

ORIGINAL

FILED IN CLERK'S OFFICE  
U.S. DISTRICT COURT

MAR 29 2006

LUTHER D. THOMAS, Clerk  
By: *[Signature]* Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**WEB.COM, INC., and  
MPC COMPUTERS, LLC,**

**Plaintiffs,**

**v.**

**INTERGRAPH HARDWARE  
TECHNOLOGIES COMPANY,  
INTERGRAPH CORPORATION, and  
INTEL CORPORATION,**

**Defendants.**

**CIVIL ACTION  
FILE NO. \_\_\_\_\_**

**1:06-CV-0737 CAP**

**COMPLAINT**

Plaintiffs Web.com, Inc. ("Web.com") and MPC Computers, LLC ("MPC"),  
by and through their undersigned counsel, state their complaint against Defendants  
Intergraph Hardware Technologies Company and Intergraph Corporation  
(collectively referred to herein as "Intergraph") and Intel Corporation ("Intel") as  
follows:

**A. INTRODUCTION**

1. This is an action for declaratory judgment under 28 U.S.C. § 2201(a)  
concerning the respective rights of the parties, including the respective intellectual

property rights of the parties under the United States Patent Act, 35 U.S.C. § 1, *et seq.* Specifically, Plaintiffs seek a declaratory judgment (Count I against Intergraph and Intel) that all of Intergraph's purported claims of patent infringement are barred by the express and/or implied terms of a Settlement, Sale of Technology, and License Agreement as well as the doctrine of patent exhaustion. Plaintiffs also seek declaratory relief against Intergraph based on non-infringement (Count III), patent invalidity (Count IV), and patent unenforceability (Count V). Plaintiff Web.com also seeks a declaratory judgment (Count II against Intel) that Intel is obligated to indemnify, defend and hold Web.com harmless from and against any claim of patent infringement asserted by Intergraph based on Web.com's incorporation of Intel's family of Pentium® processors in personal computers designed, marketed, sold or distributed by Web.com. Plaintiffs allege and show the Court as follows:

**B. PARTIES**

2. Plaintiff Web.com is a corporation organized and existing under the laws of the State of Minnesota with its principal place of business in Atlanta, Georgia. Web.com was formerly known as Interland, Inc., which was formerly known as Micron Electronics, Inc.

3. Plaintiff MPC is a limited liability corporation organized and existing under the laws of the State of Delaware with its principal place of business in Nampa, Idaho.

4. Defendant Intergraph Hardware Technologies Company (“IHTC”) is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in Nevada. IHTC may be served with process through its registered agent, Entity Services (Nevada), LLC, 2215-B Renaissance Dr., Las Vegas, Nevada 89119.

5. Defendant Intergraph Corporation (“Intergraph Corp.”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Alabama. Intergraph Corp. may be served with process through its registered agent, Prentice Hall Corp. System, 40 Technology Pkwy South, #300, Norcross, Georgia 30092.

6. IHTC is a wholly-owned subsidiary of Intergraph Corp.

7. In or around 2002, Intergraph Corp. assigned its right, title and interest in U.S. Patent No. 4,899,275; U.S. Patent No.4,933,835; and U.S. Patent No. 5,091,846 (collectively, the “Patents In Suit” or “Intergraph System Patents”) to IHTC.

8. IHTC is a holding company that holds title to the Patents In Suit.

9. As the sole shareholder of IHTC, Intergraph Corp. directs and controls IHTC's activities.

10. IHTC is the alter ego of Intergraph Corp.

11. Intel Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in California. Intel may be served with process through its registered agent, C.T. Corporation System, 1201 Peachtree Street N.E., Atlanta, Georgia 30361.

**C. JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1338 and 2201.

13. Venue for this action lies in this judicial district pursuant to 28 U.S.C. § 1391.

14. This Court has personal jurisdiction over Intergraph and Intel because they regularly conduct business within this district and the State of Georgia by, and including, the sales of products and/or services within this district. IHTC is in the business of licensing the Patents In Suit and has conducted business within this district and the State of Georgia by communicating with Web.com in Georgia concerning such licensing. Moreover, Intergraph and Intel have a registered agent for service of process and maintain offices within this judicial district.

