

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

HO KEUNG, TSE,

Plaintiff

vs.

**GOOGLE, INC., SAMSUNG
TELECOMMUNICATIONS AMERICA,
LLC and HTC AMERICA, INC.,**

Defendants.

Civil Action No. 6:12-cv-00356-LED

Jury Trial Requested

**DEFENDANT GOOGLE, INC.’S AMENDED ANSWER
TO COMPLAINT FOR PATENT INFRINGEMENT**

Defendant GOOGLE, INC. (“Google”), by and through its undersigned counsel, hereby submits its Amended Answer and Affirmative Defenses to Plaintiff HO KEUNG TSE’S (“Plaintiff’s”) Complaint for Patent Infringement pursuant to Federal Rule of Civil Procedure 15(a)(1)(A).

AMENDED ANSWER

Responding to the unnumbered paragraph entitled “Plaintiff’s Attempt to Secure Counsel,” Google responds that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the unnumbered paragraph “Plaintiff’s Attempt to Secure Counsel” and, on that basis, denies these allegations.

Responding to the unnumbered paragraphs entitled “Plaintiff’s Other Lawsuits,” Google admits, on information and belief, that certain public records appear to reflect that Plaintiff has attempted to initiate at least three other lawsuits. On information and belief, Google admits that public records reflect that a suit filed by Plaintiff against Apple Computer, Inc., RealNetworks, Inc., MusicMatch, Inc., Sony Connect, Inc., and Napster Inc. is pending in the Northern District

of California, that Plaintiff filed a suit against eBay Inc., uBid, Inc., and America Online Inc. in the Eastern District of Texas, and that Plaintiff filed suit against Apple, Inc. and Ascedia, Inc. in the Western District of Wisconsin. Except as so expressly admitted, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in the unnumbered paragraphs entitled “Plaintiff’s Other Lawsuits” and, on that basis, denies these allegations.

COMPLAINT ¶ 1:

This is a patent infringement action to stop Defendants’ infringement of Plaintiff’s United States Patent No. 6,665,797 (the “ ‘797 Patent”, a copy of which is attached hereto as Exh. A), entitled “Computer Apparatus/Software Access Right Management” (corrected by Certificate of Correction dated January 3, 2006, last page of Exh. A).

RESPONSE TO COMPLAINT ¶ 1:

Google admits that Plaintiff purports to bring an action for patent infringement of U.S. Patent No. 6,665,797 (the “ ‘797 Patent”), but Google denies that there is any factual basis for Plaintiff’s action. Google further admits that Exhibit A contains a patent purporting to be a copy of the ‘797 Patent. Except as so expressly admitted, Google denies every remaining allegation of Paragraph 1 of the Complaint.

COMPLAINT ¶ 2:

Plaintiff seeks injunctive relief and monetary damages.

RESPONSE TO COMPLAINT ¶ 2:

Google admits that Plaintiff purports to seek injunctive relief and monetary damages, but Google denies that Plaintiff has any factual or legal basis to receive injunctive relief or recover monetary damages. Except as so expressly admitted, Google denies every remaining allegation of Paragraph 2 of the Complaint.

COMPLAINT ¶ 3:

The '797 patent is currently under a reexamination (control number : 90/008,772) before the United States Patent and Trademark Office (PTO), jointly requested by defendants in above-mentioned first action.

RESPONSE TO COMPLAINT ¶ 3:

Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 and, on that basis, denies those allegations.

COMPLAINT ¶ 4:

The PTO has issued a "Notice of Intent to Issue Ex Parte Reexamination Certificate" (Exh. B) on March 14, 2012, confirming patentability of amended claims 1, 3, 16 and 21; unamended claims 2, 4, 5; and new claims 23, 27- 29. A listing of all the claims is submitted in Exh. C. Only claims 1-5, 13, 16, 17, 20, 23, 27- 29, are asserted against all the Defendants.

Note that claims 13, 17, 20 are un-reexamined and therefore maintained unchanged.

