

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

STRAGENT, LLC and SEESAW)	
FOUNDATION,)	Civil Action No. 6:10-CV-242-LED
)	JURY TRIAL DEMANDED
Plaintiffs,)	
)	
v.)	
)	
CLASSMATES ONLINE, INC., et al.,)	
)	
Defendants.)	
)	

DEFENDANT PLAXO INC.’S ANSWER AND COUNTERCLAIM

Defendant Plaxo, Inc. (“Plaxo”) files the following answer, defenses and counterclaim to the Second Amended Complaint for Patent Infringement (“Second Amended Complaint”) filed in this action by Stragent, LLC (“Stragent”) and SeeSaw Foundation (“SeeSaw”; collectively “Plaintiffs”) on September 17, 2010.

ANSWER

1. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 1 and therefore denies them.
2. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 2 and therefore denies them.
3. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 3 and therefore denies them.
4. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4 and therefore denies them.

5. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 5 and therefore denies them.

6. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6 and therefore denies them.

7. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 7 and therefore denies them.

8. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 8 and therefore denies them.

9. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 9 and therefore denies them.

10. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 10 and therefore denies them.

11. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 11 and therefore denies them.

12. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 12 and therefore denies them.

13. Admitted.

14. Admitted that Plaintiffs purport to assert a claim for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code. Further admitted that the Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). To the extent, however, that any allegation in paragraph 14 is intended as a basis for liability as to Plaxo, it is denied.

15. Except as expressly admitted or averred herein, Plaxo denies the allegations of paragraph 15 to the extent such allegations are directed to Plaxo. Plaxo avers that it operates a website that is accessible nationwide. Plaintiffs' allegation in paragraph 15 that venue is proper in this District, to the extent directed to Plaxo, is a legal conclusion to which no answer is required. To the extent an answer is required, and solely for purposes of this action, Plaxo does not contest the propriety of venue in this District. Plaxo avers, however, that venue is not convenient in this District. To the extent that the allegations in paragraph 15 are directed to other defendants, Plaxo lacks sufficient information or knowledge to form a belief as to their truth or falsity and therefore denies them.

16. The allegations in paragraph 16 are legal conclusions to which no answer is required, but to the extent an answer is required, Plaxo denies all allegations directed to Plaxo. However, and solely for purposes of this action, Plaxo does not contest personal jurisdiction in this District. To the extent that the allegations in paragraph 16 are directed to other defendants, Plaxo lacks sufficient information or knowledge to form a belief as to the truth or falsity of those allegations and therefore denies them.

17. Admitted that a document purporting to be United States Patent No. 6,665,722 (the "'722 Patent'") is attached to the Second Amended Complaint as Exhibit A. Admitted that the '722 Patent, on its face, has the title "Store-and-forward packet radio system and method" and indicates an issue date of December 16, 2003. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegation that SeeSaw is the owner by assignment of the '722 Patent and therefore denies it.

18. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 18 and therefore denies them.

19. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 19 and therefore denies them.

20. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 20 and therefore denies them.

21. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 21 and therefore denies them.

22. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 22 and therefore denies them.

23. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 23 and therefore denies them.

24. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 24 and therefore denies them.

25. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 25 and therefore denies them.

26. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 26 and therefore denies them.

27. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 27 and therefore denies them.

28. Plaxo lacks information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 28 and therefore denies them.

29. Admitted that Plaxo operates the Plaxo.com Internet website. Except as expressly admitted herein, Plaxo denies the allegations of paragraph 29.

30. Admitted that Plaxo operates the Plaxo.com Internet website. Except as expressly admitted herein, Plaxo denies the allegations of paragraph 30.

31. To the extent that the allegations in paragraph 31 are directed to Plaxo, Plaxo denies them. To the extent that the allegations in paragraph 31 are directed to other defendants, Plaxo lacks sufficient information or knowledge to form a belief as to the truth or falsity of those allegations and therefore denies them.

GENERAL DENIAL

Plaxo denies each and every allegation of Plaintiffs' Second Amended Complaint, including Plaintiffs' Prayer for Relief, that herein has been neither admitted nor controverted.

DEFENSES

Plaxo asserts the following defenses to Plaintiffs' Second Amended Complaint:

First Defense

Plaxo has not directly infringed, literally or under the doctrine of equivalents, contributed to the infringement of, or induced the infringement of any claim of the '722 Patent.