**D. THE LICENSE AGREEMENT BETWEEN INTEL AND INTERGRAPH IN THE ALABAMA LITIGATION**

15. On November 17, 1997, Intergraph sued Intel Corporation in the United States District Court for the Northern District of Alabama for, among other claims, infringement of the Patents In Suit. That litigation between Intergraph and Intel is referred to herein as the “Alabama Litigation.” Effective April 4, 2002, Intergraph and Intel entered into a settlement agreement in a document entitled “Settlement, Sale of Technology and License Agreement” (the “License Agreement”) to resolve all issues related to the Patents In Suit. A true and correct copy of the License Agreement is attached hereto as Exhibit “A.”

16. In subsequent litigation in the United States District Court for the Eastern District of Texas regarding the exact same Patents In Suit (the “Texas Litigation”), Intergraph admitted in its complaint that it entered into “**a comprehensive settlement agreement**” (emphasis added) with Intel that settled the Alabama Litigation. (See Intergraph’s Complaint filed in the Texas Litigation (the “Intergraph’s Texas Complaint”) (a true and correct copy of which is attached hereto as Exhibit “B”) ¶ 26.)

17. Section 4.3 of the License Agreement grants Intel a license for “Intel Computer Systems” under the “Intergraph System Patents.” Intergraph System Patents are defined in the License Agreement as “U.S. Patents claim 37 and 38 of

4,899,275; all claims of 4,933,835 and all claims of 5,091,846” (License Agreement §§ 4.3, 1.10) – the very same Patents In Suit.

18. Under Section 1.6 of the License Agreement, an “Intel Computer System” is defined as:

any Intel Product which incorporates all elements of an Intergraph System Patent claim, whether or not the elements covered by the claim are purchased contemporaneously or separately from Intel. Intel Computer System does not include the combination of a Processor sold by Intel with a third party’s chipset, or the combination of a Processor sold by Intel with main memory provided by a third party. Whether an Intel Product is an Intel Computer System under the Intergraph System Patents is determined on a claim by claim basis under the Intergraph System Patents.

(License Agreement § 1.6.)

19. In addition to the express license Intergraph granted to Intel Computer Systems in Section 4.3 of the License Agreement, Intergraph provided to Intel a covenant not to sue that states:

Intergraph agrees that for the Intergraph Patents licensed hereunder, Intergraph will not assert a claim of Indirect Infringement against Intel, but may assert a claim of direct infringement against a third party purchaser of an Intel Product, where such a claim of Indirect Infringement is based upon (a) any activity for which Intel is licensed under this Agreement, or (b) any act by Intel providing instructions regarding, or sample designs relating to, Intel Products. Intel agrees that notwithstanding anything to the contrary in this

Agreement, Intergraph shall have the right to assert direct or indirect claims of infringement against third parties for the combination of Intel Products with any third party products.

(License Agreement § 4.5.)

20. In addition to the covenant not to sue set forth in Section 4.5, the License Agreement contains the following covenant:

Intergraph covenants not to sue Intel or Intel's Customers under the Intergraph System Patents for a product which contains an Intel Motherboard, unless the basis for the assertion of infringement under the Intergraph System Patents including the Intel Product is that one or more of the processing elements as defined by the claims of the Intergraph System Patents is a non-Intel processing element.

(License Agreement § 4.21.)

**E. THE SETTLEMENT AGREEMENT BETWEEN INTEL AND INTERGRAPH IN THE TEXAS LITIGATION**

21. Effective March 29, 2004, Intergraph and Intel entered into a settlement agreement concerning the Texas Litigation, which is entitled "Settlement Agreement Between Intergraph and Intel and License to Dell" (the "Settlement and License Agreement"), a true and correct copy of which is attached hereto as Exhibit "C."

22. Section 6 of the Settlement and License Agreement contains the following covenant not to sue:

- a. Intergraph covenants not to sue Intel or Intel's customers under the Intergraph System Patents for a product that contains one or more of each of the following Intel Products: an Intel Motherboard, an Intel chipset, and an Intel Microprocessor. For the avoidance of doubt, the covenant not to sue in this section applies only to computer systems which contain all three of the identified Intel Products: namely, Intel Motherboard(s), Intel chipset(s), and Intel Microprocessor(s). Intergraph will promptly remove such products from the list of accused products in the ACTION.
- b. If Intergraph sues Intel for indirect infringement, it shall immediately refund all amounts paid by Intel under this Agreement, and Intel and Dell shall retain all licenses and covenants not to sue herein.

