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Honorable Marsha J. Pechman

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

INTERVAL LICENSING LLC,

Plaintiff,

v.

AOL, INC.; APPLE, INC.; eBAY, INC.;
FACEBOOK, INC.; GOOGLE INC.; NETFLIX,
INC.; OFFICE DEPOT, INC.; OFFICEMAX
INC.; STAPLES, INC.; YAHOO! INC.; and
YOUTUBE, LLC,

Defendants.

Civil Case No. 2:10-CV-01385-MJP

**DEFENDANT YAHOO! INC'S
ANSWER, AFFIRMATIVE
DEFENSES, AND
COUNTERCLAIMS TO THE FIRST
AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

**DEFENDANT YAHOO! INC'S ANSWER,
AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS TO THE
FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Defendant Yahoo! Inc. ("Yahoo!") respectfully submits its Answer and Affirmative Defenses to the First Amended Complaint For Patent Infringement ("First Amended Complaint") of Plaintiff Interval Licensing LLC ("Plaintiff" or "Interval"), filed on December 28, 2010, and states as follows:

ALLEGATIONS REGARDING THE PARTIES

1. In response to paragraph 1 of the Complaint, Yahoo! lacks sufficient information to admit or deny the allegations contained therein and on that basis denies them.
2. In response to paragraph 2 of the Complaint, Yahoo! lacks sufficient information to admit or deny the allegations contained therein and on that basis denies them.

1 3. In response to paragraph 3 of the Complaint, Yahoo! lacks sufficient
2 information to admit or deny the allegations contained therein and on that basis denies them.

3 4. In response to paragraph 4 of the Complaint, Yahoo! lacks sufficient
4 information to admit or deny the allegations contained therein and on that basis denies them.

5 5. In response to paragraph 5 of the Complaint, Yahoo! lacks sufficient
6 information to admit or deny the allegations contained therein and on that basis denies them.

7 6. In response to paragraph 6 of the Complaint, Yahoo! lacks sufficient
8 information to admit or deny the allegations contained therein and on that basis denies them.

9 7. In response to paragraph 7 of the Complaint, Yahoo! lacks sufficient
10 information to admit or deny the allegations contained therein and on that basis denies them.

11 8. In response to paragraph 8 of the Complaint, Yahoo! lacks sufficient
12 information to admit or deny the allegations contained therein and on that basis denies them.

13 9. In response to paragraph 9 of the Complaint, Yahoo! lacks sufficient
14 information to admit or deny the allegations contained therein and on that basis denies them.

15 10. In response to paragraph 10 of the Complaint, Yahoo! lacks sufficient
16 information to admit or deny the allegations contained therein and on that basis denies them.

17 11. In response to paragraph 11 of the Complaint, Yahoo! admits that it is a
18 corporation duly organized and existing under the laws of the state of Delaware and that its
19 principal place of business is at 701 First Avenue, Sunnyvale, California 94089.

20 12. In response to paragraph 12 of the Complaint, Yahoo! lacks sufficient
21 information to admit or deny the allegations contained therein and on that basis denies them.

22 **ALLEGATIONS REGARDING JURISDICTION AND VENUE**

23 13. In response to paragraph 13 of the Complaint, Yahoo! admits that this Court
24 has subject mater jurisdiction pursuant to 28 U.S.C. §§ 1338(a) because this action purports
to arise under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* Yahoo! further
admits that venue is proper, although Yahoo! reserves the right to contend that the Western
District of Washington is an inconvenient forum and that the Court should transfer the
action to the Northern District of California. Yahoo! further admits that it has conducted
certain business in this district. With respect to the allegations in this paragraph against
other defendants, Yahoo! lacks sufficient information to admit or deny the allegations and

1 on that basis denies them. Except as expressly admitted, Yahoo! denies the allegations of
2 paragraph 13 that pertain to Yahoo!

3 **ALLEGATIONS REGARDING INTERVAL RESEARCH CORPORATION**

4 14. In response to paragraph 14 of the Complaint, Yahoo! lacks sufficient
5 information to admit or deny the allegations contained therein and on that basis denies them.

6 15. In response to paragraph 15 of the Complaint, Yahoo! lacks sufficient
7 information to admit or deny the allegations contained therein and on that basis denies them.