Second Defense

The '722 Patent is invalid by reason of having been issued in violation of the United States patent laws, Title 35 United States Code, including but not limited to violations of Sections 101, 102, 103, and/or 112 thereof, the Rules and Regulations of the Patent & Trademark Office relating thereto.

Third Defense

To the extent that Plaintiffs' alleged causes of action for infringement of the '722 Patent are based upon the doctrine of equivalents, they are barred under the doctrine of prosecution history estoppel and/or other limits to the doctrine of equivalents, and Plaintiffs are estopped

from claiming that the '722 Patent covers or includes any accused Plaxo method, system, apparatus, and/or product.

Fourth Defense

The relief sought by Plaintiffs for alleged infringement of the '722 Patent as a result of Plaxo's actions in conjunction with the actions of one or more other parties are barred to the extent that any such other party is licensed or otherwise authorized to practice the claims of the '722 Patent and/or is released from past claims of infringement of the claims of the '722 Patent.

Fifth Defense

Plaintiffs have authorized the sale of components by third parties such that their patent rights have been exhausted, and such that they have at least impliedly authorized Plaxo's manufacture, sale, offer for sale, or importation of products containing or utilizing such components.

Sixth Defense

The relief sought by Plaintiffs is barred in whole or in part by the doctrine of laches.

Seventh Defense

On information and belief, all or a portion of the relief sought by Plaintiffs is barred by Title 35 United States Code Sections 286 and/or 287.

Eighth Defense

The complaint fails to state a claim for indirect infringement of the '722 Patent.

COUNTERCLAIM

For its counterclaim against Stragent and SeeSaw, Plaxo alleges as follows:

JURISDICTION AND VENUE

1. Plaxo's counterclaim arises under the patent laws of the of the United States, Title 35 of the United States Code, and the Declaratory Judgment provisions of §§ 2201 and 2202 of Title 28 of the United States Code. This Court's jurisdiction over the subject matter of Plaxo's counterclaim is based on 28 U.S.C. §§ 1331, 1338(a) and the Declaratory Judgment Act.

2. While this District is not a convenient venue for the parties' dispute, venue for Plaxo's counterclaim is proper in this District under 28 U.S.C. § 1391(b) because Plaintiffs' assertion of a patent infringement claim against Plaxo in this District gave rise to Plaxo's counterclaim, and because Plaintiffs concede to being subject to personal jurisdiction in the State of Texas and in this District.

COUNT I – DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. 6,665,722 (the '722 Patent)

3. Plaxo restates and re-alleges the allegations set forth in paragraphs 1-2 above and incorporates them by reference.

4. Plaxo has not directly infringed, contributed to the infringement, and/or induced the infringement of any claim of the '722 Patent.

COUNT II – DECLARATORY JUDGMENT OF INVALIDITY OF U.S. PATENT NO. 6,665,722 (the '722 Patent)

5. Plaxo restates and re-alleges the allegations set forth in paragraphs 1-4 above and incorporates them by reference.

6. The '722 Patent is invalid by reason of its having been issued in violation of the U.S. patent laws, Title 35 of the United States Code, including but not limited to violations of Sections 101, 102, 103, and/or 112 thereof, the Rules and Regulations of the United States Patent and Trademark Office relating thereto.

DEMAND FOR JURY

If this matter proceeds to trial, Plaxo demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaxo respectfully requests judgment as follows:

1. That Plaintiffs' Second Amended Complaint be dismissed with prejudice against Plaxo in its entirety;
2. That judgment be entered for Plaxo and that Plaintiffs take nothing;
3. For entry of judgment that United States Patent No. 6,665,722 is invalid and/or not infringed by Plaxo;
4. That Plaintiffs be ordered to pay Plaxo's costs of suit in this action;
5. That Plaintiffs be ordered to pay Plaxo's attorneys' fees in this action pursuant to 35 U.S.C. § 285; and
6. That Plaxo be awarded such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ Deron R. Dacus

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a), and was served on all counsel who are deemed to have consented to electronic service. All other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by certified mail, return receipt requested, on this 4th day of October, 2010.

/s/ Deron R. Dacus

Deron R. Dacus