

Hon. Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

INTERVAL LICENSING LLC,

Plaintiff,

v.

AOL, INC., et al.,

Defendants.

No. 2:10-CV-01385-MJP

DEFENDANT APPLE INC.'S
ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIMS TO
PLAINTIFF INTERVAL LICENSING
LLC'S FIRST AMENDED
COMPLAINT FOR PATENT
INFRINGEMENT

Defendant Apple Inc. ("Apple"), for its Answer, Affirmative Defenses, and Counterclaims to the First Amended Complaint for Patent Infringement, filed on December 28, 2010, by Plaintiff Interval Licensing, LLC ("Interval"), admits, denies, and alleges as follows:

INTERVAL'S ALLEGATIONS REGARDING THE PARTIES

1. In answer to Paragraph 1, Apple is without information sufficient to form a belief as to the truth of the allegations thereof, and on that basis denies them.

2. In answer to Paragraph 2, Apple is without information sufficient to form a belief as to the truth of the allegations thereof, and on that basis denies them.

1 **3.** In answer to Paragraph 3, Apple admits that it is a corporation organized
2 under the laws of California and that it maintains its principal place of business located at 1
3 Infinite Loop, Cupertino, California.

4 **4.** In answer to Paragraph 4, Apple is without information sufficient to form a
5 belief as to the truth of the allegations thereof, and on that basis denies them.

6 **5.** In answer to Paragraph 5, Apple is without information sufficient to form a
7 belief as to the truth of the allegations thereof, and on that basis denies them.

8 **6.** In answer to Paragraph 6, Apple is without information sufficient to form a
9 belief as to the truth of the allegations thereof, and on that basis denies them.

10 **7.** In answer to Paragraph 7, Apple is without information sufficient to form a
11 belief as to the truth of the allegations thereof, and on that basis denies them.

12 **8.** In answer to Paragraph 8, Apple is without information sufficient to form a
13 belief as to the truth of the allegations thereof, and on that basis denies them.

14 **9.** In answer to Paragraph 9, Apple is without information sufficient to form a
15 belief as to the truth of the allegations thereof, and on that basis denies them.

16 **10.** In answer to Paragraph 10, Apple is without information sufficient to form a
17 belief as to the truth of the allegations thereof, and on that basis denies them.

18 **11.** In answer to Paragraph 11, Apple is without information sufficient to form a
19 belief as to the truth of the allegations thereof, and on that basis denies them.

20 **12.** In answer to Paragraph 12, Apple is without information sufficient to form a
21 belief as to the truth of the allegations thereof, and on that basis denies them.

22 **ALLEGED JURISDICTION AND VENUE**

23 **13.** In answer to Paragraph 13, Apple admits that this Court has subject matter
24 jurisdiction over the claims. Apple further admits that venue is proper, although Apple
25 reserves the right to contend that the Western District of Washington is an inconvenient
26 forum and that the Court should transfer the action to the Northern District of California.

1 Apple further admits that it has conducted certain business in this district. Regarding the
2 allegations in this paragraph about the other defendants, Apple is without information
3 sufficient to form a belief as to the truth of the allegations thereof, and on that basis denies
4 them. Except as expressly admitted herein, Apple denies each and every allegation about
5 Apple set forth in Paragraph 13.

6 **INTERVAL’S ALLEGATION THAT INTERVAL RESEARCH CORPORATION**
7 **WAS A PIONEER IN THE TECHNOLOGY INDUSTRY**

8 **14.** In answer to Paragraph 14, Apple is without information sufficient to form a
9 belief as to the truth of the allegations thereof, and on that basis denies them.

10 **15.** In answer to Paragraph 15, Apple is without information sufficient to form a
11 belief as to the truth of the allegations thereof, and on that basis denies them.

12 **16.** In answer to Paragraph 16, Apple is without information sufficient to form a
13 belief as to the truth of the allegations thereof, and on that basis denies them.

14 **17.** In answer to Paragraph 17, Apple is without information sufficient to form a
15 belief as to the truth of the allegations thereof, and on that basis denies them.

16 **18.** In answer to Paragraph 18, Apple is without information sufficient to form a
17 belief as to the truth of the allegations thereof, and on that basis denies them.