RESPONSE TO COMPLAINT ¶ 4:

Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 and, on that basis, denies those allegations.

COMPLAINT ¶ 5:

Plaintiff is the sole inventor, sole patentee and sole owner of the '797 Patent duly and legally issued by the United States Patent and Trademark Office on December 16, 2003 Plaintiff owns and has at all times owned and has standing to sue for infringement of '797 Patent.

RESPONSE TO COMPLAINT ¶ 5:

Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 and, on that basis, denies those allegations.

COMPLAINT ¶ 6:

Upon information and belief, Defendant Google, Inc. (referred to individually herein as "Google") is a Delaware corporation with its principal place of business at 1600 Amphitheater Parkway, Mountain View, California 94043. Google may be served with process through its registered agent Corporation Service Company (which will do business in California as CSC-Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, Ca 95833).

RESPONSE TO COMPLAINT ¶ 6:

Google admits that it is a Delaware corporation with its principal place of business at 1600 Amphitheater Parkway, Mountain View, California 94043. Google further admits that it may be served through its registered agent, Corporation Service Company. Except as so expressly admitted, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 and, on that basis, denies those allegations.

COMPLAINT ¶ 7:

Upon information and belief, Samsung Telecommunications America, LLC (referred to individually herein as “Samsung”) is a Delaware limited liability company with its principal place of business at 1301 East Lookout Drive, Richardson, Texas 75081. Samsung may be served with process through its registered agent Corporation Service Company dba CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas, 78701- 3218.

RESPONSE TO COMPLAINT ¶ 7:

Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 and, on that basis, denies those allegations.

COMPLAINT ¶ 8:

Upon information and belief, HTC America, Inc. (referred to herein as “HTC”) is a Washington corporation with its principal place of business at 13920 SE Eastgate Way, Suite 400, Bellevue, Washington 98005. HTC may be served with process through its registered agent National Registered Agents Inc, 1780 Barnes Blvd SW, Tumwater, Washington 98512-0410.

RESPONSE TO COMPLAINT ¶ 8:

Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 and, on that basis, denies those allegations.

COMPLAINT ¶ 9:

This action arises under the Patent Laws of the United States, Title 35 United States Code, including but not limited to 35 U.S.C. § 271, 281, 283, 284, and 285.

RESPONSE TO COMPLAINT ¶ 9:

Google admits that Plaintiff purports to state a claim under the patent laws of the United States, but denies that there is any factual basis for that action. Except as so expressly admitted, Google denies the allegations contained in Paragraph 9.

COMPLAINT ¶ 10:

This Court has jurisdiction of this action under 28 U.S.C. § 1331 (federal question jurisdiction), 1338(a) (patent jurisdiction).

RESPONSE TO COMPLAINT ¶ 10:

Google admits that this action invokes the United States patent laws, and that this Court has subject matter jurisdiction over patent law claims. Google denies every remaining allegation in Paragraph 10 of the Complaint.

COMPLAINT ¶ 11:

Defendant Google, is in the business of selling third party application programs (“Apps”), through its Internet virtual Store, “Android Market” (since Oct 2008), now renamed as “Google Play” (since March 2012), for use on Android Devices (devices with Android Operating Systems, or in short, “Android OS”, installed thereon), mostly are tablets or smart phones.

RESPONSE TO COMPLAINT ¶ 11:

Google admits that its product, “Android Market” has now been renamed as “Google Play,” and that Google Play is used on certain products with the Android operating system. Except as so expressly admitted, Google denies the allegations contained in Paragraph 11.

COMPLAINT ¶ 12:

Each Android Device accesses the Google Play, via Internet, by means of Google’s “Google Play” App (formerly known as “Android Market” App).

RESPONSE TO COMPLAINT ¶ 12:

Google denies each and every allegation in Paragraph 12 of the Complaint.

