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3:02-CV-02060 LUCENT TECHNOLOGIES V. GATEWAY INC

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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: *m. m...* DEPUTY

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17 Attorneys for Plaintiffs and Counterclaim-Defendants  
18 *Lucent Technologies Inc. and Lucent Technologies*  
19 *Guardian I LLC*

20 UNITED STATES DISTRICT COURT  
21 SOUTHERN DISTRICT OF CALIFORNIA

22 LUCENT TECHNOLOGIES INC. and  
23 LUCENT TECHNOLOGIES GUARDIAN I  
24 LLC,

25 Plaintiffs,

26 v.

27 GATEWAY, INC. and GATEWAY COUNTRY  
28 STORES LLC,

Defendants,

and

MICROSOFT CORPORATION,

Intervener.

GATEWAY, INC. and GATEWAY COUNTRY  
STORES LLC,

Counter-claimants,

v.

LUCENT TECHNOLOGIES INC. and  
LUCENT TECHNOLOGIES GUARDIAN I  
LLC,

Counter-defendants.

CASE NO. 02-CV-2060 BTM (LAB)

LUCENT TECHNOLOGIES INC.'S AND  
LUCENT TECHNOLOGIES GUARDIAN I  
LLC'S REPLY AND COUNTERCLAIMS  
TO THE COUNTERCLAIMS OF  
INTERVENER MICROSOFT

JURY TRIAL DEMANDED

ORIGINAL

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*ad*

1           Lucent Technologies Inc. and Lucent Technologies Guardian I LLC (collectively, "Lucent")  
2 hereby submit their Reply and Counterclaims to the Counterclaims of Intervener Microsoft  
3 Corporation ("Microsoft").

4   **THE PARTIES**

5           1.       Lucent lacks knowledge or information sufficient to form a belief as to the truth of  
6 the allegations contained in Paragraph 1 and therefore denies them.

7           2.       Admitted.

8           3.       Admitted.

9           4.       Paragraph 4 does not contain an allegation to which a response is required.

10   **JURISDICTION AND VENUE**

11          5.       Lucent admits that Microsoft's counterclaims arise under the Patent Laws of the  
12 United States. Lucent admits that the Court has subject-matter jurisdiction over Counts III-V of  
13 Microsoft's Counterclaims, but denies that the Court has subject-matter jurisdiction over Counts I  
14 and II.

15          6.       Lucent admits that venue is proper in this judicial district.

16   **COUNT I**

17   **(Declaratory Judgment Regarding the Torok Patent)**

18          7.       Lucent incorporates its responses to the allegations of Paragraphs 1 through 6 set  
19 forth above as if fully set forth herein.

20          8.       Lucent admits that the Torok '956 Patent is now expired, but denies the allegations of  
21 Paragraph 8 in so far as they concern any time period before the expiration of the Torok '956 Patent.

22          9.       Denied.

23          10.      Denied.

24   **COUNT II**

25   **(Declaratory Judgment Regarding the Netravali Patent)**

26          11.      Lucent incorporates its responses to the allegations of Paragraphs 1 through 6 set  
27 forth above as if fully set forth herein.

28          12.      Lucent admits that the Netravali '272 Patent is now expired, but denies the allegations

1 of Paragraph 12 in so far as they concern any time period before the expiration of the Netravali '272  
2 Patent.

3 13. Denied.

4 14. Denied.

5 15. Denied.

6 **COUNT III**

7 **(Declaratory Judgment Regarding the Jayant Patent)**

8 16. Lucent incorporates its responses to the allegations of Paragraphs 1 through 6 set  
9 forth above as if fully set forth herein.

10 17. Denied.

11 18. Denied.

12 19. Denied.

13 20. Admitted.

14 **COUNT IV**

15 **(Declaratory Judgment Regarding the Day Patent)**

16 21. Lucent incorporates its responses to the allegations of Paragraphs 1 through 6 set  
17 forth above as if fully set forth herein.

18 22. Denied.

19 23. Denied.

20 24. Admitted.

21 **COUNT V**

22 **(Declaratory Judgment Regarding the Haskell Patent)**

23 25. Lucent incorporates its responses to the allegations of Paragraphs 1 through 6 set  
24 forth above as if fully set forth herein.

25 26. Denied.

26 27. Denied.

27 28. Denied.

28 29. Admitted.

1                                   **PRAYER FOR RELIEF ON MICROSOFT'S COUNTERCLAIMS**

2           Lucent denies that Microsoft is entitled to any of the relief prayed for in Paragraphs A  
3 through F of its prayer for relief.

4                                   **COUNTERCLAIMS**

5           Pursuant to Rule 13 of the Federal Rules of Civil Procedure, Lucent hereby asserts the  
6 following counterclaims against Intervener Microsoft.