8 16. In response to paragraph 16 of the Complaint, Yahoo! lacks sufficient
9 information to admit or deny the allegations contained therein and on that basis denies them.

10 17. In response to paragraph 17 of the Complaint, Yahoo! lacks sufficient
11 information to admit or deny the allegations contained therein and on that basis denies them.

12 18. In response to paragraph 18 of the Complaint, Yahoo! lacks sufficient
13 information to admit or deny the allegations contained therein and on that basis denies them.

14 19. In response to paragraph 19 of the Complaint, Yahoo! lacks sufficient
15 information to admit or deny the allegations contained therein and on that basis denies them.

16 **ALLEGATIONS REGARDING U.S. PATENT NO. 6,263,507**

17 20. In response to paragraph 20 of the Complaint, Yahoo! admits that the face of
18 United States Patent No. 6,263,507 (“the ’507 patent”) indicates that it issued on July 17,
19 2001, that it is entitled “Browser for Use in Navigating a Body of Information, With
20 Particular Application to Browsing Information Represented By Audiovisual Data,” and that
21 a copy of the ’507 patent is attached as Exhibit 2. Yahoo! denies that the ’507 patent was
22 duly and legally issued. Yahoo! denies that the ’507 patent describes an invention that
23 enables a user to efficiently review a large body of information by categorizing and
24 correlating segments of information within the body of information and generating displays
of segments that are related to the primary information being viewed by the user. Except as
expressly admitted or denied, Yahoo! lacks sufficient knowledge or information to admit or
deny the allegations of paragraph 20 and on that basis denies them.

21 21. In response to paragraph 21 of the Complaint, Yahoo! lacks sufficient
22 information to admit or deny the allegations contained therein and on that basis denies them.

23 22. In response to paragraph 22 of the Complaint, Yahoo! lacks sufficient
24 information to admit or deny the allegations contained therein and on that basis denies them.

1 23. In response to paragraph 23 of the Complaint, Yahoo! lacks sufficient
2 information to admit or deny the allegations contained therein and on that basis denies them.

3 24. In response to paragraph 24 of the Complaint, Yahoo! lacks sufficient
4 information to admit or deny the allegations contained therein and on that basis denies them.

5 25. In response to paragraph 25 of the Complaint, Yahoo! lacks sufficient
6 information to admit or deny the allegations contained therein and on that basis denies them.

7 26. In response to paragraph 26 of the Complaint, Yahoo! lacks sufficient
8 information to admit or deny the allegations contained therein and on that basis denies them.

9 27. In response to paragraph 27 of the Complaint, Yahoo! lacks sufficient
10 information to admit or deny the allegations contained therein and on that basis denies them.

11 28. In response to paragraph 28 of the Complaint, Yahoo! lacks sufficient
12 information to admit or deny the allegations contained therein and on that basis denies them.

13 29. In response to paragraph 29 of the Complaint, Yahoo! lacks sufficient
14 information to admit or deny the allegations contained therein and on that basis denies them.

15 30. In response to paragraph 30 of the Complaint, Yahoo! lacks sufficient
16 information to admit or deny the allegations contained therein and on that basis denies them.

17 31. In response to paragraph 31 of the Complaint, Yahoo! lacks sufficient
18 information to admit or deny the allegations contained therein and on that basis denies them.

19 32. In response to paragraph 32 of the Complaint, Yahoo! lacks sufficient
20 information to admit or deny the allegations contained therein and on that basis denies them.

21 33. In response to paragraph 33 of the Complaint, Yahoo! lacks sufficient
22 information to admit or deny the allegations contained therein and on that basis denies them.

