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11 and Counterclaimant SimpleAir, Inc.

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 **GOOGLE INC.,**
15 **Plaintiff,**

16 **v.**

17 **SIMPLEAIR, INC., et al.,**
18 **Defendants.**

Case No. LA 2:16-cv-03758 JAK
(PLAx)

**SIMPLEAIR'S ANSWER AND FIRST
AMENDED COUNTERCLAIMS TO
GOOGLE'S AMENDED COMPLAINT**

DEMAND FOR JURY TRIAL

1 As of the time this document is being filed, Google’s operative complaint in this
2 action is the First Amended Complaint filed by Google on June 30, 2016. Dkt. 18.
3 Pursuant to the Court’s August 20, 2020, Order (Dkt. 127), Defendant and
4 Counterclaimant SimpleAir files this Answer and First Amended Counterclaim.
5 Defendant SimpleAir answers and counterclaims to Plaintiff Google’s Amended
6 Complaint (Dkt. 18).

7 **I. ANSWER**

8 The paragraphs in this answer are numbered to correspond with the paragraphs
9 in Google’s Amended Complaint. All allegations in the Amended Complaint that are
10 not specifically admitted in this answer are specifically denied.

11 To the extent that the unnumbered introduction to the Amended Complaint
12 contains allegations to which SimpleAir must respond, SimpleAir admits that Google
13 is seeking a declaration that Google does not directly or indirectly infringe U.S. Patents
14 9,356,899 (‘899 Patent) and 9,380,106 (‘106 patent) (collectively, “challenged
15 patents”) and/or that the challenged patents are unenforceable. SimpleAir denies that
16 Google is entitled to the relief it seeks. SimpleAir denies all remaining allegations
17 contained in the un-numbered introduction.

18 **Response to “Nature of the Action”¹**

19 1. SimpleAir admits that Google’s claims arise under the patent laws of the
20 United States and that Google seeks declaratory relief under the Declaratory Judgment
21 Act. SimpleAir admits that it has filed claims of infringement against Google for
22 infringement of the following patents: U.S. Patent Nos. 7,035,914 (the ‘914 Patent),
23 6,021,433 (the ‘433 Patent), 8,601,154 (the ‘154 Patent), 8,572,279 (the ‘279 Patent),
24 8,656,048 (the ‘048 Patent), and 8,639,838 (the ‘838 Patent). SimpleAir admits that
25 the systems and methods that SimpleAir accused of infringing the foregoing patents

26 _____
27 ¹ The headings set forth in Google’s Amended Complaint are repeated in this
28 Answer for ease of reference. To the extent that the headings in Google’s Amended
Complaint contain any allegations to which SimpleAir must respond, SimpleAir denies
each allegation contained in each of the headings of Google’s Amended Complaint.

1 include Google Cloud Messaging, GCM for Chrome, Android Cloud to Device
2 Messaging, and Google applications that used such services to deliver instant
3 notifications to Android smartphones and tablets (collectively, “GCM services”).
4 SimpleAir has no actual knowledge of the motivations behind Google’s request for
5 declaratory judgment relief and on that basis denies Google’s allegation that it requests
6 declaratory relief because SimpleAir filed the foregoing actions. SimpleAir admits
7 that the ‘914, ‘433, ‘154, ‘279, ‘048, and ’839 patents are in the same family, are
8 terminally disclaimed to the ‘433 patent, and share a common specification.
9 SimpleAir denies that each of the ‘914, ‘433, ‘154, ‘279, ‘048, and ’839 “are in fact
10 one invention.” SimpleAir denies that it has “engaged in a pattern of filing successive
11 litigation against Google.” SimpleAir admits that a jury returned a verdict of non-
12 infringement of the ‘279 patent, but that verdict is subject to pending post-trial
13 motions. SimpleAir admits that a panel of the Federal Circuit reversed a jury verdict
14 that Google infringes the ‘914 patent and held that Google does not infringe the ‘914
15 patent, but that decision has no impact on the ‘899 and ‘106 patents in this case.
16 SimpleAir denies Google’s allegation that it does not infringe “SimpleAir’s claimed
17 invention” or that any Court or jury made such a determination. SimpleAir denies all
18 remaining allegations of paragraph 1.

19 2. SimpleAir admits that Google seeks a declaratory judgment of non-
20 infringement and unenforceability of the challenged patents. SimpleAir denies the
21 remaining allegations of paragraph 2.

