

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

APPLE INC. and NeXT SOFTWARE,)
INC. (f/k/a NeXT COMPUTER, INC.),)
)
Plaintiffs,)
)
)
v.)
)
MOTOROLA, INC. and MOTOROLA)
MOBILITY, INC.)
)
Defendants.)

Case No. 10-CV-662-BBC
JURY TRIAL DEMANDED

**MOTOROLA MOBILITY, INC.’S ANSWER AND REPLY TO APPLE INC.’S
AMENDED COUNTERCLAIMS**

Motorola Mobility, Inc. (“Mobility”) hereby answers the Amended Counterclaims of Apple Inc. (“Apple”), filed in the above-captioned action on January 28, 2011.

MOBILITY’S ANSWER TO APPLE’S COUNTERCLAIMS

GENERAL DENIAL

Unless expressly admitted below, Mobility denies each and every allegation Apple has set forth in its Amended Counterclaims. Mobility further specifically denies the allegations contained in the affirmative defenses Apple has set forth in its Amended Answer, including Apple’s allegations of inequitable conduct.

RESPONSE TO APPLE’S SPECIFIC ALLEGATIONS

Answering the specific allegations of Apple’s Amended Counterclaims, Mobility responds with the following paragraphs, which correspond sequentially to the paragraphs in Apple’s Amended Counterclaims:

PARTIES¹

154. Admitted.

155. Denied.

156. Mobility admits that it is a corporation organized under the laws of the State of Delaware, with a principal place of business at 600 North U.S. Highway 45, Libertyville, Illinois 60048. Mobility denies the remaining allegations in Paragraph 156.

JURISDICTION AND VENUE

157. Mobility admits that Apple alleges counterclaims that arise under the patent laws of the United States, Title 35 of the United States Code, but specifically denies Apple's allegations regarding non-infringement, invalidity, or unenforceability of the asserted Mobility patents. Mobility admits that this Court has subject matter jurisdiction over these counterclaims against Mobility pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202. Mobility denies the remaining allegations of Paragraph 157.

158. Denied.

159. Mobility admits that this Court has personal jurisdiction over it for purposes of these counterclaims against Mobility. Mobility denies the remaining allegations of Paragraph 159.

160. Mobility admits that venue is proper in this district as to Apple's First through Sixth Counterclaim pursuant to at least 28 U.S.C. § 1391.

¹ For ease of reference only, Mobility has reproduced the headings Apple used in its Counterclaims. To the extent the headings Apple used contain any allegations or characterizations, Mobility denies the truth of those allegations or characterizations.

FIRST COUNTERCLAIM – DECLARATORY JUDGMENT

U.S. PATENT NO. 5,311,516

161. Mobility admits that Apple purports to counterclaim against Mobility pursuant to the patent laws of the United States, Titled 35 of the United States Code and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Mobility specifically denies Apple’s allegations regarding non-infringement, invalidity, or unenforceability of the asserted Mobility patents, including U.S. Patent No. 5,311,516. Mobility denies the remaining allegations of Paragraph 161.

162. Admitted. U.S. Patent No. 5,311,516 has been assigned to Mobility.

A. Declaration of Noninfringement

163. Mobility repeats and realleges its responses to Paragraphs 154–162 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs in Mobility’s Counterclaims and denies any of Apple’s allegations therein.

164. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the ’516 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the ’516 patent by making, using, offering for sale, selling, and/or importing the Apple iPhone, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, the Apple iPad, the Apple iPad with 3G, each generation of the Apple iPod Touch, the Apple MacBook, the Apple MacBook Pro, the Apple MacBook Air, the Apple iMac, the Apple Mac mini, and the Apple Mac Pro. Mobility denies the remaining allegations of Paragraph 164. Mobility specifically denies that Apple does not infringe the ’516 patent and that Mobility is wrongfully asserting the ’516 patent against Apple, thereby causing Apple any harm.

165. Mobility denies each and every allegation of Paragraph 165.

166. Mobility denies each and every allegation of Paragraph 166.

B. Declaration of Invalidity

167. Mobility repeats and realleges its responses to Paragraphs 154–166 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs in Mobility’s Counterclaims and denies any of Apple’s allegations therein.

168. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the ’516 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the ’516 patent by making, using, offering for sale, selling, and/or importing the Apple iPhone, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, the Apple iPad, the Apple iPad with 3G, each generation of the Apple iPod Touch, the Apple MacBook, the Apple MacBook Pro, the Apple MacBook Air, the Apple iMac, the Apple Mac mini, and the Apple Mac Pro. Mobility denies the remaining allegations of Paragraph 168. Mobility specifically denies that the ’516 patent is invalid and that Mobility is wrongfully asserting the ’516 patent against Apple, thereby causing Apple any harm.

169. Mobility denies each and every allegation of Paragraph 169.

170. Mobility denies each and every allegation of Paragraph 170.

C. Declaration of Unenforceability

171. Mobility repeats and realleges its responses to Paragraphs 154–170 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and

Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs Mobility's Counterclaims and denies any of Apple's allegations therein.

172. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the '516 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the '516 patent by making, using, offering for sale, selling, and/or importing the Apple iPhone, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, the Apple iPad, the Apple iPad with 3G, each generation of the Apple iPod Touch, the Apple MacBook, the Apple MacBook Pro, the Apple MacBook Air, the Apple iMac, the Apple Mac mini, and the Apple Mac Pro. Mobility denies the remaining allegations of Paragraph 172. Mobility specifically denies that the '516 patent is unenforceable and that Mobility is wrongfully asserting the '516 patent against Apple, thereby causing Apple any harm.

173. Mobility denies each and every allegation of Paragraph 173, including, but not limited to, specifically denying Apple's allegations of inequitable conduct as described in Apple's affirmative defenses. Mobility specifically denies that David F. Willard was aware of specific material information, including any prior art, that he withheld, concealed, or mischaracterized with the intent to deceive the Patent Office. Mobility incorporates by reference its response to Paragraphs 112–118 of Apple's Thirteenth Affirmative Defense set forth below.

174. Mobility denies each and every allegation of Paragraph 174.

SECOND COUNTERCLAIM – DECLARATORY JUDGMENT

U.S. PATENT NO. 5,319,712

175. Mobility admits that Apple purports to counterclaim against Mobility pursuant to the patent laws of the United States, Titled 35 of the United States Code and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Mobility specifically denies Apple's allegations regarding non-infringement, invalidity, or unenforceability of the asserted Mobility patents,

including U.S. Patent No. 5,319,712. Mobility denies the remaining allegations of Paragraph 175.

176. Admitted. U.S. Patent No. 5,319,712 has been assigned to Mobility.

A. Declaration of Noninfringement

177. Mobility repeats and realleges its responses to Paragraphs 154–176 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs in Mobility’s Counterclaims and denies any of Apple’s allegations therein.

178. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the ’712 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the ’712 patent by making, using, offering for sale, selling, and/or importing the Apple iPhone, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, the Apple iPad, the Apple iPad with 3G, each generation of the Apple iPod Touch, the Apple MacBook, the Apple MacBook Pro, the Apple MacBook Air, the Apple iMac, the Apple Mac mini, and the Apple Mac Pro. Mobility denies the remaining allegations of Paragraph 178. Mobility specifically denies that Apple does not infringe or has not infringed the ’712 patent and that Mobility is wrongfully asserting the ’712 patent against Apple, thereby causing Apple any harm.

179. Mobility denies each and every allegation in Paragraph 179.

B. Declaration of Invalidity

180. Mobility repeats and realleges its responses to Paragraphs 154–179 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and

Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs in Mobility's Counterclaims and denies any of Apple's allegations therein.

181. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the '712 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the '712 patent by making, using, offering for sale, selling, and/or importing the Apple iPhone, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, the Apple iPad, the Apple iPad with 3G, each generation of the Apple iPod Touch, the Apple MacBook, the Apple MacBook Pro, the Apple MacBook Air, the Apple iMac, the Apple Mac mini, and the Apple Mac Pro. Mobility denies the remaining allegations of Paragraph 181. Mobility specifically denies that the '712 patent is invalid and that Mobility is wrongfully asserting the '712 patent against Apple, thereby causing Apple any harm and that Apple has not infringed the '712 patent.

182. Mobility denies each and every allegation in Paragraph 182.

183. Mobility denies each and every allegation in Paragraph 183.

C. Declaration of Unenforceability

184. Mobility repeats and realleges its responses to Paragraphs 154–183 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs in Mobility's Counterclaims and denies any of Apple's allegations therein.

185. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the '712 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the '712 patent by making, using, offering

for sale, selling, and/or importing the Apple iPhone, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, the Apple iPad, the Apple iPad with 3G, each generation of the Apple iPod Touch, the Apple MacBook, the Apple MacBook Pro, the Apple MacBook Air, the Apple iMac, the Apple Mac mini, and the Apple Mac Pro. Mobility denies the remaining allegations of Paragraph 185. Mobility specifically denies that the '712 patent is unenforceable and that Mobility is wrongfully asserting the '712 patent against Apple, thereby causing Apple any harm.

186. Mobility denies each and every allegation of Paragraph 186, including, but not limited to, specifically denying Apple's allegations of inequitable conduct as described in Apple's affirmative defenses. Mobility specifically denies that Louis Finkelstein, Jeffrey Smolinske, or Shawn Dempster were aware of specific material information, including any prior art, that they withheld, concealed, or mischaracterized with the intent to deceive the Patent Office. Mobility incorporates by reference its response to Paragraphs 119–130 of Apple's Thirteenth Affirmative Defense set forth below.