23 34. In response to paragraph 34 of the Complaint, Yahoo! admits that its
24 products and/or services include websites. Yahoo! admits that its products and/or services
include Flickr, Hotjobs, Rivals, Yahoo Advertising, Yahoo Alerts, Yahoo Auto, Yahoo
Avatar, Yahoo Biz, Yahoo Bookmarks, Yahoo Buzz, Yahoo Education, Yahoo
Entertainment, Yahoo Events, Yahoo Finance, Yahoo Games, Yahoo Green, Yahoo Groups,
Yahoo Health, Yahoo Kids, Yahoo Lifestyle, Yahoo Maps, Yahoo Mail, Yahoo Mobile,
Yahoo Movies, Yahoo Music, My Yahoo, Yahoo News, Yahoo OMG!, Yahoo People,
Yahoo Pulse, Yahoo Real Estate, Yahoo Shine, Yahoo Shopping, Yahoo Small Business,
Yahoo Sports, Yahoo Travel, Yahoo TV, Yahoo Video, Yahoo Video Games, Yahoo

1 Weather, Yahoo Widgets, Yahoo Answers, and Yahoo Local. Yahoo! admits that some of
2 its products and/or services contain articles, videos, advertisements, and/or content. Yahoo!
3 admits that Exhibit 16 appears to be a copy of a screen shot of the Yahoo Finance website.
4 Except as expressly admitted herein, Yahoo denies the allegations set forth in paragraph 34,
5 and specifically denies that it has infringed or is infringing any valid claim of the '507
6 patent.

7 35. In response to paragraph 35 of the Complaint, Yahoo! admits that its
8 products and/or services include Content Match for Yahoo Search Marketing and Yahoo
9 Advertising Solutions. Yahoo! admits that these products and/or services relate to
10 advertising. Yahoo! admits that Exhibit 17 appears to be a copy of a screen shot of the
11 Buy.com website. Except as expressly admitted herein, Yahoo! denies the allegations set
12 forth in paragraph 35, and specifically denies that it has infringed or is infringing any valid
13 claim of the '507 patent.

14 36. In response to paragraph 36 of the Complaint, Yahoo! admits that its
15 products and/or services include Yahoo SpamGuard and Yahoo Mail. Except as expressly
16 admitted herein, Yahoo denies the allegations set forth in paragraph 36, and specifically
17 denies that it has infringed or is infringing any valid claim of the '507 patent.

18 37. In response to paragraph 37 of the Complaint, Yahoo! lacks sufficient
19 information to admit or deny the allegations contained therein and on that basis denies them.

20 38. In response to paragraph 38 of the Complaint, Yahoo! denies the allegations
21 to the extent that they pertain to Yahoo! and specifically denies that it has infringed or is
22 infringing any valid claim of the '507 patent. Yahoo! lacks sufficient information to admit
23 or deny the remaining allegations contained therein and on that basis denies them.

24 **ALLEGATIONS REGARDING U.S. PATENT NO. 6,034,652**

39. In response to paragraph 39 of the Complaint, Yahoo! admits that the face of
United States Patent No. 6,034,652 ("the '652 patent") indicates that it issued on March 7,
2000 and that it is entitled "Attention Manager for Occupying the Peripheral Attention of a
Person in the Vicinity of a Display Device." Yahoo! also admits that the face of the '314
patent indicates that it is related to the '652 patent and that a copy of the '652 patent is
attached as Exhibit 3. Yahoo! denies that the '652 patent was duly and legally issued.
Yahoo! denies that the '652 patent describes an invention that enables information to be

1 provided to a user in an unobtrusive manner that does not distract the user from his primary
2 interaction with an apparatus such as, for example, a computer or television. Except as
3 expressly admitted or denied, Yahoo! lacks sufficient knowledge or information to admit or
deny the allegations of paragraph 39 and on that basis denies them.

4 40. In response to paragraph 40 of the Complaint, Yahoo! lacks sufficient
5 information to admit or deny the allegations contained therein and on that basis denies them.

6 41. In response to paragraph 41 of the Complaint, Yahoo! lacks sufficient
7 information to admit or deny the allegations contained therein and on that basis denies them.

8 42. In response to paragraph 42 of the Complaint, Yahoo! lacks sufficient
9 information to admit or deny the allegations contained therein and on that basis denies them.

10 43. In response to paragraph 43 of the Complaint, Yahoo! lacks sufficient
11 information to admit or deny the allegations contained therein and on that basis denies them.

12 44. In response to paragraph 44 of the Complaint, Yahoo! lacks sufficient
13 information to admit or deny the allegations contained therein and on that basis denies them.

