

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

PARALLEL NETWORKS, LLC)	
)	
Plaintiff,)	
)	
v.)	Case No. 6:10-cv-00491 LED
)	
Adidas America, Inc., <i>et al.</i> ,)	
)	
Defendants.)	

**BERGDORFGOODMAN.COM, LLC’S
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM OR,
IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT**

BergdorfGoodman.com, LLC (“Bergdorf Goodman”) respectfully moves this Court for an Order dismissing Parallel Networks, LLC’s (“Parallel Networks”) Complaint on the grounds that Parallel Networks’ purported claims for direct, indirect, and willful infringement fail to state a claim upon which relief may be granted. Alternatively, Bergdorf Goodman moves for a more definite statement pursuant to Fed. R. Civ. P. Rule 12(e).

The allegations against Bergdorf Goodman in Parallel Networks’ Complaint unduly restrict Bergdorf Goodman’s ability to prepare its defense. To properly respond to the Complaint, Bergdorf Goodman must have an adequate opportunity to investigate the allegations, identify potential witnesses with relevant information, identify potential third-party defendants, and make informed decisions regarding document preservation. The failure of the Complaint to identify any accused product beyond a “website” makes it impossible for Bergdorf Goodman to begin this process. Assuming that Parallel Networks complied with its Rule 11 pre-filing obligations, there is no acceptable reason for Parallel Networks to hide this basic information.

Without an adequate, well-pled complaint, Parallel Networks should not be allowed to proceed with costly discovery. The Supreme Court made it clear in *Ashcroft v. Iqbal* that a motion to dismiss “does not turn on the controls placed upon the discovery process.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1953 (2009). Early discovery obligations requiring patent plaintiffs to provide detailed infringement contentions cannot trump a plaintiff’s obligations to properly plead its case.

BACKGROUND

On September 23, 2010, Parallel Networks filed this patent infringement suit against nearly 60 defendants alleging infringement of U.S. Patent No. 6,446,111 (“the ‘111 patent”) entitled “Method and Apparatus for Client-Serve Communications Using a Limited Capability Client Over a Low-Speed Communications Network.”^{1/} Despite the fact that each defendant operates its own unique business and website, Parallel Networks has pled identical, threadbare allegations against each defendant. The allegations against Bergdorf Goodman are as follows:

On information and belief, Defendant BERGDORFGOODMAN.COM, LLC, has been and now is infringing at least claim 1 [of] the ‘111 patent in the State of Texas, in this judicial district, and elsewhere in the United States, by actions comprising making and using its website at www.bergdorfgoodman.com, which comprises a server coupled to a communications link that receives a request from a client device and collects data items as a function of the requests; an executable applet dynamically generated by the server in response to the client request; a constituent system associated with the applet comprising a subset of the data items and a further constituent system comprising a data interface capability configured to provide a plurality of operations associated with the subset of data items; with such applet operable to be transferred over the communications link to the client device.

^{1/} This case is one of four cases currently pending in the Eastern District of Texas in which Parallel Networks is claiming infringement of the ‘111 patent against multiple defendants.

On information and belief, since becoming aware of the ‘111 patent, BERGDORFGOODMAN.COM, LLC, has been or now is indirectly infringing by way of inducing infringement and contributing to the infringement of at least claim 1 of the ‘111 patent in the State of Texas, in this judicial district, and elsewhere in the United States, by providing the website www.bergdorfgoodman.com for use by BERGDORFGOODMAN.COM, LLC’S clients. BERGDORFGOODMAN.COM, LLC, is a direct and indirect infringer, and its clients using www.bergdorfgoodman.com are direct infringers.

On information and belief, since becoming aware of the ‘111 patent BERGDORFGOODMAN.COM, LLC, is and has been committing the act of inducing infringement by specifically intending to induce infringement by providing the identified website to its clients and by aiding and abetting its use. On information and belief, BERGDORFGOODMAN.COM, LLC, knew or should have known that through its acts it was and is inducing infringement of the ‘111 patent. On information and belief, BERGDORFGOODMAN.COM, LLC, is and has been committing the act of contributory infringement by intending to provide the identified website to its clients knowing that it is a material part of the invention, knowing that its use was made and adapted for infringement of the ‘111 patent, and further knowing that the system is not a staple article or commodity of commerce suitable for substantially noninfringing use.

