

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

Parallel Networks, LLC,

Plaintiff

vs.

NO. 6:10-cv-491-LED

Adidas America, Inc., et al,

Defendants.

**ANSWER AND COUNTERCLAIMS TO COMPLAINT
FOR PATENT INFRINGEMENT**

Defendant Hayneedle, Inc. (“Hayneedle”) files this Answer and Counterclaims to Plaintiff Parallel Networks, LLC’s (“Parallel Networks”) Original Complaint for Patent Infringement (“Complaint”). Unless expressly admitted in the paragraphs set forth below, Hayneedle denies the allegations and characterizations in Parallel Networks’ Complaint.

THE PARTIES

1. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 1 and, therefore, denies the same.
2. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 2 and, therefore, denies the same.
3. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 3 and, therefore, denies the same.
4. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 4 and, therefore, denies the same.

5. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 5 and, therefore, denies the same.

6. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 6 and, therefore, denies the same.

7. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 7 and, therefore, denies the same.

8. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 8 and, therefore, denies the same.

9. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 9 and, therefore, denies the same.

10. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 10 and, therefore, denies the same.

11. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 11 and, therefore, denies the same.

12. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 12 and, therefore, denies the same.

13. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 13 and, therefore, denies the same.

14. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 14 and, therefore, denies the same.

15. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 15 and, therefore, denies the same.

16. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 16 and, therefore, denies the same.

17. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 17 and, therefore, denies the same.

18. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 18 and, therefore, denies the same.

19. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 19 and, therefore, denies the same.

20. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 20 and, therefore, denies the same.

21. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 21 and, therefore, denies the same.

22. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 22 and, therefore, denies the same.

23. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 23 and, therefore, denies the same.

24. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 24 and, therefore, denies the same.

25. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 25 and, therefore, denies the same.

26. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 26 and, therefore, denies the same.

27. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 27 and, therefore, denies the same.

28. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 28 and, therefore, denies the same.

29. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 29 and, therefore, denies the same.

30. Hayneedle admits the allegations contained in Paragraph 30.

31. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 31 and, therefore, denies the same.

32. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 32 and, therefore, denies the same.

33. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 33 and, therefore, denies the same.

34. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 34 and, therefore, denies the same.

35. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 35 and, therefore, denies the same.

36. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 36 and, therefore, denies the same.

37. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 37 and, therefore, denies the same.

38. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 38 and, therefore, denies the same.

39. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 39 and, therefore, denies the same.

40. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 40 and, therefore, denies the same.

41. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 41 and, therefore, denies the same.

42. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 42 and, therefore, denies the same.

43. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 43 and, therefore, denies the same.

44. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 44 and, therefore, denies the same.

45. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 45 and, therefore, denies the same.

46. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 46 and, therefore, denies the same.

47. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 47 and, therefore, denies the same.

48. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 48 and, therefore, denies the same.

49. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 49 and, therefore, denies the same.

50. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 50 and, therefore, denies the same.

51. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 51 and, therefore, denies the same.

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54. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 54 and, therefore, denies the same.

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56. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 56 and, therefore, denies the same.

57. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 57 and, therefore, denies the same.

58. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 58 and, therefore, denies the same.

59. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 59 and, therefore, denies the same.

60. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 60 and, therefore, denies the same.

61. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 61 and, therefore, denies the same.

JURISDICTION AND VENUE

62. Hayneedle admits that this action arises 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 and 1338(a). Hayneedle further admits that it is subject to this Court's personal jurisdiction. Hayneedle denies the remaining allegations contained in Paragraph 62 as applied to Hayneedle. Hayneedle lacks sufficient information and knowledge to

admit or deny the remaining allegations contained in Paragraph 62 as they apply to the other Defendants, and therefore, denies the same.

63. Hayneedle admits that venue is proper in this District under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b), but denies that venue is convenient in this jurisdiction and reserves the right to move to transfer to a more convenient or appropriate venue pursuant to 28 U.S.C. § 1404. Hayneedle denies the remaining allegations contained in Paragraph 63 as applied to Hayneedle. Hayneedle lacks sufficient information and knowledge to admit or deny the remaining allegations contained in Paragraph 63 as they apply to the other Defendants, and therefore, denies the same.

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

64. Hayneedle admits the allegations contained in Paragraph 64.

65. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 65 and, therefore, denies the same.

