IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROBOCAST, INC., a Delaware corporation, Plaintiff, v. YOUTUBE LLC., a Delaware limited liability company; and GOOGLE LLC, a Delaware limited liability company, Defendants.	C.A. No. 22-304 (RGA) **JURY TRIAL DEMANDED**

DEFENDANTS GOOGLE LLC AND YOUTUBE LLC'S ANSWER TO PLAINTIFF ROBOCAST, INC.'S COMPLAINT FOR PATENT INFRINGEMENT

Defendants Google LLC and YouTube, LLC (collectively, "Google"), by and through the undersigned counsel, answer the Complaint for Patent Infringement ("Complaint") (D.I. 1) of plaintiff Robocast, Inc. ("Plaintiff" or "Robocast") as follows.

THE PARTIES

1. Google is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 1 of the Complaint and on that basis, denies them.

2. Google admits that YouTube, LLC ("YouTube") is a limited liability company organized under the laws of Delaware with its principal place of business at 901 Cherry Avenue, San Bruno, California 94066.

3. Google admits that Google LLC is a limited liability company organized under the laws of Delaware with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043.

4. Google admits that it is the parent company of YouTube.

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JURISDICTION AND VENUE

5. Google admits that this action invokes the United States patent laws, and that this Court has subject matter jurisdiction over patent law claims pursuant to 28 U.S.C §§ 1331 and 1338(a).

6. Google does not context that this Court has personal jurisdiction solely for the purposes of this particular action. Google specifically denies that it has committed any acts of infringement within this district, or any other district. Otherwise denied.

7. Google admits that venue is proper in this judicial district for the purposes of this particular action, but contends that requiring the parties to litigate here is not convenient or in the interests of justice under 28 U.S.C. § 1404(a). Otherwise denied.

THE PATENTS-IN-SUIT

8. Google admits that what purports to be a copy of U.S. Patent No. 7,155,451 ("the '451 patent") is attached as Exhibit 1 to the Complaint. Google further admits that the face of what appears to be the '451 patent indicates that its title is "Automated Browsing System For Publishers And Users On Networks Serving Internet And Remote Devices" and that the date of the patent is December 26, 2006. Google denies that the '451 patent was duly and legally issued. Google denies that Robocast has any right to sue on or recover damages for infringement of the '451 patent. Google is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 8 of the Complaint and on that basis, denies them.

9. Google admits that what purports to be a copy of U.S. Patent No. 8,606,819 ("the '819 patent") is attached as Exhibit 2 to the Complaint. Google further admits that the face of what appears to be the '819 patent indicates that its title is "Automated Content Scheduler And Displayer" and that the date of the patent is December 10, 2013. Google denies that the '819 patent

was duly and legally issued. Google denies that Robocast has any right to recover damages for infringement of the '819 patent. Google is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 9 of the Complaint and on that basis, denies them.

10. Google admits that what purports to be a copy of U.S. Patent No. 8,965,932 ("the '932 patent") is attached as Exhibit 2 to the Complaint. Google further admits that the face of what appears to be the '932 patent indicates that its title is "Automated Content Scheduler And Displayer" and that the date of the patent is February 24, 2015. Google denies that the '932 patent was duly and legally issued. Google denies that Robocast has any right to recover damages for infringement of the '932 patent. Google is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 10 of the Complaint and on that basis, denies them.

11. Google admits that the faces of what appear to be the '451 Patent, the '819 Patent, and the '932 Patent refer to other U.S. Patent applications and granted patents. Google denies that any of the Patents-in-Suit is entitled the priority date of September 3, 1996 or the date of the referenced provisional patent application. Google is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 11 of the Complaint and on that basis, denies them.

12. Plaintiff's allegations in paragraph 12 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

13. Plaintiff's allegations in paragraph 13 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

14. Plaintiff's allegations in paragraph 14 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

15. Plaintiff's allegations in paragraph 15 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

16. Plaintiff's allegations in paragraph 16 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

17. Plaintiff's allegations in paragraph 17 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

18. Plaintiff's allegations in paragraph 18 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject

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matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

