

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

PARALLEL NETWORKS, LLC

Plaintiffs,

v.

ADIDAS AMERICA, INC.; et al.

Defendant.

**CIVIL ACTION NO. 6:10-cv-00491**

**JURY TRIAL DEMANDED**

**DEFENDANT NEW BALANCE ATHLETIC SHOE, INC.'S  
ANSWER TO PLAINTIFF'S ORIGINAL  
COMPLAINT FOR PATENT INFRINGEMENT**

Defendant New Balance Athletic Shoe, Inc. ("New Balance") answers the Original Complaint for Patent Infringement of Parallel Networks, LLC ("Parallel Networks") as follows:

**THE PARTIES**

1. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

2. The allegations of paragraph 2 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

3. The allegations of paragraph 3 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

4. The allegations of paragraph 4 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

5. The allegations of paragraph 5 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

6. The allegations of paragraph 6 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

7. The allegations of paragraph 7 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

8. The allegations of paragraph 8 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

9. The allegations of paragraph 9 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or

information sufficient to form a belief as to the truth of these allegations and therefore denies them.

10. The allegations of paragraph 10 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

11. The allegations of paragraph 11 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

12. The allegations of paragraph 12 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

13. The allegations of paragraph 13 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

14. The allegations of paragraph 14 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

15. The allegations of paragraph 15 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

16. The allegations of paragraph 16 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

17. The allegations of paragraph 17 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

18. The allegations of paragraph 18 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

19. The allegations of paragraph 19 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

20. The allegations of paragraph 20 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or

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21. The allegations of paragraph 21 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

22. The allegations of paragraph 22 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

23. The allegations of paragraph 23 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

24. The allegations of paragraph 24 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

25. The allegations of paragraph 25 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

26. The allegations of paragraph 26 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

27. The allegations of paragraph 27 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

28. The allegations of paragraph 28 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

29. The allegations of paragraph 29 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

30. The allegations of paragraph 30 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

31. The allegations of paragraph 31 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or

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32. The allegations of paragraph 32 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

33. The allegations of paragraph 33 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

34. The allegations of paragraph 34 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

35. The allegations of paragraph 35 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

36. The allegations of paragraph 36 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

37. The allegations of paragraph 37 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

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41. The allegations of paragraph 41 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

42. The allegations of paragraph 42 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or



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46. The allegations of paragraph 46 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

47. The allegations of paragraph 47 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

48. The allegations of paragraph 48 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

49. The allegations of paragraph 49 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

50. The allegations of paragraph 50 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

51. Admitted.

52. The allegations of paragraph 52 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

53. The allegations of paragraph 53 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

54. The allegations of paragraph 54 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or

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57. The allegations of paragraph 57 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

58. The allegations of paragraph 58 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

59. The allegations of paragraph 59 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

60. The allegations of paragraph 60 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

61. The allegations of paragraph 61 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

### **JURISDICTION AND VENUE**

62. Defendant New Balance admits that this action purports to arise under the patent laws of the United States, Title 35 of the United States Code. Defendant New Balance admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), and that New Balance is subject to this Court's specific and general personal jurisdiction, but denies that it is committing or has committed any act of infringement alleged in the Plaintiff's Original Complaint for Patent Infringement. Defendant New Balance admits that it is subject to this Court's general jurisdiction and that it does business in this forum, and derives revenue from goods and services provided to persons or entities in Texas. Defendant New Balance denies the remaining allegations of this paragraph, as they relate to Defendant New Balance. As to the other Defendants, New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

63. Defendant New Balance denies that venue is proper under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). Defendant New Balance admits that it is subject to personal jurisdiction in this District, but denies that it is committing or has committed any act of infringement alleged in the Plaintiff's Original Complaint for Patent Infringement. Defendant New Balance denies the

remaining allegations of this paragraph, as they relate to Defendant New Balance. As to the other defendants, Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

**COUNT I**  
**INFRINGEMENT OF U.S. PATENT NO. 6,446,111**

64. Defendant New Balance admits that the face of U.S. Patent No. 6,446,111 indicates that it is entitled “Method and Apparatus for Client-Server Communications Using a Limited Capability Client Over a Low Speed Communications Network” and that it issued on September 3, 2002.

65. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations, and therefore denies them.

66. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations, and therefore denies them.

67. The allegations of paragraph 67 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

68. The allegations of paragraph 68 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

69. The allegations of paragraph 69 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or

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70. The allegations of paragraph 70 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

71. The allegations of paragraph 71 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

72. The allegations of paragraph 72 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

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83. The allegations of paragraph 83 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

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155. The allegations of paragraph 155 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

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258. The allegations of paragraph 258 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

259. Denied.

260. Denied.

261. Denied.

262. Denied.

263. The allegations of paragraph 263 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

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300. The allegations of paragraph 300 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

301. The allegations of paragraph 301 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

302. The allegations of paragraph 302 are not directed towards Defendant New Balance, and therefore, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

303. To the extent the allegations of paragraph 303 are not directed towards Defendant New Balance, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies

them. To the extent the allegations of paragraph 303 are directed towards Defendant New Balance, such allegations are denied in their entirety.

304. To the extent the allegations of paragraph 304 are not directed towards Defendant New Balance, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies them. To the extent the allegations of paragraph 304 are directed towards Defendant New Balance, such allegations are denied in their entirety.