23. The Settlement and License Agreement refers to the License Agreement as the "2002 Agreement" and incorporates the License Agreement's definition of the "Intergraph System Patents," i.e., the very same Patents In Suit.

24. Section 5 of the Settlement and License Agreement grants Intel the following license:

- a. Subject to the conditions set forth herein, Intergraph grants to Intel under the Intergraph System Patents (including without limitation all claims of such patents, including method, apparatus, business method and software) a non-exclusive, non-transferable, world-wide, paid-up license, with no right to transfer to, or sublicense other than to any SUBSIDIARY or AFFILIATE of Intel, to make, have made, use, import, lease, offer to sell, sell or otherwise transfer products which include an Intel Microprocessor, an Intel chipset, an Intel motherboard and main system memory (e.g., DRAM, DDR-RAM) manufactured or sold as "kits" or "whit boxes." This license



applies whether or not these components are sold contemporaneously or separately. For the avoidance of doubt, all products made, used, imported, leased, offered for sale, sold or otherwise transferred under this license are themselves licensed products, and such license passes to each transferee of such products.

- b. Intergraph and Intel agree that if an Intel Computer System as defined in the 2002 Agreement is licensed under any of the apparatus claims of the '835 or '846 patents, then it is also licensed under all method claims in all of the Intergraph System Patents.

\*\*\*\*\*

- d. All products made, used, sold or offered for sale under the license in Section 5(c) herein and the licenses granted under the 2002 Agreement to Intel are themselves licensed products, and such license passes to each transferee of such products (including without limitation the license granted in Section 4.1 of the 2002 Agreement). For the avoidance of doubt, this Section 5(d) applies only to the licenses contained in Section 5(c) herein and in the 2002 Agreement, and the applicability of this paragraph shall be determined on a license-by-license basis.

(Settlement and License Agreement § 5.)

25. Herein, the License Agreement from the Alabama Litigation and the Settlement and License Agreement from the Texas Litigation are referenced collectively as the "License Agreements."

**F. INTERGRAPH'S ALLEGATIONS OF PATENT INFRINGEMENT AGAINST PLAINTIFFS**

26. Beginning in 1997, Intergraph has repeatedly and expressly accused Web.com of infringing the Patents In Suit and threatened legal action against Web.com based on these alleged claims.

27. In a letter dated October 14, 2005, Intergraph for the first time accused MPC of infringing the Patents In Suit and threatened legal action against MPC based on these alleged claims.

28. Intergraph's purported claims of patent infringement are based on Plaintiffs' incorporation of Intel's family of Pentium® processors in personal computers designed, marketed, sold or distributed by Plaintiffs.

29. On February 21, 1997, Intergraph sent a letter to Web.com (f/k/a Micron Electronics, Inc.) accusing Web.com of infringing the 4,933,835 (the "'835 patent") and 5,091,846 (the "'846 patent") patents by selling computer products "under the tradenames Home MPC." A true and correct copy of this correspondence (without its enclosures) is attached hereto as Exhibit "D."

30. On March 28, 1997, Intergraph sent another letter to Web.com again accusing Web.com of infringing the '835 and '846 patents. A true and correct copy of this correspondence is attached hereto as Exhibit "E."

31. On April 22, 1997, Intergraph sent a letter to Web.com's outside counsel in which it claimed the indemnity contained in an agreement between Web.com and Intel (see Section H below) would not "provide relief to [Web.com] for infringement of the claims as we have asserted them against the [Web.com] computer systems." Intergraph further insisted that "[a] licensing arrangement is appropriate to [Web.com]." A true and correct copy of this correspondence is attached hereto as Exhibit "F."

32. On July 17, 1997, Intergraph sent a letter to Web.com's outside counsel reiterating the allegations contained in its letter dated April 22, 1997. A true and correct copy of this correspondence is attached hereto as Exhibit "G."

