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HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERVAL LICENSING LLC,

 Plaintiff,

 v.

AOL, INC, et al.,

 Defendants.

Case No.: 2:10-cv-01385-MJP

DEFENDANT YOUTUBE, LLC’S
ANSWER AND COUNTERCLAIMS
TO PLAINTIFF INTERVAL
LICENSING LLC’S FIRST
AMENDED COMPLAINT FOR
PATENT INFRINGEMENT

Jury Trial Demanded

**DEFENDANT YOUTUBE, LLC’S ANSWER AND COUNTERCLAIMS TO PLAINTIFF
INTERVAL LICENSING LLC’S FIRST AMENDED COMPLAINT FOR PATENT
INFRINGEMENT**

Defendant YouTube, LLC (“YouTube”) responds to the First Amended Complaint for Patent Infringement (“Complaint”) of Plaintiff Interval Licensing LLC (“Plaintiff” or “Interval”) as follows:

YouTube believes that no response to the preamble of the Complaint is required, but to the extent any response is required, and to the extent the allegations contained in the preamble are directed at YouTube, YouTube denies the allegations contained in the preamble. To the

1 extent the allegations contained in the preamble are directed at any other defendant, YouTube is
2 without knowledge or information sufficient to form a belief as to the truth of the allegations
3 contained in the preamble of the Complaint and on that basis denies the allegations contained
4 therein.

5 **THE PARTIES**

6 1. YouTube is without knowledge or information sufficient to form a belief as to the
7 truth of the allegations contained in paragraph 1 of the Complaint and on that basis denies the
8 allegations contained therein.

9 2. YouTube is without knowledge or information sufficient to form a belief as to the
10 truth of the allegations contained in paragraph 2 of the Complaint and on that basis denies the
11 allegations contained therein.

12 3. YouTube is without knowledge or information sufficient to form a belief as to the
13 truth of the allegations contained in paragraph 3 of the Complaint and on that basis denies the
14 allegations contained therein.

15 4. YouTube is without knowledge or information sufficient to form a belief as to the
16 truth of the allegations contained in paragraph 4 of the Complaint and on that basis denies the
17 allegations contained therein.

18 5. YouTube is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 5 of the Complaint and on that basis denies the
20 allegations contained therein.

21 6. YouTube is without knowledge or information sufficient to form a belief as to the
22 truth of the allegations contained in paragraph 6 of the Complaint and on that basis denies the
23 allegations contained therein.

24 7. YouTube is without knowledge or information sufficient to form a belief as to the
25 truth of the allegations contained in paragraph 7 of the Complaint and on that basis denies the
26 allegations contained therein.

1 8. YouTube is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 8 of the Complaint and on that basis denies the
3 allegations contained therein.

4 9. YouTube is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations contained in paragraph 9 of the Complaint and on that basis denies the
6 allegations contained therein.

7 10. YouTube is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations contained in paragraph 10 of the Complaint and on that basis denies the
9 allegations contained therein.

10 11. YouTube is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations contained in paragraph 11 of the Complaint and on that basis denies the
12 allegations contained therein.

13 12. YouTube admits that it is a limited liability company duly organized and existing
14 under the laws of the state of California, with its principal place of business at 901 Cherry
15 Avenue, San Bruno, California 94066.

16 **JURISDICTION AND VENUE**

17 13. To the extent they are directed at YouTube, and except as expressly admitted
18 herein, YouTube denies the allegations contained in paragraph 13 of the Complaint. YouTube
19 admits that Interval's Complaint purports to state a claim arising under the Patent Laws of the
20 United States, 35 U.S.C. § 1, et seq., and that, pursuant to 28 U.S.C. § 1338(a), this Court has
21 subject matter jurisdiction over actions arising under the Patent Laws of the United States. For
22 purposes of this action only, YouTube does not contest that venue is permissible as to YouTube,
23 but asserts that a transfer of venue may be proper pursuant to 35 U.S.C. § 1404. To the extent
24 the allegations contained in paragraph 13 of the Complaint are directed at any other defendant,
25 YouTube is without knowledge or information sufficient to form a belief as to the truth of the
26 allegations contained in paragraph 13 of the Complaint and on that basis denies the allegations
27

1 contained therein. YouTube specifically denies any infringement literally or under the doctrine
2 of equivalents.

3 14. YouTube is without knowledge or information sufficient to form a belief as to the
4 truth of the allegations contained in paragraph 14 of the Complaint and on that basis denies the
5 allegations contained therein.

