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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
OFFICE DEPOT INC.’S COUNTERCLAIMS**

Plaintiff Interval Licensing LLC (“Interval”), by and through its attorneys, files this Answer to the counterclaims of Defendant and Counterclaimant Office Depot Inc. (“Office Depot”) 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 Office Depot prior to the commencement of this action informing Office Depot
24 that Vulcan Inc. and its affiliated companies had patents that may be of interest to Office Depot,
25 and invited Office Depot to 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 Office Depot’s Prayer for Relief, Interval denies that Office Depot is entitled to relief of any kind.

DEMAND FOR JURY TRIAL

23. This paragraph sets forth Office Depot’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.

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JURISDICTION

26. Interval admits the allegations in ¶ 3 that Office Depot’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.

27. Interval admits the allegations in ¶ 4.

28. Interval admits the allegations in ¶ 5 that an actual case and controversy exists between Interval and Office Depot relating to the ‘507 and ‘682 patents.

COUNT ONE

(Declaration of Non-Infringement of the ‘507 Patent)

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

30. Interval denies the allegations in ¶ 7.

31. Interval denies the allegations in ¶ 8.

COUNT TWO

(Declaration of Non-Infringement of the ‘682 Patent)

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

33. Interval denies the allegations in ¶ 10.

34. Interval denies the allegations in ¶ 11.

COUNT THREE

(Declaration of Invalidity of the ‘507 Patent)

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

36. Interval denies the allegations in ¶ 13.

37. Interval denies the allegations in ¶ 14.

1 **COUNT FOUR**

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

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

5 39. Interval denies the allegations in ¶ 16.

6 40. Interval denies the allegations in ¶ 17.

7 **DEMAND FOR JURY TRIAL**

8 41. This paragraph sets forth Office Depot's request for a jury trial, to which no response is
9 required.

10 **PRAYER FOR RELIEF**

11 42. In response to Office Depot's Prayer for Relief, Interval denies that Office Depot is
12 entitled to relief of any kind.

13 **REQUEST FOR RELIEF**

14 43. WHEREFORE, Interval respectfully requests judgment of the Court against Office Depot
15 as follows:

16 (a) Dismissal of Office Depot's counterclaims with prejudice;

17 (b) Declaration that Office Depot has infringed U.S. Patent Nos. 6,263,507 and
18 6,757,682;

19 (c) Awarding the damages arising out of Office Depot's infringement of U.S. Patent
20 Nos. 6,263,507 and 6,757,682, to Interval, together with prejudgment and post-judgment interest,
21 in an amount according to proof;

22 (d) Permanently enjoining Office Depot and its respective officers, agents, employees,
23 and those acting in privity with them, from further infringement of U.S. Patent Nos. 6,263,507
24 and 6,757,682, or in the alternative, awarding a royalty for post judgment infringement;

25 (e) Awarding attorney's fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by
26 law; and

1 (f) Awarding such other costs and further relief as the Court may deem just and
2 proper.

3
4 Dated: February 7, 2011

/s/ Matthew R. Berry

5 Justin A. Nelson
6 WA Bar No. 31864
7 E-Mail: jnelson@susmangodfrey.com
8 Edgar G. Sargent
9 WA Bar No. 28283
10 E-Mail: esargent@susmangodfrey.com
11 Matthew R. Berry
12 WA Bar No. 37364
13 E-Mail: mberry@susmangodfrey.com
14 SUSMAN GODFREY L.L.P.
15 1201 Third Ave, Suite 3800
16 Seattle, WA 98101
17 Telephone: (206) 516-3880
18 Facsimile: (206) 516-3883

19 Max L. Tribble, Jr.
20 E-Mail: mtribble@susmangodfrey.com
21 SUSMAN GODFREY L.L.P.
22 1000 Louisiana Street, Suite 5100
23 Houston, Texas 77002
24 Telephone: (713) 651-9366
25 Facsimile: (713) 654-6666

26 Michael F. Heim
27 E-mail: mheim@hpcllp.com
28 Eric J. Enger
E-mail: eenger@hpcllp.com
Nathan J. Davis
E-mail: ndavis@hpcllp.com
HEIM, PAYNE & CHORUSH, L.L.P.
600 Travis, Suite 6710
Houston, Texas 77002
Telephone: (713) 221-2000
Facsimile: (713) 221-2021

Attorneys for INTERVAL LICENSING LLC

1
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:

6 **Attorneys for AOL, Inc.**

6 Aneelah Afzali aneelah.afzali@stokeslaw.com
7 Cortney Alexander cortney.alexander@finnegan.com
7 Robert Burns robert.burns@finnegan.com
8 Elliot Cook elliot.cook@finnegan.com
8 Gerald Ivey gerald.ivey@finnegan.com
9 Scott Johnson scott.johnson@stokeslaw.com
9 Shannon Jost shannon.jost@stokeslaw.com

10
11 **Attorneys for Apple, Inc.**

11 David Almeling dalmeling@omm.com
12 Brian Berliner bberliner@omm.com
12 George Riley griley@omm.com
13 Jeremy Roller jroller@yarmuth.com
13 Scott Wilsdon wilsdon@yarmuth.com
14 Neil Yang nyang@omm.com

15 **Attorneys for eBay, Inc., Netflix, Inc., and Staples, Inc.**

16 Chris Carraway chris.carraway@klarquist.com
16 Kristin Cleveland kristin.cleveland@klarquist.com
17 Klaus Hamm klaus.hamm@klarquist.com
17 Arthur Harrigan, Jr. arthurh@dhl.com
18 John Vandenberg john.vandenberg@klarquist.com
19 Christopher Wion chrisw@dhl.com

20 **Attorneys for Facebook, Inc.**

20 Christen Dubois cdubois@cooley.com
21 Heidi Keefe hkeefe@cooley.com
21 Michael Rhodes mrhodes@cooley.com
22 Elizabeth Stameshkin lstameshkin@cooley.com
23 Mark Weinstein mweinstein@cooley.com

24 **Attorneys for Google, Inc. and YouTube, LLC**

24 Aneelah Afzali aneelah.afzali@stokeslaw.com
25 Aaron Chase achase@whitecase.com
25 Dimitrios Drivas ddrivas@whitecase.com
26 John Handy jhandy@whitecase.com
26 Warren Heit wheat@whitecase.com
27 Scott Johnson scott.johnson@stokeslaw.com
28 Shannon Jost shannon.jost@stokeslaw.com

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Kevin McGann
Wendi Schepler

kmcgann@whitecase.com
wschepler@whitecase.com

Attorneys for Office Depot, Inc.

Chris Carraway
Kristin Cleveland
Klaus Hamm
Arthur Harrigan, Jr.
John Vandenberg
Christopher Wion

chris.carraway@klarquist.com
Kristin.cleveland@klarquist.com
Klaus.hamm@klarquist.com
arthurh@dhl.com
john.vandenberg@klarquist.com
chrisw@dhl.com

Attorneys for OfficeMax, Inc.

Kevin Baumgardner
Steven Fogg
John Letchinger
Douglas Rupert

kbaumgardner@correronin.com
sfogg@correronin.com
letchinger@wildman.com
rupert@wildman.com

Attorneys for Yahoo! Inc.

Francis Ho
Richard S.J. Hung
Michael Jacobs
Matthew Kreeger
Dario Machleidt
Eric Ow
Mark Walters

fho@mof.com
rhung@mof.com
mjacobs@mof.com
mkreeger@mof.com
dmachleidt@flhlaw.com
eow@mof.com
mwalters@flhlaw.com

By: /s/ Bianca Nealious
Bianca Nealious