

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

MANTIS COMMUNICATIONS, LLC,

Plaintiff,

v.

CULVER FRANCHISING SYSTEM,
INC.,

Defendant.

CASE NO. 2:17-cv-324
PATENT CASE
JURY TRIAL DEMANDED

**DEFENDANT CULVER FRANCHISING SYSTEM, INC.'S
ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS TO PLAINTIFF'S COMPLAINT**

Defendant Culver Franchising System, Inc. ("Culver's" or "Defendant") files this Answer and Counterclaims to Plaintiff Mantis Communications, LLC's ("Plaintiff" or "Mantis") Complaint for Patent Infringement ("Complaint") of U.S. Patent Nos. 7,403,788 (the "'788 Patent"), 7,792,518 (the "'518 Patent"), 8,131,262 (the "'262 Patent"), 8,437,784 (the "'784 Patent"), 8,761,732 (the "'732 Patent"), 8,938,215 (the "'215 Patent"), and 9,092,803 (the "'803 Patent") (collectively, "patents-in-suit" or "Mantis patents").¹ Culver's denies the allegations and characterizations in Plaintiff's Complaint unless expressly admitted in the following paragraphs.

BACKGROUND

1. Culver's is without knowledge or information sufficient to form a belief as

¹ For avoidance of doubt, Culver's denies liability for all allegations of patent infringement included or implied in the introductory paragraph of the Complaint.

to the truth of the allegations in Paragraph 1 of the Complaint and, on that basis, denies all such allegations.

2. Culver's denies the allegations in Paragraph 2 of the Complaint.

3. Culver's is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Complaint and, on that basis, denies all such allegations.

4. Culver's admits that the documents attached to the Complaint as Exhibits A through G purport to be the patents-in-suit and are each entitled "System and Method to Initiate a Mobile Data Communication Utilizing a Trigger System." Except as so admitted, Culver's lacks knowledge or information sufficient to admit or deny all other allegations of Paragraph 4 of the Complaint, and therefore denies them.

5. Culver's admits that the patents-in-suit purport to claim priority to a provisional patent application dated July 19, 2002, which was U.S. Provisional Application No. 60/397,435. Culver's denies the remaining allegations in Paragraph 5 of the Complaint.

6. Culver's denies the allegations in Paragraph 6 of the Complaint.

7. Culver's denies the allegations in Paragraph 7 of the Complaint.

8. Culver's denies the allegations in Paragraph 8 of the Complaint.

9. Culver's denies the allegations in Paragraph 9 of the Complaint.

10. Culver's denies the allegations in Paragraph 10 of the Complaint.

11. Culver's denies the allegations in Paragraph 11 of the Complaint.

12. Culver's denies the allegations in Paragraph 12 of the Complaint.

13. Culver's denies the allegations in Paragraph 13 of the Complaint.

14. Culver's denies the allegations in Paragraph 14 of the Complaint.

15. Culver's denies the allegations in Paragraph 15 of the Complaint.

16. Culver's denies the allegations in Paragraph 16 of the Complaint.

17. Culver's denies the allegations in Paragraph 17 of the Complaint.

18. Culver's denies the allegations in Paragraph 18 of the Complaint.

19. Culver's denies the allegations in Paragraph 19 of the Complaint.

20. Culver's denies the allegations in Paragraph 20 of the Complaint.

21. Culver's is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint and, on that basis, denies all such allegations.

22. Culver's denies the allegations in Paragraph 22 of the Complaint.
23. Culver's denies the allegations in Paragraph 23 of the Complaint.
24. Culver's denies the allegations in Paragraph 24 of the Complaint.
25. Culver's denies the allegations in Paragraph 25 of the Complaint.
26. Culver's denies the allegations in Paragraph 26 of the Complaint.
27. Culver's denies the allegations in Paragraph 27 of the Complaint.
28. Culver's denies the allegations in Paragraph 28 of the Complaint.
29. Culver's denies the allegations in Paragraph 29 of the Complaint.