19. Plaintiff's allegations in paragraph 19 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

20. Plaintiff's allegations in paragraph 20 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

21. Plaintiff's allegations in paragraph 21 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

22. Plaintiff's allegations in paragraph 22 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

23. Plaintiff's allegations in paragraph 23 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

24. The allegations of paragraph 24 relate to claims that have been dismissed as to the '819 and '932 patents; therefore, no response is necessary as to these patents. Google admits that on February 26, 2020, Google's outside counsel referred to the Patents-in-Suit in a subpoena to Robocast in the case *Virentem Ventures, LLC v. YouTube, LLC, et al.*, C.A. No. 1:18-cv-00917-MN (D. Del.). Google further admits that Google received a copy of Robocast's complaint in this action, which refers to the Patents-in-Suit. Google denies the remaining allegations of paragraph 24 of the complaint. Google specifically denies that it infringes any valid claim of the Plaintiff's patents, willfully, indirectly, or otherwise.

YOUTUBE'S INFRINGING OPERATION OF ITS YOUTUBE INTERNET PLATFORM[1]

25. Google admits that it operates a digital video platform at www.youtube.com. Google admits that computer servers are used to publish the website on a variety of devices. Google otherwise denies the remaining allegations in paragraph 25 and specifically denies that it infringes any valid claim of Plaintiff's patents. The remaining allegations in paragraph 25 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

26. Plaintiff's allegations in paragraph 26 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

[1] Google includes the headings from Robocast's complaint for ease of reference only. Google denies the statement in this heading and all other headings that Google infringes any valid patent.

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27. Plaintiff's allegations in paragraph 27 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

28. Plaintiff's allegations in paragraph 28 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

29. Google admits that it receives revenue associated with advertising. The remaining allegations in paragraph 29 of the Complaint appear intended to reflect the state of the art, claim scope, an appropriate construction of any of the claim terms, the subject matter of the claims, or a claim of infringement, and Google therefore denies them. Google specifically denies that it infringes any valid claim of Plaintiff's patents.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 7,155,451

30. Google realleges and incorporates by reference its responses to paragraphs 1-29 above as if fully set forth herein.

31. Google denies the allegations in paragraph 31 of the Complaint.

32. Google denies the allegations in paragraph 32 of the Complaint.

33. Google denies the allegations in paragraph 33 of the Complaint

34. Google denies the allegations in paragraph 34 of the Complaint.

35. Google denies the allegations in paragraph 35 of the Complaint.

36. Google denies the allegations in paragraph 36 of the Complaint.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 8,606,819

37. Google realleges and incorporates by reference its responses to paragraphs 1-36 above as if fully set forth herein.

38. Google denies the allegations in paragraph 38 of the Complaint.

39. The allegations of paragraph 39 relate to a claim that has been dismissed; therefore, no response is necessary. To the extent a response is necessary, Google denies the allegations of paragraph 39.

40. The allegations of paragraph 40 relate to a claim that has been dismissed; therefore, no response is necessary. To the extent a response is necessary, Google denies the allegations of paragraph 40.

41. The allegations of paragraph 41 relate to a claim that has been dismissed; therefore, no response is necessary. To the extent a response is necessary, Google denies the allegations of paragraph 41.

42. Google denies the allegations in paragraph 42 of the Complaint.

43. Google denies the allegations in paragraph 43 of the Complaint.

COUNT III
INFRINGEMENT OF U.S. PATENT NO. 8,965,932

44. Google realleges and incorporates by reference its responses to paragraphs 1-43 above as if fully set forth herein.

45. Google denies the allegations in paragraph 45 of the Complaint.

46. The allegations of paragraph 46 relate to a claim that has been dismissed; therefore, no response is necessary. To the extent a response is necessary, Google denies the allegations of paragraph 46.

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47. The allegations of paragraph 47 relate to a claim that has been dismissed; therefore, no response is necessary. To the extent a response is necessary, Google denies the allegations of paragraph 47.

48. The allegations of paragraph 48 relate to a claim that has been dismissed; therefore, no response is necessary. To the extent a response is necessary, Google denies the allegations of paragraph 48.

49. Google denies the allegations in paragraph 49 of the Complaint.

50. Google denies the allegations in paragraph 50 of the Complaint.

PRAYER FOR RELIEF

51. Google denies that plaintiff is entitled to any relief whatsoever, including all relief requested in Plaintiff's "Prayer for Relief." To the extent any statement in the Prayer for Relief is deemed factual and/or requires a response, it is denied.