33. On April 20, 2001, Intergraph sent a letter to Web.com's outside counsel regarding Web.com's "need for a license" under the Patents In Suit. The letter contended that Web.com was previously advised of the Alabama Litigation and of "Intergraph's intention to resume its licensing and/or enforcement program at the conclusion of its action against Intel." The letter further states that "Intergraph's enforcement and/or licensing program will resume upon the conclusion of its litigation with Intel." A true and correct copy of this correspondence is attached hereto as Exhibit "H."

34. On December 16, 2002, Intergraph sent correspondence to Web.com's outside counsel, which stated that Intergraph had commenced the Texas Litigation. This correspondence stated that Web.com "should also have received, or will in the near future receive, correspondence from Intel Corporation advising [Web.com] of [its] need to obtain a license to the [Patents In Suit] for computer system products which [Web.com] designs, builds or sells based upon the combination of certain computer components." The letter further stated that Web.com was "first advised of its infringement" of the Patents In Suit on February 21, 1997 and that Intergraph would only consider entering into "licensing discussions" with Web.com if it executed a "tolling agreement to preserve Intergraph' [sic] pending patent claims." Although a "tolling agreement" was attached to this correspondence, Web.com never executed such an agreement with Intergraph. The letter indicates that "Intergraph will be in further contact about its pending patent enforcement action in the [Texas Litigation]." A true and correct copy of this correspondence (without its enclosure) is attached hereto as Exhibit "I."

35. On April 16, 2003, Intergraph sent a letter to Web.com in which it stated: "We first advised your company on February 21, 1997, that it was infringing the [Patents In Suit] by selling computer systems under the tradenames: Home MPC Series, Millenia series, Vetix LXI Server, TransPort MRX notebook,

Transport XPE notebook, Vetix EL Server, ClientPro series, and ClientPro2 series.” The letter further stated: “Your company has infringed, and continues to infringe, the [Patents In Suit].” The letter then threatened: “Please be advised that Intergraph intends to enforce its patent rights against your company when it concludes its pending litigation in the [Texas Litigation].” Finally, Intergraph expressly stated: “Under Federal Circuit precedent, **the time for filing an action against your company** will be tolled during the pendency of Intergraph’s litigation in the Eastern District of Texas.” (Emphasis added.) A true and correct copy of this correspondence (without its enclosure) is attached hereto as Exhibit “J.”

36. On or about February 20, 2006, Intergraph sent correspondence to Web.com that purported to summarize the previous correspondence exchanged between the parties. Intergraph copied MPC on this correspondence. The letter alleged that Web.com and MPC had infringed the Patents In Suit and inquired as to the specific entity that allegedly was “responsible for past infringement.” The letter also referenced certain alleged conversations between Intergraph and MPC regarding alleged “past infringement.” The letter demanded that Plaintiffs take a license under the Patents In Suit “instead of forcing Intergraph to take additional steps to protect its intellectual property.” Intergraph demanded that Plaintiffs pay a

“rock bottom,” “non-negotiable royalty” in the amount of \$5 million for such a license. The letter further threatened that Intergraph “may need to take action in order to determine the issue of who is responsible for this infringement.” A true and correct copy of this correspondence (without its enclosures) is attached hereto as Exhibit “K.”

37. Intergraph has repeatedly and expressly accused Web.com, Inc. of infringing the Patents In Suit. Since October 2005, Intergraph has also accused MPC of infringing the Patents In Suit.

38. Intergraph has expressly threatened to initiate a lawsuit against Plaintiffs for infringement of the Patents In Suit.

39. The purpose of Intergraph’s actions and correspondence was to create an apprehension on the part of Plaintiffs that Intergraph would initiate a patent infringement suit against Plaintiffs.

40. Intergraph’s actions and correspondence created an actual apprehension on the part of Plaintiffs that Intergraph would initiate a patent infringement suit against Plaintiffs.

41. Intergraph’s actions and correspondence have created a reasonable apprehension on the part of Plaintiffs that Intergraph would initiate a patent infringement suit against Plaintiffs.