187. Mobility denies each and every allegation of Paragraph 187.

THIRD COUNTERCLAIM – DECLARATORY JUDGMENT

U.S. PATENT NO. 5,490,230

188. Mobility admits that Apple purports to counterclaim against Mobility pursuant to the patent laws of the United States, Titled 35 of the United States Code and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Mobility specifically denies Apple's allegations regarding non-infringement, invalidity, or unenforceability of the asserted Mobility patents, including U.S. Patent No. 5,490,230. Mobility denies the remaining allegations of Paragraph 188.

189. Admitted. U.S. Patent No. 5,490,230 has been assigned to Mobility.

A. Declaration of Noninfringement

190. Mobility repeats and realleges its responses to Paragraphs 154–189 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs in Mobility’s Counterclaims and denies any of Apple’s allegations therein.

191. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the ’230 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the ’230 patent by making, using, offering for sale, selling, and/or importing the Apple iPhone, the Apple iPhone 3G, the Apple iPhone 3GS, and the Apple iPhone 4. Mobility denies the remaining allegations of Paragraph 191. Mobility specifically denies that Apple does not infringe the ’230 patent and that Mobility is wrongfully asserting the ’230 patent against Apple, thereby causing Apple any harm.

192. Mobility denies each and every allegation in Paragraph 192.

193. Mobility denies each and every allegation in Paragraph 193.

B. Declaration of Invalidity

194. Mobility repeats and realleges its responses to Paragraphs 153–193 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs in Mobility’s Counterclaims and denies any of Apple’s allegations therein.

195. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the ’230 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the ’230 patent by making, using, offering

for sale, selling, and/or importing the Apple iPhone, the Apple iPhone 3G, the Apple iPhone 3GS, and the Apple iPhone 4. Mobility denies the remaining allegations of Paragraph 195. Mobility specifically denies that the '230 patent is invalid and that Mobility is wrongfully asserting the '230 patent against Apple, thereby causing Apple any harm.

196. Mobility denies each and every allegation in Paragraph 196.

197. Mobility denies each and every allegation in Paragraph 197.

FOURTH COUNTERCLAIM – DECLARATORY JUDGMENT

U.S. PATENT NO. 5,572,193

198. Mobility admits that Apple purports to counterclaim against Mobility pursuant to the patent laws of the United States, Titled 35 of the United States Code and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Mobility specifically denies Apple's allegations regarding non-infringement, invalidity, or unenforceability of the asserted Mobility patents, including U.S. Patent No. 5,572,193. Mobility denies the remaining allegations of Paragraph 198.

199. Admitted. U.S. Patent No. 5,572,193 has been assigned to Mobility.

A. Declaration of Noninfringement

200. Mobility repeats and realleges its responses to Paragraphs 154–199 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs in Mobility's Counterclaims and denies any of Apple's allegations therein.

201. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the '193 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the '193 patent by making, using, offering

for sale, selling, and/or importing the Apple iPhone, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, the Apple iPad, the Apple iPad with 3G, each generation of the Apple iPod Touch, the Apple MacBook, the Apple MacBook Pro, the Apple MacBook Air, the Apple iMac, the Apple Mac mini, and the Apple Mac Pro. Mobility denies the remaining allegations of Paragraph 201. Mobility specifically denies that Apple does not infringe the '193 patent and that Mobility is wrongfully asserting the '193 patent against Apple, thereby causing Apple any harm.

202. Mobility denies each and every allegation in Paragraph 202.

203. Mobility denies each and every allegation in Paragraph 203.

B. Declaration of Invalidity

204. Mobility repeats and realleges its responses to Paragraphs 154–203 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs in Mobility's Counterclaims and denies any of Apple's allegations therein.

205. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the '193 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the '193 patent by making, using, offering for sale, selling, and/or importing the Apple iPhone, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, the Apple iPad, the Apple iPad with 3G, each generation of the Apple iPod Touch, the Apple MacBook, the Apple MacBook Pro, the Apple MacBook Air, the Apple iMac, the Apple Mac mini, and the Apple Mac Pro. Mobility denies the remaining allegations of Paragraph 205. Mobility specifically denies that the '193 patent is invalid and that Mobility is wrongfully asserting the '193 patent against Apple, thereby causing Apple any harm.

206. Mobility denies each and every allegation in Paragraph 206.

207. Mobility denies each and every allegation in Paragraph 206.

C. Declaration of Unenforceability

208. Mobility repeats and realleges its responses to Paragraphs 154–207 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs in Mobility’s Counterclaims and denies any of Apple’s allegations therein.

209. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the ’193 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the ’193 patent by making, using, offering for sale, selling, and/or importing the Apple iPhone, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, the Apple iPad, the Apple iPad with 3G, each generation of the Apple iPod Touch, the Apple MacBook, the Apple MacBook Pro, the Apple MacBook Air, the Apple iMac, the Apple Mac mini, and the Apple Mac Pro. Mobility denies the remaining allegations of Paragraph 209. Mobility specifically denies that the ’193 patent is unenforceable and that Mobility is wrongfully asserting the ’193 patent against Apple, thereby causing Apple any harm.