PARTIES

30. Culver's is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 of the Complaint and, on that basis, denies all such allegations.

31. Culver's admits the allegations in Paragraph 31 of the Complaint.

JURISDICTION AND VENUE

32. Culver's admits that the Complaint purports to set forth an action for infringement under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.* and that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). Culver's denies it has committed or is committing acts of infringement and, on that basis, denies any remaining allegations in Paragraph 32 of the Complaint.

33. Culver's does not contest whether personal jurisdiction over it properly lies in this District in this case, or that it conducts business in the State of Texas. Culver's denies it has committed or is committing acts of infringement within the State of Texas or in this District and, on that basis, denies the remaining allegations in Paragraph 33 of the Complaint.

34. Culver's does not contest whether personal jurisdiction over it properly lies in this District in this case. Culver's admits that venue may be proper, but denies that venue is convenient in this District as to Culver's. Culver's admits that it conducts business in this District. Culver's denies it has committed or is committing acts of infringement within the State of Texas or in this District and, on that basis, denies the remaining allegations in Paragraph 34 of the Complaint.

COUNT I [ALLEGED] INFRINGEMENT OF U.S. PATENT NO. 7,403,788

35. Culver's incorporates by reference each of its responses set forth in Paragraphs 1-34 above as if fully set forth herein.

36. Culver's denies that it has committed or is committing acts of infringement in this district or elsewhere and, on that basis, denies the allegations in Paragraph 36 of the Complaint.

37. Culver's denies the allegations in Paragraph 37 of the Complaint.

38. Culver's denies the allegations in Paragraph 38 of the Complaint.

39. Culver's admits that a claim chart is attached to the Complaint as Exhibit A-1. Culver's denies that it has committed or is committing acts of infringement in this district or elsewhere and, on that basis, denies the remaining allegations in Paragraph 39 of the Complaint and denies the allegations in the accompanying claim chart attached to the Complaint as Exhibit A-1.

40. Culver's denies the allegations in Paragraph 40 of the Complaint.

41. Culver's denies the allegations in Paragraph 41 of the Complaint.

COUNT II
[ALLEGED] INFRINGEMENT OF U.S. PATENT NO. 7,792,518

42. Culver's incorporates by reference each of its responses set forth in Paragraphs 1-41 above as if fully set forth herein.

43. Culver's denies that it has committed or is committing acts of infringement in this district or elsewhere and, on that basis, denies the allegations in Paragraph 43 of the Complaint.

44. Culver's denies the allegations in Paragraph 44 of the Complaint.

45. Culver's admits that a claim chart is attached to the Complaint as Exhibit A-2. Culver's denies that it has committed or is committing acts of infringement in this

district or elsewhere and, on that basis, denies the remaining allegations in Paragraph 45 of the Complaint and denies the allegations in the accompanying claim chart attached to the Complaint as Exhibit A-2.

46. Culver's denies the allegations in Paragraph 46 of the Complaint.

47. Culver's denies the allegations in Paragraph 47 of the Complaint.

48. Culver's denies the allegations in Paragraph 48 of the Complaint.

COUNT III
[ALLEGED] INFRINGEMENT OF U.S. PATENT NO. 8,131,262

49. Culver's incorporates by reference each of its responses set forth in Paragraphs 1-48 above as if fully set forth herein.

50. Culver's denies that it has committed or is committing acts of infringement in this district or elsewhere and, on that basis, denies the allegations in Paragraph 50 of the Complaint.

51. Culver's denies the allegations in Paragraph 51 of the Complaint.

52. Culver's denies the allegations in Paragraph 52 of the Complaint.

53. Culver's admits that a claim chart is attached to the Complaint as Exhibit A-3. Culver's denies that it has committed or is committing acts of infringement in this district or elsewhere and, on that basis, denies the remaining allegations in Paragraph 53 of the Complaint and denies the allegations in the accompanying claim chart attached to the Complaint as Exhibit A-3.