Defendant BERGDORFGOODMAN.COM, LLC, is thus liable for infringement of the ‘111 patent pursuant to 35 U.S.C. § 271.

Complaint ¶¶ 107-110.

Parallel Networks has not pled facts sufficient to support its claims of direct, indirect, and willful infringement. Instead, Parallel Networks has brought vague and conclusory allegations that do not give Bergdorf Goodman sufficient notice of the claims against it. Specifically, with respect to its direct infringement claim, Parallel Networks failed to specifically identify the product Bergdorf Goodman used or sold that allegedly infringes the ‘111 patent, instead merely asserting the vague term “website.” With respect to its claims for inducement and contributory infringement, Parallel Networks has not pled that Bergdorf Goodman knew of the patent, which

claims of the '111 patent are asserted, or any facts in support of its claims. Finally, with respect to its claim for willful infringement, the Complaint fails to allege the required pre-suit conduct necessary to support such a claim.

The allegations in Parallel Networks' Complaint are not plausible on their face and should be dismissed.

ARGUMENT

A. Standard of Review

On a motion to dismiss a patent infringement case, the law of the regional circuit applies. *McZeal v. Spring Nextel Corp.*, 501 F.3d 1354, 1356 (Fed. Cir. 2007). Dismissal of a complaint is appropriate where a party fails to state a claim upon which relief may be granted. *See* Fed. R. Civ. P. Rule 8(a); *see also Teirstein v. AGA Medical Corp.*, No. 6:08-cv-14, 2009 WL 704138, at *2 (E.D. Tx. Mar. 16, 2009). “The complaint must allege ‘enough facts to state a claim for relief that is plausible on its face.’” *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)) (“*Twombly*”). Moreover, the “[f]actual allegations must be enough to raise a right to relief above the speculative level...” *Id.* The factual allegations presented in the complaint must be specific and not mere conclusory allegations. *Id.* Legal conclusions, as opposed to factual allegations, “are not entitled [to] the presumption of truth – they must be supported by factual allegations.” *Garrett v. Simank*, No. A-09-CA-521-SS, 2009 WL 4640504, at *1 (W.D. Tx. Nov. 30, 2009) (quoting *Iqbal*, 129 S.Ct. at 1950 (2009)). According to the Supreme Court, Fed. R. Civ. P. 8 demands more than “an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* at *2. In order for a complaint to proceed past the motion to dismiss phase, “a formulaic recitation of the elements of a cause of action will not do.” *Id.* (quoting *Twombly*, at 550 U.S. at 555). In light of this well-established case law, Parallel Networks' Complaint should be dismissed.

Rule 11 of the Federal Rules of Civil Procedure requires patent plaintiffs to “at a bare minimum, apply the claims of each and every patent that is being brought into the lawsuit to an accused device and conclude that there is a reasonable basis for a finding of infringement of at least one claim of each patent so asserted” prior to filing a complaint. *View Eng'g, Inc. v. Robotic Vision Sys., Inc.*, 208 F.3d 981, 986 (Fed. Cir. 2000). The Federal Circuit has described this obligation as “extremely important.” *Id.* It requires, among other things, that plaintiff conduct a proper investigation before filing suit. *See Judin v. U.S.*, 110 F.3d 780, 784 (Fed. Cir. 1997) (failure to conduct pre-filing investigation to compare products accused of infringement with claims of a patent is sanctionable).