COMPLAINT ¶ 13:

At least “Android Market” App or “Google Play” App, Google’s Android digital rights management application program interfaces (“DRM API”) of Google, herein below collectively referred to as “Google DRM Software”, containing Digital Rights Management (DRM) software, for use on Android Devices. Further, the Google DRM Software in the Android Devices works in a co-operative manner with other DRM software and hardware (including Internet servers) of Google’s virtual store “Google Play” (formerly known as “Android Market”), for protecting from unauthorized use, application programs offered to sell/sold at the stores.

RESPONSE TO COMPLAINT ¶ 13:

The first sentence contained in Paragraph 13 is vague and unintelligible as written, and on that basis, Google denies the allegations contained therein. Google further denies every remaining allegation in Paragraph 13 of the Complaint.

COMPLAINT ¶ 14:

The Google DRM Software in Android Devices and DRM software and hardware (including Internet servers) of Google’s virtual store “Google Play”, infringes/has infringes on ‘797 Patent.

RESPONSE TO COMPLAINT ¶ 14:

Google denies each and every allegation in Paragraph 14 of the Complaint.

COMPLAINT ¶ 15:

On information and belief, Google has purposefully, actively, and voluntarily distributed its Google DRM Software, for to be installed into Android Devices, with the expectation that such devices will be purchased, used, or licensed by consumers in the Eastern District of Texas. Android Devices have been and continues to be purchased, used, and licensed by consumers in the Eastern District of Texas.

RESPONSE TO COMPLAINT ¶ 15:

Google states that Google Play is not restricted from use by consumers in the Eastern District of Texas. For the purpose of this action only, Google does not contest that Android devices have been sold in the Eastern District of Texas. Except as so expressly stated, Google denies every remaining allegation in Paragraph 15 of the Complaint.

COMPLAINT ¶ 16:

Google, having been notified by Plaintiff of its infringement of '797 patent, continues to solicit, through its website <http://developer.android.com>, third party developers all over USA, including Texas and Eastern District of Texas, to develop for and submit to Google, application programs with infringing DRM software components, dedicated for sales at its virtual Store "Google Play" (formerly known as "Android Market"), constituting inducing those third party developers to participating in and profit from infringing the '797 Patent.

RESPONSE TO COMPLAINT ¶ 16:

Google denies each and every allegation in Paragraph 16 of the Complaint.

COMPLAINT ¶ 17:

On information and belief, Samsung's and HTC's Android device products, including cell phones and tablets, with Google's DRM Software installed therein, are and have been used, offered for sale/sold, in the Eastern District of Texas. Defendants Google, Samsung and HTC, directly and/or through its distribution network, places the products within the stream of commerce directed at the Eastern District of Texas, with the knowledge and/or understanding that such products will be sold in the Eastern District of Texas.

RESPONSE TO COMPLAINT ¶ 17:

Google denies the allegations contained in Paragraph 17 to the extent these allegations are directed to Google. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 with respect to the other Defendants, and on that basis, denies every remaining allegation contained in Paragraph 17.

COMPLAINT ¶ 18:

This Court has general and specific personal jurisdiction over Defendants Google, Samsung and HTC because they have established substantial contacts with the forum as a result of conducting substantial business in the State of Texas and within this district.

Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), (c), and 1400(b), and also the Texas Long Arm Statute.

RESPONSE TO COMPLAINT ¶ 18:

Google does not contest personal jurisdiction in this District solely for the purpose of this action. Google specifically denies that it has committed any acts of infringement within the

Eastern District of Texas, or any other District. To the extent the remaining allegations of Paragraph 18 are directed at Google, they are denied. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 with respect to the other Defendants, and on that basis, denies every remaining allegation contained in Paragraph 18.

COMPLAINT ¶ 19:

As readable on the abstract of '797 patent, the concept behind the present invention can be summarized as a method of "using the existence of the EI sub-program in a computer as a precondition for authorising use of software products on that computer".

The EI program is for authorizing payment from an account of the rightful user of the software products desired to be protected, and in the present invention, it is being used as a token for identity verification only. No charge is to be made on the account.