54. Culver's denies the allegations in Paragraph 54 of the Complaint.

55. Culver's denies the allegations in Paragraph 55 of the Complaint.

COUNT IV
[ALLEGED] INFRINGEMENT OF U.S. PATENT NO. 8,437,784

56. Culver's incorporates by reference each of its responses set forth in Paragraphs 1-55 above as if fully set forth herein.

57. Culver's denies that it has committed or is committing acts of infringement in this district or elsewhere and, on that basis, denies the allegations in Paragraph 57 of the Complaint.

58. Culver's denies the allegations in Paragraph 58 of the Complaint.

59. Culver's denies the allegations in Paragraph 59 of the Complaint.

60. Culver's admits that a claim chart is attached to the Complaint as Exhibit A-4. Culver's denies that it has committed or is committing acts of infringement in this district or elsewhere and, on that basis, denies the remaining allegations in Paragraph 60 of the Complaint and denies the allegations in the accompanying claim chart attached to the Complaint as Exhibit A-4.

61. Culver's denies the allegations in Paragraph 61 of the Complaint.

62. Culver's denies the allegations in Paragraph 62 of the Complaint.

COUNT V
[ALLEGED] INFRINGEMENT OF U.S. PATENT NO. 8,761,732

63. Culver's incorporates by reference each of its responses set forth in Paragraphs 1-62 above as if fully set forth herein.

64. Culver's denies that it has committed or is committing acts of infringement in this district or elsewhere and, on that basis, denies the allegations in Paragraph 64 of

the Complaint.

65. Culver's denies the allegations in Paragraph 65 of the Complaint.

66. Culver's denies the allegations in Paragraph 66 of the Complaint.

67. Culver's admits that a claim chart is attached to the Complaint as Exhibit A-5. Culver's denies that it has committed or is committing acts of infringement in this district or elsewhere and, on that basis, denies the remaining allegations in Paragraph 67 of the Complaint and denies the allegations in the accompanying claim chart attached to the Complaint as Exhibit A-5.

68. Culver's denies the allegations in Paragraph 68 of the Complaint.

69. Culver's denies the allegations in Paragraph 69 of the Complaint.

COUNT VI
[ALLEGED] INFRINGEMENT OF U.S. PATENT NO. 8,938,215

70. Culver's incorporates by reference each of its responses set forth in Paragraphs 1-69 above as if fully set forth herein.

71. Culver's denies that it has committed or is committing acts of infringement in this district or elsewhere and, on that basis, denies the allegations in Paragraph 71 of the Complaint.

72. Culver's denies the allegations in Paragraph 72 of the Complaint.

73. Culver's admits that a claim chart is attached to the Complaint as Exhibit A-6. Culver's denies that it has committed or is committing acts of infringement in this district or elsewhere and, on that basis, denies the remaining allegations in Paragraph 73 of the Complaint and denies the allegations in the accompanying claim chart attached to

the Complaint as Exhibit A-6.

74. Culver's denies the allegations in Paragraph 74 of the Complaint.

75. Culver's denies the allegations in Paragraph 75 of the Complaint.

76. Culver's denies the allegations in Paragraph 76 of the Complaint.

COUNT VII
[ALLEGED] INFRINGEMENT OF U.S. PATENT NO. 9,092,803

77. Culver's incorporates by reference each of its responses set forth in Paragraphs 1-76 above as if fully set forth herein.

78. Culver's denies that it has committed or is committing acts of infringement in this district or elsewhere and, on that basis, denies the allegations in Paragraph 78 of the Complaint.

79. Culver's denies the allegations in Paragraph 79 of the Complaint.

80. Culver's admits that a claim chart is attached to the Complaint as Exhibit A-7. Culver's denies that it has committed or is committing acts of infringement in this district or elsewhere and, on that basis, denies the remaining allegations in Paragraph 80 of the Complaint and denies the allegations in the accompanying claim chart attached to the Complaint as Exhibit A-7.

