

THE HONORABLE MARSHA J. PECHMAN

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERVAL LICENSING LLC,

Plaintiff,

v.

AOL Inc., et al.,

Defendants.

Case No. 2:10-cv-1385 MJP

**AOL INC.’S ANSWER AND
COUNTERCLAIMS TO INTERVAL
LICENSING LLC’S FIRST
AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

Defendant AOL Inc. (“AOL”) hereby answers and asserts affirmative defenses and counterclaims to the First Amended Complaint (“FAC”) filed by Plaintiff Interval Licensing LLC (“Interval”), on December 28, 2010, as follows:

THE PARTIES

1. AOL admits that Interval purports to be a limited liability company organized under the laws of the state of Washington, with its principal place of business at 505 Fifth Avenue South, Suite 900, Seattle, WA 98104. AOL is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 1 of the FAC, and therefore denies the same.

2. Admitted.

3. AOL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the FAC, and therefore denies the same.

1 AOL. To the extent the allegations contained in paragraph 13 of the Complaint are directed at any
2 other defendant, AOL is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained in paragraph 13 of the Complaint and on that basis denies the
4 allegations contained therein.

5 **INTERVAL RESEARCH CORPORATION**

6 14. AOL is without knowledge or information sufficient to form a belief as to the truth
7 of the allegations contained in paragraph 14 of the FAC, and therefore denies the same.

8 15. AOL is without knowledge or information sufficient to form a belief as to the truth
9 of the allegations contained in paragraph 15 of the FAC, and therefore denies the same.

10 16. AOL is without knowledge or information sufficient to form a belief as to the truth
11 of the allegations contained in paragraph 16 of the FAC, and therefore denies the same.

12 17. AOL is without knowledge or information sufficient to form a belief as to the truth
13 of the allegations contained in paragraph 17 of the FAC, and therefore denies the same.

14 18. AOL admits that the four patents-in-suit purport to have been assigned to Interval
15 Research Corporation. AOL is without knowledge or information sufficient to form a belief as to
16 the truth of the remaining allegations contained in paragraph 18 of the FAC, and therefore denies
17 the same.

18 19. AOL admits that Interval Licensing LLC purports to own the patents-in-suit. AOL
19 is without knowledge or information sufficient to form a belief as to the truth of the remaining
20 allegations contained in paragraph 19 of the FAC, and therefore denies the same.

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

22 20. On information and belief, AOL admits that on July 17, 2001, United States Patent
23 No. 6,263,507 (“the ’507 patent”) issued and is entitled “Browser for Use in Navigating a Body of
24 Information, With Particular Application to Browsing Information Represented By Audiovisual
25 Data.” AOL denies that the ’507 patent was duly and legally issued. AOL specifically denies that
26 the ’507 patent describes an invention and refers to the patent for its description. AOL is without

1 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
2 contained in paragraph 20 of the FAC, and therefore denies the same.

3 21. AOL admits that it provides websites that provide information such as, for
4 example, articles, videos, advertisements, and other types of content to users. AOL denies that it
5 has infringed or continues to infringe one or more claims of the '507 patent under 35 U.S.C. §
6 271. AOL denies the remainder of the allegations contained in paragraph 21 of the FAC.

7 22. AOL admits that it provides the AOL Spam Filter as part of its AOL Mail website
8 and service, and admits that the AOL Spam Filter provides spam filtering of emails. AOL denies
9 that the hardware and software associated with the AOL Spam Filter have infringed or continue to
10 infringe any claim of the '507 patent under 35 U.S.C. § 271. AOL denies the remainder of the
11 allegations contained in paragraph 22 of the FAC.

12 23. AOL is without knowledge or information sufficient to form a belief as to the truth
13 of the allegations contained in paragraph 23 of the FAC, and therefore denies the same.

14 24. AOL is without knowledge or information sufficient to form a belief as to the truth
15 of the allegations contained in paragraph 24 of the FAC, and therefore denies the same.

16 25. AOL is without knowledge or information sufficient to form a belief as to the truth
17 of the allegations contained in paragraph 25 of the FAC, and therefore denies the same.

18 26. AOL is without knowledge or information sufficient to form a belief as to the truth
19 of the allegations contained in paragraph 26 of the FAC, and therefore denies the same.

20 27. AOL is without knowledge or information sufficient to form a belief as to the truth
21 of the allegations contained in paragraph 27 of the FAC, and therefore denies the same.

22 28. AOL is without knowledge or information sufficient to form a belief as to the truth
23 of the allegations contained in paragraph 28 of the FAC, and therefore denies the same.