Note that other payment information, such as a credit account password, may be used as an alternative to the EI program. For details of the scope of protection, please refer to the '797 Patent itself. (Exh. A)

RESPONSE TO COMPLAINT ¶ 19:

Google denies each and every allegation in Paragraph 19 of the Complaint.

COMPLAINT ¶ 20:

The present invention is the cornerstone of Digital Rights Management ("DRM") technologies of nowadays. Before it, purchased software is generally protected from unauthorized use, by means of a piece of specific hardware, such as a dongle, not practical for Internet sales.

RESPONSE TO COMPLAINT ¶ 20:

Google denies each and every allegation in Paragraph 20 of the Complaint.

COMPLAINT ¶ 21:

Plaintiff incorporates by reference the allegations set forth in Paragraphs 1-20 of this Complaint as though fully set forth herein.

RESPONSE TO COMPLAINT ¶ 21:

Google incorporates by reference its Responses to Paragraphs 1-20 of the Complaint as if fully restated herein.

COMPLAINT ¶ 22:

Google owns/has owned and operates/has operated Internet Virtual Stores, called as “Android Market”, “Google Play”.

RESPONSE TO COMPLAINT ¶ 22:

Google admits that it has a product, “Android Market” now renamed as “Google Play.” Except as so expressly admitted, Google denies the allegations contained in paragraph 22 of the Complaint.

COMPLAINT ¶ 23:

Google provides/has provided “Android Market” App and “Google Play” to the users of the Android Devices to access Google’s Internet servers and create the virtual Store “Android Market” or “Google Play”, respectively, on the screens of the Android Devices.

RESPONSE TO COMPLAINT ¶ 23:

Google admits that users of certain Android devices can access the “Android Market,” now renamed as “Google Play.” Except as so expressly admitted, Google denies the allegations contained in paragraph 23 of the Complaint.

COMPLAINT ¶ 24:

Google also sells Apps, through its website <http://play.google.com> (formerly “<http://market.android.com>”).

RESPONSE TO COMPLAINT ¶ 24:

Google admits that applications or “apps” can be purchased using Google’s website, <http://play.google.com> (formerly at “<http://market.android.com>”). Except as so expressly admitted, Google denies the allegations contained in paragraph 24 of the Complaint.

COMPLAINT ¶ 25:

Google, through its virtual Stores “Android Market”, “Google Play” and website <http://play.google.com> (formerly “<http://market.android.com>”), has required/requires users to open accounts with Google and submit information of their financial account, such as credit account, to Google, in order that the users can purchase at Google’s virtual stores “Android Market” and “Google Play”.

RESPONSE TO COMPLAINT ¶ 25:

Google denies each and every allegation in Paragraph 25 of the Complaint.

COMPLAINT ¶ 26:

Each Google account can be signed in to with a respective username and password.

RESPONSE TO COMPLAINT ¶ 26:

Google denies each and every allegation in Paragraph 26 of the Complaint.

COMPLAINT ¶ 27:

Upon receiving a correct username and password of a Google account, Google is authorized by the account holder, to make use of the financial account information the account holder previously submitted to Google, to receive payment from his/her financial account, so that the account holder can purchase application programs from the virtual Stores “Android Market” or “Google Play”, by using the username and password as a means for authorizing payment.

RESPONSE TO COMPLAINT ¶ 27:

Google denies each and every allegation in Paragraph 27 of the Complaint.

COMPLAINT ¶ 28:

Once an account holder has purchased an application program, Google allows the account holder to re-download for an unlimited number of times, the same application program from the virtual Store “Android Market” or “Google Play”, to any Android Device, without repaying for/re-purchasing the application program.

RESPONSE TO COMPLAINT ¶ 28:

Google denies each and every allegation in Paragraph 28 of the Complaint.

COMPLAINT ¶ 29:

Google requires an account holder to sign in to the virtual Stores “Android Market” or

“Google Play”, with the username and password of the account used for the purchase of a purchased application program, in order that the account holder may re-download the application program, with no charge on the account, to an Android Device which is not already signed in.