6 15. YouTube is without knowledge or information sufficient to form a belief as to the
7 truth of the allegations contained in paragraph 15 of the Complaint and on that basis denies the
8 allegations contained therein.

9 16. YouTube is without knowledge or information sufficient to form a belief as to the
10 truth of the allegations contained in paragraph 16 of the Complaint and on that basis denies the
11 allegations contained therein.

12 17. YouTube is without knowledge or information sufficient to form a belief as to the
13 truth of the allegations contained in paragraph 17 of the Complaint and on that basis denies the
14 allegations contained therein.

15 18. YouTube is without knowledge or information sufficient to form a belief as to the
16 truth of the allegations contained in paragraph 18 of the Complaint and on that basis denies the
17 allegations contained therein.

18 19. YouTube is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 19 of the Complaint and on that basis denies the
20 allegations contained therein.

21 **INFRINGEMENT OF U.S. PATENT NO. 6,263,507**

22 20. YouTube admits that United States Patent No. 6,263,507 (“the ’507 patent”) bears
23 the issue date July 17, 2001 and the title “Browser for Use in Navigating a Body of Information,
24 With Particular Application to Browsing Information Represented By Audiovisual Data.”

25 YouTube denies that the ’507 patent was duly and legally issued. YouTube specifically denies
26 that the ’507 patent describes an invention and refers to the patent for its description. YouTube
27

1 is without knowledge or information sufficient to form a belief as to the truth of the remaining
2 allegations contained in paragraph 20 of the Complaint and on that basis denies these allegations.

3 21. YouTube is without knowledge or information sufficient to form a belief as to the
4 truth of the allegations contained in paragraph 21 of the Complaint and on that basis denies the
5 allegations contained therein.

6 22. YouTube is without knowledge or information sufficient to form a belief as to the
7 truth of the allegations contained in paragraph 22 of the Complaint and on that basis denies the
8 allegations contained therein.

9 23. YouTube is without knowledge or information sufficient to form a belief as to the
10 truth of the allegations contained in paragraph 23 of the Complaint and on that basis denies the
11 allegations contained therein.

12 24. YouTube is without knowledge or information sufficient to form a belief as to the
13 truth of the allegations contained in paragraph 24 of the Complaint and on that basis denies the
14 allegations contained therein.

15 25. YouTube is without knowledge or information sufficient to form a belief as to the
16 truth of the allegations contained in paragraph 25 of the Complaint and on that basis denies the
17 allegations contained therein.

18 26. YouTube is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 26 of the Complaint and on that basis denies the
20 allegations contained therein.

21 27. YouTube is without knowledge or information sufficient to form a belief as to the
22 truth of the allegations contained in paragraph 27 of the Complaint and on that basis denies the
23 allegations contained therein.

24 28. YouTube is without knowledge or information sufficient to form a belief as to the
25 truth of the allegations contained in paragraph 28 of the Complaint and on that basis denies the
26 allegations contained therein.

1 29. YouTube is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 29 of the Complaint and on that basis denies the
3 allegations contained therein.

4 30. YouTube is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations contained in paragraph 30 of the Complaint and on that basis denies the
6 allegations contained therein.

7 31. YouTube is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations contained in paragraph 31 of the Complaint and on that basis denies the
9 allegations contained therein.

10 32. YouTube is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations contained in paragraph 32 of the Complaint and on that basis denies the
12 allegations contained therein.

13 33. YouTube is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations contained in paragraph 33 of the Complaint and on that basis denies the
15 allegations contained therein.

16 34. YouTube is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations contained in paragraph 34 of the Complaint and on that basis denies the
18 allegations contained therein.

19 35. YouTube is without knowledge or information sufficient to form a belief as to the
20 truth of the allegations contained in paragraph 35 of the Complaint and on that basis denies the
21 allegations contained therein.

22 36. YouTube is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations contained in paragraph 36 of the Complaint and on that basis denies the
24 allegations contained therein.

25 37. YouTube specifically denies any infringement of any claim of the '507 patent
26 literally or under the doctrine of equivalents. YouTube admits that YouTube operates
27 YouTube.com and that users of YouTube.com may access videos or see advertisements.

1 YouTube admits that, in viewing content on YouTube.com, users are sometimes presented with
2 additional content that may be similar to content recently viewed by that user. To the extent that
3 the allegations in paragraph 37 purport to quote an Exhibit to the Complaint, YouTube refers to
4 the Exhibit for its content. Except as expressly admitted herein, YouTube denies the remaining
5 allegations of paragraph 37 that are directed at YouTube.