14 45. In response to paragraph 45 of the Complaint, Yahoo! admits that its
15 products and/or services include Yahoo Messenger and that Exhibit 25 appears to be a copy
16 of a screen shot of Yahoo Messenger. Except as expressly admitted, Yahoo! denies the
17 allegations in paragraph 45 and specifically denies that it has infringed or is infringing any
18 valid claim of the '652 patent.

19 46. In response to paragraph 46 of the Complaint, Yahoo! admits that its
20 products and/or services include Yahoo Widgets and that Exhibit 26 appears to be a copy of
21 a screen shot of Yahoo Widgets. Except as expressly admitted, Yahoo! denies the
22 allegations in paragraph 46 and specifically denies that it has infringed or is infringing any
23 valid claim of the '652 patent.

24 47. In response to paragraph 47 of the Complaint, Yahoo! admits that its
products and/or services include Yahoo Connected TV and Yahoo News and that Exhibit 27
appears to be a copy of a screen shot of Yahoo Connected TV and Yahoo News. Except as
expressly admitted, Yahoo! denies the allegations in paragraph 47 and specifically denies
that it has infringed or is infringing any valid claim of the '652 patent.

48. In response to paragraph 48 of the Complaint, Yahoo! denies the allegations
to the extent that they pertain to Yahoo! and specifically denies that it has infringed or is

1 infringing any valid claim of the '652 patent. Yahoo! lacks sufficient information to admit
2 or deny the remaining allegations contained therein and on that basis denies them.

3 **ALLEGATIONS REGARDING U.S. PATENT NO. 6,788,314**

4 49. In response to paragraph 49 of the Complaint, Yahoo! admits that the face of
5 United States Patent No. 6,788,314 (“the '314 patent”) indicates that it issued on September
6 7, 2004 and that it is entitled “Attention Manager for Occupying the Peripheral Attention of
7 a Person in the Vicinity of a Display Device.” Yahoo! also admits that the face of the '314
8 patent indicates that it is related to the '652 patent and that a copy of the '314 patent is
9 attached as Exhibit 4. Yahoo! denies that the '314 patent was duly and legally issued.
10 Yahoo! denies that the '314 patent describes an invention that enables information to be
11 provided to a user in an unobtrusive manner that does not distract the user from his primary
12 interaction with an apparatus such as, for example, a computer or television. Except as
13 expressly admitted or denied, Yahoo! lacks sufficient knowledge or information to admit or
14 deny the allegations of paragraph 49 and on that basis denies them.

15 50. In response to paragraph 50 of the Complaint, Yahoo! lacks sufficient
16 information to admit or deny the allegations contained therein and on that basis denies them.

17 51. In response to paragraph 51 of the Complaint, Yahoo! lacks sufficient
18 information to admit or deny the allegations contained therein and on that basis denies them.

19 52. In response to paragraph 52 of the Complaint, Yahoo! lacks sufficient
20 information to admit or deny the allegations contained therein and on that basis denies them.

21 53. In response to paragraph 53 of the Complaint, Yahoo! lacks sufficient
22 information to admit or deny the allegations contained therein and on that basis denies them.

23 54. In response to paragraph 54 of the Complaint, Yahoo! lacks sufficient
24 information to admit or deny the allegations contained therein and on that basis denies them.

55. In response to paragraph 55 of the Complaint, Yahoo! admits that its
products and/or services include Yahoo Messenger. Except as expressly admitted, Yahoo!
denies the allegations in paragraph 55 and specifically denies that it has infringed or is
infringing any valid claim of the '314 patent.

56. In response to paragraph 56 of the Complaint, Yahoo! admits that its
products and/or services include Yahoo Widgets. Except as expressly admitted, Yahoo!

1 denies the allegations in paragraph 56 and specifically denies that it has infringed or is
2 infringing any valid claim of the '314 patent.

3 57. In response to paragraph 57 of the Complaint, Yahoo! admits that its
4 products and/or services include Yahoo Connected TV. Except as expressly admitted,
5 Yahoo! denies the allegations in paragraph 57 and specifically denies that it has infringed or
6 is infringing any valid claim of the '314 patent.

7 58. In response to paragraph 58 of the Complaint, Yahoo! denies the allegations
8 to the extent that they pertain to Yahoo! and specifically denies that it has infringed or is
9 infringing any valid claim of the '314 patent. Yahoo! lacks sufficient information to admit
10 or deny the remaining allegations contained therein and on that basis denies them.

