

Joseph Mohr, OSB No. 053274

Email: joey@mohriplaw.com

MOHR INTELLECTUAL PROPERTY LAW SOLUTIONS, P.C.

522 SW 5th Avenue, Suite 1270

Portland, Oregon 97204-2137

Telephone: 503/336-1214

Facsimile: 866/387-6875

Andrew J. Holen, Texas Bar No. 24061244 (*pro hac vice* application pending)

Email: andy@korelaw.com

CHOE, HOLEN, YOO & BURCHFIEL, P.C.

3030 LBJ Freeway, Suite 1650

Dallas, Texas 75234

Telephone: 214/884-0888

Facsimile: 214/884-0555

Attorneys for Defendant Simtech Software, Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

GARY ODOM, an Oregon resident

Case No. 3:09-cv-00406-AC

Plaintiff,

v.

**DEFENDANT SIMTECH
SYSTEMS, INC.'S
ANSWER AND
COUNTERCLAIMS**

ATTACHMATE CORPORATION,

a Washington corporation,

AUSTHINK USA, INC.,

a Delaware corporation,

BAE SYSTEMS, INC.,

a Delaware corporation,

BBS TECHNOLOGIES, INC.,

a Texas corporation,

COMPONENTONE, LLC,

a Pennsylvania corporation,

DIONEX CORPORATION,

a Delaware corporation,

DUOSERVICE, INC.,

a California corporation,
EMPORTAL, INC.,
a California corporation,
ESQUIRE INNOVATIONS, INC.,
a Nevada corporation,
FINDEX.COM, INC.,
a Nevada corporation,
FRONTLINE SYSTEMS, INC.,
a Nevada corporation,
GE FANUC INTELLIGENT PLATFORMS, INC.,
a Delaware corporation,
LIVINGSTONE TECHNOLOGIES, INC.,
a Utah corporation,
MATCHWARE, INC.,
a Florida corporation,
METAPRODUCTS CORPORATION,
a Florida corporation,
MICROSYSTEMS COMPANY, LLC,
an Illinois corporation,
MINDJET CORPORATION,
a Delaware corporation,
MVP SYSTEMS SOFTWARE, INC.,
a Connecticut corporation,
OMNIVEX CORPORATION,
an Ontario corporation,
PROMPT AMERICAS,
a California corporation,
**SIEMENS PRODUCT LIFECYCLE MANAGEMENT
SOFTWARE, INC.,**
a Delaware corporation,
MANAGEMENT SOFTWARE, INC.,
a Delaware corporation,
SIMTECH SOFTWARE, INC.,
a Texas corporation,
SMARTDRAW.COM,
a California corporation,
TECHSMITH CORPORATION,
a Michigan corporation,
TLM, INC.,
a Washington Corporation,
TRADERS DEVELOPMENT, LLC,
a California corporation,

UNIFY CORPORATION,
a Delaware corporation,
Defendants.

Defendant Simtech Systems, Inc. (“Simtech”), by counsel, states the following as its Answer to Plaintiff’s Original Complaint.

NATURE OF THE ACTION

Simtech admits that the Complaint purports to be an action arising under the patent laws of the United States, but denies that there is any legal or factual basis for any such claims or that Plaintiff is entitled to any damages or relief from Simtech. To the extent allegations are directed to other Defendants, no response by Simtech is necessary or appropriate.

JURISDICTION AND VENUE

1. Simtech admits that the Complaint purports to be an action arising under the patent laws of the United States, but denies that there is any legal or factual basis for any such claims or that Plaintiff is entitled to any damages or relief from Simtech. Simtech admits that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1338(a). Simtech denies the remaining allegations of paragraph 1 not expressly admitted above.

2. Simtech admits that it has done business in this District and that venue may lie as to Simtech pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b). Simtech denies that it has committed or is committing acts of infringement. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 2 asserted against other Defendants and, therefore, denies them.

PARTIES

3. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 3 and, therefore, denies them.

4. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 4 and, therefore, denies them.

5. Simtech admits that U.S. Patent No. 7,363,592 (the “592 Patent”) entitled “Tool Group Manipulations” on its face lists Gary Odom as inventor. Simtech denies all allegations in paragraph 5 not expressly admitted above.

6. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 6 and, therefore, denies them.

7. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 7 and, therefore, denies them.

8. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 8 and, therefore, denies them.

9. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 9 and, therefore, denies them.

10. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 10 and, therefore, denies them.

11. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 11 and, therefore, denies them.

12. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 12 and, therefore, denies them.

13. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 13 and, therefore, denies them.

14. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 14 and, therefore, denies them.

15. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 15 and, therefore, denies them.

16. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 16 and, therefore, denies them.

17. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 17 and, therefore, denies them.

18. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 18 and, therefore, denies them.

19. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 19 and, therefore, denies them.

20. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 20 and, therefore, denies them.

21. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 21 and, therefore, denies them.

22. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 22 and, therefore, denies them.

23. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 23 and, therefore, denies them.

24. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 24 and, therefore, denies them.

25. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 25 and, therefore, denies them.

26. Simtech lacks information sufficient to form a belief as to the truth of the

allegations in paragraph 26 and, therefore, denies them.

27. Simtech admits the allegations of paragraph 27.

28. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 28 and, therefore, denies them.

29. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 29 and, therefore, denies them.

30. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 30 and, therefore, denies them.

31. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 31 and, therefore, denies them.

32. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 32 and, therefore, denies them.

PURPORTED CAUSES OF ACTION

33. Simtech admits that what appears to be a copy of the '592 Patent is attached as Exhibit A to the Complaint. Simtech admits that on its face, the '592 Patent, entitled "Tool Group Manipulations," issued on April 22, 2008 to inventor Gary Odom. Simtech lacks information sufficient to form a belief as to the truth of the remaining allegations in paragraph 33 and, therefore, denies them.

34. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 34 and, therefore, denies them.

35. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 35 and, therefore, denies them.

36. Simtech lacks information sufficient to form a belief as to the truth of the

allegations in paragraph 36 and, therefore, denies them.

37. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 37 and, therefore, denies them.

38. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 38 and, therefore, denies them.

39. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 39 and, therefore, denies them.

40. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 40 and, therefore, denies them.

41. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 41 and, therefore, denies them.

42. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 42 and, therefore, denies them.

43. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 43 and, therefore, denies them.

44. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 44 and, therefore, denies them.

45. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 45 and, therefore, denies them.

46. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 46 and, therefore, denies them.

47. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 47 and, therefore, denies them.

48. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 48 and, therefore, denies them.

49. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 49 and, therefore, denies them.

50. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 50 and, therefore, denies them.

51. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 51 and, therefore, denies them.

52. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 52 and, therefore, denies them.

53. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 53 and, therefore, denies them.

54. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 54 and, therefore, denies them.

55. Simtech denies the allegations of paragraph 55.

56. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 56 and, therefore, denies them.

57. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 57 and, therefore, denies them.

58. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 58 and, therefore, denies them.

59. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 59 and, therefore, denies them.

60. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 60 and, therefore, denies them.

61. To the extent the allegations of paragraph 61 are directed to Simtech, Simtech denies the allegations of paragraph 61. Simtech lacks information sufficient to form a belief as to the truth of the allegations in paragraph 61 directed to other defendants and, therefore, denies them.

62. Simtech admits that Odom demands a trial by jury, and agrees with Odom's demand for a jury trial.

63. Simtech denies any allegation not expressly admitted herein.

AFFIRMATIVE DEFENSES

Simtech alleges and asserts the following defenses in response to the allegations of the Complaint, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how defenses are denominated herein:

64. Simtech's actions with respect to the use, sale or offer for sale of services or products do not infringe literally or under the doctrine of equivalents, directly or indirectly, any properly construed, valid and/or enforceable claims of the patent in suit.

65. Odom's claims are barred, in whole or in part, because the claims of the Patent are invalid for failure to satisfy one or more conditions of patentability specified in Title 35, United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

66. Odom lacks standing to bring this action.

67. Odom's claims are barred, in whole or in part, under the doctrine of "unclean hands."

68. Odom's claims are barred, in whole or in part, because Odom suffered no damage

as a result of the alleged conduct by Simtech.

69. With respect to each and every purported claim for relief alleged in the Complaint, Simtech alleges that Odom's claims and demands for relief are barred by 28 U.S.C. § 1498(a) to the extent the products or services accused of infringing the '592 Patent have been used or manufactured by or for the United States.

70. Odom's request for relief for a finding that this case is exceptional, and an award of attorneys' fees and costs, fails to state a claim upon which relief can be granted because Odom has failed to allege the requisite facts.

71. Odom's requests for relief for a finding that this case is exceptional, and an award of attorneys' fees and costs, are barred because Simtech did not act with the requisite objective recklessness.

72. Odom's request for damages is limited by 35 U.S.C. § 287 to only those damages occurring after proper and sufficient notice of alleged infringement to Simtech.

73. Odom's Complaint is barred as to Simtech by the fact that any and all acts were undertaken or performed by Simtech in a permissible way, in good faith, and with the reasonable belief that such actions or conduct were lawful and valid.

74. Odom's claims are barred, in whole or in part, under the principles of consent and/or acquiescence.

75. Simtech alleges that Odom, at the time and place of the occurrence alleged in his Complaint, failed to exercise ordinary care on his own behalf under the circumstances then existing and that any and all events and occurrences in connection with the events alleged in the Complaint, and the resulting injuries and damages, if any, were proximately caused and contributed to by the said negligence of Odom. As a result thereof, Odom's right to recover

from Simtech should be diminished in whole or in part in an amount established by proof at trial.