**G. THE LICENSE AGREEMENTS PRECLUDE INTERGRAPH FROM ASSERTING INFRINGEMENT CLAIMS AGAINST PLAINTIFFS**

42. In whole or substantial part, the allegedly infringing computer systems designed, manufactured, sold or distributed by Plaintiffs use microprocessors, chipsets, and motherboards purchased from Intel or its authorized distributors. These Intel microprocessors, chipsets and/or motherboards were installed by Plaintiffs in computers manufactured by or for Plaintiffs in accord with their intended and sole purpose in the manner recommended by Intel.

43. Thus, Intergraph's claims of infringement regarding the Patents In Suit are barred by the express and/or implied terms of the License Agreements because:

- a) Plaintiffs' allegedly infringing computer systems are licensed under Sections 4.3 and 1.6 of the License Agreement and Section 5 of the Settlement and License Agreement; and/or
- b) Plaintiffs' allegedly infringing computer systems are protected by Intergraph's covenant not to sue Intel in Section 4.5 of the License Agreement and Section 6 of the Settlement and License Agreement; and/or
- c) Plaintiffs' allegedly infringing computer systems are protected by Intergraph's covenant not to sue Intel's customers in Section 4.21 of the License Agreement and Section 6 of the Settlement and License Agreement; and/or

- d) The License Agreements create an implied license between Intergraph and Intel's downstream customers, including Plaintiffs; and/or
- e) Intergraph's patent rights are exhausted as a result of the License Agreements.

**H. DISPUTE ON INTERPRETATION OF LICENSE AGREEMENTS**

44. In its February 20, 2006 correspondence, Intergraph asserts that it has a right to sue Intel's downstream customers, such as Plaintiffs. Further, in the Texas Litigation, Intergraph sued certain of Intel's downstream customers and asserted that the License Agreement "specifically preserved Intergraph's right to seek payment for patent licenses from the OEMs, and the right to sue the OEMs under the Patents In Suit." (Intergraph's Texas Complaint ¶ 26.)

45. The License Agreement purports to disclaim any implied license to Intel customers who combine products protected by the express license in Section 4.3 and/or the Intergraph covenants not to sue in Sections 4.5 and 4.21 with non-Intel products. (License Agreement §§ 4.3, 4.5, 4.6, 4.7, 4.8, 12.10 and 12.11.)

46. Intel "acknowledges" in Section 5.1 of the License Agreement that Intergraph's intent is to seek "payment for patent license agreements by vendors of Computer Systems including OEM Customers." (License Agreement § 5.1.)



**I. THE DISPUTE REGARDING INTEL'S OBLIGATION TO INDEMNIFY WEB.COM**

47. In April 1997, an "Agreement Between Intel Corporation and Micron Electronics Inc. [n/k/a Web.com, Inc.]" (the "Intel Agreement") was executed. A true and correct copy of the Intel Agreement is attached hereto as Exhibit "L."

48. The Intel Agreement set forth certain "master warranty, indemnity, limitation of liability and related terms and conditions applicable to Products sold by Intel to [Web.com]." (Intel Agreement p. 1.)

49. The term "Product" was defined by the Intel Agreement to include Intel's "family of Pentium® processors." (Id.)

50. The Intel Agreement specifically provides:

Intel will indemnify, defend and hold [Web.com] harmless from any suit or proceeding brought against [Web.com] based upon a claim that any Product furnished hereunder or part thereof, alone or in combination with any other product in circumstances where the Product has no noninfringing use other than in such combination constitutes an infringement of any patent or copyright and Intel will pay all damages and costs finally awarded against Micron provided that: (i) Intel is notified promptly in writing of such claim, (ii) Intel controls the defense or settlement of the claim, and (iii) Micron cooperates reasonably and gives all necessary authority, information and assistance (at Intel's expense).

(Intel Agreement ¶ 4.)

51. Web.com promptly informed Intel of the claims of patent infringement asserted by Intergraph.

52. Upon information and belief, Intel had actual knowledge of Intergraph's intention to assert patent infringement claims against Web.com as early as February 21, 1997.

53. On January 30, 2003, Web.com gave formal notice to Intel of the patent infringement claims asserted by Intergraph. A true and correct copy of this notice is attached hereto as Exhibit "M."

54. Intel responded to this notice on March 18, 2003 by expressly declining to defend Web.com against the patent infringement claims asserted by Intergraph. A true and correct copy of Intel's response to Web.com's demand for indemnification is attached hereto as Exhibit "N."