24 29. AOL is without knowledge or information sufficient to form a belief as to the truth
25 of the allegations contained in paragraph 29 of the FAC, and therefore denies the same.

1 sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 39 of
2 the FAC, and therefore denies the same.

3 40. AOL admits that it provides the AOL Instant Messenger and Lifestream software.
4 AOL denies that it has infringed or continues to infringe any claim of the '652 patent under 35
5 U.S.C. § 271. AOL denies the remainder of the allegations contained in paragraph 40 of the FAC.

6 41. AOL is without knowledge or information sufficient to form a belief as to the truth
7 of the allegations contained in paragraph 41 of the FAC, and therefore denies the same.

8 42. AOL is without knowledge or information sufficient to form a belief as to the truth
9 of the allegations contained in paragraph 42 of the FAC, and therefore denies the same.

10 43. AOL is without knowledge or information sufficient to form a belief as to the truth
11 of the allegations contained in paragraph 43 of the FAC, and therefore denies the same.

12 44. AOL is without knowledge or information sufficient to form a belief as to the truth
13 of the allegations contained in paragraph 44 of the FAC, and therefore denies the same.

14 45. AOL is without knowledge or information sufficient to form a belief as to the truth
15 of the allegations contained in paragraph 45 of the FAC, and therefore denies the same.

16 46. AOL is without knowledge or information sufficient to form a belief as to the truth
17 of the allegations contained in paragraph 46 of the FAC, and therefore denies the same.

18 47. AOL is without knowledge or information sufficient to form a belief as to the truth
19 of the allegations contained in paragraph 47 of the FAC, and therefore denies the same.

20 48. AOL denies the allegations contained in paragraph 48 of the FAC pertaining to
21 AOL. AOL is without knowledge or information sufficient to form a belief as to the truth of the
22 remaining allegations contained in paragraph 48 of the FAC, and therefore denies the same.

23 **U.S. PATENT NO. 6,788,314**

24 49. On information and belief, AOL admits that on September 7, 2004, United States
25 Patent No. 6,788,314 (“the '314 patent”) issued and is entitled “Attention Manager for Occupying
26 the Peripheral Attention of a Person in the Vicinity of a Display Device.” AOL denies that the

1 '314 patent was duly and legally issued. AOL specifically denies that the '314 patent describes an
2 invention and refers to the patent for its description. AOL is without knowledge or information
3 sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 49 of
4 the FAC, and therefore denies the same.

5 50. AOL admits that it provides the AOL Instant Messenger and Lifestream software.
6 AOL denies that it has infringed or continues to infringe any claim of the '314 patent under 35
7 U.S.C. § 271. AOL incorporates by reference its response to paragraph 40 of the FAC. AOL
8 denies the remainder of the allegations contained in paragraph 50 of the FAC.

9 51. AOL is without knowledge or information sufficient to form a belief as to the truth
10 of the allegations contained in paragraph 51 of the FAC, and therefore denies the same.

11 52. AOL is without knowledge or information sufficient to form a belief as to the truth
12 of the allegations contained in paragraph 52 of the FAC, and therefore denies the same.

13 53. AOL is without knowledge or information sufficient to form a belief as to the truth
14 of the allegations contained in paragraph 53 of the FAC, and therefore denies the same.

15 54. AOL is without knowledge or information sufficient to form a belief as to the truth
16 of the allegations contained in paragraph 54 of the FAC, and therefore denies the same.

17 55. AOL is without knowledge or information sufficient to form a belief as to the truth
18 of the allegations contained in paragraph 55 of the FAC, and therefore denies the same.

19 56. AOL is without knowledge or information sufficient to form a belief as to the truth
20 of the allegations contained in paragraph 56 of the FAC, and therefore denies the same.

21 57. AOL is without knowledge or information sufficient to form a belief as to the truth
22 of the allegations contained in paragraph 57 of the FAC, and therefore denies the same.

23 58. AOL denies the allegations contained in paragraph 58 of the FAC pertaining to
24 AOL. AOL is without knowledge or information sufficient to form a belief as to the truth of the
25 remaining allegations contained in paragraph 58 of the FAC, and therefore denies the same.

26

1 **U.S. PATENT NO. 6,757,682**

2 59. On information and belief, AOL admits that on June 29, 2004, United States Patent
3 No. 6,757,682 (“the ’682 patent”) issued and is entitled “Alerting Users to Items of Current
4 Interest.” AOL denies that the ’682 patent was duly and legally issued. AOL specifically denies
5 that the ’682 patent describes an invention and refers to the patent for its description. AOL is
6 without knowledge or information sufficient to form a belief as to the truth of the remaining
7 allegations contained in paragraph 59 of the FAC, and therefore denies the same.