It is therefore no excuse to argue in response to a motion to dismiss that such basic factual questions are premature or outside a plaintiff’s control. Because a patentee suing in federal court is required to have complied with Rule 11, it must have identified what it believes to be the factual bases for its claims. Consequently, “[i]f challenged, a patent holder bringing an infringement claim must be able to demonstrate to the court and the alleged infringer *exactly* why it believed before filing suit that it had a reasonable chance of proving infringement.” *Classen Immunotherapies, Inc. v. Biogen IDEC*, 381 F. Supp. 2d 452, 457 (D. Md. 2005) (citing *View Eng'g*, 208 F.3d at 986) (emphasis added). If, for example, “a plaintiff cannot describe with some specificity the product he claims infringes his patent, there is reason to question whether such a certification [of Rule 11 compliance] is true.” *Bay Indus., Inc. v. Tru-Arx Mfg., LLC*, No. 06-C-1010, 2006 WL 3469599, *2 (E.D. Wis. Nov. 29, 2006) (granting motion for more definite statement because no products were specifically identified).

B. Parallel Networks’ Claim of Direct Infringement Should be Dismissed Because It Fails to Sufficiently Identify the Allegedly Infringing System or Method.

Parallel Networks’ Complaint fails to properly identify the allegedly infringing system or method Bergdorf Goodman used or made, sufficient to fulfill the requirements of Rule 8 or the suggested form of pleading under Form 18 of the Appendix of Forms to the Federal Rules of Civil Procedure. When a party sets forth threadbare allegations only supported by conclusory statements, dismissal of the complaint is warranted. *See Elan Microelectronics Corp. v. Apple, Inc.* No. C 09-01531 RS, 2009 WL 2972374, at *2 (N.D. Ca. Sept. 14, 2009). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Garrett*, 2009 WL 4640504, at *1 (*quoting Twombly*, 550 U.S. at 555). Only a complaint that states a plausible claim for relief can survive a motion to dismiss. *Elan*, 2009 WL 2972374, at *1 (*quoting Twombly*, 550 U.S. at 556).

In its claim against Bergdorf Goodman—and every other defendant in this case—Parallel Networks claims that Bergdorf Goodman is infringing the ‘111 patent “by actions comprising making and using its website at www.bergdorfgoodman.com...” *See* Complaint ¶ 107. The ‘111 Patent, however, is not directed to a “website,” but rather to a data processing system and method having certain narrow limitations. *See, e.g.*, claims 1 and 17 of the ‘111 Patent (Doc. No. 1, Exh. A). Rather than specifically identify any portion of Bergdorf Goodman’s website, or identify what service or operation provided by the website allegedly causes the infringement, Parallel Networks merely paraphrases the language of claim 1 from the ‘111 Patent. Thus, the Complaint alleges that Bergdorf Goodman’s website includes:

a server coupled to a communications link that receives a request from a client device and collects data items as a function of the requests; an executable applet dynamically generated by the server in response to the client request; a constituent system associated with the applet comprising a subset of the data items and a further constituent system associated with the applet comprising a subset of the data items and a further constituent system comprising a data interface capability configured to provide a plurality of operations associated with the subset of data items; with such applet operable to be transferred over the communications link to the client device.

Complaint ¶ 107.

Merely repeating the language of the patent claims is wholly insufficient to inform Bergdorf Goodman as to how it is allegedly infringing the ‘111 patent. *See Realtime Data, LLC v. Morgan Stanley*, No. 6:09-cv-00326, slip op. at 6 (E.D. Tex. May 7, 2010) (Love, J.) (Doc. No. 168) (adopted by Davis, J. on June 10, 2020). In the *Realtime Data* case, this Court found that the plaintiff’s reference to “one or more data compression products and/or services” to be insufficiently vague. Similarly, this Court has found that identifying the accused product as a “electronic commerce system” is insufficient to meet the requirements of Form 18. *Landmark Technology LLC v. Aeropostale, et al.*, 6:09-cv-00262, slip op. at 5-6 (E.D. Tex. March 29, 2010) (Davis, J.) (Doc. No. 122). Here, Parallel Networks’ references to a “website,” “servers,” “client devices,” “executable applets,” “constituent systems,” and a “communication link” are just as vague as the terms “data compression products” and “electronic commerce system.” Moreover, the identification of accused instrumentalities must be specific to particular defendants. *Realtime Data, LLC v. Morgan Stanley*, No. 6:09-cv-00326, slip op. at 6. Nowhere does the Complaint identify what portion of Bergdorf Goodman’s website operates as a “server” or an “executable applet” or a “constituent system.” Parallel Networks’ allegations of direct

infringement are so vague that Bergdorf Goodman does not have sufficient notice of the claims against which it must defend.

