

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

PARALLEL NETWORKS, LLC,	)	
	)	
Plaintiff,	)	
	)	Case No. 6:10-cv-491
v.	)	
	)	
ADIDAS AMERICA, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	

**J. JILL’S ANSWER TO PLAINTIFF’S  
COMPLAINT, COUNTERCLAIMS, AND JURY DEMAND**

Defendant Jill Acquisition LLC (“J. Jill”), which operates the web site, www.jjill.com, submits the following answer, counterclaims, and jury demand in response to the Complaint for Patent Infringement (“complaint”) (Doc. No. 1) of Plaintiff Parallel Networks, LLC (“Plaintiff” or “Parallel”).

**ANSWER**

1. J. Jill lacks knowledge sufficient to confirm or deny the allegations in paragraph 1 of the complaint, and therefore denies the same.

2–33. Paragraphs 2–33 of the complaint, inclusive, do not require a response by J. Jill. To the extent that paragraphs 2–33 are deemed to require a response, J. Jill lacks sufficient knowledge or information concerning the facts asserted in paragraphs 2–33, inclusive, to form a belief about their truth, and, on that basis, denies them.

34. J. Jill denies the allegations of paragraph 34. There is no such entity as J. Jill Group, Inc. J. Jill affirmatively states that it operates the web site, www.jjill.com, and is a New Hampshire limited liability company with a principal place of business in Tilton, New

Hampshire. Furthermore, J. Jill Group, Inc. was dismissed from this lawsuit by order dated October 14, 2010 (Dkt. No. 106).

35. J. Jill admits the allegations in paragraph 35 of the complaint.

36–61. Paragraphs 36–61 of the complaint, inclusive, do not require a response by J. Jill. To the extent that paragraphs 36–61 are deemed to require a response, J. Jill lacks sufficient knowledge or information concerning the facts asserted in paragraphs 36–61, inclusive, to form a belief about their truth, and, on that basis, denies them.

62. J. Jill admits that this action arose under the patent laws of the United States, Title 35 of the United States Code and that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 & 1338(a). J. Jill denies the remaining allegations in paragraph 62 as applied to J. Jill, and lacks sufficient information to admit or deny the remaining allegations applicable to other defendants and, therefore, denies the same.

63. J. Jill denies that venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c), & 1400(b), and it reserves its rights to move to transfer to a more convenient or more appropriate venue under 28 U.S.C. § 1404. J. Jill denies the remaining allegations in paragraph 63 as applied to J. Jill, and lacks sufficient information to admit or deny the remaining allegations applicable to other defendants and, therefore, denies the same.

64. J. Jill admits that U.S. Patent No. 6,446,111 (“the ’111 patent”) indicates that it was issued on September 3, 2002, and that the patent is entitled “Method and Apparatus for Client–Server Communication Using a Limited Capability Client Over a Low–Speed Communications Link.” To the extent paragraph 64 of the complaint makes any other allegations against J. Jill, J. Jill denies the same, and specifically J. Jill does not concede that the patent was properly issued or titled.

65. J. Jill lacks knowledge sufficient to confirm or deny the allegations in paragraph 65 of the complaint, and therefore denies the same.

66. J. Jill denies the allegations of paragraph 66 of the complaint.

67–190. Paragraphs 67–190 of the complaint, inclusive, do not require a response by J. Jill. To the extent that paragraphs 67–190 are deemed to require a response, J. Jill lacks sufficient knowledge or information concerning the facts asserted in paragraphs 67–190, inclusive, to form a belief about their truth, and, on that basis, denies them.

191. J. Jill denies the allegations of paragraph 191 of the complaint. There is no such entity as J. Jill Group, Inc., which was dismissed from this lawsuit by order dated October 14, 2010 (Dkt. No. 106).

192. J. Jill denies the allegations of paragraph 192 of the complaint. There is no such entity as J. Jill Group, Inc., which was dismissed from this lawsuit by order dated October 14, 2010 (Dkt. No. 106).

193. J. Jill denies the allegations of paragraph 193 of the complaint. There is no such entity as J. Jill Group, Inc., which was dismissed from this lawsuit by order dated October 14, 2010 (Dkt. No. 106).

194. J. Jill denies the allegations of paragraph 194 of the complaint. There is no such entity as J. Jill Group, Inc., which was dismissed from this lawsuit by order dated October 14, 2010 (Dkt. No. 106).