7                                   **PARTIES**

8           1.       Plaintiff Lucent Technologies Inc. is a corporation organized under the laws of the  
9 state of Delaware with its principal place of business at 600 Mountain Avenue, Murray Hill, NJ  
10 07974.

11          2.       Plaintiff Lucent Technologies Guardian I LLC is a limited liability company  
12 organized under the laws of the state of Delaware with its principal place of business at 600  
13 Mountain Avenue, Murray Hill, New Jersey 07974.

14          3.       Lucent is a leading global supplier of computer and communications equipment,  
15 including data, software, voice, and wireless-networking technologies. Researchers at Lucent's Bell  
16 Laboratories have developed a wide variety of key innovations that have greatly enhanced the  
17 capabilities and utility of personal computers. Common features such as video display, audio  
18 encoding, telephony, networking, and user interfaces have all benefited from Lucent's research and  
19 development efforts.

20          4.       Microsoft Corporation states that it is a Washington corporation with its principal  
21 place of business at One Microsoft Way, Redmond, WA 98052-6399.

22          5.       Microsoft makes, uses, sells, and offers for sale in the United States software for  
23 computer systems, components, and accessories.

24                                   **NATURE OF THE ACTION**

25          6.       These are compulsory counterclaims under Fed. R. Civ. P. 13 for infringement of  
26 three United States Patents. This action is based upon the Patent Laws of the United States, 35  
27 U.S.C. § 1 et seq.

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1 **JURISDICTION AND VENUE**

2 7. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§  
3 1331, 1338(a) and 1367.

4 8. Venue is proper in this district because these claims are being brought as compulsory  
5 counterclaims pursuant to Fed. R. Civ. P. 13(a) and under 28 U.S.C. §§ 1391(b) and (c) and 1400(b)  
6 because Microsoft has committed acts of infringement in this district and because Microsoft is  
7 subject to personal jurisdiction in this district.

8 **THE PATENTS**

9 9. United States Patent No. 4,617,676 (“the Jayant ‘676 Patent”), entitled “Predictive  
10 Communication System Filtering Arrangement,” was duly and legally issued on October 14, 1986,  
11 to Jayant et al. A copy of the Jayant ‘676 Patent is attached to Lucent’s Complaint in this action as  
12 Exhibit E.

13 10. United States Patent No. 4,763,356 (“the Day ‘356 Patent”), entitled “Touch Screen  
14 Form Entry System,” was duly and legally issued on August 9, 1988, to Day, Jr. et al. A copy of the  
15 Day ‘356 Patent is attached to Lucent’s Complaint in this action as Exhibit F.

16 11. United States Patent No. 4,958,226 (“the Haskell ‘226 Patent”), entitled “Conditional  
17 Motion Compensated Interpolation Of Digital Motion Video,” was duly and legally issued on  
18 September 18, 1990, to Haskell et al. A copy of the Haskell ‘226 Patent is attached to Lucent’s  
19 Complaint in this action as Exhibit G.

20 12. Lucent owns the Jayant ‘676, Day ‘356, and Haskell ‘226 Patents, with the right to  
21 sue for past infringement.

22 **COUNT I**

23 **(Patent Infringement of United States Patent No. 4,617,676)**

24 13. Paragraphs 1 through 12 are incorporated by reference as if stated fully herein.

25 14. The Jayant ‘676 patent is valid and enforceable.

26 15. Microsoft makes, uses, sells, and/or offers to sell products that infringe at least one  
27 claim of the Jayant ‘676 Patent.

28 16. Microsoft also contributes to and/or induces the infringement of at least one claim of

1 the Jayant '676 Patent.

2 17. Microsoft's infringement of the Jayant '676 Patent was, and continues to be, willful.

3 18. Lucent has been damaged by Microsoft's infringement of the Jayant '676 Patent and  
4 will suffer irreparable injury unless the infringement is enjoined by this Court.

5 **COUNT II**

6 **(Patent Infringement of United States Patent No. 4,763,356)**

7 19. Paragraphs 1 through 12 are incorporated by reference as if stated fully herein.

8 20. The Day '356 Patent is valid and enforceable.

9 21. Microsoft makes, uses, sells, and/or offers to sell products that infringe at least one  
10 claim of the Day '356 Patent.

11 22. Microsoft also contributes to and/or induces the infringement of at least one claim of  
12 the Day '356 Patent.

13 23. Microsoft's infringement of the Day '356 Patent was, and continues to be, willful.

14 24. Lucent has been damaged by Microsoft's infringement of the Day '356 Patent and  
15 will suffer irreparable injury unless the infringement is enjoined by this Court.