8 60. AOL admits that it provides the AOL Shopping website. AOL denies that it has
9 infringed or continues to infringe any claim of the ’682 patent under 35 U.S.C. § 271. AOL
10 denies the remainder of the allegations contained in paragraph 60 of the FAC.

11 61. AOL is without knowledge or information sufficient to form a belief as to the truth
12 of the allegations contained in paragraph 61 of the FAC, and therefore denies the same.

13 62. AOL is without knowledge or information sufficient to form a belief as to the truth
14 of the allegations contained in paragraph 62 of the FAC, and therefore denies the same.

15 63. AOL is without knowledge or information sufficient to form a belief as to the truth
16 of the allegations contained in paragraph 63 of the FAC, and therefore denies the same.

17 64. AOL is without knowledge or information sufficient to form a belief as to the truth
18 of the allegations contained in paragraph 64 of the FAC, and therefore denies the same.

19 65. AOL is without knowledge or information sufficient to form a belief as to the truth
20 of the allegations contained in paragraph 65 of the FAC, and therefore denies the same.

21 66. AOL is without knowledge or information sufficient to form a belief as to the truth
22 of the allegations contained in paragraph 66 of the FAC, and therefore denies the same.

23 67. AOL is without knowledge or information sufficient to form a belief as to the truth
24 of the allegations contained in paragraph 67 of the FAC, and therefore denies the same.

25 68. AOL is without knowledge or information sufficient to form a belief as to the truth
26 of the allegations contained in paragraph 68 of the FAC, and therefore denies the same.

1 **Noninfringement**

2 1. AOL has not infringed and does not infringe, either directly, contributorily, or by
3 inducement, any claim of the '507, '652, '314, or '682 patents, either literally or under the
4 doctrine of equivalents.

5 **Invalidity**

6 2. The claims of the '507, '652, '314, and '682 patents are invalid for failing to
7 comply with the provisions of the Patent Laws of the United States, including without limitation
8 35 U.S.C. §§ 101, 102, 103 and/or 112.

9 **Laches**

10 3. On information and belief, and in view of Interval's infringement contentions,
11 Interval has had knowledge of one or more accused AOL products for at least six years before
12 instituting this lawsuit.

13 4. On information and belief, Interval delayed filing the instant suit against AOL for
14 an unreasonable and inexcusable length of time after it knew or reasonably should have known of
15 its infringement claims against AOL with respect to the '507, '652, '314, and '682 patents.

16 5. Interval's delay in filing the instant suit has caused AOL material prejudice of an
17 economic and/or evidentiary nature.

18 6. AOL's conduct with respect to Interval has not been culpable, and a finding of
19 laches applied to Interval's patent infringement claims would not be inequitable.

20 7. On information and belief, Interval's claims are barred, in whole or in part, by the
21 doctrine of laches.

22 **Prosecution History Estoppel**

23 8. By reason of the proceedings in the U.S. Patent and Trademark Office during the
24 prosecution of the applications for the '507, '652, '314, and '682 patents, including but not limited
25 to amendments to the claims and arguments and representations made to induce the grant of those
26

1 patents, Interval is barred by prosecution history estoppel from relying on the doctrine of
2 equivalents to prove infringement.

3 **No Entitlement to Injunctive Relief**

4 9. Upon information and belief, Interval does not make or sell any systems or
5 methods that compete with AOL's accused instrumentalities. Upon further information and belief,
6 Interval does not make or sell any products at all.

7 10. Interval is not entitled to any injunctive relief in connection with this action
8 because, *inter alia*: (1) AOL has not infringed and is not infringing any of the asserted patents; (2)
9 the asserted patents are invalid; (3) any purported injury to Interval is neither immediate nor
10 irreparable; (4) even if Interval had suffered some injury (which it has not), there is an adequate
11 remedy at law and monetary damages would be sufficient; (5) the public interest strongly
12 disfavors an injunction under the circumstances present here; and (6) the balance of hardships
13 favors AOL.

14 **COUNTERCLAIMS**

15 Pursuant to Rule 13 of the Federal Rules of Civil Procedure, Defendant/Counter-Plaintiff
16 AOL asserts the following counterclaims against Plaintiff/Counter-Defendant Interval:

17 **THE PARTIES**

18 1. AOL Inc. ("AOL") is a corporation duly organized and existing under the laws of
19 the state of Delaware, with its principal place of business at 770 Broadway, New York, NY 10003.