RESPONSE TO COMPLAINT ¶ 29:

Paragraph 29 is vague and unintelligible as written, and on that basis, Google denies the allegations contained in Paragraph 29 of the Complaint.

COMPLAINT ¶ 30:

Google uses/has used DRM software and/or hardware for preventing a user from using a purchased App on an Android Device other than the one used for making the purchase, unless the Android Device is authorized to execute the App, by a user using the Android Device to access the virtual Store “Android Market” or “Google Play”, then signing in with the username and password of the account used for the purchase. Google doesn’t charge the account for the authorization.

RESPONSE TO COMPLAINT ¶ 30:

Google denies each and every allegation in Paragraph 30 of the Complaint.

COMPLAINT ¶ 31:

Google has engaged/is engaging in making and using Digital Rights Management (DRM) software and hardware, including but not limited to, the Android OS, “Android Market” App, “Google Play” App, DRM API, servers of its virtual Store “Android Market” and “Google Play”, for practicing the methods covered under the claims of the ‘797 Patent, including but not limited to claims 13, 16, 17, 20 and 21, for protecting from unauthorized use, application programs offered for sale or sold in its virtual Stores “Android Market” and “Google Play”, to users of Android Devices.

RESPONSE TO COMPLAINT ¶ 31:

Google denies each and every allegation in Paragraph 31 of the Complaint.

COMPLAINT ¶ 32:

Google has been given notice by Plaintiff of the ‘797 Patent and its above mentioned infringement activities. Google has been and still is infringing the ‘797 Patent, and will continue to do so unless enjoined by this Court.

RESPONSE TO COMPLAINT ¶ 32:

Google admits it received notice of the ‘797 patent through an email alleging

infringement. Except as so expressly admitted, Google denies every remaining allegation in Paragraph 32 of the Complaint.

COMPLAINT ¶ 33:

Google's infringement of the '797 Patent is willful and deliberate, justifying an increase of damages of up to three times under 35 U.S.C. § 284.

RESPONSE TO COMPLAINT ¶ 33:

Google denies each and every allegation in Paragraph 33 of the Complaint.

COMPLAINT ¶ 34:

Google's infringement of the '797 Patent is exceptional and entitles Plaintiff to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285, should Plaintiff pro se obtains an attorney in the future.

RESPONSE TO COMPLAINT ¶ 34:

Google denies each and every allegation in Paragraph 34 of the Complaint.

COMPLAINT ¶ 35:

Google, by using the '797 patented invention, has without difficulty, successfully built up its virtual Stores "Android Market" and "Google Play" as one of the greatest Internet Business, while inflicting irreparable harm to Plaintiff.

RESPONSE TO COMPLAINT ¶ 35:

Google denies each and every allegation in Paragraph 35 of the Complaint.

COMPLAINT ¶ 36:

Plaintiff incorporates by reference the allegations set forth in Paragraphs 1-35 of this Complaint as though fully set forth herein.

RESPONSE TO COMPLAINT ¶ 36:

Google incorporates by reference its Responses to Paragraphs 1-35 of the Complaint as if fully restated herein.

COMPLAINT ¶ 37:

Google, by using Digital Rights Management (DRM) software and methods covered under the claims of the '797 patent, including but not limited to claims 13, 16, 17, 20 and 21, to protect purchased application programs ("Apps") from use by an unauthorized user, Google has infringed/infringing on the '797 patent directly itself, while at the same time, has induced/inducing the infringement of the '797 Patent by third party developers in the United States.

RESPONSE TO COMPLAINT ¶ 37:

Google denies each and every allegation in Paragraph 37 of the Complaint.

COMPLAINT ¶ 38:

Google has engaged/engages in soliciting through its <http://developer.android.com>, third party developers all over USA, to develop for and submit to Google, application programs with infringing DRM software components, for sales at its virtual Stores "Android Market" and "Google Play" exclusively.

RESPONSE TO COMPLAINT ¶ 38:

Google denies each and every allegation in Paragraph 38 of the Complaint.