Moreover, Parallel Networks cannot use the discovery process to shore up its bare-bones allegations of infringement. “Rule 8...does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.” *Iqbal*, 129 at 1950. The Supreme Court has described how important it is to resolve such questions at the outset of litigation, such as through Rule 12(b)(6) motion practice, rather than simply allowing conclusory allegations to open the door to expansive discovery: “[T]his basic deficiency should . . . be exposed at the point of minimum expenditure of time and money by the parties and the court . . . a district court must retain the power to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed.” *Twombly*, 550 U.S. at 558 (citations and internal quotations omitted). Furthermore, “[t]he Patent Rules demonstrate high expectations as to plaintiffs’ preparedness before bringing suit, requiring plaintiffs to disclose their preliminary infringement contentions before discovery has even begun.” *Am. Video Graphics, L.P. v. Elec. Arts, Inc.*, 359 F.Supp.2d 558, 560 (E.D. Tx. 2005). Parallel Networks should not be allowed to subject Bergdorf Goodman to the costs and burden of a lengthy discovery process without first fulfilling Rule 8’s pleading requirements.

Parallel Networks’ claim for direct infringement should be dismissed. While following Form 18’s example and complying with Rule 8 are not high standards for pleading claims, Parallel Networks’ vague allegations of infringement fail to meet even those standards. Parallel Networks’ allegations are so vague that they fail to specify a product or method by which Bergdorf Goodman is allegedly infringing the ‘111 patent.

C. Parallel Networks Fails to State a Claim for Inducement or Contributory Infringement

Parallel Networks' claim of indirect infringement is similarly deficient and should be dismissed. A showing of either inducement of infringement or contributory infringement requires a showing of additional elements over and above direct infringement. Section 271(b) of Title 35 states that "[w]hoever actively induces infringement of a patent shall be liable as an infringer." 35 U.S.C. § 271(b). "In order to succeed on a claim of inducement, the patentee must first show that there has been direct infringement and second that the alleged infringer knowingly induced infringement and possessed specific intent to encourage another's infringement." *Symantec Corp v. Computer Assocs. Int'l, Inc.*, 522 F.3d 1279, 1292 (Fed. Cir. 2008) (citations and internal quotations omitted). Further, an *en banc* Federal Circuit panel held that the specific intent necessary to induce infringement "requires more than just intent to cause the acts that produce direct infringement...[T]he inducer must have an affirmative intent to cause direct infringement." *DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1306 (Fed. Cir. 2006). Thus, "inducement requires *evidence of culpable conduct, directed to encouraging another's infringement*, not merely that the inducer had knowledge of the direct infringer's activities." *Id.* (emphasis added). This requirement also "necessarily includes the requirement that he or she *knew of the patent.*" *Id.* at 1304 (emphasis added).

Courts have also found patent infringement complaints lacking where, as here, the elements of the inducement claim are not supported by any factual allegations. In *AntiCancer Inc. v. Xenogen Corp.*, 248 F.R.D. 278 (S.D. Cal. 2007), for example, plaintiff pled inducement as follows: "Each of the defendants has directly infringed the...Patent and has indirectly infringed the...Patent by contributing to or inducing direct infringements of the ...Patent by others." *Id.* at 282 (emendations in original). The court granted defendants' motion to dismiss,

holding that plaintiff “failed to plead any further facts beyond a bare statement of direct and indirect infringement so as to demonstrate a plausible entitlement to relief...” *Id.* Likewise, in *Pfizer Inc. v. Ranbaxy Labs Ltd.*, 321 F.Supp.2d 612 (D.Del. 2004), the court granted defendants’ motion for partial judgment on the pleadings where plaintiffs’ theory of induced infringement was not legally viable. The court held, in relevant respect, that because plaintiffs made “no factual allegations pertaining to [plaintiff’s theory of] inducement,” the court was “not persuaded that the Complaint sufficiently states a cognizable claim for inducement of infringement.” *Id.* at 618 n. 2. Here, Parallel Networks has also failed to state a cognizable claim.