6 38. To the extent the allegations of paragraph 38 are directed at YouTube, YouTube
7 denies the allegations of paragraph 38. YouTube specifically denies any infringement of any
8 claim of the '507 patent literally or under the doctrine of equivalents. YouTube also specifically
9 denies any damage or harm of any kind to Interval. YouTube further specifically denies that
10 Interval has any basis for asserting willful or deliberate infringement against YouTube and that
11 Interval is entitled to attorney's fees or costs. YouTube is without knowledge or information
12 sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 38
13 of the Complaint and on that basis denies the allegations contained therein.

14 **INFRINGEMENT OF U.S. PATENT NO. 6,034,652**

15 39. YouTube is without knowledge or information sufficient to form a belief as to the
16 truth of the allegations contained in paragraph 39 of the Complaint and on that basis denies the
17 allegations contained therein.

18 40. YouTube is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 40 of the Complaint and on that basis denies the
20 allegations contained therein.

21 41. YouTube is without knowledge or information sufficient to form a belief as to the
22 truth of the allegations contained in paragraph 41 of the Complaint and on that basis denies the
23 allegations contained therein.

24 42. YouTube is without knowledge or information sufficient to form a belief as to the
25 truth of the allegations contained in paragraph 42 of the Complaint and on that basis denies the
26 allegations contained therein.

1 43. YouTube is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 43 of the Complaint and on that basis denies the
3 allegations contained therein.

4 44. YouTube is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations contained in paragraph 44 of the Complaint and on that basis denies the
6 allegations contained therein.

7 45. YouTube is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations contained in paragraph 45 of the Complaint and on that basis denies the
9 allegations contained therein.

10 46. YouTube is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations contained in paragraph 46 of the Complaint and on that basis denies the
12 allegations contained therein.

13 47. YouTube is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations contained in paragraph 47 of the Complaint and on that basis denies the
15 allegations contained therein.

16 48. YouTube is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations contained in paragraph 48 of the Complaint and on that basis denies the
18 allegations contained therein.

19 **INFRINGEMENT OF U.S. PATENT NO. 6,788,314**

20 49. YouTube is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 49 of the Complaint and on that basis denies the
22 allegations contained therein.

23 50. YouTube is without knowledge or information sufficient to form a belief as to the
24 truth of the allegations contained in paragraph 50 of the Complaint and on that basis denies the
25 allegations contained therein.

1 51. YouTube is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 51 of the Complaint and on that basis denies the
3 allegations contained therein.

4 52. YouTube is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations contained in paragraph 52 of the Complaint and on that basis denies the
6 allegations contained therein.

7 53. YouTube is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations contained in paragraph 53 of the Complaint and on that basis denies the
9 allegations contained therein.

10 54. YouTube is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations contained in paragraph 54 of the Complaint and on that basis denies the
12 allegations contained therein.

13 55. YouTube is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations contained in paragraph 55 of the Complaint and on that basis denies the
15 allegations contained therein.

16 56. YouTube is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations contained in paragraph 56 of the Complaint and on that basis denies the
18 allegations contained therein.

19 57. YouTube is without knowledge or information sufficient to form a belief as to the
20 truth of the allegations contained in paragraph 57 of the Complaint and on that basis denies the
21 allegations contained therein.

22 58. YouTube is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations contained in paragraph 58 of the Complaint and on that basis denies the
24 allegations contained therein.

25 **INFRINGEMENT OF U.S. PATENT NO. 6,757,682**

26 59. YouTube admits that United States Patent No. 6,757,682 (“the ’682 patent”) bears
27 the issue date June 29, 2004 and the title “Alerting Users to Items of Current Interest.” YouTube

1 denies that the '682 patent was duly and legally issued. YouTube refers to the patent for its
2 description. YouTube is without knowledge or information sufficient to form a belief as to the
3 truth of the remaining allegations contained in paragraph 59 of the Complaint and on that basis
4 denies these allegations.

5 60. YouTube is without knowledge or information sufficient to form a belief as to the
6 truth of the allegations contained in paragraph 60 of the Complaint and on that basis denies the
7 allegations contained therein.

8 61. YouTube is without knowledge or information sufficient to form a belief as to the
9 truth of the allegations contained in paragraph 61 of the Complaint and on that basis denies the
10 allegations contained therein.

11 62. YouTube is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations contained in paragraph 62 of the Complaint and on that basis denies the
13 allegations contained therein.