18 **19.** In answer to Paragraph 19, Apple is without information sufficient to form a
19 belief as to the truth of the allegations thereof, and on that basis denies them.

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

21 **20.** In answer to Paragraph 20, Apple admits that U.S. Patent No. 6,263,507
22 (“the ’507 Patent”), issued on July 17, 2001, bears the title “Browser for Use in Navigating
23 a Body of Information, with Particular Application to Browsing Information Represented
24 by Audio Visual Data,” and that a copy of the ’507 Patent is attached as Exhibit 2. Apple
25 denies that the ’507 Patent was duly and legally issued. Except as expressly admitted
26

1 herein, Apple is without information sufficient to form a belief as to the truth of the
2 allegations set forth in paragraph 20, and on that basis denies them.

3 **21.** In answer to Paragraph 21, Apple is without information sufficient to form a
4 belief as to the truth of the allegations thereof, and on that basis denies them.

5 **22.** In answer to Paragraph 22, Apple is without information sufficient to form a
6 belief as to the truth of the allegations thereof, and on that basis denies them.

7 **23.** In answer to Paragraph 23, Apple admits that its products and/or services
8 include the Apple Online Store at <http://store.apple.com>, iTunes, the App Store, and Apple
9 TV. Apple admits that the Apple Online Store provides, among other things, information
10 about Apple products and services. Apple admits that iTunes is an application that, among
11 other things, organizes and plays digital media. Apple further admits that Exhibit 7 appears
12 to be a copy of a screen shot of iTunes. Apple admits that the App Store allows users to,
13 among other things, browse and download applications. Apple admits that Apple TV
14 allows users to, among other things, browse and play media. Except as expressly admitted
15 herein, Apple denies each and every allegation set forth in Paragraph 23, and specifically
16 denies that it has infringed or is infringing any valid claims of the '507 Patent.

17 **24.** In answer to Paragraph 24, Apple is without information sufficient to form a
18 belief as to the truth of the allegations thereof, and on that basis denies them.

19 **25.** In answer to Paragraph 25, Apple is without information sufficient to form a
20 belief as to the truth of the allegations thereof, and on that basis denies them.

21 **26.** In answer to Paragraph 26, Apple is without information sufficient to form a
22 belief as to the truth of the allegations thereof, and on that basis denies them.

23 **27.** In answer to Paragraph 27, Apple is without information sufficient to form a
24 belief as to the truth of the allegations thereof, and on that basis denies them.

25 **28.** In answer to Paragraph 28, Apple is without information sufficient to form a
26 belief as to the truth of the allegations thereof, and on that basis denies them.

1 **29.** In answer to Paragraph 29, Apple is without information sufficient to form a
2 belief as to the truth of the allegations thereof, and on that basis denies them.

3 **30.** In answer to Paragraph 30, Apple is without information sufficient to form a
4 belief as to the truth of the allegations thereof, and on that basis denies them.

5 **31.** In answer to Paragraph 31, Apple is without information sufficient to form a
6 belief as to the truth of the allegations thereof, and on that basis denies them.

7 **32.** In answer to Paragraph 32, Apple is without information sufficient to form a
8 belief as to the truth of the allegations thereof, and on that basis denies them.

9 **33.** In answer to Paragraph 33, Apple is without information sufficient to form a
10 belief as to the truth of the allegations thereof, and on that basis denies them.

11 **34.** In answer to Paragraph 34, Apple is without information sufficient to form a
12 belief as to the truth of the allegations thereof, and on that basis denies them.

13 **35.** In answer to Paragraph 35, Apple is without information sufficient to form a
14 belief as to the truth of the allegations thereof, and on that basis denies them.

15 **36.** In answer to Paragraph 36, Apple is without information sufficient to form a
16 belief as to the truth of the allegations thereof, and on that basis denies them.

17 **37.** In answer to Paragraph 37, Apple is without information sufficient to form a
18 belief as to the truth of the allegations thereof, and on that basis denies them.