66. The allegations set forth in Paragraph 66 contain a legal conclusion for which no response is required. To the extent a response is required, Hayneedle lacks sufficient information and knowledge to admit or deny the allegations of Paragraph 66 and, therefore, denies the same.

67. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 67 and, therefore, denies the same.

68. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 68 and, therefore, denies the same.

69. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 69 and, therefore, denies the same.

70. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 70 and, therefore, denies the same.

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100. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 100 and, therefore, denies the same.

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174. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 174 and, therefore, denies the same.

175. Hayneedle denies the allegations contained in Paragraph 175.

176. Hayneedle denies the allegations contained in Paragraph 176.

177. Hayneedle denies the allegations contained in Paragraph 177.

178. Hayneedle denies the allegations contained in Paragraph 178.

179. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 179 and, therefore, denies the same.

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278. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 279 and, therefore, denies the same.

279. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 279 and, therefore, denies the same.

280. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 280 and, therefore, denies the same.

281. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 281 and, therefore, denies the same.

282. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 282 and, therefore, denies the same.

283. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 283 and, therefore, denies the same.

284. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 284 and, therefore, denies the same.

285. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 285 and, therefore, denies the same.

286. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 286 and, therefore, denies the same.

287. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 287 and, therefore, denies the same.

288. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 288 and, therefore, denies the same.

289. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 289 and, therefore, denies the same.

290. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 290 and, therefore, denies the same.

291. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 291 and, therefore, denies the same.

292. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 292 and, therefore, denies the same.

293. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 293 and, therefore, denies the same.

294. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 294 and, therefore, denies the same.

295. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 295 and, therefore, denies the same.

296. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 296 and, therefore, denies the same.

297. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 297 and, therefore, denies the same.

298. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 298 and, therefore, denies the same.

299. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 299 and, therefore, denies the same.

300. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 300 and, therefore, denies the same.

301. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 301 and, therefore, denies the same.

302. Hayneedle lacks sufficient knowledge and information concerning the allegations contained in Paragraph 302 and, therefore, denies the same.

303. Hayneedle denies the allegations set forth in Paragraph 303 as applied to Hayneedle. Hayneedle lacks sufficient information and knowledge regarding the allegations contained in Paragraph 303 as applied to the other Defendants, and therefore, denies the same.

304. Hayneedle denies the allegations set forth in Paragraph 304 as applied to Hayneedle. Hayneedle lacks sufficient information and knowledge regarding the allegations contained in Paragraph 304 as applied to the other Defendants, and therefore, denies the same.

COUNT II WILLFUL INFRINGEMENT

305. Hayneedle denies the allegations set forth in Paragraph 305 as applied to Hayneedle. Hayneedle lacks sufficient information and knowledge regarding the allegations contained in Paragraph 305 as applied to the other Defendants, and therefore, denies the same.

PRAYER FOR RELIEF

To the extent Parallel Networks' prayer for relief contains any allegations or statements to which a response is required, Hayneedle denies the same and, further, requests that the Court deny any and all relief to Parallel Networks, including that expressly requested by Parallel Networks in its Prayer for Relief.

AFFIRMATIVE DEFENSES

Hayneedle hereby asserts the following affirmative defenses pursuant to Federal Rule of Civil Procedure 8(c). Hayneedle further reserves the right to amend its Answer to add additional Affirmative Defenses, including by way of example only, instances of inequitable conduct, as discovery proceeds in this case.

FIRST AFFIRMATIVE DEFENSE

Hayneedle does not infringe and has not infringed, either directly or indirectly (whether contributorily or by inducement) any valid and enforceable claims of U.S. Patent No. 6,446,111 (the “‘111 Patent”).

SECOND AFFIRMATIVE DEFENSE

The ‘111 is invalid under one or more of the provisions of 35 U.S.C. §§ 101, 102, 103 and 112.

THIRD AFFIRMATIVE DEFENSE

Venue in the current judicial district is inconvenient.

FOURTH AFFIRMATIVE DEFENSE

Parallel Networks’ Complaint fails to state a claim for which relief can be granted.

