IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

LODSYS GROUP, LLC, Plaintiff, v. ATARI INTERACTIVE, INC.; COMBAY, INC.; ELECTRONIC ARTS, INC.; ICONFACTORY, INC.; ILLUSION LABS AB; MICHAEL G. KARR D/B/A SHOVELMATE; QUICKOFFICE, INC.; ROVIO MOBILE LTD. RICHARD SHINDERMAN; SQUARE ENIX LTD.; TAKE-TWO INTERACTIVE SOFTWARE, INC., Defendants, APPLE INC., Intervenor.	§ §	CIVIL ACTION NO. 2:11-cv-272-JRG **JURY TRIAL DEMANDED**

PLAINTIFF LODSYS, LLC'S ORIGINAL ANSWER TO INTERVENOR APPLE INC.'S COUNTERCLAIM

COMES NOW, Plaintiff Lodsys Group, LLC ("Plaintiff"), and files its Original Answer to the Counterclaim filed by Intervenor Apple Inc. ("Intervenor"). Pursuant to the Court's April 12, 2012 Memorandum Opinion and Order [dkt. no. 105] (the "Intervention Order"), Intervenor's intervention is limited to the issues of patent exhaustion and licensing. Pursuant to the Intervention Order, this Original Answer is limited to the issues on which the Court granted limited intervention and, therefore, does not include any claims that Plaintiff may have against Intervenor outside the scope of the limited intervention. Accordingly, Plaintiff would respectfully show the Court as follows, as limited by the Intervention Order:

Introduction

1. Answering paragraph 1, Plaintiff states that its Amended Complaint for Patent Infringement (the "Complaint") speaks for itself, and Plaintiff denies any characterizations or allegations inconsistent with the Complaint.

2. Answering paragraph 2, Plaintiff admits that, at a point in time, Apple held a limited license to the patents-in-suit. Plaintiff denies the remaining allegations in paragraph 2.

3. Answering paragraph 3, Plaintiff admits that its assignment to the patents-in-suit was subject to certain then-existing licenses. Plaintiff denies the remaining allegations in paragraph 3.

4. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4, and on that basis denies each and every allegation contained paragraph 4.

5. Answering paragraph 5, Plaintiff denies the allegation that "[t]he products and services Apple provides to the Developers … permit interaction between the Developers and Apple end users through the App Store." Plaintiff also denies that Apple owns or provides "end users." Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 5, and on that basis denies each and every remaining allegation contained paragraph 5.

6. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6, and on that basis denies each and every allegation contained paragraph 6.

7. Plaintiff denies the allegations in paragraph 7.

8. Plaintiff denies the allegations in paragraph 8.

9. The first sentence of paragraph 9 contains legal or other conclusions that do not require a response. To the extent a response is required, Plaintiff denies the allegations in the first sentence of paragraph 9. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 9, and on that basis

denies each and every allegation contained in the second sentence of paragraph 9. Plaintiff denies the allegations in the third sentence in paragraph 9.

10. Answering the first sentence in paragraph 10, Plaintiff admits that some of the defendants and/or "Developers" are smaller than Intervenor. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence of paragraph 10, and on that basis denies each and every remaining allegation contained in the first sentence of paragraph 10. Plaintiff denies the allegations in second sentence of paragraph 10. Answering the third sentence of paragraph 10, Plaintiff states that certain of the defendants and/or "Developers" have asserted "the defense based on Apple's License." Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the third sentence of paragraph 10, and on that basis denies each and every remaining allegation contained in the third sentence of paragraph 10. Plaintiff denies the allegations in fourth sentence of paragraph 10.

11. Paragraph 11 contains legal or other conclusions that do not require a response. To the extent a response is required, Plaintiff denies the allegations in paragraph 11.

12. Paragraph 12 contains legal or other conclusions that do not require a response. To the extent a response is required, Plaintiff denies the allegations in paragraph 12.

Parties

13. Plaintiff admits the allegations in paragraph 58.

14. Plaintiff admits the allegations in paragraph 59.

Jurisdiction and Venue

15. Plaintiff admits that this Court has jurisdiction over the subject matter of Intervenor's Counterclaim. The remaining legal or other conclusions in paragraph 60 do not require a response. To the extent a response is required, Plaintiff denies the remaining allegations in paragraph 60.

16. Plaintiff admits the allegations in paragraph 61

17. Plaintiff admits the allegations in paragraph 62.

First Counterclaim for Declaratory Relief

18. Plaintiff restates and incorporates by reference each of its responses to the allegations in paragraphs 1 through 12 and 58 through 62 of Intervenor's Answer and Counterclaim, as if fully set forth herein.

19. Plaintiff denies the allegations in the first sentence in paragraph 64. The remaining allegations in paragraph 64 contain legal or other conclusions that do not require a response. To the extent a response is required, Plaintiff denies the remaining allegations in paragraph 64.

20. The first sentence of paragraph 65 contains legal or other conclusions that do not require a response. To the extent a response is required, Plaintiff denies the allegations in the first sentence of paragraph 65. Plaintiff denies the remaining allegations in paragraph 65.

21. Paragraph 66 contains legal or other conclusions that do not require a response. To the extent a response is required, Plaintiff denies the allegations in paragraph 66.

Plaintiff's Affirmative Defenses to Intervenor's Counterclaim

Without assuming the burden of pleading or proof that would otherwise rest on Intervenor, Plaintiff asserts the following defenses and affirmative defenses to Intervenor's Counterclaim:

1. Intervenor's Counterclaim fails to state a claim upon which relief can be granted.

2. Intervenor's Counterclaim is barred, in whole or in part, by the doctrines of unclean hands, estoppel, release, and waiver.

3. Intervenor's Counterclaim is barred, in whole or in part, because Intervenor has breached its alleged license to the patents-in-suit.

4. Intervenor's Counterclaim is barred, in whole or in part, by the terms of its alleged license to the patents-in-suit.

5. Intervenor's Counterclaim is barred, in whole or in part, by the terms of its agreements with defendants and/or "Developers."

6. To the extent that Intervenor's Counterclaim relies on any purported oral contract, any such oral contract is void and unenforceable under the statute of frauds.

7. Intervenor's Counterclaim is barred, in whole or in part, by a failure of consideration.

The above defenses and affirmative defenses are based on the facts currently known to Plaintiff. Plaintiff reserves the right to amend or add defenses or affirmative defenses based on facts later discovered, pled, or offered.

Demand for Jury Trial on Intervenor's Counterclaim

Plaintiff demands a trial by jury on Intervenor's Counterclaim.

Response to Intervenor's Prayer for Relief

Plaintiff denies that Intervenor is entitled to any of the relief requested in Intervenor's Prayer for Relief.

Plaintiff's Prayer for Relief

WHEREFORE, in addition to the relief requested in its Amended Complaint, Plaintiff respectfully requests entry of a judgment in its favor and against Intervenor as follows:

A. That Intervenor take nothing by its Counterclaim;

B. That the Court award Plaintiff all costs and attorneys' fees incurred in defending against Intervenor's Counterclaim; and

C. Any and all further relief that the Court deems just and proper.

Dated: May 4, 2012.

Respectfully Submitted,

By: /s/ Christopher M. Huck
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this response was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(V). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 4th day of May 2012.

By: /s/ Christopher M. Huck
Christopher M. Huck