19 **38.** In answer to Paragraph 38, regarding the allegations in this paragraph about
20 the other defendants, Apple is without information sufficient to form a belief as to the truth
21 of the allegations thereof, and on that basis denies them. Interval’s attempt to reserve the
22 right to allege that Apple’s alleged infringement is willful and deliberate is an improper
23 legal assertion and does not require a response. Apple denies each and every allegation
24 about Apple set forth in Paragraph 38, and specifically denies that it has infringed or is
25 infringing any valid claims of the ’507 Patent, that Interval is entitled to damages, and that
26 Interval is entitled to an injunction.

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

2 **39.** In answer to Paragraph 39, Apple admits that U.S. Patent No. 6,034,652
3 (“the ’652 Patent”), issued on March 7, 2000, bears the title “Attention Manager for
4 Occupying the Peripheral Attention of a Person in the Vicinity of a Display Device,” that a
5 copy of the ’652 Patent is attached as Exhibit 3, and that the ’652 Patent is related to the
6 ’314 Patent. Apple denies that the ’652 Patent was duly and legally issued. Except as
7 expressly admitted herein, Apple is without information sufficient to form a belief as to the
8 truth of the allegations set forth in paragraph 39, and on that basis denies them.

9 **40.** In answer to Paragraph 40, Apple is without information sufficient to form a
10 belief as to the truth of the allegations thereof, and on that basis denies them.

11 **41.** In answer to Paragraph 41, Apple admits that Mac OS X includes Apple
12 Dashboard, that Exhibit 21 appears to be a copy of a screen shot of Apple Dashboard, and
13 that the quoted except is from [http://www.apple.com/macosx/what-is-macosx/apps-and-](http://www.apple.com/macosx/what-is-macosx/apps-and-utilities.html)
14 [utilities.html](http://www.apple.com/macosx/what-is-macosx/apps-and-utilities.html). Except as expressly admitted herein, Apple denies each and every allegation
15 set forth in Paragraph 41, and specifically denies that it has infringed or is infringing any
16 valid claims of the ’652 Patent.

17 **42.** In answer to Paragraph 42, Apple is without information sufficient to form a
18 belief as to the truth of the allegations thereof, and on that basis denies them.

19 **43.** In answer to Paragraph 43, Apple is without information sufficient to form a
20 belief as to the truth of the allegations thereof, and on that basis denies them.

21 **44.** In answer to Paragraph 44, Apple is without information sufficient to form a
22 belief as to the truth of the allegations thereof, and on that basis denies them.

23 **45.** In answer to Paragraph 45, Apple is without information sufficient to form a
24 belief as to the truth of the allegations thereof, and on that basis denies them.

25 **46.** In answer to Paragraph 46, Apple is without information sufficient to form a
26 belief as to the truth of the allegations thereof, and on that basis denies them.

1 **47.** In answer to Paragraph 47, Apple is without information sufficient to form a
2 belief as to the truth of the allegations thereof, and on that basis denies them.

3 **48.** In answer to Paragraph 48, regarding the allegations in this paragraph about
4 the other defendants, Apple is without information sufficient to form a belief as to the truth
5 of the allegations thereof, and on that basis denies them. Interval’s attempt to reserve the
6 right to allege that Apple’s alleged infringement is willful and deliberate is an improper
7 legal assertion and does not require a response. Apple denies each and every allegation
8 about Apple set forth in Paragraph 48, and specifically denies that it has infringed or is
9 infringing any valid claims of the ’652 Patent, that Interval is entitled to damages, and that
10 Interval is entitled to an injunction.

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

12 **49.** In answer to Paragraph 49, Apple admits that U.S. Patent No. 6,788,314
13 (“the ’314 Patent”), issued on September 7, 2004, bears the title “Attention Manager for
14 Occupying the Peripheral Attention of a Person in the Vicinity of a Display Device,” that a
15 copy of the ’314 Patent is attached as Exhibit 4, and that the ’314 Patent is related to the
16 ’652 Patent. Apple denies that the ’314 Patent was duly and legally issued. Except as
17 expressly admitted herein, Apple is without information sufficient to form a belief as to the
18 truth of the allegations set forth in paragraph 49, and on that basis denies them.

19 **50.** In answer to Paragraph 50, Apple is without information sufficient to form a
20 belief as to the truth of the allegations thereof, and on that basis denies them.