DEFENSES

52. Subject to the responses above, Google and YouTube allege and assert the following defenses in response to the allegations, undertaking the burden of proof only as to those defenses deemed affirmative by law, regardless of how such defenses are denominated herein. In addition, to the defenses described below, and subject to its responses above, Google and YouTube specifically reserve all rights to allege additional defenses that become known through the course of discovery.

FIRST DEFENSE—NON-INFRINGEMENT

53. Google and YouTube do not infringe and have not infringed (directly, contributorily, or by inducement), either literally or under doctrine of equivalents, and are not liable for infringements of any valid and enforceable claim of the '451, '819, or '932 Patents (collectively, the "Patents-in-Suit").

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SECOND DEFENSE—INVALIDITY

54. The claims of the Patents-in-Suit are invalid and unenforceable under 35 U.S.C. § 101 because the claims are directed to abstract ideas or other non-statutory subject matter.

55. The claims of the Patents-in-Suit are invalid and unenforceable under 35 U.S.C. § 102 because the claims lack novelty and are taught and suggested by the prior art.

56. The claims of the Patents-in-Suit are invalid and unenforceable under 35 U.S.C. § 103 because the claims are obvious in view of the prior art.

57. The claims of the Patents-in-Suit are invalid and unenforceable for failure to satisfy the conditions set forth in 35 U.S.C. § 112 including failure to contain a written description, lack of enablement, and indefiniteness.

58. The claims of the '451 patent are invalid for obviousness-type double patenting, including but not limited to based on the '819 and '932 patents.

THIRD DEFENSE—LIMITATIONS ON PATENT DAMAGES

59. Plaintiff's claim for damages, if any, against Google and YouTube for alleged infringement of the Asserted Patents are limited by 35 U.S.C. §§ 286, 287, and/or 288.

FOURTH DEFENSE—PROSECUTION HISTORY ESTOPPEL

60. By reason of statements, representations, concessions, admissions, arguments, and/or amendments, whether explicit or implicit, made by or on behalf of the applicant during the prosecution of the patent applications that led to the issuance of the Asserted Patents, Plaintiff's claims of infringement are barred in whole or in part by the doctrine of prosecution history estoppel.

FIFTH DEFENSE—INEQUITABLE CONDUCT

61. On information and belief, the Patents-in-Suit are unenforceable because Mr. Torres violated his duty of candor to, and engaged in inequitable conduct before, the United States

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Patent & Trademark Office ("USPTO") during the prosecution of the parent application to the Patents-in-Suit, Application No. 08/922,063 (the "'063 application"), and this inequitable conduct infects each of the Patents-in-Suit and renders them unenforceable. Mr. Torres both made deliberate and materials misrepresentations to, and deliberately withholding information from, the USPTO with the intent to deceive the USPTO to achieve allowance of the claims of the '063 application.

62. 37 C.F.R. § 1.56 (as in effect in 1999, *i.e.*, during the prosecution of '063 application) imposes a duty of candor and good faith on patent applications and others associated with the filing and prosecution of patent applications.

63. On information and belief, Mr. Torres violated this duty of candor and good faith by submitting a false declaration under 37 C.F.R. § 1.131 to the USPTO in order to overcome a prior art rejection. Additionally, on information and belief, Mr. Torres violated this duty of candor and good faith by withholding from the USPTO material evidence that contradicted representations made in the declaration. Further, on information and belief, Mr. Torres' actions were undertaken with the intent to deceive the USPTO into granting a patent.

64. Specifically, during the prosecution of the '063 Application, the USPTO issued a Non-Final Office Action dated September 29, 1998 rejecting the single pending claim in the '063 Application as "unpatentable over Richardson et al. (USP 5,809,247) in view of Davis et al (USP 5,796,953)."

65. Mr. Torres waited for six months—until March 29, 1999—before he filed an extension of time and a Continued Prosecution Application ("CPA"). The CPA made no changes to the '063 application or the rejected claims.

66. On March 14, 1999, the USPTO issued a Final Office Action where the examiner again rejected the '063 application as "unpatentable over Richardson et al. (USP 5,809,247) in view of Davis et al (USP 5,796,953)." The Examiner specifically noted how Mr. Torres had made no changes to the '063 application or the rejected claims: "This is a continuation of applicant's earlier Application No. 08/922,063. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, THIS ACTION IS MADE FINAL, even though it is a first action in this case."