210. Mobility denies each and every allegation of Paragraph 210, including, but not limited to, specifically denying Apple’s allegations of inequitable conduct as described in Apple’s affirmative defenses. Mobility specifically denies that Louis Finkelstein or the prosecuting attorney for the ’193 patent were aware of specific material information, including any prior art, that they withheld, concealed, or mischaracterized with the intent to deceive the Patent Office. Mobility incorporates by reference its response to Paragraphs 131–139 of Apple’s Thirteenth Affirmative Defense set forth below.

211. Mobility denies each and every allegation in Paragraph 211.

FIFTH COUNTERCLAIM – DECLARATORY JUDGMENT

U.S. PATENT NO. 6,175,559

212. Mobility admits that Apple purports to counterclaim against Mobility pursuant to the patent laws of the United States, Titled 35 of the United States Code and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Mobility specifically denies Apple’s allegations regarding non-infringement, invalidity, or unenforceability of the asserted Mobility patents, including U.S. Patent No. 6,175,559. Mobility denies the remaining allegations of Paragraph 212.

213. Admitted. U.S. Patent No. 6,175,559 has been assigned to Mobility.

A. Declaration of Noninfringement

214. Mobility repeats and realleges its responses to Paragraphs 154–213 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs in Mobility’s Counterclaims and denies any of Apple’s allegations therein.

215. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the ’559 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the ’559 patent by making, using, offering for sale, selling, and/or importing the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, and the Apple iPad with 3G. Mobility denies the remaining allegations of Paragraph 215. Mobility specifically denies that Apple does not infringe the ’559 patent and that Mobility is wrongfully asserting the ’559 patent against Apple, thereby causing Apple any harm.

216. Mobility denies each and every allegation in Paragraph 216.

217. Mobility denies each and every allegation in Paragraph 217.

B. Declaration of Invalidity

218. Mobility repeats and realleges its responses to Paragraphs 154–217 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs in Mobility’s Counterclaims and denies any of Apple’s allegations therein.

219. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the ’559 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the ’559 patent by making, using, offering for sale, selling, and/or importing the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, and the Apple iPad with 3G. Mobility denies the remaining allegations of Paragraph 219. Mobility specifically denies that the ’559 patent is invalid and that Mobility is wrongfully asserting the ’559 patent against Apple, thereby causing Apple any harm.

220. Mobility denies each and every allegation in Paragraph 220.

221. Mobility denies each and every allegation in Paragraph 221.

C. Declaration of Unenforceability

222. Mobility repeats and realleges its responses to Paragraphs 154–221 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs in Mobility’s Counterclaims and denies any of Apple’s allegations therein.

223. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the ’559 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the ’559 patent by making, using, offering

for sale, selling, and/or importing the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, and the Apple iPad with 3G. Mobility denies the remaining allegations of Paragraph 223.

Mobility specifically denies that the '559 patent is unenforceable and that Mobility is wrongfully asserting the '559 patent against Apple, thereby causing Apple any harm.

224. Mobility denies each and every allegation of Paragraph 224, including, but not limited to, specifically denying Apple's allegations of inequitable conduct as described in Apple's affirmative defenses. Mobility specifically denies that any named inventor or prosecuting attorney was aware of specific material information, including any prior art, that was withheld, concealed, or mischaracterized with the intent to deceive the Patent Office. Mobility incorporates by reference its response to Paragraphs 140–146 of Apple's Thirteenth Affirmative Defense set forth below.

225. Mobility denies each and every allegation in Paragraph 225.

SIXTH COUNTERCLAIM – DECLARATORY JUDGMENT

U.S. PATENT NO. 6,359,898

226. Mobility admits that Apple purports to counterclaim against Mobility pursuant to the patent laws of the United States, Titled 35 of the United States Code and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Mobility specifically denies Apple's allegations regarding non-infringement, invalidity, or unenforceability of the asserted Mobility patents, including U.S. Patent No. 6,359,898. Mobility denies the remaining allegations of Paragraph 226.

227. Admitted. U.S. Patent No. 6,359,898 has been assigned to Mobility.

A. Declaration of Noninfringement

228. Mobility repeats and realleges its responses to Paragraphs 154–227 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers

and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs in Mobility’s Counterclaims and denies any of Apple’s allegations therein.

229. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the ’898 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the ’898 patent by making, using, offering for sale, selling, and/or importing the Apple iPhone, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, and the Apple iPad with 3G. Mobility denies the remaining allegations of Paragraph 229. Mobility specifically denies that Apple does not infringe the ’898 patent and that Mobility is wrongfully asserting the ’898 patent against Apple, thereby causing Apple any harm.

230. Mobility denies each and every allegation in Paragraph 230.

231. Mobility denies each and every allegation in Paragraph 231.

B. Declaration of Invalidity

232. Mobility repeats and realleges its responses to Paragraphs 154–231 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs in Mobility’s Counterclaims and denies any of Apple’s allegations therein.

233. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the ’898 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the ’898 patent by making, using, offering for sale, selling, and/or importing the Apple iPhone, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, and the Apple iPad with 3G. Mobility denies the remaining allegations

of Paragraph 233. Mobility specifically denies that the '898 patent is invalid and that Mobility is wrongfully asserting the '898 patent against Apple, thereby causing Apple any harm.

234. Mobility denies each and every allegation in Paragraph 234.

235. Mobility denies each and every allegation in Paragraph 235.

C. Declaration of Unenforceability

236. Mobility repeats and realleges its responses to Paragraphs 154–235 above as if set forth herein; to the extent Apple purports to reallege and incorporate by reference the answers and allegations set forth in Paragraphs 1–153 of its Answer, Affirmative Defenses, and Counterclaims, Mobility, to the extent so required, admits that Apple so responds to those paragraphs in Mobility's Counterclaims and denies any of Apple's allegations therein.

237. Mobility admits that at this time an actual and justiciable controversy exists between Apple and Mobility with respect to the '898 patent. Mobility admits that it has brought an action against Apple alleging that Apple infringes the '898 patent by making, using, offering for sale, selling, and/or importing the Apple iPhone, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, and the Apple iPad with 3G. Mobility denies the remaining allegations of Paragraph 237. Mobility specifically denies that the '898 patent is unenforceable and that Mobility is wrongfully asserting the '898 patent against Apple, thereby causing Apple any harm.

238. Mobility denies each and every allegation of Paragraph 238, including, but not limited to, specifically denying Apple's allegations of inequitable conduct as described in Apple's affirmative defenses. Mobility specifically denies that Mark Cudak or the prosecuting attorney of the '898 patent were aware of specific material information, including any prior art, that they withheld, concealed, or mischaracterized with the intent to deceive the Patent Office. Mobility incorporates by reference its response to Paragraphs 147–153 of Apple's Thirteenth Affirmative Defense set forth below.

239. Mobility denies each and every allegation in Paragraph 239.

REQUEST FOR RELIEF

Mobility denies each and every allegation contained in the section of Apple's Counterclaims headed "Request for Relief," including Apple's allegation that it is entitled to or should be granted any relief in this matter, including the relief Apple seeks in lettered paragraphs A through J.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Mobility demands a trial by jury of this action.

MOBILITY'S REPLY TO APPLE'S THIRTEENTH DEFENSE OF INEQUITABLE CONDUCT

GENERAL DENIAL OF ALL AFFIRMATIVE DEFENSES

Unless expressly admitted below, Mobility denies each and every allegation Apple has set forth in its Amended Affirmative Defenses, including, as set forth below, specifically denying the allegations contained in Apple's Thirteenth Defense regarding alleged inequitable conduct.

RESPONSE TO APPLE'S SPECIFIC ALLEGATIONS

Answering the specific allegations of Apple's Thirteenth Defense, Mobility responds with the following paragraphs, which correspond sequentially to the paragraphs in Apple's Thirteenth Defense:

A. The '516 Patent

112. Mobility denies each and every allegation in Paragraph 112, including specifically denying Apple's allegations of inequitable conduct. Mobility specifically denies that David F. Willard was aware of any material information, including any prior art, that he withheld, concealed, or mischaracterized with the intent to deceive the Patent Office or that any such prior

art exists, including any allegation that U.S. Patent No. 5,089,813 to Michael J. DeLuca, Leon Jasinski, and David F. Willard (“DeLuca”) is prior art.

113. Mobility admits that David F. Willard is a named inventor on the DeLuca reference. Mobility denies the remaining allegations in Paragraph 113, including specifically denying that David F. Willard had knowledge regarding material prior art at least by July 19, 1989 that he withheld, concealed, or mischaracterized with the intent to deceive the Patent Office. Mobility further denies that DeLuca is prior art.

114. Mobility denies each and every allegation of Paragraph 114.

115. Mobility denies each and every allegation of Paragraph 115, including specifically denying Apple’s allegations of inequitable conduct. Mobility specifically denies that David F. Willard failed to disclose the DeLuca reference during prosecution of the ’516 patent with an intent to deceive the Patent Office or was aware of material information, including any prior art, that he withheld, concealed, or mischaracterized with the intent to deceive the Patent Office, or that any such prior art exists. Mobility further reincorporates its response to Paragraph 113, including specifically denying that Willard knew of material prior art at least by July 19, 1989 that he withheld, concealed, or mischaracterized with the intent to deceive the Patent Office.

116. Any allegations in Paragraph 116 constitute legal conclusions, and on that basis, to the extent that response is required, Mobility denies each and every allegation in Paragraph 116. Mobility reincorporates its response to Paragraph 114 and specifically denies that DeLuca anticipates or renders obvious any claim of the ’516 patent.

117. Mobility lacks information sufficient to form a belief regarding the allegations contained in Paragraph 117, and on that basis denies each and every allegation in Paragraph 117.

118. Mobility denies each and every allegation of Paragraph 118, including, but not limited to, specifically denying Apple's allegations that the '516 patent is unenforceable or that David F. Willard committed fraud on the Patent Office or any inequitable conduct by withholding, concealing, or mischaracterizing any material prior art with the intent to deceive the Patent Office.