81. Culver's denies the allegations in Paragraph 81 of the Complaint.

82. Culver's denies the allegations in Paragraph 82 of the Complaint.

83. Culver's denies the allegations in Paragraph 83 of the Complaint.

PRAYER FOR RELIEF

Culver's denies the Plaintiff is entitled to any relief from Culver's and denies all

the allegations contained in Paragraphs A-K of Plaintiff's Prayer for Relief.

PLAINTIFF'S DEMAND FOR JURY TRIAL

Culver's is not required to provide a response to Plaintiff's request for a trial by jury.

AFFIRMATIVE DEFENSES

Defendant's Affirmative Defenses are listed below. Culver's reserves the right to amend its answer to add additional Affirmative Defenses consistent with the facts discovered in this case.

FIRST AFFIRMATIVE DEFENSE

Culver's has not infringed and does not infringe, under any theory of infringement (including directly (whether individually or jointly) or indirectly (whether contributorily or by inducement)), any valid, enforceable claim of the '788 Patent, the '518 Patent, the '262 Patent, the '784 Patent, the '732 Patent, the '215 Patent, and/or the '803 Patent (collectively, the "patents-in-suit").

SECOND AFFIRMATIVE DEFENSE

Each asserted claim of the patents-in-suit is invalid for failure to comply with one or more of the requirements of the United States Code, Title 35, including without limitation, 35 U.S.C. §§ 101, 102, 103, and 112, and the rules, regulations, and laws pertaining thereto.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's attempted enforcement of the patents-in-suit against Culver's is barred by the doctrine of inequitable conduct.

FOURTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff and any predecessors in interest to the patents-in-suit failed to properly mark any of their relevant products or materials as required by 35 U.S.C. § 287, or otherwise give proper notice that Defendant's actions allegedly infringe the patents-in-suit, Culver's is not liable to Plaintiff for the acts alleged to have been performed before it received actual notice that it was allegedly infringing the patents-in-suit.

FIFTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff asserts that Culver's indirectly infringes, either by contributory infringement or inducement of infringement, Culver's is not liable to Plaintiff for the acts alleged to have been performed before Culver's knew that its actions would cause indirect infringement.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's attempted enforcement of the patents-in-suit against Culver's is barred by one or more of the equitable doctrines of laches, estoppel, acquiescence, waiver, and unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

The claims of the patents-in-suit are not entitled to a scope sufficient to encompass any system employed or process practiced by Culver's.

EIGHTH AFFIRMATIVE DEFENSE

To the extent Plaintiff contends that it alleges a claim for indirect infringement (whether by inducement or contributorily), Plaintiff has failed to state a claim upon which relief can be granted.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted because the patents-in-suit do not claim patentable subject matter under 35 U.S.C. § 101.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted because, among other things, Plaintiff has not stated a plausible allegation that any system employed or process practiced by Culver's includes an offer entry system in communication with said offer application component, and an offer database in communication with said offer application component for storing said generated content and said user request data.

CULVER'S COUNTERCLAIMS

For its counterclaims against Plaintiff Mantis Communications, LLC ("Mantis"), Counterclaim Plaintiff Culver Franchising System, Inc. ("Culver's"), alleges as follows:

PARTIES

1. Counterclaim Plaintiff Culver Franchising System, Inc. is a corporation organized and existing under the laws of the State of Wisconsin, with offices located at 1240 Water Street, Prairie du Sac, Wisconsin 53578.
2. Upon information and belief based solely on Paragraph 30 of the Complaint

as pled by Plaintiff, Counterclaim Defendant Mantis Communications, LLC, is a limited liability company organized and existing under the laws of the State of Texas and maintains its principle place of business at 2600 Avenue K, Plano, Texas 75074.

JURISDICTION

3. Culver's incorporates by reference Paragraphs 1-2 above.

4. These counterclaims arise under the patent laws of the United States, Title 35, United States Code. The jurisdiction of this Court is proper under at least 35 U.S.C. § 271 *et seq.*, and 28 U.S.C. §§ 1331, 1338, 1367, and 2201-02.