67. An applicant may overcome a rejection based upon prior art by following the procedure set forth in 37 C.F.R. § 1.131 (1999). In particular, pursuant to 37 C.F.R. § 1.131 (1999), a patent applicant can seek to establish that a reference is not prior art by submitting an oath or declaration showing that the applicant invented the claimed subject matter before the date of the reference used as a basis for rejecting a claim:

> [w]hen any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.

68. To do so, the applicant must make a "showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application." 37 C.F.R. § 1.131.

69. As part of this showing, "[o]riginal exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence must be satisfactorily explained." 37 C.F.R. § 1.131.

70. U.S. Patent No. 5,809,247 ("Richardson") was the primary reference used to reject the '063 application. Richardson was filed on July 22, 1996.

71. On November 12, 1999, Mr. Torres responded to the Final Office Action by claiming that the '063 application was entitled to claim priority to Mr. Torres' earlier-filed Provisional Application No. 60/025360. Provisional Application No. 60/025360 was filed on September 2, 1996.

72. Since the provisional filing date of September 2, 1996 was after the July 22, 1996 filing date of Richardson, Mr. Torres also filed a declaration pursuant to 37 C.F.R. § 1.131 to establish that Richardson was not prior art.

73. In his November 12, 1999 response to the Final Office Action, Mr. Torres did not offer substantive arguments trying to distinguish the pending claims from the disclosures of Richardson. Instead, Mr. Torres relied on an attached declaration: "None of the references cited by the Examiner teaches or discloses the present invention as claimed. In any event, Applicant herewith submits a Declaration pursuant to 37 CFR Section 131 to overcome [*sic*] Richardson reference and has amended claim 1 to further define the invention."

74. Specifically, Mr. Torres's stated in the declaration that he "conceived in the United States the invention claimed in the above-identified patent application prior to July 22, 1996, the filing date of [prior art reference] US Patent No. 5,809,247." To support its arguments, Mr. Torres attached as Exhibit A to the declaration a purported fax dated before July 22, 1996 from himself to a "tech writer" that the declaration contended "illustrate[d] the conception of his invention."

Specifically, the declaration stated that, in the fax, Mr. Torres had "describe[d his] invention for users who are surfing sites to have a way to see more than one web page per click. The letter suggests means that are provided to cue up many pages and have them automatically 'play' in your browser. Furthermore, such an automated software scheduler and player could 'automate search results,' 'print dozens of pages of its own,' and enable users to 'pick from pages that were made specially as it [*sic*] sequence, like a story.'"

75. Mr. Torres further asserted in the declaration that "pursuant to this conception, [he] exercised due diligence from prior to said date, July 22, 1996, the filing date of the cited Richardson et al. patent, to a subsequent constructive reduction to practice, namely the filing of a provisional application on September 3, 1996. Further evidence of such due diligence includes the establishment of a software project team to implement the invention from before July 22, 1996 through August."

76. On information and belief, Mr. Torres fabricated the purported fax attached to his declaration as Exhibit A and submitted it to the USPTO. Accordingly, on information and belief, his statements in the declaration regarding conception and the fax to Mr. Hertzig were knowingly false. *See, e.g.*, *Robocast, Inc. v. Microsoft Corporation*, Civil Action No. 10-1055-RGA (D. Del. February 21, 2014), D.I. 499 at 21-25; *id.* D.I. 387 at 6-7.

77. On information and belief, Mr. Torres's statements in the declaration regarding reduction to practice were also knowingly false, including because no such "software project team" had been "establish[ed]" from before July 22, 1996. *See, e.g.*, *id.*

78. In addition, on information and belief, Mr. Torres came into possession of a letter during the prosecution of the '063 application from John Halbert that contradicted his statement in his declaration regarding establishing a project team to implement the invention from before

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July 22, 1996, and Mr. Torres knowingly and intentionally withheld this letter from the Patent & Trademark Office despite its materiality to the '063 application and Mr. Torres's prior false statements during prosecution. *See, e.g., id.*

79. On information and belief, further information regarding these allegations can be found at paragraphs 45 through 132 of Amended Answer and Defenses of Defendant Apple Inc., D.I. 210, Apple Inc.'s Answering Brief in Opposition to Robocast's Motion for Summary Judgment of No Unenforceability, D.I. 370, and pages 23-27 of Memorandum Opinion, D.I. 457, all in *Robocast, Inc. v. Apple Inc.*, C.A. No. 11-235-RGA; Microsoft's Answer, D.I. 220, Microsoft Corporation's Answering Brief in Opposition to Robocast's Motion for Summary Judgment of No Unenforceability and No Unclean Hands, D.I. 360, and pages 21-25 of Memorandum Opinion, D.I. 499 all in *Robocast, Inc. v. Microsoft Corporation*, C.A. No. 10-1055-RGA.