20 2. On information and belief, Interval Licensing LLC ("Interval") is a limited liability
21 company duly organized under the laws of the state of Washington, with its principal place of
22 business at 505 Fifth Avenue South, Suite 900, Seattle, WA 98104.

23 **JURISDICTION AND VENUE**

24 3. AOL's counterclaims for declaratory judgments arise under the patent laws of the
25 United States, more particularly under Title 35, United States Code. The jurisdiction of this Court
26 is proper under at least 35 U.S.C. § 271 et seq. and 28 U.S.C. §§ 1331, 1338, 1367, and 2201-02.

1 4. On August 27, 2010, Interval commenced a civil action for infringement of the
2 '507, '652, '314, and '682 patents by filing a Complaint in this Court against AOL. Interval's
3 Complaint was dismissed by this Court on December 10, 2010. On December 28, 2010, Interval
4 filed its First Amended Complaint ("FAC"). AOL denies infringement of the '507, '652, '314,
5 and '682 patents as alleged in Interval's FAC and asserts the invalidity of the patents, as set forth
6 above in AOL's Answer to the FAC. As a consequence, there is an actual justiciable controversy
7 between AOL and Interval concerning whether AOL infringes any valid and enforceable claim of
8 the '507, '652, '314, and '682 patents.

9 5. This Court has personal jurisdiction over Interval at least because Interval, on
10 information and belief, is organized under the laws of the state of Washington, has its principal
11 place of business in the state of Washington, and has submitted itself to the jurisdiction of this
12 Court.

13 6. Venue in this judicial district is proper at least because Interval has consented to
14 this venue by asserting and filing claims of patent infringement against AOL in this judicial
15 district. Venue is also proper in this District pursuant to at least 28 U.S.C. §§ 1391 and 1400.

16 **First Counterclaim for Declaratory Judgment That AOL's Accused Products**
17 **Do Not Infringe Any Claim of the '507 Patent**

18 7. AOL incorporates by reference the allegations contained in paragraphs 1 through 6
19 of its Counterclaims.

20 8. AOL does not directly or indirectly infringe any claim of the '507 patent because
21 AOL does not make, use, sell, offer to sell, or import any system, apparatus, or method claimed in
22 the '507 patent and AOL does not induce or contribute to the direct infringement of the '507
23 patent by any party.

24 9. A judicial declaration that AOL does not directly or indirectly infringe the claims
25 of the '507 patent is necessary and appropriate at this time pursuant to 28 U.S.C. § 2201(a) in
26 order that AOL may ascertain its rights and duties with respect to the '507 patent.

1 **Second Counterclaim for Declaratory Judgment That AOL's Accused Products**
2 **Do Not Infringe Any Claim of the '652 Patent**

3 10. AOL incorporates by reference the allegations contained in paragraphs 1 through 9
4 of its Counterclaims.

5 11. AOL does not directly or indirectly infringe any claim of the '652 patent because
6 AOL does not make, use, sell, offer to sell, or import any system, apparatus, or method claimed in
7 the '652 patent and AOL does not induce or contribute to the direct infringement of the '652
8 patent by any party.

9 12. A judicial declaration that AOL does not directly or indirectly infringe the claims
10 of the '652 patent is necessary and appropriate at this time pursuant to 28 U.S.C. § 2201(a) in
11 order that AOL may ascertain its rights and duties with respect to the '652 patent.

12 **Third Counterclaim for Declaratory Judgment That AOL's Accused Products**
13 **Do Not Infringe Any Claim of the '314 Patent**

14 13. AOL incorporates by reference the allegations contained in paragraphs 1 through
15 12 of its Counterclaims.

16 14. AOL does not directly or indirectly infringe any claim of the '314 patent because
17 AOL does not make, use, sell, offer to sell, or import any system, apparatus, or method claimed in
18 the '314 patent and AOL does not induce or contribute to the direct infringement of the '314
19 patent by any party.

20 15. A judicial declaration that AOL does not directly or indirectly infringe the claims
21 of the '314 patent is necessary and appropriate at this time pursuant to 28 U.S.C. § 2201(a) in
22 order that AOL may ascertain its rights and duties with respect to the '314 patent.

23 **Fourth Counterclaim for Declaratory Judgment That AOL's Accused Products**
24 **Do Not Infringe Any Claim of the '682 Patent**

25 16. AOL incorporates by reference the allegations contained in paragraphs 1 through
26 15 of its Counterclaims.

1 17. AOL does not directly or indirectly infringe any claim of the '682 patent because
2 AOL does not make, use, sell, offer to sell, or import any system, apparatus, or method claimed in
3 the '682 patent and AOL does not induce or contribute to the direct infringement of the '682
4 patent by any party.