**COUNT II**  
**WILLFUL INFRINGEMENT**

305. To the extent the allegations of paragraph 305 are not directed towards Defendant New Balance, no answer is required. Defendant New Balance is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies them. To the extent the allegations of paragraph 305 are directed towards Defendant New Balance, such allegations are denied in their entirety.

**PRAYER FOR RELIEF**

Defendant New Balance denies that Plaintiff is entitled to any of the relief requested in its Prayer for Relief.

**DEMAND FOR JURY TRIAL**

Defendant New Balance admits that Plaintiff has demanded a trial by jury.

**DEFENDANT'S AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State Sufficient Facts To Constitute Claims)**

306. Plaintiff fails to state a claim on which relief may be granted.



**SECOND AFFIRMATIVE DEFENSE**  
**(Invalidity)**

307. The '111 patent (the "Asserted Patent") is invalid for failure to comply with the requirements of patentability stated in Title 35, United States Code § 1, *et seq.*

**THIRD AFFIRMATIVE DEFENSE**  
**(Laches)**

308. Plaintiff is time barred under the doctrine of laches to bring this action against Defendant New Balance. Plaintiff unreasonably delayed in filing this action, and unreasonably delayed in prosecuting the asserted claims, after the Plaintiff knew, or should have known of the alleged infringing acts. In the interim, Defendant New Balance has invested time and money into building its business and goodwill. To allow Plaintiff to bring an action now after its unreasonable delay would result in material prejudice to Defendant New Balance.

**FOURTH AFFIRMATIVE DEFENSE**  
**(Innocent Intent)**

309. Defendant New Balance has engaged in all relevant activities in good faith, thereby precluding Plaintiff, even if it prevails, from recovering its reasonable attorney's fees and/or costs under 35 U.S.C. § 285.

**FIFTH AFFIRMATIVE DEFENSE**  
**(Prosecution History Estoppel)**

310. By reason of the proceedings in the United States Patent and Trademark Office during the prosecution of the application that ultimately led to the issuance of the Asserted Patent, Plaintiff is estopped from asserting that any claim of the Asserted Patent is infringed by Defendant New Balance under the doctrine of equivalents for one or more of the Plaintiff's asserted claims.

**SIXTH AFFIRMATIVE DEFENSE**  
**(Estoppel)**

311. Plaintiff's Original Complaint and each and every purported cause of action therein, in whole or in part, are barred by the equitable doctrine of estoppel.

**COUNTERCLAIMS**

Counter-Plaintiff New Balance alleges as follows for its Counterclaim against Counter-Defendant Parallel Networks, LLC.

**NATURE OF THE LAWSUIT**

1. This Counterclaim is an action for a declaration of patent non-infringement, patent invalidity, and unenforceability arising under the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the patent laws of the United States, 35 U.S.C. § 1, *et seq.*

**THE PARTIES**

2. Counterclaimant New Balance is a Massachusetts corporation with its principal place of business at 20 Guest Street, Boston, Massachusetts 02135.

3. Plaintiff's Original Complaint alleges that Parallel Networks, LLC is a Texas Limited Liability Company with its principal place of business at 100 E. Ferguson Street, Suite 602, in Tyler, Texas.

**JURISDICTION AND VENUE**

4. This court has subject matter jurisdiction over these counterclaims based on 28 U.S.C. §§ 1331, 1338, 2201-02 and under Fed. R. Civ. P. 13(a) in that this is a compulsory counterclaim to the allegations in Plaintiff's Original Complaint.

5. If venue is proper for the Original Complaint, then venue is proper for these counterclaims. The declaratory relief sought is a compulsory counterclaim to the claims filed by Plaintiff in this case and pursuant to 28 U.S.C. §§ 1367 and 1391(b).

6. By virtue of the Original Complaint filed by the Plaintiff in this action, there is an actual and justiciable controversy between New Balance and Plaintiff concerning non-infringement, invalidity, and unenforceability with respect to the Asserted Patent. A judicial declaration is needed and appropriate to resolve this controversy.

**COUNT I - INVALIDITY - NON-INFRINGEMENT - UNENFORCEABILITY**

7. Defendant New Balance realleges and reincorporates herein the foregoing responses and allegations.

8. Defendant New Balance seeks a declaration that the products and services made, used, imported, sold or offered for sale by New Balance have not and to not infringe, directly or indirectly, any valid and enforceable claim of the Asserted Patent and/or that the Asserted Patent is either invalid or otherwise unenforceable for one of the grounds set forth in 35 U.S.C. § 1, *et seq.*

9. This case qualifies as an exceptional case under 35 U.S.C. § 285.

**PRAYER FOR RELIEF**

WHEREFORE, New Balance respectfully requests that this Court:

- A. Dismiss Plaintiff's Complaint with prejudice;
- B. Order and adjudge that New Balance has not infringed any valid, enforceable claim of the Asserted Patent;
- C. Order and adjudge that the Asserted Patent is invalid under the patent laws of the United States for failure to comply with requirement of patentability set forth in Title 35, United States Code § 1, *et seq.*;
- D. Order and adjudge that the Asserted Patent is unenforceable;
- E. Order and adjudge that this case is exceptional pursuant to 35 U.S.C. § 285, and award New Balance its reasonable attorney's fees; and

F. Grant New Balance such further relief as this Court deems just and appropriate.

**JURY DEMAND**

New Balance demands a jury trial on all issues so triable in this case.

Respectfully submitted,



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Attorney for Defendant New Balance  
Athletic Shoe, Inc.

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email and/or fax, on this the 22<sup>nd</sup> day of November, 2010.



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Scott E. Stevens