80. Mr. Torres's declaration was submitted in order to establish that Richardson was not prior art to his claimed invention.

81. On information and belief, Mr. Torres's declaration constituted an affirmative act of egregious misconduct before the USPTO.

82. On information and belief, Mr. Torres's declaration constituted an unmistakably false affidavit.

83. On information and belief Mr. Torres's declaration constituted a knowingly false affidavit.

84. On information and belief, Mr. Torres's declaration constituted an unmistakably false affidavit submitted in an attempt to secure allowance of the claims of his patent application.

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85. One or more of the misrepresentations or omissions by Mr. Torres and/or Robocast to the USPTO was *per se* material. For example, knowingly submitting a false affidavit during prosecution to the USPTO is *per se* material.

86. The Patents-in-Suit each claim priority to the ’063 application. Each of the Patents-in-Suit has an immediate and necessary relationship to Mr. Torres’ misconduct in the prosecution of the ’063 application. The claims of the Patents-in-Suit are also sufficiently similar to one or more of those at issue in the ’063 application.

87. Mr. Torres’ inequitable conduct in prosecution of the ’063 application infects, and renders unenforceable, the claims of the Patents-in-Suit.

SIXTH DEFENSE—EQUITABLE DEFENSES

88. Google realleges and incorporates by reference paragraphs 60-87 above as if fully set forth herein.

89. Plaintiff’s claims for relief are barred in whole or in part under principles of equity, including laches, waiver, estoppel and/or unclean hands.

90. For example, the allegations described in paragraphs 60-87, in addition to constituting inequitable conduct, constitutes unclean hands, barring Robocast’s claims for relief.

SEVENTH DEFENSE—PATENT MARKING

91. Any claim for damages for patent infringement is limited by 35 U.S.C. § 287 to those damages occurring only after the notice of infringement.

EIGHTH DEFENSE—IMPLIED LICENSE

92. Plaintiff’s claims are barred in whole or in part by an express or implied license and/or the patent exhaustion doctrine.

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NINTH DEFENSE—NON-EXCEPTIONAL CASE

93. Plaintiff cannot prove that this is an exceptional case that would justify an award of attorney's fees against Google pursuant to 35 U.S.C. § 285.

TENTH DEFENSE—FAILURE TO MITIGATE DAMAGES

94. Plaintiff's claims are barred in whole or in part by its failure to mitigate damages.

ELEVENTH DEFENSE—RESERVATION

95. Google and YouTube reserve all affirmative defenses available under Rule 8(a) of the Federal Rules of Civil Procedure, and any other defenses, at law or in equity, that may be available now or may become available in the future based on discovery or any other factual investigations in this case.

TWELFTH DEFENSE—ENSNAREMENT

96. Plaintiff's claims for infringement are barred by the doctrine of ensnarement.

EXCEPTIONAL CASE

97. On information and belief, this is an exceptional case entitling Google to an award of its attorneys' fees incurred in connection with defending and prosecuting this action pursuant to 35 U.S.C. § 285, as a result of, inter alia, Plaintiff's assertion of the Patents-in-Suit against Google with the knowledge that Google does not infringe any valid or enforceable claim of the Patents-in-Suit and/or that the Patents-in-Suit are invalid and/or unenforceable.

REQUEST FOR RELIEF

WHEREFORE, Google and YouTube respectfully request that the Court enter judgment in favor and against Plaintiff as follows:

1. Dismissing with prejudice Plaintiff's claims against Google and YouTube;
2. Denying all relief that Plaintiff seeks in its Complaint;
3. Finding this case exceptional under 35 U.S.C. § 285 and awarding Google and YouTube all costs and attorney's fees; and

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4. Awarding any other relief the Court deems just and equitable.

DEMAND FOR A JURY TRIAL

In accordance with Fed. R. Civ. P. 38, Google and YouTube demand a trial by jury on all issues so triable.

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