B. The '712 Patent

119. Mobility denies each and every allegation of Paragraph 119, including specifically denying Apple's allegations of inequitable conduct. Mobility specifically denies that Louis Finkelstein, Jeffrey Smolinske, or the prosecuting attorney for the '712 patent, Shawn Dempster, were aware of any material information, including any prior art that they withheld, concealed, or mischaracterized with the intent to deceive the Patent Office or that any such prior art exists, including any allegation that U.S. Patent No. 5,239,294 to Flanders et al. ("Flanders") or U.S. Pat. No. 5,455,863 to Brown et al. ("Brown") is prior art.

120. Mobility admits that Louis Finkelstein is a named inventor on the Flanders reference. Mobility admits that Shawn Dempster is named as a prosecuting attorney on the Flanders reference. Mobility denies the remaining allegations in Paragraph 120, including specifically denying that Louis Finkelstein or Shawn Dempster had knowledge regarding material prior art at least by December 7, 1990 that they withheld, concealed, or mischaracterized with the intent to deceive the Patent Office. Mobility further denies that Flanders is prior art.

121. Mobility admits that Louis Finkelstein and Jeffrey Smolinske are named inventors on the Brown reference. Mobility admits that Shawn Dempster is named as a prosecuting attorney on the Brown reference. Mobility denies the remaining allegations in Paragraph 121, including specifically denying that Louis Finkelstein, Jeffrey Smolinske, or Shawn Dempster had

knowledge regarding material prior art at least by June 29, 1993 that they withheld, concealed, or mischaracterized with the intent to deceive the Patent Office. Mobility further denies that Brown is prior art.

122. Mobility denies each and every allegation in Paragraph 122, including specifically denying Apple's allegation that Finkelstein and Dempster knew that Flanders was material prior art to the '712 patent "because Flanders discloses an encryption scheme wherein encryption/decryption is performed as a function of sequence variables (including counters and a 'overflow counter')," and that they withheld, concealed, or mischaracterized any material prior art with the intent to deceive the Patent Office. Mobility further denies that Flanders constitutes prior art.

123. Mobility denies each and every allegation of Paragraph 123, including Apple's allegation that Louis Finkelstein, Jeffrey Smolinske, or Shawn Dempster knew that Brown was material prior art to the '712 patent "because Brown discloses an encryption scheme wherein encryption/decryption is performed as a function of sequence variables (including counters and a 'unique packet number variable')," and that they withheld, concealed, or mischaracterized any material prior art with the intent to deceive the Patent Office. Mobility further denies that Brown is prior art.

124. Mobility denies each and every allegation of Paragraph 124.

125. Mobility denies each and every allegation of Paragraph 125, including specifically denying that Louis Finkelstein or Shawn Dempster had knowledge regarding material prior art that they withheld, concealed, or mischaracterized with the intent to deceive the Patent Office. Mobility further denies that Flanders is prior art. Mobility further incorporates its objections and responses to Paragraphs 120 and 122.

126. Mobility denies each and every allegation of Paragraph 126, including specifically denying that Louis Finkelstein, Jeffrey Smolinske, or Shawn Dempster had knowledge regarding material prior art that they withheld, concealed, or mischaracterized with the intent to deceive the Patent Office. Mobility further denies that Brown is prior art. Mobility further incorporates its objections and responses to Paragraphs 121 and 123.

127. Any allegations in Paragraph 127 constitute legal conclusions, and on that basis, to the extent response is required, Mobility denies each and every allegation in Paragraph 127.

128. Any allegations in Paragraph 128 constitute legal conclusions, and on that basis, to the extent that response is required, Mobility denies each and every allegation in Paragraph 128.

129. Mobility lacks information sufficient to form a belief regarding the allegations contained in Paragraph 129, and on that basis denies each and every allegation in Paragraph 129.

130. Mobility denies each and every allegation of Paragraph 130, including, but not limited to, specifically denying Apple's allegations that the '712 patent is unenforceable or that Louis Finkelstein, Jeffrey Smolinske, or Shawn Dempster committed fraud on the Patent Office or any inequitable conduct by withholding, concealing, or mischaracterizing any material prior art with the intent to deceive the Patent Office.

C. The '193 Patent

131. Mobility denies each and every allegation of Paragraph 131, including specifically denying Apple's allegations of inequitable conduct. Mobility specifically denies that Louis Finkelstein or the prosecuting attorney for the '193 patent were aware of any material information, including any prior art, and that they withheld, concealed, or mischaracterized with the intent to deceive the Patent Office or that any such prior art exists, including any allegation that U.S. Patent No. 5,189,700 to Blandford is prior art.