11 **ALLEGATIONS REGARDING U.S. PATENT NO. 6,757,682**

12 59. In response to paragraph 59 of the Complaint, Yahoo! admits that the face of
13 United States Patent No. 6,757,682 (“the '682 patent”) indicates that it issued on June 29,
14 2004 and that it is entitled “Alerting Users to Items of Current Interest” and that a copy of
15 the '682 patent is attached as Exhibit 5. Yahoo! denies that the '682 patent was duly and
16 legally issued. Yahoo! denies that the '682 patent describes a system that receives
17 indications from users that online content is of current interest, processes the indications,
18 and alerts other users of the interesting content. Except as expressly admitted or denied,
19 Yahoo! lacks sufficient knowledge or information to admit or deny the allegations of
20 paragraph 59 and on that basis denies them.

21 60. In response to paragraph 60 of the Complaint, Yahoo! lacks sufficient
22 information to admit or deny the allegations contained therein and on that basis denies them.

23 61. In response to paragraph 61 of the Complaint, Yahoo! lacks sufficient
24 information to admit or deny the allegations contained therein and on that basis denies them.

62. In response to paragraph 62 of the Complaint, Yahoo! lacks sufficient
information to admit or deny the allegations contained therein and on that basis denies them.

63. In response to paragraph 63 of the Complaint, Yahoo! lacks sufficient
information to admit or deny the allegations contained therein and on that basis denies them.

64. In response to paragraph 64 of the Complaint, Yahoo! lacks sufficient
information to admit or deny the allegations contained therein and on that basis denies them.

1 65. In response to paragraph 65 of the Complaint, Yahoo! lacks sufficient
2 information to admit or deny the allegations contained therein and on that basis denies them.

3 66. In response to paragraph 66 of the Complaint, Yahoo! lacks sufficient
4 information to admit or deny the allegations contained therein and on that basis denies them.

5 67. In response to paragraph 67 of the Complaint, Yahoo! lacks sufficient
6 information to admit or deny the allegations contained therein and on that basis denies them.

7 68. In response to paragraph 68 of the Complaint, Yahoo! lacks sufficient
8 information to admit or deny the allegations contained therein and on that basis denies them.

9 69. In response to paragraph 69 of the Complaint, Yahoo! lacks sufficient
10 information to admit or deny the allegations contained therein and on that basis denies them.

11 70. In response to paragraph 70 of the Complaint, Yahoo! lacks sufficient
12 information to admit or deny the allegations contained therein and on that basis denies them.

13 71. In response to paragraph 71 of the Complaint, Yahoo! lacks sufficient
14 information to admit or deny the allegations contained therein and on that basis denies them.

15 72. In response to paragraph 72 of the Complaint, Yahoo! admits that its
16 products and/or services include Yahoo Buzz, Delicious, Flickr, Yahoo Shopping, Yahoo
17 Music and Yahoo Answers. Yahoo! admits that Exhibit 39 appears to be a copy of a screen
18 shot of Yahoo Buzz. Except as expressly admitted, Yahoo! denies the allegations therein
19 and specifically denies that it has infringed or is infringing any valid claim of the '682
20 patent.

21 73. In response to paragraph 73 of the Complaint, Yahoo! lacks sufficient
22 information to admit or deny the allegations contained therein and on that basis denies them.

23 74. In response to paragraph 74 of the Complaint, Yahoo! denies the allegations
24 to the extent that they pertain to Yahoo! and specifically denies that it has infringed or is
infringing any valid claim of the '682 patent. Yahoo! lacks sufficient information to admit
or deny the remaining allegations contained therein and on that basis denies them.

ALLEGATIONS REGARDING JURY DEMAND

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

1 **INTERVAL’S PRAYER FOR RELIEF**

2 76. Yahoo! denies that Interval is entitled to any of the relief sought in its Prayer
3 for Relief to the extent relief is sought against Yahoo! To the extent that the Prayer for
4 Relief contains any factual allegations against Yahoo!, Yahoo! denies them.