14 63. YouTube is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations contained in paragraph 63 of the Complaint and on that basis denies the
16 allegations contained therein.

17 64. YouTube is without knowledge or information sufficient to form a belief as to the
18 truth of the allegations contained in paragraph 64 of the Complaint and on that basis denies the
19 allegations contained therein.

20 65. YouTube is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations contained in paragraph 65 of the Complaint and on that basis denies the
22 allegations contained therein.

23 66. YouTube is without knowledge or information sufficient to form a belief as to the
24 truth of the allegations contained in paragraph 66 of the Complaint and on that basis denies the
25 allegations contained therein.

1 67. YouTube is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 67 of the Complaint and on that basis denies the
3 allegations contained therein.

4 68. YouTube is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations contained in paragraph 68 of the Complaint and on that basis denies the
6 allegations contained therein.

7 69. YouTube is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations contained in paragraph 69 of the Complaint and on that basis denies the
9 allegations contained therein.

10 70. YouTube is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations contained in paragraph 70 of the Complaint and on that basis denies the
12 allegations contained therein.

13 71. YouTube is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations contained in paragraph 71 of the Complaint and on that basis denies the
15 allegations contained therein.

16 72. YouTube is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations contained in paragraph 72 of the Complaint and on that basis denies the
18 allegations contained therein.

19 73. YouTube specifically denies any infringement of any claim of the '682 patent
20 literally or under the doctrine of equivalents. YouTube admits that YouTube operates
21 YouTube.com and that users of YouTube.com may access videos or see advertisements. To the
22 extent that the allegations in paragraph 73 purport to quote an Exhibit to the Complaint,
23 YouTube refers to the Exhibit for its content. Except as expressly admitted herein, YouTube
24 denies the remaining allegations of paragraph 73 that are directed at YouTube.

25 74. To the extent the allegations of paragraph 74 are directed at YouTube, YouTube
26 denies the allegations of paragraph 74. YouTube specifically denies any infringement of any
27 claim of the '682 patent literally or under the doctrine of equivalents. YouTube also specifically

1 denies any damage or harm of any kind to Interval. YouTube further specifically denies that
2 Interval has any basis for asserting willful or deliberate infringement against YouTube and that
3 Interval is entitled to attorney’s fees or costs. Except as expressly admitted herein, YouTube
4 denies the remaining allegations of paragraph 74 that are directed at YouTube.

5 **JURY DEMAND**

6 75. YouTube believes that no response to paragraph 75 is required, but to the extent
7 any response is required, and to the extent the allegations contained in paragraph 75 are directed
8 at YouTube, YouTube denies the allegations contained in paragraph 75. To the extent the
9 allegations contained in paragraph 75 are directed at any other defendant, YouTube is without
10 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
11 paragraph 75 of the Complaint and on that basis denies the allegations contained therein.

12 * * *

13 YouTube denies that Interval is entitled to the relief sought in items a) through e) of
14 Interval’s “PRAYER FOR RELIEF”, and in the preamble to such items, on pages 33 and 34 of
15 the Complaint.

16 **GENERAL DENIAL**

17 To the extent that any allegations of the Complaint are not specifically admitted,
18 YouTube hereby denies them.

19 **AFFIRMATIVE DEFENSES**

20 In addition to the defenses described below, YouTube reserves all affirmative defenses
21 under Rule 8(c) of the Federal Rules of Civil Procedure, the Patent Laws of the United States and
22 any other defenses, at law or in equity, which may now exist or in the future may be available
23 based on discovery and further factual investigation in this case.

24 **FIRST AFFIRMATIVE DEFENSE**

25 76. YouTube has not infringed and is not infringing any claim of any of the ’507
26 patent or the ’682 patent (together, “the patents-in-suit”), either directly or by inducing or
27 contributing to infringement by others.

1 **SECOND AFFIRMATIVE DEFENSE**

2 77. Each of the claims of each of the patents-in-suit is invalid and/or void for failing
3 to comply with one or more of the requirements for patentability under the Patent Laws of the
4 United States, including but not limited to, 35 U.S.C. §§ 101, 102, 103, 112 et seq.