COMPLAINT ¶ 39:

Google has offered/offers infringing Android Software Development Kit ("Android SDK") to third part [sic] developers for developing application programs for to be sold exclusively at the Stores and executable only on Android Devices. Therefore, constituting inducing those third party developers to participating in and profit from infringing the '797 Patent.

RESPONSE TO COMPLAINT ¶ 39:

Google denies each and every allegation in Paragraph 39 of the Complaint.

COMPLAINT ¶ 40:

Google through its virtual Stores "Android Market" and "Google Play", has offered to sell/sells/has sold Apps supplied from or developed by third party developers in Texas.

RESPONSE TO COMPLAINT ¶ 40:

Google's Android Market or Google Play allows users of certain Android devices to purchase Apps supplied or developed by third-party developers in Texas. Except as so expressly

admitted, Google denies each and every allegation in Paragraph 40 of the Complaint.

COMPLAINT ¶ 41:

Google through its virtual Stores “Android Market” and “Google Play”, has offered to sell/sells/has sold Apps supplied from or developed by third party developers in the Eastern District of Texas.

RESPONSE TO COMPLAINT ¶ 41:

Google’s Android Market or Google Play allows users of certain Android devices to purchase Apps supplied or developed by third-party developers in the Eastern District of Texas. Except as so expressly admitted, Google denies each and every allegation in Paragraph 41 of the Complaint.

COMPLAINT ¶ 42:

Google has been given notice by Plaintiff of the ‘797 Patent and its above mentioned infringement activities. Google has been and still is infringing the ‘797 Patent, and will continue to do so unless enjoined by this Court.

RESPONSE TO COMPLAINT ¶ 42:

Google admits it became aware of the ‘797 patent through the filing of this Complaint.

Except as so expressly admitted, Google denies every remaining allegation in Paragraph 42 of the Complaint.

COMPLAINT ¶ 43:

Google’s infringement of the ‘797 Patent is willful and deliberate, justifying an increase of damages of up to three times under 35 U.S.C. § 284.

RESPONSE TO COMPLAINT ¶ 43:

Google denies each and every allegation in Paragraph 43 of the Complaint.

COMPLAINT ¶ 44:

Google’s infringement of the ‘797 Patent is exceptional and entitles Plaintiff to attorneys’ fees and costs incurred in prosecuting this action under 35 U.S.C. § 285, should Plaintiff pro se obtains an attorney in the future.

RESPONSE TO COMPLAINT ¶ 44:

Google denies each and every allegation in Paragraph 44 of the Complaint.

COMPLAINT ¶ 45:

Google, by using the ‘797 patented invention, has without difficulty, successfully built up its virtual Stores “Android Market” and “Google Play” as one of the greatest Internet Business, while inflicting irreparable harm to Plaintiff.

RESPONSE TO COMPLAINT ¶ 45:

Google denies each and every allegation in Paragraph 45 of the Complaint.

COMPLAINT ¶ 46:

Samsung has engaged/is engaging in importing, offering for sale, and selling in the United States, its Android Device products with software and hardware for DRM purposes, including but not limited to the Google’s infringing Android OS, “Android Market” App, “Google Play” App, DRM API installed thereon, for practicing the methods covered under the claims of the ‘797 patent, including but not limited to claims 13, 16, 17, 20 and 21, for protecting from unauthorized use, application programs offered for sale/sold at Google’s virtual Stores “Android Market” and “Google Play”.

RESPONSE TO COMPLAINT ¶ 46:

Google denies the allegations contained in Paragraph 46 to the extent these allegations are directed to Google. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46 with respect to other Defendants, and on that basis, denies every remaining allegation contained in Paragraph 46.

COMPLAINT ¶ 47:

Samsung has been given notice by Plaintiff of the ‘797 Patent and its above-mentioned infringement activities. Samsung has been and still is infringing the ‘797 Patent, and will continue to do so unless enjoined by this Court.

RESPONSE TO COMPLAINT ¶ 47:

Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47 and, on that basis, denies the allegations contained in Paragraph 47.