5 18. A judicial declaration that AOL does not directly or indirectly infringe the claims
6 of the '682 patent is necessary and appropriate at this time pursuant to 28 U.S.C. § 2201(a) in
7 order that AOL may ascertain its rights and duties with respect to the '682 patent.

8 **Fifth Counterclaim for Declaratory Judgment That the**
9 **Claims of the '507 Patent Are Invalid**

10 19. AOL incorporates by reference the allegations contained in paragraphs 1 through
11 18 of its Counterclaims, as if fully set forth herein.

12 20. The claims of the '507 patent are invalid because they fail to comply with one or
13 more of the statutory requirements for patentability set forth in 35 U.S.C. §§ 101 et seq.

14 21. A judicial declaration of the invalidity of the claims of the '507 patent is necessary
15 and appropriate at this time pursuant to 28 U.S.C. § 2201(a) in order that AOL may ascertain its
16 rights and duties with respect to the '507 patent.

17 **Sixth Counterclaim for Declaratory Judgment That the**
18 **Claims of the '652 Patent Are Invalid**

19 22. AOL incorporates by reference the allegations contained in paragraphs 1 through
20 21 of its Counterclaims, as if fully set forth herein.

21 23. The claims of the '652 patent are invalid because they fail to comply with one or
22 more of the statutory requirements for patentability set forth in 35 U.S.C. §§ 101 et seq.

23 24. A judicial declaration of the invalidity of the claims of the '652 patent is necessary
24 and appropriate at this time pursuant to 28 U.S.C. § 2201(a) in order that AOL may ascertain its
25 rights and duties with respect to the '652 patent.

1 **Seventh Counterclaim for Declaratory Judgment That the**
2 **Claims of the '314 Patent Are Invalid**

3 25. AOL incorporates by reference the allegations contained in paragraphs 1 through
4 24 of its Counterclaims, as if fully set forth herein.

5 26. The claims of the '314 patent are invalid because they fail to comply with one or
6 more of the statutory requirements for patentability set forth in 35 U.S.C. §§ 101 et seq.

7 27. A judicial declaration of the invalidity of the claims of the '314 patent is necessary
8 and appropriate at this time pursuant to 28 U.S.C. § 2201(a) in order that AOL may ascertain its
9 rights and duties with respect to the '314 patent.

10 **Eighth Counterclaim for Declaratory Judgment That the**
11 **Claims of the '682 Patent Are Invalid**

12 28. AOL incorporates by reference the allegations contained in paragraphs 1 through
13 27 of its Counterclaims, as if fully set forth herein.

14 29. The claims of the '682 patent are invalid because they fail to comply with one or
15 more of the statutory requirements for patentability set forth in 35 U.S.C. §§ 101 et seq.

16 30. A judicial declaration of the invalidity of the claims of the '682 patent is necessary
17 and appropriate at this time pursuant to 28 U.S.C. § 2201(a) in order that AOL may ascertain its
18 rights and duties with respect to the '682 patent.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, AOL respectfully requests that the Court:

21 A. Enter a judgment in AOL's favor and against Interval for a declaration that AOL
22 does not directly or indirectly infringe the claims of the '507, '652, '314, and '682 patents;

23 B. Enter a judgment in AOL's favor and against Interval for a declaration that the
24 claims of the '507, '652, '314, and '682 patents are invalid;

25 C. Declare that Interval, its officers, agents, servants, employees, attorneys, licensees
26 or others acting for, on behalf of, or in concert with Interval, be enjoined from asserting or

1 threatening to assert any rights under the '507, '652, '314, and '682 patents against AOL, its
2 customers, suppliers, licensees, agents, employees or others acting for, on behalf of, or in concert
3 with AOL;

4 D. Declare that Interval takes nothing by its FAC;

5 E. Declare an award to AOL of its costs, expenses and interest incurred in this action;

6 F. Declare that this case is "exceptional" pursuant to 35 U.S.C. § 285, and award to
7 AOL its attorneys' fees in this action; and

8 G. Award AOL any other further relief as this Court deems just and appropriate.

9 AOL reserves the right to supplement or amend this Answer and its Counterclaims, if
10 necessary, after further investigation and as more information becomes known.

11 **DEMAND FOR JURY TRIAL**

12 Pursuant to Federal Rule of Civil Procedure 38, AOL respectfully demands a trial by jury
13 on all issues so triable.

14 DATED this 14th day of January, 2011.

15 Respectfully submitted,

16 SUMMIT LAW GROUP PLLC

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 14th day of January, 2011.

/s/ Deanna Schow

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