21 **51.** In answer to Paragraph 51, Apple admits that its products and/or services
22 include Apple Dashboard. Except as expressly admitted herein, Apple denies each and
23 every allegation set forth in Paragraph 51, and specifically denies that it has infringed or is
24 infringing any valid claims of the ’314 Patent.

25 **52.** In answer to Paragraph 52, Apple is without information sufficient to form a
26 belief as to the truth of the allegations thereof, and on that basis denies them.

1 **53.** In answer to Paragraph 53, Apple is without information sufficient to form a
2 belief as to the truth of the allegations thereof, and on that basis denies them.

3 **54.** In answer to Paragraph 54, Apple is without information sufficient to form a
4 belief as to the truth of the allegations thereof, and on that basis denies them.

5 **55.** In answer to Paragraph 55, Apple is without information sufficient to form a
6 belief as to the truth of the allegations thereof, and on that basis denies them.

7 **56.** In answer to Paragraph 56, Apple is without information sufficient to form a
8 belief as to the truth of the allegations thereof, and on that basis denies them.

9 **57.** In answer to Paragraph 57, Apple is without information sufficient to form a
10 belief as to the truth of the allegations thereof, and on that basis denies them.

11 **58.** In answer to Paragraph 58, regarding the allegations in this paragraph about
12 the other defendants, Apple is without information sufficient to form a belief as to the truth
13 of the allegations thereof, and on that basis denies them. Interval’s attempt to reserve the
14 right to allege that Apple’s alleged infringement is willful and deliberate is an improper
15 legal assertion and does not require a response. Apple denies each and every allegation
16 about Apple set forth in Paragraph 58, and specifically denies that it has infringed or is
17 infringing any valid claims of the ’314 Patent, that Interval is entitled to damages, and that
18 Interval is entitled to an injunction.

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

20 **59.** In answer to Paragraph 59, Apple admits that U.S. Patent No. 6,757,682
21 (“the ’682 Patent”), issued on June 29, 2004, bears the title “Alerting Users to Items of
22 Current Interest,” and that a copy of the ’682 Patent is attached as Exhibit 5. Apple denies
23 that the ’682 Patent was duly and legally issued. Except as expressly admitted herein,
24 Apple is without information sufficient to form a belief as to the truth of the allegations set
25 forth in paragraph 59, and on that basis denies them.

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1 **60.** In answer to Paragraph 60, Apple is without information sufficient to form a
2 belief as to the truth of the allegations thereof, and on that basis denies them.

3 **61.** In answer to Paragraph 61, Apple admits that its products and/or services
4 include the Apple Online Store at <http://store.apple.com>, iTunes, the App Store, and Apple
5 TV. Apple admits that the Apple Online Store provides, among other things, information
6 about Apple products and services. Apple admits that iTunes is an application that, among
7 other things, organizes and plays digital media. Apple further admits that Exhibit 29
8 appears to be a copy of a screen shot of iTunes. Apple admits that the App Store allows
9 users to, among other things, browse and download applications. Apple admits that Apple
10 TV allows users to, among other things, browse and play media. Except as expressly
11 admitted herein, Apple denies each and every allegation set forth in Paragraph 61, and
12 specifically denies that it has infringed or is infringing any valid claims of the '682 Patent.

13 **62.** In answer to Paragraph 62, Apple admits that its products and/or services
14 include iTunes Ping. Apple admits that, among other things, Ping is a music oriented social
15 network, Ping lets user post thoughts and opinions, and Ping contains a Recent Activity
16 feed. Apple further admits that Exhibit 30 appears to be a copy of a screen shot of iTunes
17 Ping. Except as expressly admitted herein, Apple denies each and every allegation set forth
18 in Paragraph 62, and specifically denies that it has infringed or is infringing any valid
19 claims of the '682 Patent.

20 **63.** In answer to Paragraph 63, Apple is without information sufficient to form a
21 belief as to the truth of the allegations thereof, and on that basis denies them.

22 **64.** In answer to Paragraph 64, Apple is without information sufficient to form a
23 belief as to the truth of the allegations thereof, and on that basis denies them.