COMPLAINT ¶ 48:

Samsung's infringement of the '797 Patent is willful and deliberate, justifying an increase of damages of up to three times under 35 U.S.C. § 284.

RESPONSE TO COMPLAINT ¶ 48:

Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 and, on that basis, denies the allegations contained in Paragraph 48.

COMPLAINT ¶ 49:

Samsung's infringement of the '797 Patent is exceptional and entitles Plaintiff to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285, should Plaintiff pro se obtains an attorney in the future.

RESPONSE TO COMPLAINT ¶ 49:

Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 and, on that basis, denies the allegations contained in Paragraph 49.

COMPLAINT ¶ 50:

Samsung, by using the '797 patented invention, has without difficulty, successfully built up itself as one of the leading suppliers of smart phones and tablets, while inflicting irreparable harm to Plaintiff.

RESPONSE TO COMPLAINT ¶ 50:

Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50 and, on that basis, denies the allegations contained in Paragraph 50.

COMPLAINT ¶ 51:

HTC has engaged/is engaging in importing, offering for sale, and selling in the United States, its Android Device products with software and hardware for DRM purposes, including but not limited to the Google's infringing Android OS, "Android Market" App, "Google Play" App, DRM API installed thereon, for practicing the methods covered under the claims of the '797 patent, including but not limited to claims 13, 16, 17, 20 and 21, for protecting from unauthorized use, application programs offered for sale/sold in Google's virtual Stores "Android Market" and "Google Play".

RESPONSE TO COMPLAINT ¶ 51:

Google denies the allegations contained in Paragraph 51 to the extent these allegations are directed to Google. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 with respect to other Defendants, and on that basis, denies every remaining allegation contained in Paragraph 51.

COMPLAINT ¶ 52:

HTC has been given notice by Plaintiff of the '797 Patent and its above mentioned infringement activities. HTC has been and still is infringing the '797 Patent, and will continue to do so unless enjoined by this Court.

RESPONSE TO COMPLAINT ¶ 52:

Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52 and, on that basis, denies the allegations contained in Paragraph 52.

COMPLAINT ¶ 53:

HTC's infringement of the '797 Patent is willful and deliberate, justifying an increase of damages of up to three times under 35 U.S.C. § 284.

RESPONSE TO COMPLAINT ¶ 53:

Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 and, on that basis, denies the allegations contained in Paragraph 53.

COMPLAINT ¶ 54:

HTC's infringement of the '797 Patent is exceptional and entitles Plaintiff to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285, should Plaintiff pro se obtains an attorney in the future.

RESPONSE TO COMPLAINT ¶ 54:

Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 and, on that basis, denies the allegations contained in Paragraph 54.

COMPLAINT ¶ 55:

HTC, by using the '797 patented invention, has without difficulty, successfully built up itself as one of the leading suppliers of smart phones and tablets, while inflicting irreparable harm to Plaintiff.

RESPONSE TO COMPLAINT ¶ 55:

Google is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 and, on that basis, denies the allegations contained in Paragraph 55.

In answer to the Prayer for Relief, Google denies each and every allegation in the Prayer and further specifically denies that Plaintiff is entitled to any of the relief described or to any remedy whatsoever against Google.

In response to the unnumbered paragraph, "Third Party Developers May Be Joined Later," Google denies the allegations contained in that unnumbered paragraph.

All allegations of the Complaint not heretofore admitted or denied are here and now denied as though specifically denied herein.

ADDITIONAL DEFENSES

Without assuming any burden that it would not otherwise bear, and reserving its right to amend its Answer to assert additional defenses as they may become known during discovery, Google hereby asserts the following separate and additional defenses:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Google has not infringed and does not infringe any valid claim of the '797 Patent.

THIRD DEFENSE

Google is informed and believes and thereon alleges that the '797 Patent is invalid for failure to comply with the requirements of 35 U.S.C. § 101 et seq., including, without limitation Sections 102, 103, 112, and/or 120.