4 **AFFIRMATIVE DEFENSES**

5 77. Without admitting or acknowledging that it bears the burden of proof as to
6 any of them, Yahoo! asserts the following affirmative and other defenses and reserves the
7 right to amend its Answer as additional information becomes available.

7 **FIRST DEFENSE**

8 **(Non-Infringement)**

9 78. Yahoo! does not and has not infringed, whether directly or indirectly, literally
10 or by equivalents, any valid and enforceable claim of the '507, '652, '314, and/or '682
11 patents.

11 **SECOND DEFENSE**

12 **(Invalidity)**

13 79. One or more of the claims of each of the '507, '652, '314 and/or '682 patents
14 is invalid on the grounds that the purported invention claimed therein fails to meet the
15 conditions of patentability specified in Title 35 of the United States Code, including, but not
16 limited to, Sections 101, 102, 103 and/or 112.

16 **THIRD DEFENSE**

17 **(Estoppel)**

18 80. Interval’s claims against Yahoo! are barred, in whole or in part, by the
19 doctrine of estoppel, including, but not limited to, prosecution history estoppel arising from
20 the patentee’s actions, representations, or conduct before the United States Patent and
21 Trademark Office during prosecution of the '507, '652, '314 and/or '682 patents.

21 **FOURTH DEFENSE**

22 **(Adequate Remedy at Law)**

23 81. To the extent Yahoo! is found to infringe the '507, '652, '314 and/or '682
24 patents (which it denies), Interval has an adequate remedy at law, and no basis exists for the
grant of equitable relief.

1 **FIFTH DEFENSE**

2 **(Limitation on Recovery of Costs)**

3 82. Interval is precluded from seeking recovery of its costs under 35 U.S.C. §
4 288.

5 **SIXTH DEFENSE**

6 **(Failure to Mark)**

7 83. Any recoverable damages are limited by Interval's failure to comply or to
8 require that its licensees comply with the provisions of 35 U.S.C. § 287.

9 **SEVENTH DEFENSE**

10 **(Laches)**

11 84. Interval's claims against Yahoo! are barred, in whole or in part, by the
12 doctrine of laches due to Interval's unreasonable delay in bringing this suit against Yahoo!

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 **(Unclean Hands)**

15 85. Interval's claims against Yahoo! are barred, in whole or in part, by the
16 doctrine of unclean hands.

17 **NINTH AFFIRMATIVE DEFENSE**

18 **(Improper Joinder)**

19 86. On information and belief, some or all of the defendants have been
20 improperly joined in a single action, and Yahoo! asserts its right to a separate trial.

21 **TENTH AFFIRMATIVE DEFENSE**

22 **(Substantial Non-infringing Use)**

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

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to State a Claim)

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88. With respect to each purported claim for relief alleged in the Complaint, Interval fails to state a claim against Yahoo! upon which relief may be granted, including but not limited to any claim for direct or indirect infringement.

ADDITIONAL DEFENSES

(Reserved)

89. Yahoo! specifically reserves the right to assert any and all affirmative defenses that may become available through information developed in discovery, at trial, or otherwise.

COUNTERCLAIMS

(Declaratory Judgment as to the '507, '652, '314 and '682 Patents)

90. Yahoo! incorporates by reference paragraphs 1-89 as if fully set forth herein.

91. Yahoo! is a Delaware corporation with its principal place of business at 701 First Avenue, Sunnyvale, California 94089.

92. Upon information and belief, Interval is a limited liability company duly organized under the laws of the state of Washington, with its principal place of business at 505 Fifth Avenue South, Suite 900, Seattle, Washington 98104.

93. By its First Amended Complaint, Interval alleges that Yahoo! has infringed the '507, '652, '314 and '682 patents. Yahoo! has denied these allegations. A justiciable controversy therefore exists between Interval and Yahoo!

94. A judicial declaration is necessary and appropriate at this time so that Yahoo! may ascertain its rights and duties with respect to the '507, '652, '314 and '682 patents.

95. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Interval has consented to this venue by filing the Complaint here. To the extent that venue is found to be proper under 28 U.S.C. § 1400 for any of the claims in the Complaint, venue is also convenient under 28 U.S.C. § 1400 for these Counterclaims. However, Yahoo! reserves the right to contend that the more appropriate venue for the claims in the Complaint and in these Counterclaims is the Northern District of California.