5. Mantis has consented to the personal jurisdiction of this Court at least by commencing its action for patent infringement in this District, as set forth in its Complaint.

6. Based solely on Plaintiff's filing of this action, venue is proper, though not necessarily convenient, in this District pursuant at least 28 U.S.C. § 1400.

COUNT I

DECLARATION REGARDING NON-INFRINGEMENT

7. Culver's incorporates by reference Paragraphs 1-6 above.

8. Based on Plaintiff's filing of this action and at least Defendant's first affirmative defense, an actual controversy has arisen and now exists between the parties as to whether Culver's infringes U.S. Patent Nos. 7,403,788 (the "'788 Patent"), 7,792,518 (the "'518 Patent"), 8,131,262 (the "'262 Patent"), 8,437,784 (the "'784 Patent"), 8,761,732 (the "'732 Patent"), 8,938,215 (the "'215 Patent"), and/or 9,092,803 (the "'803 Patent") (collectively, "patents-in-suit").

9. Among other things, Culver's does not infringe at least claim 1 of the '788 Patent because, *inter alia*, the accused system does not include an offer entry system in communication with said offer application component, and an offer database in communication with said offer application component for storing said generated content and said user request data.

10. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*, Culver's requests a declaration by the Court that Culver's has not infringed and does not infringe any claim of the patents-in-suit under any theory (including directly (whether individually or jointly) or indirectly (whether contributorily or by inducement)).

COUNT II

DECLARATION REGARDING INVALIDITY

11. Culver's incorporates by reference Paragraphs 1-10 above.

12. Based on Plaintiff's filing of this action and at least Defendant's Second Affirmative Defense, an actual controversy has arisen and now exists between the parties as to the validity of the claims of the patents-in-suit.

13. The asserted claims of the patents-in-suit are anticipated and/or rendered obvious by, *inter alia*, U.S. Patent No. 7,386,517, U.S. Patent Application 2003/0074328, and/or U.S. Patent Application 2003/0100315.

14. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*, Culver's requests a declaration by the Court claims of the patents-in-suit are invalid for failure to comply with one or more of the requirements of United States Code, Title 35, including without limitation, 35 U.S.C. §§ 101, 102, 103, and 112, and the rules,

regulations, and laws pertaining thereto.

PRAYER FOR RELIEF

WHEREFORE, Culver's asks this Court to enter judgment in its favor and against Mantis by granting the following relief:

- a) a declaration that the patents-in-suit are invalid;
- b) a declaration that Culver's does not infringe, under any theory, any valid claim of the patents-in-suit that may be enforceable;
- c) a declaration that the patents-in-suit are unenforceable;
- d) a declaration that Mantis take nothing by its Complaint;
- e) judgment against Mantis and in favor of Culver's;
- f) dismissal of the Complaint with prejudice;
- g) a finding that this case is an exceptional case under 35 U.S.C. § 285 and an award to Culver's of its costs and attorneys' fees incurred in this action; and
- h) further relief as the Court may deem just and proper.

JURY DEMAND

Culver's hereby demands trial by jury on all issues.

Dated: June 12, 2017

Respectfully submitted,

FISH & RICHARDSON P.C.

By: *David B. Conrad*

Neil J. McNabney
mcnabney@fr.com
Texas Bar No. 24002583
David B. Conrad
conrad@fr.com
Texas Bar No. 24049042
Ricardo J. Bonilla
rbonilla@fr.com
Texas Bar No. 24082704
Theresa M. Dawson
tdawson@fr.com
Texas Bar No. 24065128

1717 Main Street, Suite 5000
Dallas, Texas 75201
(214) 747-5070 - Telephone
(214) 747-2091 - Facsimile

**COUNSEL FOR DEFENDANT
CULVER FRANCHISING SYSTEM, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on June 12, 2017, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Ricardo J. Bonilla

Ricardo J. Bonilla