5 **THIRD AFFIRMATIVE DEFENSE**

6 78. Interval is estopped from construing any valid claim of any of the patents-in-suit
7 to cover or include, either literally or by application of the doctrine of equivalents, any product or
8 service manufactured, used, imported, sold, or offered by YouTube because of admissions and
9 statements to the United States Patent and Trademark Office in the specifications of any of the
10 patents-in-suit and during prosecution of the applications leading to the issuance of any of the
11 patents-in-suit.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 79. The claims alleged in the Complaint are barred, in whole or in part, by the
14 doctrine of unclean hands.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 80. Interval is not entitled to injunctive relief because any alleged injury to
17 Interval is not immediate or irreparable, and Interval has an adequate remedy at law.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 81. With respect to each purported claim for relief alleged in the Complaint, Interval
20 fails to state a claim against YouTube upon which relief may be granted, including but not
21 limited to any claim for infringement, contributory infringement or inducing infringement.

22 **SEVENTH AFFIRMATIVE DEFENSE**

23 82. The claims alleged in the Complaint are barred, in whole or in part, by the
24 doctrine of laches and/or estoppel.

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 83. Interval failed to provide adequate notice to YouTube of alleged infringement and
3 is thus barred under 35 U.S.C. § 287 from recovering damages prior to the date of the filing of
4 the Complaint.

5 84. Interval is barred by 35 U.S.C. § 288 from recovering costs associated with its
6 action.

7 85. By asserting this affirmative defense, YouTube does not assume any burden of
8 proof.

9 **NINTH AFFIRMATIVE DEFENSE**

10 86. Interval cannot prove that this is an exceptional case justifying award of attorney
11 fees against YouTube pursuant to 35 U.S.C. § 285.

12 **TENTH AFFIRMATIVE DEFENSE**

13 87. To the extent Interval purports to identify any YouTube products, Interval's
14 claims for contributory infringement are barred in whole or in part under 35 U.S.C. § 271(c) in
15 view of the substantial non-infringing uses of such allegedly infringing products.

16 **ELEVENTH AFFIRMATIVE DEFENSE**

17 88. YouTube's investigation of its defenses is continuing, and YouTube expressly
18 reserves the right to allege and assert any additional affirmative defenses under Rule 8 of the
19 Federal Rules of Civil Procedure, the patent laws of the United States and any other defense, at
20 law or in equity, that may now exist or in the future be available based upon discovery and
21 further investigation in this case. YouTube also expressly incorporates by reference herein all
22 defenses pleaded by any other defendant in this action in their respective answers to the
23 Complaint.

24 **TWELFTH AFFIRMATIVE DEFENSE**

25 89. On information and belief, some or all of the defendants have been improperly
26 joined in a single action, and YouTube asserts its right to a separate trial.

1 **COUNTERCLAIMS**

2 YouTube brings these counterclaims against Interval, alleging as follows:

3 **JURISDICTION AND VENUE**

4 90. This Court has subject matter jurisdiction over this Counterclaim pursuant to 28
5 U.S.C. §§ 1331, 1332, 1338(a), and 1367 and the Declaratory Judgment Act 28 U.S.C. §§ 2201
6 and 2202.

7 91. This Court has personal jurisdiction over Interval because, inter alia, Interval has
8 submitted to the jurisdiction of this Court by filing suit in this District and purposefully availing
9 itself of the benefits and protections of the laws of the District.

10 92. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(c) and by
11 virtue of Interval asserting, pursuant to 28 U.S.C. § 1400, a claim for patent infringement in this
12 District in response to which this Counterclaim is asserted.

13 **COUNT I**
14 **(Declaratory Judgment of Invalidity of the '507 Patent)**

15 93. YouTube repeats and incorporates by reference the allegations contained in
16 paragraphs 90-92 above as if fully set forth herein.

17 94. The claims of the '507 patent are invalid for failure to meet the conditions of
18 patentability set forth in the Patent Laws of the United States, including but not limited to 35
19 U.S.C. §§ 101, 102, 103, and 112.

20 95. Interval alleges that YouTube infringes one or more claims of the '507 patent.
21 YouTube contends that the '507 patent is invalid. An actual controversy exists between Interval
22 and YouTube regarding the invalidity of the '507 patent.

23 96. YouTube is entitled to a declaratory judgment that the claims of the '507 patent
24 are invalid and/or void in law.

25 97. This is an exceptional case entitling YouTube to an award of its attorneys' fees
26 incurred in connection with this action under 35 U.S.C. § 285.

1 **COUNT II**
2 **(Declaratory Judgment of Invalidity of the '682 Patent)**

3 98. YouTube repeats and incorporates by reference the allegations contained in
4 paragraphs 90-97 above as if fully set forth herein.