Courts have also granted motions to dismiss where the allegation of intent does not accompany factual allegations sufficient to meet the legal standard. In *Ristvedt-Johnson v. Peltz*, Civ. No. 91-3273, 1991 WL 255691 (N.D. Ill. Nov. 18, 1991), the court held that “[t]o properly allege that the infringer knowingly induced infringement, the plaintiffs must demonstrate that the defendants possessed specific intent to encourage their corporation’s supposed infringement and not merely that the defendants had knowledge of the acts alleged to constitute inducement.” *Id.* at *4. In this case, Parallel Networks does not provide any facts in support of its allegations.

Parallel Networks’ barebones allegations cannot possibly be sufficient to state a claim of induced infringement. Parallel Networks provides no facts in support of its claims and no specific allegations to differentiate between the multitude of defendants. As in *AntiCancer*, Parallel Networks’ threadbare and unsupported allegations are insufficient, and its Complaint should be dismissed.

Similarly, the Complaint’s assertion that Bergdorf Goodman is liable for contributory infringement fails to state a claim upon which relief can be granted. Liability for contributory

infringement arises when one “sells within the United States...a component of a patented machine...constituting a material part of the invention, knowing the same to be especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use.” 35 U.S.C. § 271(c). The language of the statute “deals with the material actually sold by the accused and the uses made of its purchasers.” *Hodosh v. Block Drug Co.*, 833 F.2d 1575, 1578 (Fed. Cir. 1987).

In addition to the reasons previously articulated as to why the inducement claim fails, the contributory infringement claim fails because the Complaint does not allege that Bergdorf Goodman sold a “component” of a patented machine. The failure to include such an allegation was dispositive in *Hewlett-Packard Co. v. Intergraph Corp.*, in which the court granted the defendant’s motion to dismiss the contributory infringement claim because plaintiff “fail[ed] to allege that Defendant offered to sell or sold any particular component or that such component was a material part of an infringing device. *Hewlett-Packard Co. v. Intergraph Corp.*, Civ. No. 03-2517, 2003 WL 23884794, *2 (N.D. Cal. Sep. 6, 2003). According to the court, “[t]his is not sufficient to state a claim for contributory infringement.” *Id.*

Bergdorf Goodman cannot possibly determine what, if any, connection it might have to Parallel Networks’ claims of inducement or contributory infringement. Accordingly, Parallel Networks’ Complaint should be dismissed.

D. Parallel Networks’ Claim of Willful Infringement Should be Dismissed Because It Fails to Identify the Requisite Pre-Suit Conduct

Parallel Networks’ claim of willful infringement should similarly be dismissed. “[W]hen a complaint is filed, a patentee must have a good faith basis for alleging willful infringement.” *In re Seagate Tech., LLC*, 497 F.3d 1360, 1374 (Fed. Cir. 2007) (en banc). Furthermore, “[...]a willfulness claim asserted in the original complaint must necessarily be grounded exclusively in

the accused infringer's pre-filing conduct." *Id.* Parallel Networks has not pled facts sufficient to demonstrate that it had a good faith basis for asserting a claim of willful infringement against Bergdorf Goodman. Parallel Networks has failed to set forth what, if any, of Bergdorf Goodman's pre-filing conduct could be the basis for a willful infringement claim.

Parallel Networks' allegation of willful infringement is not sufficient to state a plausible claim. In its Complaint, Parallel Networks states: "Defendants' infringement was willful and continues to be willful." (Complaint ¶ 305). And, "Defendants were aware of the '111 patent and knew or should have known that defendants were infringing at least claim 1 of the '111 patent." (Complaint ¶ 305). These allegations are devoid of any facts that could support a claim of willful infringement. At the very least, Parallel Networks should have to set forth facts that could form the basis for a claim of willful infringement. Without such facts, Bergdorf Goodman will not have fair notice of Parallel Networks' claim against it. Thus, Parallel Networks has failed to properly state a claim for willful infringement, and its claim should be dismissed.