FOURTH DEFENSE

Plaintiff's claims for damages are barred, in whole or in part, by the doctrines of absolute and equitable intervening rights and 35 U.S.C. §§ 286, 287, and/or 288.

FIFTH DEFENSE

Plaintiff lacks subject matter jurisdiction to assert infringement under certain claims of the '797 Patent because those claims are currently subject to reexamination by the United States Patent and Trademark Office, were amended or added during reexamination, and have not yet issued.

SIXTH DEFENSE

Plaintiff's claims are not ripe to assert infringement under certain claims of the '797 Patent because those claims are currently subject to reexamination by the United States Patent and Trademark Office, were amended or added during reexamination, and have not yet issued.

SEVENTH DEFENSE

Plaintiff's Complaint, and each claim for relief purportedly stated therein, is barred by the doctrine of laches and/or equitable estoppel.

EIGHTH DEFENSE

On information and belief, Plaintiff has an adequate remedy at law and no basis exists for the grant of equitable or injunctive relief.

**COUNTERCLAIM FOR DECLARATION OF
INVALIDITY OF U.S. PATENT NO. 6,665,797**

Defendant and Counterclaimant Google Inc. ("Google") for its Counterclaims against Plaintiff and Counter-defendant Ho Keung Tse alleges as follows:

1. Google is a Delaware corporation with its principal place of business in Mountain View, California.
2. Upon information and belief, Plaintiff is a Hong Kong resident who has brought this suit in the Eastern District of Texas.
3. On May 30, 2012, Plaintiff filed a Complaint alleging patent infringement in the Eastern District of Texas.
4. This action arises under the patent laws of the United States. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1338, and 2201.

5. Plaintiff has alleged that Google is infringing U.S. Patent No. 6,665,797. Plaintiff allegedly has all rights and interest in the ‘797 Patent.

6. A judicial declaration is necessary and appropriate so that Google may ascertain its rights as to whether the ‘797 Patent is invalid.

7. The ‘797 Patent is invalid because it fails to meet the “conditions for patentability” of 35 USC §§ 102 and/or 103 because the alleged invention thereof is taught by, suggested by, and/or, obvious in view of, the prior art.

8. The claims of the ‘797 patent are invalid for failure satisfy one or more conditions of patentability set forth in 35 U.S.C. § 112, including failure of written description, lack of enablement, and claim indefiniteness.

9. Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., Google is entitled to a declaratory judgment of non-infringement of the patents-in-suit.

PRAYER FOR RELIEF

WHEREFORE, Google prays for the following relief:

1. That Plaintiff be denied all relief requested in its Complaint and take nothing;
2. That judgment be entered determining that Google has not infringed and does not infringe, directly, indirectly, or by inducement, any valid and enforceable claim of the ‘797 Patent as properly construed, either literally or under the doctrine of equivalents;
3. That judgment be entered declaring that the ‘797 Patent is invalid;
4. That Google be awarded its costs, expenses and attorneys’ fees;
5. That Google be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Google hereby demands a trial by jury of all issues so triable.

Dated: July 24, 2012

Respectfully submitted,

/s/ Stephanie P. Skaff

(with permission by Jennifer Parker Ainsworth)

Stephanie P. Skaff (*pro hac vice*)

sskaff@fbm.com

Deepak Gupta (*pro hac vice*)

dgupta@fbm.com

FARELLA BRAUN & MARTEL LLP

235 Montgomery Street, 17th Floor

San Francisco, CA 94104

Telephone: (415) 954-4400

Facsimile: (415) 954-4480

Jennifer Parker Ainsworth

jainsworth@wilsonlawfirm.com

State Bar No. 00784720

WILSON, ROBERTSON & CORNELIUS, P.C.

P.O. Box 7339

Tyler, Texas 75711

Telephone: (903) 509-5000

Facsimile: (903) 509-5092

ATTORNEYS FOR DEFENDANT GOOGLE INC.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who have consented to electronic service, Local Rule CV-5(a)(3), on this the 24th day of July, 2012.

/s/ Jennifer P. Ainsworth

Jennifer P. Ainsworth