55. To date, Intel has failed and refused to acknowledge its obligation to indemnify, defend and hold Web.com harmless from and against any suit or proceeding brought by Intergraph that alleges infringement of the Patents In Suit based on Web.com's incorporation of Intel's family of Pentium® processors in personal computers designed, marketed, sold or distributed by Web.com.

**COUNT I**

**DECLARATORY JUDGMENT AGAINST INTERGRAPH AND INTEL**

56. The allegations of paragraphs 1 through 55 above are restated and incorporated by reference as though fully set forth herein.

57. The License Agreements bar Intergraph's claims for infringement against Plaintiffs.

58. Based on Intergraph's allegations of infringement, several years of litigation over the Patents In Suit in the Alabama Litigation, several years of litigation over the Patents in Suit in the Texas Litigation, and Intergraph's allegations that the License Agreements do not provide relief to Plaintiffs, an actual, substantial controversy of sufficient immediacy exists between Plaintiffs and Intergraph and Intel as to the rights conferred with respect to the License Agreements.

59. Pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. §§ 2201 *et seq.*, Plaintiffs are entitled to a declaratory judgment that the express and/or implied terms of the License Agreements bar Intergraph's claims for infringement against Plaintiffs because:

- a) Plaintiffs' allegedly infringing computer systems are licensed under Sections 4.3 and 1.6 of the License Agreement and Section 5 of the Settlement and License Agreement; and/or

- b) Plaintiffs' allegedly infringing computer systems are protected by Intergraph's covenant not to sue Intel in Section 4.5 of the License Agreement and Section 6 of the Settlement and License Agreement; and/or
- c) Plaintiffs' allegedly infringing computer systems are protected by Intergraph's covenant not to sue Intel's customers in Section 4.21 of the License Agreement and Section 6 of the Settlement and License Agreement; and/or
- d) The License Agreements create an implied license between Intergraph and Intel's downstream customers, including Plaintiffs; and/or
- e) Intergraph's patent rights are exhausted as a result of the License Agreements.

60. The requested declaratory relief would serve the useful purpose of clarifying the legal issues and resolving Intergraph's allegations of infringement.

## **COUNT II**

### **DECLARATORY JUDGMENT OF NONINFRINGEMENT AGAINST INTERGRAPH**

61. The allegations of paragraphs 1 through 60 above are restated and incorporated by reference as though fully set forth herein.

62. Plaintiffs have not infringed and are not infringing (directly, contributorily, or by inducement) any claim of the Patents In Suit.

63. Based on Intergraph's allegations of infringement, several years of litigation over the Patents In Suit in the Alabama Litigation and several years of

litigation over the Patents In Suit in the Texas Litigation, an actual, substantial controversy of sufficient immediacy exists between Plaintiffs and Intergraph concerning Plaintiffs' alleged infringement of the Patents In Suit.

64. Pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 *et seq.*, Plaintiffs are entitled to a declaratory judgment that they have not infringed and are not infringing the Patents In Suit.

65. The requested declaratory relief would serve the useful purpose of clarifying the legal issues and resolving Intergraph's allegations of infringement.

### **COUNT III**

#### **DECLARATORY JUDGMENT OF INVALIDITY AGAINST INTERGRAPH**

66. The allegations of paragraphs 1 through 65 above are restated and incorporated by reference as though fully set forth herein.

67. The Patents In Suit are void and invalid for failure to comply with the requirements of Title 35, United States Code, including but not limited to, Sections 102, 103 and/or 112.

68. Based on Intergraph's allegations of infringement, several years of litigation over the Patents In Suit in the Alabama Litigation, and several years of litigation over the Patents In Suit in the Texas Litigation, an actual, substantial

controversy of sufficient immediacy exists between Plaintiffs and Intergraph concerning the alleged validity of the Patents In Suit.

69. Pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 *et seq.*, Plaintiffs are entitled to a declaratory judgment that the Patents In Suit are invalid.

70. The requested declaratory relief would serve the useful purpose of clarifying the legal issues and resolving Intergraph's allegations of infringement.

