

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

GEOTAG, INC.,

Plaintiff,

v.

STARBUCKS CORPORATION, *et al.*,

Defendants.

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Civil Action No. 2:10-00572-TJW

DEFENDANT CEC ENTERTAINMENT, INC. AND CEC ENTERTAINMENT CONCEPTS, LP.’S ORIGINAL ANSWER TO PLAINTIFF’S COMPLAINT FOR PATENT INFRINGEMENT AND COUNTERCLAIMS

Defendants CEC Entertainment, Inc. and CEC Entertainment Concepts, L.P. (collectively, “Defendants”) hereby answer the Complaint for Patent Infringement (“Complaint”) asserted by Plaintiff Geotag, Inc. (“Plaintiff”), and would show the Court as follows:

PARTIES

1. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 1 of the Complaint and, therefore, Defendants deny all such allegations.
2. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 2 of the Complaint and, therefore, Defendants deny all such allegations.
3. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 3 of the Complaint and, therefore, Defendants deny all such allegations.
4. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 4 of the Complaint and, therefore, Defendants deny all such allegations.
5. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 5 of the Complaint and, therefore, Defendants deny all such allegations.

6. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 6 of the Complaint and, therefore, Defendants deny all such allegations.

7. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 7 of the Complaint and, therefore, Defendants deny all such allegations.

8. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 8 of the Complaint and, therefore, Defendants deny all such allegations.

9. Defendants admit the allegations contained in Paragraph 9 of the Complaint.

10. Defendants admit the allegations contained in Paragraph 10 of the Complaint.

11. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 11 of the Complaint and, therefore, Defendants deny all such allegations.

12. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 12 of the Complaint and, therefore, Defendants deny all such allegations.

13. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 13 of the Complaint and, therefore, Defendants deny all such allegations.

14. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 14 of the Complaint and, therefore, Defendants deny all such allegations.

15. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 15 of the Complaint and, therefore, Defendants deny all such allegations.

16. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 16 of the Complaint and, therefore, Defendants deny all such allegations.

17. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 17 of the Complaint and, therefore, Defendants deny all such allegations.

18. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 18 of the Complaint and, therefore, Defendants deny all such allegations.

19. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 19 of the Complaint and, therefore, Defendants deny all such allegations.

20. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 20 of the Complaint and, therefore, Defendants deny all such allegations.

21. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 21 of the Complaint and, therefore, Defendants deny all such allegations.

22. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 22 of the Complaint and, therefore, Defendants deny all such allegations.

23. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 23 of the Complaint and, therefore, Defendants deny all such allegations.

24. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 24 of the Complaint and, therefore, Defendants deny all such allegations.

25. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 25 of the Complaint and, therefore, Defendants deny all such allegations.

26. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 26 of the Complaint and, therefore, Defendants deny all such allegations.

27. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 27 of the Complaint and, therefore, Defendants deny all such allegations.

28. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 28 of the Complaint and, therefore, Defendants deny all such allegations.

29. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 29 of the Complaint and, therefore, Defendants deny all such allegations.

30. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 30 of the Complaint and, therefore, Defendants deny all such allegations.

31. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 31 of the Complaint and, therefore, Defendants deny all such allegations.

32. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 32 of the Complaint and, therefore, Defendants deny all such allegations.

33. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 33 of the Complaint and, therefore, Defendants deny all such allegations.

34. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 34 of the Complaint and, therefore, Defendants deny all such allegations.

35. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 35 of the Complaint and, therefore, Defendants deny all such allegations.

36. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 36 of the Complaint and, therefore, Defendants deny all such allegations.

37. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 37 of the Complaint and, therefore, Defendants deny all such allegations.

38. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 38 of the Complaint and, therefore, Defendants deny all such allegations.

39. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 39 of the Complaint and, therefore, Defendants deny all such allegations.

40. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 40 of the Complaint and, therefore, Defendants deny all such allegations.

41. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 41 of the Complaint and, therefore, Defendants deny all such allegations.

42. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 42 of the Complaint and, therefore, Defendants deny all such allegations.

43. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 43 of the Complaint and, therefore, Defendants deny all such allegations.

44. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 44 of the Complaint and, therefore, Defendants deny all such allegations.

45. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 45 of the Complaint and, therefore, Defendants deny all such allegations.

46. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 46 of the Complaint and, therefore, Defendants deny all such allegations.

47. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 47 of the Complaint and, therefore, Defendants deny all such allegations.

48. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 48 of the Complaint and, therefore, Defendants deny all such allegations.

49. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 49 of the Complaint and, therefore, Defendants deny all such allegations.

50. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 50 of the Complaint and, therefore, Defendants deny all such allegations.

JURISDICTION AND VENUE

51. The allegations contained in Paragraph 51 of the Complaint state legal conclusions to which Defendants are not required to plead. To the extent an answer is required, however, these allegations are denied.

52. The allegations contained in Paragraph 52 of the Complaint state legal conclusions to which Defendants are not required to plead. To the extent an answer is required, however, these allegations are denied.

53. The allegations contained in Paragraph 53 of the Complaint state legal conclusions to which Defendants are not required to plead. To the extent an answer is required, however, these allegations are denied.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 5,930,474

54. Defendants admit that U.S. Patent No. 5,930,474 (the “474 Patent”) is entitled “Internet Organizer for Accessing Geographically and Topically Based Information” and that it states on its face that it was issued on July 29, 1999.

55. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 55 of the Complaint and, therefore, Defendants deny all such allegations.

56. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 56 of the Complaint and, therefore, Defendants deny all such allegations.

57. To the extent the allegations contained in paragraph 57 are directed to Defendants, Defendants deny all of the allegations contained in paragraph 57. Specifically,

Defendants deny any infringement of the '474 Patent. With respect to the other defendants in this lawsuit, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 57 as they relate to the other Defendants, and on that basis Defendants deny the same.

58. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 58 of the Complaint and, therefore, Defendants deny all such allegations.

59. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 59 of the Complaint and, therefore, Defendants deny all such allegations.

60. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 60 of the Complaint and, therefore, Defendants deny all such allegations.

61. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 61 of the Complaint and, therefore, Defendants deny all such allegations.

62. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 62 of the Complaint and, therefore, Defendants deny all such allegations.

63. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 63 of the Complaint and, therefore, Defendants deny all such allegations.

64. Defendants deny that they have committed any actions that could constitute infringement of the '474 Patent.

65. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 65 of the Complaint and, therefore, Defendants deny all such allegations.

66. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 66 of the Complaint and, therefore, Defendants deny all such allegations.

67. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 67 of the Complaint and, therefore, Defendants deny all such allegations.

68. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 68 of the Complaint and, therefore, Defendants deny all such allegations.

69. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 69 of the Complaint and, therefore, Defendants deny all such allegations.

70. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 70 of the Complaint and, therefore, Defendants deny all such allegations.

71. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 71 of the Complaint and, therefore, Defendants deny all such allegations.

72. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 72 of the Complaint and, therefore, Defendants deny all such allegations.

73. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 73 of the Complaint and, therefore, Defendants deny all such allegations.

74. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 74 of the Complaint and, therefore, Defendants deny all such allegations.

75. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 75 of the Complaint and, therefore, Defendants deny all such allegations.

76. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 76 of the Complaint and, therefore, Defendants deny all such allegations.

77. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 77 of the Complaint and, therefore, Defendants deny all such allegations.

78. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 78 of the Complaint and, therefore, Defendants deny all such allegations.

79. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 79 of the Complaint and, therefore, Defendants deny all such allegations.

80. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 80 of the Complaint and, therefore, Defendants deny all such allegations.

81. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 81 of the Complaint and, therefore, Defendants deny all such allegations.

82. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 82 of the Complaint and, therefore, Defendants deny all such allegations.

83. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 83 of the Complaint and, therefore, Defendants deny all such allegations.

84. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 84 of the Complaint and, therefore, Defendants deny all such allegations.

85. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 85 of the Complaint and, therefore, Defendants deny all such allegations.

86. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 86 of the Complaint and, therefore, Defendants deny all such allegations.

87. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 87 of the Complaint and, therefore, Defendants deny all such allegations.

88. Defendants lack sufficient information and knowledge to admit or deny the allegations in Paragraph 88 of the Complaint and, therefore, Defendants deny all such allegations.

89. Defendants deny that it is infringing or has infringed the '474 Patent, and further denies that any alleged infringement could be willful. Defendants further deny any remaining allegations in Paragraph 89.

90. To the extent the allegations contained in Paragraph 90 are directed to Defendants, Defendants deny all of the allegations contained in paragraph 90. Specifically, Defendants deny that they have infringed the '474 Patent and deny that Plaintiff has suffered any injury as a result of any act of Defendants. Defendants further denies any remaining allegations in paragraph 90 that pertain to Defendants. With respect to the other defendants in this lawsuit, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 90 as they relate to the other defendants, and on that basis Defendants deny the same.

PRAYER FOR RELIEF

Defendants deny that plaintiff is entitled to the relief requested or any other relief. To any extent that Geotag avers or makes any allegations in its prayer for relief or elsewhere in its

Complaint that was not specifically addressed herein, any such averment and/or allegation is denied.

WHEREFORE, Defendants respectfully request that this Court enter judgment in favor of Defendants and against Geotag, together with an award of costs and attorney fees, along with such other relief as this Court may deem just and proper.

DEFENSES

First Defense

1. Venue is improper in the Eastern District of Texas.

Second Defense

2. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

Third Defense

3. Defendants have not infringed and does not infringe, nor have they contributed to any infringement by others, nor has it induced others to infringe any claim of United States Patent No. 5,930,474 (the "'474 Patent").

Fourth Defense

4. The claims of the '474 Patent are invalid for failure to comply with the requirements for patentability under the patent laws, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, and/or 112.

Fifth Defense

5. Plaintiff's claims are barred in whole or in part by the doctrines of laches and/or estoppel.

Sixth Defense

6. To the extent that plaintiff, licensees, or its predecessors in interest of the '474 Patent failed to properly notify Defendants of the actions alleged to infringe the '474 Patent, including but not limited to, by reason of 35 U.S.C. § 287 or infringement allegations based on indirect infringement, Defendants are not liable to Plaintiff for those allegedly infringing actions performed before receipt of actual notice of allegations that it was infringing the '474 Patent.

Seventh Defense

7. Plaintiff's claims are barred in whole or in part by prosecution history estoppel.

Eighth Ninth Defense

8. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

Ninth Defense

9. Plaintiff's claims are barred in whole or in part due to Plaintiff's failure to mitigate damages, if any.

Tenth Defense

10. Plaintiff's claims are barred in whole or in part for lack of standing.

Eleventh Defense

11. Plaintiff's claims are barred in whole or in part by the doctrine of issue preclusion.

Twelfth Defense

12. Pursuant to 35 U.S.C. § 286, plaintiff's claims are barred in whole or in part for all events occurring more than six years before the filing of this lawsuit.

Thirteenth Defense

13. Plaintiff's claims are barred in whole or in part based on the doctrine of patent exhaustion.

Fourteenth Defense

14. Plaintiff's claims are barred in whole or in part because all or part of the alleged infringing activity is covered, in whole or in part, by a license and/or covenant not to sue granted by Plaintiff.