16 **COUNT III**

17 **(Patent Infringement of United States Patent No. 4,958,226)**

18 25. Paragraphs 1 through 12 are incorporated by reference as if stated fully herein.

19 26. The Haskell '226 Patent is valid and enforceable.

20 27. Microsoft makes, uses, sells, and/or offers to sell products that infringe at least one  
21 claim of the Haskell '226 Patent.

22 28. Microsoft also contributes to and/or induces the infringement of at least one claim of  
23 the Haskell '226 Patent.

24 29. Microsoft's infringement of the Haskell '226 Patent was, and continues to be, willful.

25 30. Lucent has been damaged by Microsoft's infringement of the Haskell '226 Patent and  
26 will suffer irreparable injury unless the infringement is enjoined by this Court.

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1 **PRAYER FOR RELIEF ON LUCENT'S COUNTERCLAIMS**

2 **WHEREFORE**, Lucent prays for judgment as follows:

- 3 A. That Microsoft has willfully infringed the Jayant '676, Day '356, and Haskell '226  
4 Patents;
- 5 B. That Microsoft, its officers, agents, servants and employees, and those persons in  
6 active concert or participation with any of them, and their successors and assigns be  
7 permanently enjoined from infringement, inducement of infringement, and  
8 contributory infringement of each of the Jayant '676, Day '356, and Haskell '226  
9 Patents, including but not limited to making, importing, using, offering for sale, or  
10 selling any devices or systems that infringe, or using processes that infringe, the  
11 Jayant '676, Day '356, and Haskell '226 Patents;
- 12 C. That Lucent be awarded all damages adequate to compensate it for Microsoft's  
13 infringement of the Jayant '676, Day '356, and Haskell '226 Patents, such damages to  
14 be determined by a jury and, if necessary to adequately compensate Lucent for the  
15 infringement, an accounting, and that such damages be trebled and awarded to Lucent  
16 with prejudgment interest;
- 17 D. That this case be declared an exceptional case within the meaning of 35 U.S.C. § 285  
18 and that Lucent be awarded the attorney fees, costs, and expenses that it incurs  
19 prosecuting this action; and
- 20 E. That Lucent be awarded such other and further relief as this Court deems just and  
21 proper.

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**JURY DEMAND**

Lucent hereby demands a trial by jury for all issues so triable.

DATED: April 9, 2003

HAHN & ADEMA

By: Alison Adema

Alison Adema  
Attorneys for  
LUCENT TECHNOLOGIES INC. AND  
LUCENT TECHNOLOGIES GUARDIAN I LLC

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2 **PROOF OF SERVICE**

3 I am a resident of the state of California over the age of eighteen years, and not a party to the  
4 within action. My business address is Hahn & Adema, 501 West Broadway, Suite 1730, San Diego,  
California 92101-3595.

5 On April 9, 2003, I served the within documents:

6 **LUCENT TECHNOLOGIES INC.'S AND LUCENT TECHNOLOGIES GUARDIAN I**  
7 **LLC'S REPLY AND COUNTERCLAIMS TO THE COUNTERCLAIMS OF INTERVENER**  
8 **MICROSOFT**

9 x by causing personal delivery by Diversified Legal Services, Inc. of the document(s) listed  
above to the person(s) at the address set forth below:

10 John E. Gartman  
11 Gary Savitt  
12 Fish & Richardson P.C.  
13 4350 La Jolla Village Drive Suite 500  
14 San Diego, CA 92122  
15 Tele: 858-678-5070  
16 Fax: 858-678-5099

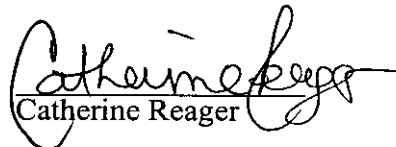
17 x by placing the document(s) listed above in a sealed envelope with postage thereon fully  
18 prepaid, in the United States mail at San Diego, California addressed as set forth below:

19 David J. Zubkoff, Esq.  
20 SELTZER CAPLAN MCMAHON VITEK  
21 750 "B" Street, Suite 2100  
22 San Diego, CA 92101  
23 Telephone: (619) 685-3003  
24 Facsimile: (619) 685-3100

25 I am readily familiar with the firm's practice of collection and processing correspondence for  
26 mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day  
27 with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of  
28 the party served, service is presumed invalid if postal cancellation date or postage meter date is more  
than one day after date of deposit for mailing an affidavit.

Executed on April 9, 2003, at San Diego, California.

29 x (Federal) I declare that I am employed in the office of a member of the bar of this court at  
30 whose directions the service was made.

31   
32 Catherine Reager