195. J. Jill denies the allegations of paragraph 195 of the complaint.

196. J. Jill denies the allegations of paragraph 196 of the complaint.

197. J. Jill denies the allegations of paragraph 197 of the complaint.

198. J. Jill denies the allegations of paragraph 198 of the complaint.

199–302. Paragraphs 199–302 of the complaint, inclusive, do not require a response by J. Jill. To the extent that paragraphs 199–302 are deemed to require a response, J. Jill lacks sufficient knowledge or information concerning the facts asserted in paragraphs 199–302, inclusive, to form a belief about their truth, and, on that basis, denies them.

303. J. Jill denies the allegations of paragraph 303 of the complaint to the extent directed at J. Jill. To the extent that paragraph 303 is deemed to require a response with respect to the other Defendants, J. Jill lacks knowledge sufficient to confirm or deny the allegations and therefore denies the same.

304. J. Jill denies the allegations of paragraph 303 of the complaint to the extent directed at J. Jill. To the extent that paragraph 303 is deemed to require a response with respect to the other Defendants, J. Jill lacks knowledge sufficient to confirm or deny the allegations and therefore denies the same.

305. J. Jill denies the allegations of paragraph 303 of the complaint to the extent directed at J. Jill. To the extent that paragraph 303 is deemed to require a response with respect to the other Defendants, J. Jill lacks knowledge sufficient to confirm or deny the allegations and therefore denies the same.

#### **GENERAL DENIAL**

306. J. Jill denies any allegations not specifically admitted above, and requests that the Court deny all relief to Parallel, including that requested by Parallel in its Prayer for Relief.

**AFFIRMATIVE DEFENSES**

J. Jill reserves the right to amend its Answer to assert additional affirmative defenses, consistent with the facts discovered in this case.

**FIRST AFFIRMATIVE DEFENSE**

307. The Court lacks jurisdiction over the persons of J. Jill.

**SECOND AFFIRMATIVE DEFENSE**

308. Venue is improper in this Court.

**THIRD AFFIRMATIVE DEFENSE**

309. The complaint fails to state a claim upon which relief may be granted.

**FOURTH AFFIRMATIVE DEFENSE**

310. J. Jill has not literally infringed, infringed under the doctrine of equivalents, contributorily infringed, or induced the infringement of the patent-in-suit, and is not doing so.

**FIFTH AFFIRMATIVE DEFENSE**

311. To the extent that Parallel ultimately states a valid claim against J. Jill for the indirect infringement of the patent-in-suit, either by contributing to or inducing infringement, J. Jill is not liable to Parallel for any acts alleged to have been performed before J. Jill knew that its actions would cause indirect infringement.

**SIXTH AFFIRMATIVE DEFENSE**

312. Some or all of the claims of the patent-in-suit are invalid and unenforceable under the patent laws, including without limitation 35 U.S.C. §§ 101, 102, 103, and 112.

**SEVENTH AFFIRMATIVE DEFENSE**

313. Any claim by Parallel for damages for patent infringement is limited by 35 U.S.C. § 286 to those damages incurred within the six years before the filing of the complaint.

**EIGHTH AFFIRMATIVE DEFENSE**

314. Any claim by Parallel for damages for patent infringement is limited by 35 U.S.C. § 287 to those damages incurred after J. Jill had notice of infringement.

**NINTH AFFIRMATIVE DEFENSE**

315. To the extent that Parallel seeks a declaration that J. Jill has willfully infringed the patent-in-suit, Parallel has neither made nor has any factual basis to make any allegation that J. Jill has willfully infringed the patent-in-suit.

**TENTH AFFIRMATIVE DEFENSE**

316. Parallel has improperly joined unrelated defendants in a single action in which there are not sufficient common questions of law or fact to justify a trial against all such defendants in a single action consistent with due process principles.

**ELEVENTH AFFIRMATIVE DEFENSE**

317. Without conceding that J. Jill performs any step of any claim of the patent-in-suit, J. Jill cannot and does not perform all of the steps of any claim of the patent-in-suit.

**TWELFTH AFFIRMATIVE DEFENSE**

318. To the extent that Parallel, and alleged predecessors-in-interest to the patent-in-suit, failed to properly mark any of their relevant products as required by 35 U.S.C. § 287 or otherwise give proper notice that J. Jill's actions allegedly infringed the patent-in-suit, J. Jill is not liable to Parallel for the acts alleged to have been performed before it received actual notice that it was allegedly infringing the patent-in-suit.