132. Mobility admits that Finkelstein is a named inventor on U.S. Patent Application No. 08/084,664 (“the ’664 application”). Mobility further admits that Blandford is identified in a Notice of References Cited related to the ’664 application. Mobility denies each and every other allegation of Paragraph 132, including specifically denying that Finkelstein had knowledge regarding material prior art at least by November 25, 1994 or during the pendency of U.S. Patent Application No. 08/295,173 (“ the ’173 application”) that he withheld, concealed, or mischaracterized with the intent to deceive the Patent Office. Mobility further denies that Blandford constitutes prior art.

133. Mobility admits that Buford is listed as a prosecuting attorney on the ’193 patent. Mobility admits that Buford participated in the prosecution of the ’664 application. Mobility also admits that Blandford is identified in a Notice of References Cited related to the ’664 application. Mobility denies each and every other allegation of Paragraph 133, including specifically denying that the attorney responsible for prosecuting the ’193 patent had knowledge of material prior art at least by November 25, 1994 or during the pendency of the ’173 application that he withheld, concealed, or mischaracterized with the intent to deceive the Patent Office. Mobility further denies that Blandford constitutes prior art.

134. Mobility denies each and every allegation in Paragraph 134, including Apple’s allegation that Finkelstein and Buford knew that Blandford was material prior art to the ’173 application and ’193 patent “because Blandford discloses ‘Devices to (1) Supply Authenticated Time and (2) Time Stamp and Authenticate Digital Documents,’” and that they withheld, concealed, or mischaracterized any material prior art with the intent to deceive the Patent Office. Mobility further denies that Blandford constitutes prior art.

135. Mobility denies each and every allegation of Paragraph 135, including specifically denying Apple's allegation that any inventions claimed in Harkins anticipate and/or render obvious the '193 patent.

136. Mobility denies each and every allegation of Paragraph 136, including specifically denying Apple's allegations of inequitable conduct. Mobility specifically denies that Louis Finkelstein and the prosecuting attorney for the '193 patent failed to disclose Blandford during prosecution of the '193 patent with an intent to deceive the Patent Office or were aware of material information, including any prior art, that they withheld, concealed, or mischaracterized with the intent to deceive the Patent Office or that any such prior art exists. Mobility further reincorporates its responses to Paragraphs 132–133, including specifically denying that Finkelstein and Buford knew that Blandford was material prior art to the '173 application and '193 patent “because Blandford discloses ‘Devices to (1) Supply Authenticated Time and (2) Time Stamp and Authenticate Digital Documents’” or because they became aware of Blandford in conjunction with the prosecution of the '863 patent and that they withheld, concealed, or mischaracterized any material prior art with the intent to deceive the Patent Office.

137. Any allegations contained in Paragraph 137 constitute legal conclusions, and on that basis, to the extent that a response is required, Mobility denies each and every allegation in Paragraph 137.

138. Mobility lacks information sufficient to form a belief regarding the allegations contained in Paragraph 138, and on that basis denies each and every allegation in Paragraph 138.

139. Mobility denies each and every allegation of Paragraph 139, including, but not limited to, specifically denying Apple's allegations that the '193 patent is unenforceable or that the named inventors and prosecuting attorneys committed fraud on the Patent Office or any

inequitable conduct by withholding, concealing or mischaracterizing any material prior art with the intent to deceive the Patent Office.

D. The '559 Patent

140. Any allegations contained in Paragraph 140 constitute legal conclusions and therefore no response is required. To the extent a response is required, Mobility lacks sufficient information to respond to the allegations in Paragraph 140 because Apple has not alleged knowledge or conduct by any individual, and on this basis denies each and every allegation in Paragraph 140. Mobility specifically denies that it was aware of material information, including prior art, and withheld, concealed, or mischaracterized that information with intent to deceive the Patent Office, including any allegation that documents from the 3GPP TSG-RAN Working Group 1, including, without limitation, 3GPP TS 25.213 v2.0.0 (1999-4) Technical Specification; 3GPP TS 25.213 v2.1.0 (1999-06); “New RACH preambles with low auto-correlation sidelobes and reduced detector complexity,” TSGR1#3(99)205 (Ericsson, March 22-26, 1999); “Comments on the proposed RACH sequence structure,” Tdoc R1-99377 (Nokia, April 18-20, 1999); and “Text proposal for RACH preambles,” TSGR1-598/99 (Nokia, June 1-4, 1999) (collectively “the 3GPP TSG-RAN Art”).

141. Any allegations contained in Paragraph 141 constitute legal conclusions and therefore no response is required. To the extent a response is required, Mobility lacks sufficient information to respond to the allegations in Paragraph 141 because Apple has not alleged knowledge or conduct by any individual, and on this basis denies each and every allegation in Paragraph 141. Mobility specifically denies that any of the 3GPP TSG-RAN Art constitutes prior art.