24 **65.** In answer to Paragraph 65, Apple is without information sufficient to form a
25 belief as to the truth of the allegations thereof, and on that basis denies them.
26

1 **66.** In answer to Paragraph 66, Apple is without information sufficient to form a
2 belief as to the truth of the allegations thereof, and on that basis denies them.

3 **67.** In answer to Paragraph 67, Apple is without information sufficient to form a
4 belief as to the truth of the allegations thereof, and on that basis denies them.

5 **68.** In answer to Paragraph 68, Apple is without information sufficient to form a
6 belief as to the truth of the allegations thereof, and on that basis denies them.

7 **69.** In answer to Paragraph 69, Apple is without information sufficient to form a
8 belief as to the truth of the allegations thereof, and on that basis denies them.

9 **70.** In answer to Paragraph 70, Apple is without information sufficient to form a
10 belief as to the truth of the allegations thereof, and on that basis denies them.

11 **71.** In answer to Paragraph 71, Apple is without information sufficient to form a
12 belief as to the truth of the allegations thereof, and on that basis denies them.

13 **72.** In answer to Paragraph 72, Apple is without information sufficient to form a
14 belief as to the truth of the allegations thereof, and on that basis denies them.

15 **73.** In answer to Paragraph 73, Apple is without information sufficient to form a
16 belief as to the truth of the allegations thereof, and on that basis denies them.

17 **74.** In answer to Paragraph 74, regarding the allegations in this paragraph about
18 the other defendants, Apple is without information sufficient to form a belief as to the truth
19 of the allegations thereof, and on that basis denies them. Interval’s attempt to reserve the
20 right to allege that Apple’s alleged infringement is willful and deliberate is an improper
21 legal assertion and does not require a response. Apple denies each and every allegation
22 about Apple set forth in Paragraph 74, and specifically denies that it has infringed or is
23 infringing any valid claims of the ’682 Patent, that Interval is entitled to damages, and that
24 Interval is entitled to an injunction.

1 **INTERVAL’S JURY DEMAND**

2 **75.** This paragraph sets forth Interval’s request for a jury trial, to which no
3 response is required.

4 **INTERVAL’S PRAYER FOR RELIEF**

5 These paragraphs set forth Interval’s request for relief, to which no response is
6 required. Apple denies that Interval is entitled to any of the requested relief and denies the
7 allegations in these paragraphs.

8 **GENERAL DENIAL**

9 To the extent that any allegations of the Complaint are not specifically admitted,
10 Apple hereby denies them.

11 **AFFIRMATIVE DEFENSES**

12 Without admitting or acknowledging that it bears the burden of proof as to any of
13 them, Apple pleads the following defenses:

14 **FIRST AFFIRMATIVE DEFENSE**
15 **(Non-Infringement)**

16 **76.** Apple has not engaged in any acts that would constitute infringement of,
17 contributory infringement of, or inducement to infringe, any valid claim of the ’507, ’652,
18 ’314, or ’682 Patents (collectively, the “Patents-in-Suit”), either literally or under the
19 doctrine of equivalents.

20 **SECOND AFFIRMATIVE DEFENSE**
21 **(Invalidity)**

22 **77.** The claims of the Patents-in-Suit are invalid for failure to comply with one
23 or more of the requirements of Title 35, United States Code, including without limitation §§
24 101, 102, 103, 111, 112, 116, 132, and/or 251.

1 **THIRD AFFIRMATIVE DEFENSE**
2 **(Estoppel and Laches)**

3 78. Interval's claims are barred, in whole or in part, by 35 U.S.C. § 286, the
4 doctrine of laches (including, but not limited to, prosecution laches), the doctrine of
5 estoppel (including, but not limited to, prosecution history estoppel), and various other
6 equitable defenses.

7 **FOURTH AFFIRMATIVE DEFENSE**
8 **(No Injunction)**

9 79. Interval cannot satisfy the requirements applicable to its request for
10 injunctive relief and has an adequate remedy at law.

11 **FIFTH AFFIRMATIVE DEFENSE**
12 **(Improper Joinder)**

13 80. On information and belief, some or all of the defendants have been
14 improperly joined in a single action, and Apple asserts its right to a separate trial.