22 3. SimpleAir admits that the ‘899 patent issued on May 31, 2016.
23 SimpleAir admits that the ‘899 patent is in the same family (though not a direct
24 continuation of) the ‘914, ‘433, ‘154, ‘279, ‘048, and ’839 patents. SimpleAir admits
25 that the specification of the ‘899 patent is substantively the same as the specification of
26 the ‘433 patent. SimpleAir admits that the ‘899 patent is terminally disclaimed to the
27 patent term of the ‘433 patent. SimpleAir admits that a copy of the ‘899 patent is
28

1 attached to Google’s Amended Complaint as exhibit A. SimpleAir denies all
2 remaining allegations of paragraph 3.

3 4. SimpleAir admits that the ‘106 patent issued on June 28, 2016.
4 SimpleAir admits that the ‘106 patent is a continuation of the ‘048 patent. SimpleAir
5 admits that the ‘106 patent is in the same family (though not a direct continuation of)
6 the ‘914, ‘433, ‘154, ‘279, and ’839 patents. SimpleAir admits that the specification of
7 the ‘106 patent is substantively the same as the specification of the ‘433 patent.
8 SimpleAir admits that the ‘106 patent is terminally disclaimed to the patent term of the
9 ‘433 patent. SimpleAir admits that a copy of the ‘106 patent is attached to Google’s
10 Amended Complaint as exhibit B. SimpleAir denies all remaining allegations of
11 paragraph 4.

12 5. SimpleAir denies that the ‘899 and ‘106 patents are not infringed by and
13 are unenforceable against Google. SimpleAir admits that Google seeks a declaratory
14 judgment of non-infringement and unenforceability of the ‘899 and ‘106 patent.
15 SimpleAir has no actual knowledge of Google’s motivations for seeking declaratory
16 relief and on that basis denies Google’s assertions concerning its motivations for
17 seeking declaratory relief. SimpleAir denies that Google is entitled to the relief it
18 seeks and denies that such relief is necessary to “remove from Google’s GCM services
19 the haze that SimpleAir’s litigation continuously seeks to impose.” SimpleAir denies
20 all remaining allegations of paragraph 5.

21 **Response to “The Parties”²**

22 6. SimpleAir is informed and believes that the allegations in paragraph 6 are
23 true and on that basis admits them.

24 7. SimpleAir admits that it is a corporation. SimpleAir admits that its
25 principal place of business is in Plano, Texas. SimpleAir admits that John Payne,
26
27

28 ² The claims against John Payne and Tim von Kaenel were dismissed without
prejudice on November 1, 2016. Dkt. 39. Accordingly they are not presently parties.

1 Mike Mirel, Tim von Kaenel, and Seth Weisberg reside in California. SimpleAir
2 denies all remaining allegations of paragraph 7.

3 8. SimpleAir denies that John Payne resides in Los Angeles County; he
4 resides in Orange County. SimpleAir admits that Mr. Payne is a principal of
5 SimpleAir, Inc. and a named inventor and that he has signed declarations submitted
6 during the prosecution of the '899 and '106 patents and related patents in the same
7 family. SimpleAir denies all remaining allegations of paragraph 8.

8 9. SimpleAir denies that Tim von Kaenel resides in Los Angeles County; he
9 resides in Orange County. SimpleAir admits that Mr. von Kaenel is a principal of
10 SimpleAir, Inc. and a named inventor and that he has signed declarations submitted
11 during the prosecution of the '899 and '106 patents and related patents in the same
12 family. SimpleAir denies all remaining allegations of paragraph 9.

13 **Response to "Jurisdiction and Venue"**

14 10. SimpleAir admits that Google invokes the Declaratory Judgment Act and
15 the patent laws of the United States. SimpleAir denies all remaining allegations of
16 paragraph 10.

17 11. SimpleAir admits that this Court has subject matter jurisdiction over
18 Google's declaratory judgment claims against SimpleAir. SimpleAir denies that this
19 Court has subject matter jurisdiction over Google's declaratory judgment claims
20 against Mr. Payne and Mr. von Kaenel. SimpleAir denies that the Declaratory
21 Judgment Act provides an independent source of subject matter jurisdiction.
22 SimpleAir denies all remaining allegations of paragraph 11.

23 12. SimpleAir admits that the Court has personal jurisdiction over SimpleAir.
24 SimpleAir denies all remaining allegations of paragraph 12.

25 13. SimpleAir denies the allegations of paragraph 13.

26 14. SimpleAir denies the allegations of paragraph 14.

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