142. Mobility denies each and every allegation in Paragraph 142.

143. Any allegations contained in Paragraph 143 constitute legal conclusions and therefore no response is required. To the extent a response is required, Mobility lacks sufficient information to respond to the allegations in Paragraph 143 because Apple has not alleged knowledge or conduct by any individual, and on this basis Mobility denies each and every allegation of Paragraph 143, including specifically denying Apple's allegations of inequitable conduct. Mobility specifically denies that any inventors or prosecuting attorneys for the '559 patent failed to disclose the GPP TSG-RAN Art with an intent to deceive the Patent Office or were aware of material information, including any prior art, that they withheld, concealed, or mischaracterized with the intent to deceive the Patent Office or that any such prior art exists.

144. Any allegations contained in Paragraph 144 constitute legal conclusions, and on that basis, to the extent that a response is required, Mobility denies each and every allegation in Paragraph 144. Mobility specifically denies that the 3GPP TSG-RAN Art anticipates and/or renders obvious the '559 patent and that the 3GPP TSG-RAN Art is prior art.

145. Mobility lacks information sufficient to form a belief regarding the allegations contained in Paragraph 145, and on that basis denies each and every allegation in Paragraph 145.

146. Mobility denies each and every allegation of Paragraph 146, including, but not limited to, specifically denying Apple's allegations that the '559 patent is unenforceable or that the named inventors and prosecuting attorneys committed fraud on the Patent Office or any inequitable conduct by withholding, concealing or mischaracterizing any material prior art with the intent to deceive the Patent Office.

E. The '898 Patent

147. Mobility denies each and every allegation in Paragraph 147, including specifically denying Apple's allegations of inequitable conduct. Mobility specifically denies that Mark Cudak, and the prosecuting attorney for the '898 patent were aware of any material information,

including any prior art, that they withheld, concealed, or mischaracterized with the intent to deceive the Patent Office or that any such prior art exists, including any allegation that an article entitled “SWAN: A Mobile Multimedia Wireless Network,” by Prathima Agrawal, Eoin Hyden, Paul Krzyzanowski, Partho Mishra, Mani B. Srivastava, and John A. Trotter (April 1996) (“Agrawal”) is prior art.

148. Mobility admits that Mark Conrad Cudak is a named inventor on U.S. Patent No. 6,058,106 (“the ’106 patent”). Mobility admits that Agrawal was cited during prosecution of U.S. Patent Application No. 08/953,948. Mobility denies each and every other allegation of Paragraph 148, including specifically denying that Cudak or Meyer had knowledge regarding material prior art at least by October 1998 that they withheld, concealed, or mischaracterized with the intent to deceive the Patent Office. Mobility also denies that Jonathan Meyer is listed as a prosecuting attorney on the ’106 patent. Mobility further denies that Agrawal constitutes prior art.

149. Mobility denies each and every allegation in Paragraph 149.

150. Mobility denies each and every allegation in Paragraph 150, including specifically denying Apple’s allegations of inequitable conduct. Mobility specifically denies that Cudak and Meyer failed to disclose Agrawal during prosecution of the ’898 patent with an intent to deceive the Patent Office or were aware of material information, including any prior art, that they withheld, concealed, or mischaracterized with the intent to deceive the Patent Office or that any such art exists. Mobility further reincorporates its response to Paragraph 148, including specifically denying that Cudak and Meyer knew that Agrawal was material prior art to the ’898 patent by October 1998 or during the pendency of U.S. Patent Application No. 09/141,835 and

that they withheld, concealed, or mischaracterized any material prior art with the intent to deceive the Patent Office.

151. Any allegations in Paragraph 151 constitute legal conclusions, and on that basis, to the extent that response is required, Mobility denies each and every allegation in Paragraph 151. Mobility reincorporates its response to Paragraph 149 and specifically denies that Agrawal anticipates or renders obvious any claim of the '898 patent.

152. Mobility lacks information sufficient to form a belief regarding the allegations contained in Paragraph 152, and on that basis denies each and every allegation in Paragraph 152.

153. Mobility denies each and every allegation of Paragraph 153, including, but not limited to, specifically denying Apple's allegations that the '898 patent is unenforceable or that the named inventors and prosecuting attorneys committed fraud on the Patent Office or any inequitable conduct by withholding, concealing, or mischaracterizing any material prior art with the intent to deceive the Patent Office.

MOBILITY'S AFFIRMATIVE AND OTHER DEFENSES

Mobility asserts the following affirmative and other defenses set forth below, and in making such defenses does not concede that Mobility bears the burden of proof as to any of them. Discovery has only recently begun in this matter, and, therefore, Mobility has not yet fully collected and reviewed all of the information and materials that may be relevant to the matters and issues raised herein. Accordingly, Mobility reserves the right to amend, modify, or expand these defenses and to take further positions as discovery proceeds in this matter.

FIRST DEFENSE AND AFFIRMATIVE DEFENSE (Failure to State a Claim Upon Which Relief Can Be Granted)

Upon information and belief, Apple has failed to state a claim against Mobility upon which relief may be granted.

SECOND DEFENSE AND AFFIRMATIVE DEFENSE
(Reservation of Remaining Defenses)

Mobility reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Patent Laws of the United States and any other defenses, at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case.

Dated: February 11, 2011

Respectfully submitted,

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