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Hon. Marsha J. Pechman

UNITED STATES DISTRICT COURT
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.

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

INTERVAL LICENSING LLC’S
ANSWER TO COUNTERCLAIMS

JURY DEMAND

**INTERVAL LICENSING LLC’S ANSWER TO
EBAY INC.’S COUNTERCLAIMS**

Plaintiff Interval Licensing LLC (“Interval”), by and through its attorneys, files this Answer to the counterclaims of Defendant and Counterclaimant eBay Inc. (“eBay”) and respectfully answers as follows:

Interval denies each and every averment set forth in the Counterclaims, except for those averments expressly and specifically admitted below. To the extent that the headings and non-numbered statements in the Counterclaims contain any averments, Interval denies each and every such averment.

1. Paragraphs 1-75 do not contain any allegations that require an answer. To the extent necessary, Interval incorporates by reference and realleges the allegations in its First Amended Complaint.

1 **Affirmative Defenses**

2 **First Affirmative Defense: Non-Infringement**

3 2. Interval denies the allegations in ¶ 1.

4 **Second Affirmative Defense: Invalidity**

5 3. Interval denies the allegations in ¶ 2.

6 **Third Affirmative Defense: Failure to State a Claim**

7 4. Interval denies the allegations in ¶ 3.

8 **Fourth Affirmative Defense: Use/Manufacture By/For United States Government**

9 5. Interval denies the allegations in ¶ 4.

10 **Fifth Affirmative Defense: Dedication to the Public**

11 6. Interval denies the allegations in ¶ 5.

12 **Sixth Affirmative Defense: Equitable Defenses**

13 7. Paragraph 6 contains legal conclusions that require no response. To the extent a response
14 is required, Interval denies the allegations in ¶ 6.

15 **Seventh Affirmative Defense: Lack of Standing**

16 8. Interval denies the allegations in ¶ 7.

17 **Eighth Affirmative Defense: Failure to Mitigate Damages**

18 9. Interval denies the allegations in ¶ 8.

19 **Ninth Affirmative Defense: Sections 284-288**

20 10. Paragraph 9 contains legal conclusions that require no response. To the extent a response
21 is required, Interval denies the allegations in ¶ 9.

22 11. Interval denies the allegations in ¶ 10. Interval, through its sister corporation, Vulcan Inc.,
23 sent a letter to eBay prior to the commencement of this action informing eBay that Vulcan Inc.
24 and its affiliated companies had patents that may be of interest to eBay, and invited eBay to
25 contact Vulcan's intellectual property counsel to discuss further.

26 12. Paragraph 11 contains legal conclusions that require no response. To the extent a
27 response is required, Interval denies the allegations in ¶ 11.

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Tenth Affirmative Defense: Reverse Doctrine of Equivalents

13. Interval denies the allegations in ¶ 12.

Eleventh Affirmative Defense: Prosecution History Estoppel

14. Paragraph 13 contains legal conclusions that require no response. To the extent a response is required, Interval denies the allegations in ¶ 13.

Twelfth Affirmative Defense: No Entitlement to an Injunction

- 15. Interval admits the allegations in ¶ 14.
- 16. Interval denies the allegations in ¶ 15.
- 17. Interval denies the allegations in ¶ 16.
- 18. Interval denies the allegations in ¶ 17.
- 19. Interval denies the allegations in ¶ 18.
- 20. Interval denies the allegations in ¶ 19.

Thirteenth Affirmative Defense: Indispensable Parties

21. Interval denies the allegations in ¶ 20.

PRAYER FOR RELIEF

22. In response to eBay’s Prayer for Relief, Interval denies that eBay is entitled to relief of any kind.

DEMAND FOR JURY TRIAL

23. This paragraph sets forth eBay’s request for a jury trial, to which no response is required.

COUNTERCLAIMS FOR DECLARATORY JUDGMENT

24. Interval is without sufficient information to admit or deny the allegations made in ¶ 1, and therefore denies those allegations.

25. Interval admits the allegations in ¶ 2.

JURISDICTION

26. Interval admits the allegations in ¶ 3 that eBay’s counterclaims constitute an action seeking a declaration of non-infringement and invalidity of the ‘507 and ‘682 patents and that this Court has jurisdiction over the counterclaims.

1 27. Interval admits the allegations in ¶ 4.

2 28. Interval admits the allegations in ¶ 5 that an actual case and controversy exists between
3 Interval and eBay relating to the '507 and '682 patents.

4 **COUNT ONE**

5 **(Declaration of Non-Infringement of the '507 Patent)**

6 29. Interval incorporates by reference its responses to paragraphs 1-5 as if fully set forth
7 herein.

8 30. Interval denies the allegations in ¶ 7.

9 31. Interval denies the allegations in ¶ 8.

10 **COUNT TWO**

11 **(Declaration of Non-Infringement of the '682 Patent)**

12 32. Interval incorporates by reference its responses to paragraphs 1-8 as if fully set forth
13 herein.

14 33. Interval denies the allegations in ¶ 10.

15 34. Interval denies the allegations in ¶ 11.

16 **COUNT THREE**

17 **(Declaration of Invalidity of the '507 Patent)**

18 35. Interval incorporates by reference its responses to paragraphs 1-11 as if fully set forth
19 herein.

20 36. Interval denies the allegations in ¶ 13.

21 37. Interval denies the allegations in ¶ 14.

22 **COUNT FOUR**

23 **(Declaration of Invalidity of the '682 Patent)**

24 38. Interval incorporates by reference its responses to paragraphs 1-14 as if fully set forth
25 herein.

26 39. Interval denies the allegations in ¶ 16.

27 40. Interval denies the allegations in ¶ 17.

1 **DEMAND FOR JURY TRIAL**

2 41. This paragraph sets forth eBay's request for a jury trial, to which no response is required.

3 **PRAYER FOR RELIEF**

4 42. In response to eBay's Prayer for Relief, Interval denies that eBay is entitled to relief of
5 any kind.

6 **REQUEST FOR RELIEF**

7 43. WHEREFORE, Interval respectfully requests judgment of the Court against eBay as
8 follows:

- 9 (a) Dismissal of eBay's counterclaims with prejudice;
- 10 (b) Declaration that eBay has infringed U.S. Patent Nos. 6,263,507 and 6,757,682;
- 11 (c) Awarding the damages arising out of eBay's infringement of U.S. Patent Nos.
12 6,263,507 and 6,757,682, to Interval, together with prejudgment and post-judgment interest, in an
13 amount according to proof;
- 14 (d) Permanently enjoining eBay and its respective officers, agents, employees, and
15 those acting in privity with them, from further infringement of U.S. Patent Nos. 6,263,507 and
16 6,757,682, or in the alternative, awarding a royalty for post judgment infringement;
- 17 (e) Awarding attorney's fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by
18 law; and
- 19 (f) Awarding such other costs and further relief as the Court may deem just and
20 proper.

21
22 Dated: February 7, 2011

/s/ Matthew R. Berry

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2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on February 7, 2011, I electronically filed the foregoing with the
4 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
5 following counsel of record:

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