5 99. The claims of the '682 patent are invalid for failure to meet the conditions of
6 patentability set forth in the Patent Laws of the United States, including but not limited to 35
7 U.S.C. §§ 101, 102, 103, and 112.

8 100. Interval alleges that YouTube infringes one or more claims of the '682 patent.
9 YouTube contends that the '682 patent is invalid. An actual controversy exists between Interval
10 and YouTube regarding the invalidity of the '682 patent.

11 101. YouTube is entitled to a declaratory judgment that the claims of the '682 patent
12 are invalid and/or void in law.

13 102. This is an exceptional case entitling YouTube to an award of its attorneys' fees
14 incurred in connection with this action under 35 U.S.C. § 285.

15 **COUNT III**
16 **(Declaratory Judgment of Non-Infringement of the '507 patent)**

17 103. YouTube realleges and incorporates by reference the allegations set forth in
18 paragraphs 90-102 above.

19 104. Interval alleges that YouTube infringes one or more claims of the '507 patent
20 and/or actively induces or contributes to others' infringement of the '507 patent. YouTube
21 contends that it has not and does not directly or indirectly infringe, contribute to, or induce
22 infringement of any claim of the '507 patent, either literally or under the doctrine of equivalents.

23 105. An actual controversy exists between Interval and YouTube over the alleged
24 infringement of the '507 patent.

25 106. YouTube is entitled to judgment from this Court that it has not and does not
26 directly or indirectly infringe, contribute to, or induce infringement of any valid claim of the
27 '507 patent either literally or under the doctrine of equivalents.

1 107. This is an exceptional case entitling YouTube to an award of its attorneys' fees
2 incurred in connection with this action under 35 U.S.C. § 285.

3
4 **COUNT IV**
(Declaratory Judgment of Non-Infringement of the '682 patent)

5 108. YouTube realleges and incorporates by reference the allegations set forth in
6 paragraphs 90-107 above.

7 109. Interval alleges that YouTube infringes one or more claims of the '682 patent
8 and/or actively induces or contributes to others' infringement of the '682 patent. YouTube
9 contends that it has not and does not directly or indirectly infringe, contribute to, or induce
10 infringement of any claim of the '682 patent, either literally or under the doctrine of equivalents.

11 110. An actual controversy exists between Interval and YouTube over the alleged
12 infringement of the '682 patent.

13 111. YouTube is entitled to judgment from this Court that it has not and does not
14 directly or indirectly infringe, contribute to, or induce infringement of any valid claim of the
15 '682 patent either literally or under the doctrine of equivalents.

16 112. This is an exceptional case entitling YouTube to an award of its attorneys' fees
17 incurred in connection with this action under 35 U.S.C. § 285.

18 **JURY DEMAND**

19 YouTube requests a trial by jury as to all issues so triable.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Defendant YouTube respectfully requests that the Court enter an Order
22 and Judgment:

- 23 1. Dismissing Interval's claims against YouTube with prejudice;
24 2. Denying all relief sought by Interval;
25 3. Declaring that YouTube has not infringed and is not directly or indirectly
26 infringing any claim of any of the patents-in-suit;
27 4. Declaring that the patents-in-suit are invalid;

1 5. Declaring that this case is exceptional under 35 U.S.C. § 285;

2 6. Awarding to YouTube its costs, attorneys' fees, and expenses incurred in
3 defending against Interval's Complaint; and

4 7. Awarding YouTube such other and further relief as the Court deems just
5 and proper.

6 Dated this 14th day of January, 2011 in Seattle, Washington.

7 STOKES LAWRENCE, P.S.

8
9 By: s/ Shannon M. Jost
10 Shannon M. Jost (WSBA #32511)
11 Scott A.W. Johnson (WSBA #15543)
12 Aneelah Afzali (WSBA #34552)

13 and

14 *Admitted Pro Hac Vice*
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21 New York, NY 10036-2787

22 Warren S. Heit
23 WHITE & CASE LLP
24 3000 El Camino Real
25 Building 5, 9th Floor
26 Palo Alto, CA 94306

27 Attorneys for Defendants Google Inc. and
YouTube, LLC

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on January 14, 2011, I caused the foregoing DEFENDANT YOUTUBE,
3 LLC'S ANSWER AND COUNTERCLAIMS TO PLAINTIFF INTERVAL LICENSING
4 LLC'S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT to be:

5 electronically filed with the Clerk of the Court using the CM/ECF system which will send
6 notification of such filing to the following:

7 **Attorneys for Plaintiff Interval Licensing LLC**

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