76. Upon information and belief, the causes of action alleged in the Complaint herein are barred by the affirmative negligence and active misconduct of Odom.

77. Simtech reserves the right to assert affirmatively any other matter that constitutes an affirmative defense under applicable law and rules.

COUNTERCLAIMS

Simtech for its counterclaims against Gary Odom (“Odom”) alleges as follows:

JURISDICTION AND VENUE

1. This action arises under the Patent Laws of the United States, 35 U.S.C. §§ 100, *et seq.* and the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, based on an actual justiciable controversy between Simtech and Odom. Jurisdiction also arises under the Patent Laws of the United States, 35 U.S.C. §§ 100, *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338(a) and 2201.

2. Odom has submitted to the personal jurisdiction of this Court by bringing the present action.

3. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391 and 1400(b).

PARTIES

4. Counterclaimant Simtech is a corporation organized and existing under the laws of the State of Texas and it has its principal place of business at 1565 W. Main Street, Suite 208-310, Lewisville, Texas 75067.

5. Based on assertions by Odom, Counterclaim Defendant Odom is an individual residing at 1223 NW 12th Avenue, #1545, Portland, Oregon 97209.

FIRST COUNTERCLAIM
(Declaration of Noninfringement)

6. Simtech realleges and incorporates the allegations set forth in paragraph 1-5 of its Counterclaims.

7. There exists an actual case or controversy between Simtech and Odom concerning the alleged infringement of the '592 Patent by virtue of the Complaint and Answer and Defenses to the Complaint in this action.

8. Simtech has not infringed and does not infringe, contribute to the infringement of, or actively induce others to infringe any claim of the '592 Patent, either willfully or otherwise.

9. Simtech seeks a declaration from this Court that Simtech does not infringe any claim of the '592 Patent.

SECOND COUNTERCLAIM
(Declaration of Invalidity)

10. Simtech realleges and incorporates the allegations set forth in paragraphs 1-9 of its Counterclaims.

11. There exists an actual case or controversy between Simtech and Odom concerning the validity of the '592 Patent by virtue of the Complaint and Answer and Defenses to the Complaint in this action.

12. Each claim of the '592 Patent is invalid for failure to meet one or more of the provisions governing patentability specified in 35 U.S.C. §§ 101, 102, 103, and 112.

13. Simtech seeks a declaration from this Court that the '592 Patent is invalid.

THIRD COUNTERCLAIM
(Exceptional Case)

14. Simtech realleges and incorporates the allegations set forth in paragraphs 1-13 of its Counterclaims.

15. Odom has filed this action without a good faith basis for believing that Simtech infringes, making this case exceptional under 35 U.S.C. § 285. Thus, Simtech is entitled to an award of its attorneys' fees, expenses, and costs incurred in the defense and pursuit of this action.

DEMAND FOR JURY TRIAL

14. Simtech demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Simtech prays for a declaration and judgment in its favor against Odom for the following relief:

A. For an Order declaring that the claims of the '592 Patent are not infringed by Simtech;

B. For an Order declaring that the claims of the '592 Patent are invalid and/or unenforceable;

C. For an Order dismissing with prejudice Odom's Complaint for patent infringement;

D. For an Order declaring this case exceptional pursuant to 35 U.S.C. § 285, and awarding costs, expenses and attorney's fees to Simtech;

E. That Odom be awarded nothing from his Complaint;

F. For such other and further relief as this Court may deem just and proper.

DATED this 6th day of August 2009.

Respectfully submitted,

MOHR IP LAW SOLUTIONS, P.C.

/s/ Joseph Mohr

Joseph Mohr, OSB No. 053274

Mohr Intellectual Property Law Solutions, P.C.

522 SW 5th Avenue, Suite 1270

Portland, Oregon 97204-2137
Email: joey@mohriplaw.com
Telephone: 503/336-1214
Facsimile: 866/387-6875

CHOE, HOLEN, YOO & BURCHFIEL, P.C.

/s/ Andrew J. Holen
Andrew J. Holen, Texas Bar. No. 24061244 (*pro*
hac vice pending)
Choe, Holen, Yoo & Burchfiel, P.C.
3030 LBJ Freeway, Suite 1650
Dallas, Texas 75234
Email: andy@korelaw.com
Telephone: 214/884-0888
Facsimile: 214/884-0555

Attorneys for Defendant Simtech Software, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANT SIMTECH SOFTWARE, INC'S ANSWER AND COUNTERCLAIMS on all attorneys of record via the Court's Case Management/Electronic Case File system on this 6th day of August, 2009.

/s/ Joseph Mohr
Joseph Alan Mohr, OSB No. 053274
Attorneys for Simtech Software, Inc.