E. At a Minimum, the Court Should Require Parallel Networks to Provide a More Definite Statement of Its Claims

Even if the Court does not dismiss Parallel Networks' claims, Bergdorf Goodman requests that Parallel Networks, at a minimum, be ordered to provide a more definite statement of its claims.

"A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). "If a complaint is ambiguous or does not contain sufficient information to allow a responsive pleading to be framed, the proper remedy is a motion for a more definite statement under Rule 12(e)." *Benal v. Freeport-McMoran, Inc.*, 197 F.3d 161, 164 (5th Cir. 1999); *see, e.g., Brown v. Whitcraft*, Civ. No. 8-186, 2008 U.S. Dist. LEXIS 39618, *2

(N.D. Tex. May 15, 2008) (“[P]arties may rely on Rule 12(e) as a mechanism to enforce the minimum requirements of notice pleading”). Such motions have “particular usefulness...[w]hen a complaint fashioned under a notice pleading standard does not disclose the facts underlying a plaintiff’s claim for relief.” *Thomas v. Independence Township*, 463 F.3d 285, 301 (3d Cir. 2006). Furthermore, courts have requested that a plaintiff provide a more definite statement when the plaintiff’s complaint contains only “bald, conclusory statements.” *Diabetes Centers of America, Inc. v. Healthpia America, Inc.*, No. H-06-3457, 2007 WL 1655923, at *2 (S.D. Tex. June 7, 2007). “When presented with an appropriate Rule 12(e) motion for a more definite statement, the district court shall grant the motion and demand more specific factual allegations from the plaintiff concerning the conduct underlying the claims for relief.” *Id.*

In the patent infringement context, “Plaintiff cannot foist the burden of discerning what products it believes infringe the patent onto defense counsel, regardless of their skill and expertise.” *eSoft, Inc. v. Astaro Corp.*, Civ. No. 06-00441, 2006 WL 2164454, *2 (D. Colo. July 31, 2006). Thus, courts have frequently granted motions for more definite statements where the patent claims do not provide sufficient factual support. *See, e.g., Bay Indus., Inc. v. Tru-Arx Mfg.*, Civ. No. 06-1010, 2006 WL 3469599, *2 (E.D. Wis. Nov. 29, 2006) (granting motion where the complaint failed to identify any allegedly infringing product, and finding that “Defendant should not have to guess which of its products infringe nor guess how its products might fall within plaintiff’s interpretation of the claims of the patent”); *Static Control Components, Inc. v. Future Graphics, LLC*, Civ. No. 07—7, 2008 WL 160827, *2 (M.D.N.C. Jan. 15, 2008) (where the complaint identified a group of exemplary “universal chips” as allegedly infringing, finding that “[a]bsent a more definite statement” the defendant “ha[d] no choice but to interpret each of the claims of the patents in suit, and determine whether it believes

the chips violate any of [those] claims”); *Taurus IP, LLC v. Ford Motor Co.*, 539 F.Supp.2d 1122, 1127 (W.D. Wis. 2008) (requiring plaintiff to allege which products allegedly infringed which claims of the patents).

In this case, Bergdorf Goodman cannot realistically be expected to frame a responsive pleading to Parallel Networks’ bare and ambiguous allegations without risk of prejudice. A more definite statement, at a minimum, is warranted.

CONCLUSION

Parallel Networks has failed to properly plead its allegations of direct, indirect, and willful infringement. Parallel Networks’ Complaint is utterly devoid of any factual allegations, and is instead filled with mere legal conclusions which do not satisfy even the minimum requirements of Rule 8. Parallel Networks’ Complaint fails to adequately apprise Bergdorf Goodman of the allegations against it, such that it can properly defend itself against Parallel Networks’ claims. Dismissal of Parallel Networks’ Complaint against Bergdorf Goodman is therefore warranted. Alternatively, Parallel Networks should be ordered to provide a more definite statement of its claims.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record via ECF, in accordance with the Federal Rules of Civil Procedure, on this 19th day of November, 2010.

/s/ Daniel A. Crowe
Daniel A. Crowe