15 **SIXTH AFFIRMATIVE DEFENSE**
16 **(Preclusion of Costs)**

17 81. Interval is precluded from recovering costs under 35 U.S.C. § 288.

18 **SEVENTH AFFIRMATIVE DEFENSE**
19 **(Notice)**

20 82. Interval is not entitled to any damages prior to the time it provided actual
21 notice of alleged infringement, pursuant to the requirements of 35 U.S.C. § 287.

22 **APPLE'S COUNTERCLAIMS**

23 Counterclaimant Apple hereby counterclaims and alleges against Counterclaim
24 Defendant Interval as follows:

1 **THE PARTIES**

2 **83.** Counterclaimant Apple is a California corporation having its principal place
3 of business at 1 Infinite Loop, Cupertino, California 95014.

4 **84.** In its Complaint, Counterclaim Defendant Interval alleged that it is a limited
5 liability company organized under the laws of the state of Washington.

6 **JURISDICTION AND VENUE**

7 **85.** This Court has subject matter jurisdiction over Apple’s counterclaims under
8 the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the patent laws of the United
9 States, Title 35, United States Code, for which jurisdiction is based on 28 U.S.C. §§ 1331
10 and 1338(a).

11 **86.** By filing its Complaint and First Amended Complaint, Interval has
12 consented to the personal jurisdiction of this Court.

13 **87.** Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because
14 Interval has consented to this venue by filing the Complaint here.

15 **FIRST COUNTERCLAIM**
16 **(For Declaratory Judgment of Non-Infringement of the ’507 Patent)**

17 **88.** Apple incorporates the foregoing admissions, denials, and allegations.

18 **89.** An actual controversy exists between Apple and Interval as to whether
19 Apple infringes directly or indirectly the ’507 Patent, as Interval alleges, or does not do so,
20 as Apple contends.

21 **90.** By this Counterclaim, Apple seeks a declaration that it has not infringed
22 directly or indirectly, and does not infringe directly or indirectly, the ’507 Patent, either
23 literally or under the doctrine of equivalents. Further, Apple seeks a declaration that it has
24 not contributed to or induced, and does not contribute to or induce, infringement of the ’507
25 Patent by anyone.

26

1 **SECOND COUNTERCLAIM**
2 **(For Declaratory Judgment of Non-Infringement of the '652 Patent)**

3 **91.** Apple incorporates the foregoing admissions, denials, and allegations.

4 **92.** An actual controversy exists between Apple and Interval as to whether
5 Apple infringes directly or indirectly the '652 Patent, as Interval alleges, or does not do so,
6 as Apple contends.

7 **93.** By this Counterclaim, Apple seeks a declaration that it has not infringed
8 directly or indirectly, and does not infringe directly or indirectly, the '652 Patent, either
9 literally or under the doctrine of equivalents. Further, Apple seeks a declaration that it has
10 not contributed to or induced and does not contribute to or induce infringement of the '652
11 Patent by anyone.

12 **THIRD COUNTERCLAIM**
13 **(For Declaratory Judgment of Non-Infringement of the '314 Patent)**

14 **94.** Apple incorporates the foregoing admissions, denials, and allegations.

15 **95.** An actual controversy exists between Apple and Interval as to whether
16 Apple infringes directly or indirectly the '314 Patent, as Interval alleges, or does not do so,
17 as Apple contends.

18 **96.** By this Counterclaim, Apple seeks a declaration that it has not infringed
19 directly or indirectly, and does not infringe directly or indirectly, the '314 Patent, either
20 literally or under the doctrine of equivalents. Further, Apple seeks a declaration that it has
21 not contributed to or induced, and does not contribute to or induce, infringement of the '314
22 Patent by anyone.

23 **FOURTH COUNTERCLAIM**
24 **(For Declaratory Judgment of Non-Infringement of the '682 Patent)**

25 **97.** Apple incorporates the foregoing admissions, denials, and allegations.
26

1 **98.** An actual controversy exists between Apple and Interval as to whether
2 Apple infringes directly or indirectly the '682 Patent, as Interval alleges, or does not do so,
3 as Apple contends.