#### **COUNT IV**

#### **DECLARATORY JUDGMENT OF UNENFORCEABILITY AGAINST INTERGRAPH**

71. The allegations of paragraphs 1 through 70 above are restated and incorporated by reference as though fully set forth herein.

72. The Patents In Suit are unenforceable based on the doctrine of patent misuse.

73. Based on Intergraph's allegations of infringement, several years of litigation over the Patents In Suit in the Alabama Litigation, and several years of litigation over the Patents In Suit in the Texas Litigation, an actual, substantial controversy of sufficient immediacy exists between Plaintiffs and Intergraph concerning the alleged enforceability of the Patents In Suit.

74. Pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 *et seq.*, Plaintiffs are entitled to a declaratory judgment that the Patents In Suit are unenforceable.

75. The requested declaratory relief would serve the useful purpose of clarifying the legal issues and resolving Intergraph's allegations of infringement.

### **COUNT V**

#### **DECLARATORY JUDGMENT AGAINST INTEL**

76. The allegations of paragraphs 1 through 75 above are restated and incorporated by reference as though fully set forth herein.

77. Intel is obligated under the express terms of the Intel Agreement to defend and hold Web.com harmless from and against any suit or proceeding brought by Intergraph that alleges infringement of the Patents In Suit based on Web.com's incorporation of Intel's family of Pentium® processors in personal computers designed, marketed, sold or distributed by Web.com.

78. All conditions precedent to indemnification and recovery under the Indemnification and Warranty provisions of the Intel Agreement have been satisfied, waived or are inapplicable.

79. Intel has failed and refused to recognize and acknowledge its obligation to defend and hold Web.com harmless from and against any suit or

proceeding brought by Intergraph that alleges infringement of the Patents In Suit based on Web.com's incorporation of Intel's family of Pentium® processors in personal computers designed, marketed, sold or distributed by Web.com.

80. Intel contends that it is not obligated to defend and hold Web.com harmless from and against any suit or proceeding brought by Intergraph that alleges infringement of the Patents In Suit based on Web.com's incorporation of Intel's family of Pentium® processors in personal computers designed, marketed, sold or distributed by Web.com.

81. By reason of the foregoing, there now exists an actual, substantial controversy of sufficient immediacy between Web.com and Intel within the meaning of 28 U.S.C. § 2201 with respect to Intel's obligation to defend and hold Web.com harmless from and against any suit or proceeding brought by Intergraph that alleges infringement of the Patents In Suit based on Web.com's incorporation of Intel's family of Pentium® processors in personal computers designed, marketed, sold or distributed by Web.com.

82. Pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 *et seq.*, Web.com is entitled to a declaratory judgment that Intel is obligated under the Intel Agreement to defend and hold Web.com harmless from and against any suit or proceeding brought by Intergraph that alleges infringement of the Patents In



Suit based on Web.com's incorporation of Intel's family of Pentium® processors in personal computers designed, marketed, sold or distributed by Web.com.

83. The requested declaratory relief would serve the useful purpose of clarifying the legal issues and resolving the allegations concerning Intel's duty to defend and indemnify Web.com.

### **COUNT VI**

#### **ALTERNATIVE CLAIM FOR DECLARATORY JUDGMENT AGAINST INTERGRAPH**

84. The allegations of paragraphs 1 through 83 above are restated and incorporated by reference as though fully set forth herein.

85. In the alternative to Counts I, II, III, and IV of this Complaint, if MPC is found to be an infringer of the Patents In Suit, MPC is entitled to a declaratory judgment that Intergraph may not collect damages, if any, against MPC for any infringement occurring prior to on or about October 14, 2005, based on Intergraph's failure to provide notice to MPC of the alleged infringement prior to that date.

86. Additionally and alternatively, if MPC is found to be an infringer of the Patents In Suit, MPC is entitled to a declaratory judgment that said notice contained a royalty free license of six (6) months and thus no damages, if any, should accrue against MPC prior to April 15, 2006.