96. By filing its Complaint and First Amended Complaint in this District, Interval has consented to the personal jurisdiction of this Court.

1 **COUNT ONE**

2 **(Declaratory Judgment of Non-Infringement of the '507, '652, '314 and '682**
3 **Patents)**

4 97. Yahoo! incorporates by reference Paragraphs 1-96 as if fully set forth herein.

5 98. Yahoo! does not and has not infringed, directly or indirectly, literally or by
6 equivalents, any valid and enforceable claim of the '507, '652, '314 and '682 patents.

7 99. Interval is precluded under the doctrine of prosecution history estoppel from
8 asserting or construing the claims of the '507, '652, '314 and '682 patents in a way that
9 would cover or read upon any product or service made, used, sold, or offered for sale by
10 Yahoo!

11 **COUNT TWO**

12 **(Declaratory Judgment of Invalidity and/or Unenforceability of the**
13 **'507, '652, '314 and '682 Patents)**

14 100. Yahoo! incorporates by reference Paragraphs 1-99 as if fully set forth herein.

15 101. One or more claims of each of '507, '652, '314 and '682 patents is invalid for
16 failure to meet one or more of the conditions of patentability specified in Title 35 of the
17 United States Code, including, but not limited to, Sections 101, 102, 103 and/or 112.
18 Furthermore, these claims are unenforceable for the reasons set forth above in Yahoo!'s
19 Affirmative Defenses.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Defendant and Counterclaimant Yahoo! prays for relief as follows:

22 A. That the Court enter judgment in favor of Yahoo! and against Interval;

23 B. That the Court find that Yahoo! has not infringed and is not infringing the
24 '507 patent and enter declaratory judgment that Yahoo! has not infringed and is not
infringing the '507 patent;

C. That the Court find that Yahoo! has not infringed and is not infringing the
'652 patent and enter declaratory judgment that Yahoo! has not infringed and is not
infringing the '652 patent;

D. That the Court find that Yahoo! has not infringed and is not infringing the
'314 patent and enter declaratory judgment that Yahoo! has not infringed and is not
infringing the '314 patent;

1 E. That the Court find that Yahoo! has not infringed and is not infringing the
2 '682 patent and enter declaratory judgment that Yahoo! has not infringed and is not
infringing the '682 patent;

3 F. That the Court find that the '507 patent is invalid and/or unenforceable and
4 enter declaratory judgment that the '507 patent is invalid and/or unenforceable;

5 G. That the Court find that the '652 patent is invalid and/or unenforceable and
6 enter declaratory judgment that the '652 patent is invalid and/or unenforceable;

7 H. That the Court find that the '314 patent is invalid and/or unenforceable and
8 enter declaratory judgment that the '314 patent is invalid and/or unenforceable;

9 I. That the Court find that the '682 patent is invalid and/or unenforceable and
10 enter declaratory judgment that the '682 patent is invalid and/or unenforceable;

11 J. That Interval take nothing by its Complaint against Yahoo!;

12 K. That the Court deny any and all of Interval's requests for injunctive relief;

13 L. That the Court deny any and all of Interval's requests for equitable relief;

14 M. That the Court dismiss Interval's Complaint in its entirety, with prejudice;

15 N. That the Court find this case exceptional under 35 U.S.C. § 285, and award
16 Yahoo! its costs and fees in this action, including attorneys' fees, and pre-judgment interest
17 thereon; and

18 O. That the Court grant Yahoo! such other and further relief as the Court deems
19 just and proper.
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1 **JURY DEMAND**

2 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Yahoo! hereby
3 demands a trial by jury of all issues triable of right by a jury in the above-captioned case.

4 Dated: January 14, 2011

By: s/ Mark P. Walters
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Dario A. Machleidt (WSBA #41860)
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8 and

9
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21 Attorneys for Defendant YAHOO! INC.

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CERTIFICATE OF SERVICE

I, Laura Gold, hereby certify that on January 14, 2011, I caused the foregoing
**DEFENDANT YAHOO! INC'S ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS TO THE FIRST AMENDED COMPLAINT FOR PATENT
INFRINGEMENT** to be served on the following parties as indicated below:

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