**THIRTEENTH AFFIRMATIVE DEFENSE**

319. Parallel's attempted enforcement of the patent-in-suit against J. Jill is barred by laches and estoppel.

## **COUNTERCLAIMS**

For its counterclaims, J. Jill complains and alleges against Parallel as follows:

### **INTRODUCTION**

320. By its counterclaims, J. Jill seeks a declaration that it has not infringed the patent-in-suit and that the patent-in-suit is invalid.

### **PARTIES**

321. J. Jill is a New Hampshire limited liability company with a principal place of business in Tilton, New Hampshire.

322. On information and belief, Parallel is a Texas limited liability company with a principal place of business in Tyler, Texas.

### **JURISDICTION**

323. J. Jill's counterclaims arise under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201, 2202 and the patent laws of the United States of America, 35 U.S.C. § 1, *et seq.*, and this Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338.

### **THE PATENT**

324. On information and belief, Parallel claims to be the current owner of all rights, interest, and title in the patent-in-suit.

### **EXISTENCE OF AN ACTUAL CONTROVERSY**

325. On September 23, 2010, Parallel filed suit in this Court alleging that J. Jill infringes the patent-in-suit.

326. J. Jill disputes the validity of the patent-in-suit, and denies that it has infringed it literally or under the doctrine of equivalents, or induced or contributed to its infringement, or is currently doing so.

327. Accordingly, there is a substantial and actual controversy between J. Jill and Parallel over whether the patent-in-suit is valid and enforceable, and, if it is valid and enforceable, whether J. Jill has infringed, or is infringing, it.

328. There exists a clear and serious threat to J. Jill's business so long as this controversy remains unresolved.

**FIRST COUNTERCLAIM**  
**[Declaration of Non-Infringement of the '739 Patent]**

329. J. Jill repeats the allegations of the preceding paragraphs as if set forth in this paragraph.

330. Parallel has asserted that J. Jill has infringed, or is infringing, the patent-in-suit.

331. J. Jill denies that it has infringed, or is infringing, the patent-in-suit.

332. J. Jill requests a judicial declaration that it neither has infringed, nor is infringing, the patent-in-suit.

**SECOND COUNTERCLAIM**  
**[Declaration of Invalidity of the '739 Patent]**

333. J. Jill repeats the allegations of the preceding paragraphs as if set forth in this paragraph.

334. J. Jill asserts that the claims of the patent-in-suit are invalid and unenforceable under one or more sections of the patent laws, including, without limitation, 35 U.S.C. §§ 101, 102, 103, and/or 112.

335. On information and belief, Parallel asserts that the claims of the patent-in-suit are valid and enforceable.

336. J. Jill requests a judicial declaration that the claims of the patent-in-suit are invalid and unenforceable.



**PRAYER FOR RELIEF**

WHEREFORE, J. Jill requests that the Court enter judgment on Parallel’s complaint that:

- A. Parallel’s complaint is dismissed in its entirety with prejudice and that Parallel takes nothing by its complaint;
- B. Parallel’s request for injunctive relief is denied;
- C. J. Jill has not infringed, and is not infringing, the patent-in-suit;
- D. The patent-in-suit is declared invalid and/or unenforceable;
- E. J. Jill is awarded its costs, disbursements, and attorneys’ fees pursuant to 35 U.S.C. § 285, and other applicable provisions of law; and
- F. J. Jill is granted such other and further relief as the Court deems just and proper.

**JURY DEMAND**

J. Jill demands a jury trial of all issues so triable in this action.

Dated: November 22, 2010

Respectfully submitted,

Jennifer Parker Ainsworth  
State Bar No. 00784720  
[jainsworth@wilsonlawfirm.com](mailto:jainsworth@wilsonlawfirm.com)  
**WILSON, ROBERTSON & CORNELIUS, P.C.**  
909 ESE Loop 323, Suite 400  
Tyler, Texas 75701  
(903) 509-5000

/s/ Stacy O. Stitham \_\_\_\_\_

Peter J. Brann

(admitted *pro hac vice*)

[pbrann@brannlaw.com](mailto:pbrann@brannlaw.com)

David Swetnam–Burland

(admitted *pro hac vice*)

[dsb@brannlaw.com](mailto:dsb@brannlaw.com)

Stacy O. Stitham

(admitted *pro hac vice*)

[sstitham@brannlaw.com](mailto:ssitham@brannlaw.com)

**BRANN & ISAACSON**

184 Main Street; Box 3070

Lewiston, ME 04243–3070

(207) 786–3566

*Attorneys for Jill Acquisition LLC*

**CERTIFICATE OF SERVICE**

I certify that on November 22, 2010, the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/ Stacy O. Stitham  
Stacy O. Stitham