Fifteenth Defense

15. The '474 Patent is unenforceable as a result of inequitable conduct in its procurement.

COUNTERCLAIMS

As set forth above, Defendants contend that venue is improper in the Eastern District of Texas. Accordingly, the counterclaims asserted below in no way constitute a waiver of that or any other defense asserted by Defendants.¹ Thus, subject to and without waiving any of the foregoing defenses, Defendants asserts the following Counterclaims against Plaintiff/Counter-Defendant Geotag, Inc. ("Geotag"):

Jurisdiction and Venue

16. This Court has subject-matter jurisdiction over the following Counterclaims under 28 U.S.C. §§ 1331 and 1338(a) (2004). This Court has personal jurisdiction over Geotag because it has voluntarily appeared before this Court for all purposes.

17. Venue is proper as to Geotag under 28 U.S.C. §§ 1391(b) and 1400(b) (2004).

The Parties

18. Counterclaim-Plaintiffs CEC Entertainment, Inc., a Kansas corporation, and CEC Entertainment Concepts, L.P., a Texas corporation, (collectively, "CEC") have their principal places of business in Irving, Texas.

¹See *Bayou Steel Corp. v. M/V Amstelvoorn*, 809 F.2d 1147, 1148-49 (5th Cir. 1987).

19. On information and belief, Counterclaim-Defendant Geotag is a Delaware corporation with a place of business in Plano, Texas.

20. Plaintiff/Counter-Defendant Geotag has filed suit in this matter asserting infringement by CEC of the '474 Patent and. The allegations in the Complaint have created an actual and justiciable controversy between Geotag and CEC concerning infringement, invalidity, and enforcement of the '474 Patent.

21. Pursuant to the Declaratory Judgments Act, 28 U.S.C. §§ 2201-2202 (2004), CEC is entitled to a declaratory judgment that it has not infringed any valid and enforceable claim of the '474 Patent.

First Counterclaim – Declaratory Judgment of Non-Infringement

22. CEC incorporates by reference the statements and allegations set forth in paragraphs 1-21 with the same force and effect as though fully rewritten herein.

23. On information and belief, CEC has not infringed and is not infringing any claim of the '474 Patent. On information and belief, CEC has not contributorily infringed and is not contributorily infringing, and has not actively induced infringement and is not actively inducing others to infringe any claim of the '474 Patent.

24. CEC is entitled to a declaratory judgment that it has not infringed and is not infringing (either directly, contributorily, or by inducement) any claim of the '474 Patent, either literally or by the application of the doctrine of equivalents.

Second Counterclaim – Declaratory Judgment of Invalidity

25. CEC incorporates by reference the statements and allegations set forth in paragraphs 1-24 with the same force and effect as though fully rewritten herein.

26. The '474 Patent is invalid for failure to meet the conditions set forth in 35 U.S.C. §§ 101, 102, 103 and 112.

27. CEC is entitled to a declaratory judgment that the '474 Patent is invalid.

28. This is an exceptional case under 35 U.S.C. § 285. Accordingly, CEC is entitled to recover its reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, CEC respectfully requests that this Court enter judgment in its favor and grant the following relief:

- a. Dismiss the Complaint against CEC for improper venue;
- b. Dismiss with prejudice the Complaint against CEC;
- c. Declare that CEC does not infringe any claim of the '474 Patent;
- d. Declare that the '474 Patent is invalid;
- e. Declare that this is an exceptional case and award CEC its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- f. Award to CEC its costs and disbursements associated with this action; and
- g. Award any additional relief as the Court may deem appropriate and just under the circumstances.

Respectfully submitted,

/s/ Brian C. McCormack

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COUNSEL FOR DEFENDANTS/COUNTER-
PLAINTIFFS CEC ENTERTAINMENT, INC. and
CEC ENTERTAINMENT CONCEPTS, L.P.

CERTIFICATE OF SERVICE

This is to certify that on the 14th day of March 2011, a copy of the foregoing *Defendants CEC Entertainment, Inc. and CEC Entertainment, Concepts, L.P.'s Original Answer to Plaintiff's Complaint for Patent Infringement* was electronically filed with the Clerk of the Court using the CM/ECF system per Local Rule CV-5(a)(3), which sent a Notification of Electronic Filing (NOEF) to all counsel of record.

/s/ Brian C. McCormack _____