FIFTH AFFIRMATIVE DEFENSE

To the extent Parallel Networks and alleged predecessors-in-interest to the ‘111 Patent fail to properly mark any of the relevant products as required pursuant to 35 U.S.C. § 287, or otherwise give proper notice that Hayneedle’s actions allegedly infringed the ‘111 Patent, Hayneedle is not liable to Parallel Networks for the acts alleged to have been performed before it received actual notice that it was allegedly infringing the ‘111 Patent.

SIXTH AFFIRMATIVE DEFENSE

Parallel Networks is not entitled to any injunctive relief and will suffer no irreparable injury due, in addition to other grounds, on the availability of an adequate remedy at law. To the extent Parallel Networks asserts that Hayneedle indirectly infringes (whether contributorily or by inducement), Hayneedle is not liable to Parallel Networks for the acts alleged to have been performed before Hayneedle knew its actions would cause the alleged indirect infringement.

SEVENTH AFFIRMATIVE DEFENSE

Parallel Networks' claims of infringement under the '111 Patent are barred, in whole or in part, by the doctrines of laches and/or estoppel.

COUNTERCLAIMS FOR DECLARATORY JUDGMENT

As and for its Counterclaims against Parallel Networks, Hayneedle hereby states and alleges as follows:

PARTIES

1. Hayneedle, Inc. is a corporation with its principal place of business at 12720 I Street, Suite 200, Omaha, Nebraska.

2. Upon information and belief, Parallel Networks is a Texas limited liability company with its principal place of business at 100 East Ferguson Street, Suite 602, Tyler, Texas.

JURISDICTION AND VENUE

3. This Counterclaim arises under the patent laws of the United States, Title 35, United States Code. This Court has subject matter jurisdiction over these Counterclaims under 35 U.S.C. §§ 271, *et. seq.*, and 28 U.S.C. §§ 1331, 1338, 1367, 2201 and 2202.

4. To the extent venue is proper and appropriately convenient for Parallel Networks' claims, then venue is also proper and appropriately convenient for these Counterclaims pursuant to 28 U.S.C. §§ 391(c) and 1400.

COUNTERCLAIM I DECLARATION OF NON-INFRINGEMENT

5. Hayneedle incorporates the allegations contained in Paragraphs 1 through 4 as if fully set forth in this Paragraph 5.

6. As a result of the filing by Parallel Networks of its Complaint and the subsequent filing of this Answer at a minimum, an actual and justiciable controversy exists between Hayneedle and Parallel Networks regarding the ‘111 Patent.

7. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et. seq.*, Hayneedle requests a declaration by the Court that it has not and does not infringe the ‘111 Patent, either directly (whether individually or jointly) or indirectly (whether contributorily or by inducement).

COUNTERCLAIM II DECLARATION OF INVALIDITY

8. Hayneedle incorporates the allegations contained in Paragraphs 1 through 7 as if fully set forth in this Paragraph 8.

9. Based on Parallel Networks’ filing of its Complaint and Hayneedle’s filing of this Answer at a minimum, an actual controversy has arisen and now exists between the parties concerning the validity of the claims of the ‘111 Patent.

10. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et. seq.* and 35 U.S.C. §§ 100, *et. seq.*, Hayneedle requests a declaration by the Court that the claims of the ‘111 Patent are invalid.

PRAYER FOR RELIEF

Hayneedle respectfully requests a judgment against Parallel Networks as follows:

- (a) A declaration that the ‘111 Patent is invalid;
- (b) A declaration that Hayneedle does not infringe under any theory any valid claim of the ‘111 Patent;
- (c) A declaration denying the relief requested by Parallel Networks;
- (d) A judgment against Parallel Networks in favor of Hayneedle;

- (e) Dismissal of Parallel Networks' Complaint with prejudice;
- (f) An award to Hayneedle of its costs and attorneys' fees incurred in connection with the prosecution of this action; and
- (g) Such other and further relief as the Court may deem just and appropriate.

JURY DEMAND

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Local Rule CV-38, Hayneedle hereby respectfully demands a jury trial on all issues.

Dated: November 22, 2010

Respectfully submitted,

/s/ Gregory P. Love

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- and -

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ATTORNEYS FOR DEFENDANT
Hayneedle, 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 motion was served on all counsel who are deemed to have consented to electronic service per Local Rule CV-5(a)(3)(A) on this the 22nd day of November 2010.

/s/ Gregory P. Love

Gregory P. Love