**EXCEPTIONAL CASE**

87. This case is an exceptional case under 35 U.S.C. § 285.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that the Court:

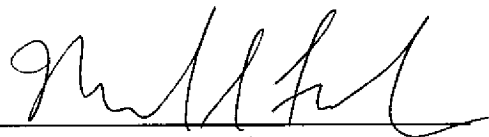
- a) Enter a declaration against Intergraph that Intergraph's claims for infringement against Plaintiffs are barred by the express and/or implied terms of the License Agreement because:
  - i. Plaintiffs' allegedly infringing computer systems are licensed under Sections 4.3 and 1.6 of the License Agreement and Section 5 of the Settlement and License Agreement; and/or
  - ii. Plaintiffs' allegedly infringing computer systems are protected by Intergraph's covenant not to sue Intel in Section 4.5 of the License Agreement and Section 6 of the Settlement and License Agreement; and/or
  - iii. Plaintiffs' allegedly infringing computer systems are protected by Intergraph's covenant not to sue Intel's customers in Section 4.21 of the License Agreement and Section 6 of the Settlement and License Agreement; and/or
  - iv. The License Agreement creates an implied license between Intergraph and Intel's downstream customers, including Plaintiffs; and/or
  - v. Intergraph's patent rights are exhausted as a result of the License Agreement.
- b) Adjudge and decree that Web.com and MPC have not infringed the Patents In Suit;

- c) Adjudge and decree that the Patents in Suit are invalid and unenforceable;
- d) Enter a declaration against Intel that Intel is obligated under the Intel Agreement to defend and hold Web.com harmless from and against any suit or proceeding brought by Intergraph that alleges infringement of the Patents In Suit based on Web.com's incorporation of Intel's family of Pentium® processors in personal computers designed, marketed, sold or distributed by Web.com.
- e) Award Plaintiffs their costs in this action, declare that this is an exceptional case under 35 U.S.C. § 285, and award Plaintiffs their reasonable attorneys' fees;
- f) Alternatively, if MPC is found to be an infringer of the Patents In Suit, adjudge and decree that Intergraph may not collect damages, if any, against MPC for any infringement occurring prior to on or about October 14, 2005, based on Intergraph's failure to provide notice to MPC of the alleged infringement prior to that date;
- g) Alternatively, if MPC is found to be an infringer of the Patents In Suit, adjudge and decree that said notice contained a royalty free license of six (6) months and thus no damages, if any, should accrue against MPC prior to April 15, 2006; and
- h) Grant Plaintiffs such other and further relief to which they may be entitled.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs Web.com, Inc. and MPC Computers, LLC hereby demand a jury trial on all of the issues in this case.

This 29<sup>th</sup> day of March, 2006.



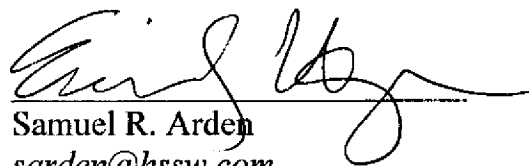
Michael S. French  
*mfrench@wargofrench.com*  
Georgia Bar No. 276680  
C. Celeste Creswell  
*ccreswell@wargofrench.com*  
Georgia Bar No. 196077

WARGO & FRENCH, LLP  
1170 Peachtree Street, N.E.  
Suite 2020  
Atlanta, GA 30309  
Telephone: (404) 853-1500  
Facsimile: (404) 853-1501

Thomas R. Jackson  
*trjackson@jonesday.com*  
Texas Bar No. 10496700  
Mark N. Reiter  
*mnreiter@jonesday.com*  
Texas Bar No. 16759900  
Daniel T. Conrad  
*dtconrad@jonesday.com*  
Texas Bar No. 24026608

JONES DAY  
2727 North Harwood Street  
Dallas, Texas 75201-1515  
Telephone: (214) 220-3939  
Facsimile: (214) 969-5100

Counsel for Plaintiff  
Web.com, Inc.



Samuel R. Arden

[sarden@hssw.com](mailto:sarden@hssw.com)

Georgia Bar No. 021228

Emily E. Hogue

[ehogue@hssw.com](mailto:ehogue@hssw.com)

Georgia Bar No. 360021

HARTMAN, SIMONS, SPIELMAN  
& WOOD, LLP

6400 Powers Ferry Road, N.W.

Suite 400

Atlanta, Georgia 30339

Telephone: (770) 955-3555

Facsimile: (770) 952-7821

Counsel for Plaintiff

MPC Computers, LLC

573009\_3.DOC