4 **99.** By this Counterclaim, Apple seeks a declaration that it has not infringed
5 directly or indirectly, and does not infringe directly or indirectly, the '682 Patent, either
6 literally or under the doctrine of equivalents. Further, Apple seeks a declaration that it has
7 not contributed to or induced, and does not contribute to or induce, infringement of the '682
8 Patent by anyone.

9 **FIFTH COUNTERCLAIM**
10 **(For Declaratory Judgment of Invalidity of the '507 Patent)**

11 **100.** Apple incorporates the foregoing admissions, denials, and allegations.

12 **101.** An actual controversy exists between Apple and Interval as to whether the
13 '507 Patent is valid, as Interval alleges, or is invalid for failure to comply with the
14 requirements of patentability set forth in 35 U.S.C. §§ 101 *et seq.*, as Apple contends.

15 **102.** By this Counterclaim, Apple seeks a declaration that the '507 Patent is
16 invalid.

17 **SIXTH COUNTERCLAIM**
18 **(For Declaratory Judgment of Invalidity of the '652 Patent)**

19 **103.** Apple incorporates the foregoing admissions, denials, and allegations.

20 **104.** An actual controversy exists between Apple and Interval as to whether the
21 '652 Patent is valid, as Interval alleges, or is invalid for failure to comply with the
22 requirements of patentability set forth in 35 U.S.C. §§ 101 *et seq.*, as Apple contends.

23 **105.** By this Counterclaim, Apple seeks a declaration that the '652 Patent is
24 invalid.

1 **SEVENTH COUNTERCLAIM**
2 **(For Declaratory Judgment of Invalidity of the '314 Patent)**

3 **106.** Apple incorporates the foregoing admissions, denials, and allegations.

4 **107.** An actual controversy exists between Apple and Interval as to whether the
5 '314 Patent is valid, as Interval alleges, or is invalid for failure to comply with the
6 requirements of patentability set forth in 35 U.S.C. §§ 101 *et seq.*, as Apple contends.

7 **108.** By this Counterclaim, Apple seeks a declaration that the '314 Patent is
8 invalid.

9 **EIGHTH COUNTERCLAIM**
10 **(For Declaratory Judgment of Invalidity of the '682 Patent)**

11 **109.** Apple incorporates the foregoing admissions, denials, and allegations.

12 **110.** An actual controversy exists between Apple and Interval as to whether the
13 '682 Patent is valid, as Interval alleges, or is invalid for failure to comply with the
14 requirements of patentability set forth in 35 U.S.C. §§ 101 *et seq.*, as Apple contends.

15 **111.** By this Counterclaim, Apple seeks a declaration that the '314 Patent is
16 invalid.

17 **DEMAND FOR JURY TRIAL**

18 **112.** Apple demands a trial by jury on all issues so triable, whether they arise
19 from the Complaint or Counterclaims.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Apple requests entry of judgment in its favor against Interval as
22 follows:

23 A. That this Court enter judgment against Interval and in favor of Apple, and
24 that Interval's First Amended Complaint be dismissed with prejudice.

1 B. A declaration that Apple has not infringed, contributed to the infringement
2 of, or induced others to infringe, either directly or indirectly, any valid claims of the
3 Patents-in-Suit;

4 C. A declaration that the Patents-in-Suit are invalid;

5 D. That Interval take nothing by reason of this lawsuit;

6 E. That this Court declare this an exceptional case under 35 U.S.C. § 285;

7 F. That this Court award attorney's fees and costs to Apple; and

8 G. That this Court award Apple such other and further relief as this Court may
9 deem just and appropriate.

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1 DATED: January 14, 2011

O'MELVENY & MYERS LLP

2
3 By: /s/ Brian Berliner

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17 Email: wilsdon@yarmuth.com; jroller@yarmuth.com

18 *Attorneys for Defendant Apple Inc.*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this date, I electronically filed the foregoing document with
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20 I declare under penalty of perjury under the laws of the State of Washington that the
21 foregoing is true and correct.

22 Dated this 14th day of January, 2011 at Seattle, Washington.

23
24 s/ Colette D. Saunders

25 Colette D. Saunders
26 Legal Assistant

