

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

PARALLEL NETWORKS, LLC,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 6:10-cv-00491-LED
v.	§	
	§	
ADIDAS AMERICA, INC., et al.,	§	(JURY TRIAL)
	§	
Defendants.	§	
	§	

**THE PROCTER & GAMBLE COMPANY AND THE GILLETTE COMPANY’S
ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS TO
PARALLEL NETWORKS, LLC’S ORIGINAL COMPLAINT
FOR PATENT INFRINGEMENT AND DAMAGES**

Defendants The Procter & Gamble Company and The Gillette Company (collectively “P&G”) hereby answer the Original Complaint of Parallel Networks, LLC (“Parallel Networks”) as follows:

ANSWER TO PARAGRAPHS 1-24: P&G lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 1-24 of the Complaint, and on that basis, P&G denies all allegations therein.

ANSWER TO PARAGRAPH 25: P&G admits that The Gillette Company is a corporation having a place of business in Boston, Massachusetts. Except as expressly admitted herein, P&G denies all allegations of paragraph 25.

ANSWER TO PARAGRAPHS 26-53: P&G lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 26-53 of the Complaint, and on that basis, P&G denies all allegations therein.

ANSWER TO PARAGRAPH 54: P&G admits that the Procter & Gamble Company is a corporation having a place of business in Cincinnati, Ohio. Except as expressly admitted herein, P&G denies all allegations of paragraph 54.

ANSWER TO PARAGRAPHS 55-61: P&G lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 55-61 of the Complaint, and on that basis, P&G denies all allegations therein.

ANSWER TO PARAGRAPH 62: P&G admits that Plaintiff purports to state a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. P&G denies that plaintiff has in fact stated a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. P&G admits that this Court has subject matter jurisdiction over P&G pursuant to 28 U.S.C. §§ 1331 and 1338(a). Except as expressly admitted herein, P&G denies the allegations in paragraph 62 as they relate to P&G. P&G lacks sufficient information to admit or deny the allegations of paragraph 62 with respect to all other defendants, and therefore denies the same.

ANSWER TO PARAGRAPH 63: P&G admits that venue over it exists in this District under 28 U.S.C. § 1391(c). However, P&G does not admit that this is the most appropriate or convenient forum to exercise jurisdiction over this case. P&G denies that it committed the tort of patent infringement within Texas and this district. P&G denies having committed acts within this judicial district that would give rise to this action. Except as expressly admitted herein, P&G denies the allegations in paragraph 63 as they relate to P&G. P&G lacks sufficient information to admit or deny the allegations of paragraph 63 with respect to all other defendants, and therefore denies the same.

ANSWER TO PARAGRAPH 64: P&G admits that the '111 shows on its face that it was issued on September 3, 2002. Except as expressly admitted herein, P&G denies any other allegations in paragraph 64.

ANSWER TO PARAGRAPH 65: P&G lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 65 of the Complaint, and on that basis, P&G denies all allegations therein.

ANSWER TO PARAGRAPH 66: P&G lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 66 of the Complaint, and on that basis, P&G denies all allegations therein.

ANSWER TO PARAGRAPHS 67-154: P&G lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 67-154 of the Complaint, and on that basis, P&G denies all allegations therein.

ANSWER TO PARAGRAPHS 155-158: P&G denies each and every allegation of paragraphs 155-158 of the Complaint.

ANSWER TO PARAGRAPHS 159-270: P&G lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 159-270 of the Complaint, and on that basis, P&G denies all allegations therein.

ANSWER TO PARAGRAPHS 271-274: P&G denies each and every allegation of paragraphs 271-274 of the Complaint.

ANSWER TO PARAGRAPHS 275-302: P&G lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 275-302 of the Complaint, and on that basis, P&G denies all allegations therein.

ANSWER TO PARAGRAPH 303: P&G denies the allegations in paragraph 303 as they relate to P&G. P&G lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 303 with respect to all other defendants named in the Complaint, and therefore denies the same.

ANSWER TO PARAGRAPH 304: P&G denies the allegations in paragraph 304 as they relate to P&G. P&G lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 304 with respect to all other defendants named in the Complaint, and therefore denies the same.

ANSWER TO PARAGRAPH 305: P&G denies the allegations in paragraph 305 as they relate to P&G. P&G lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 305 with respect to all other defendants named in the Complaint, and therefore denies the same.

PRAYER FOR RELIEF

1. P&G requests that the Court deny all relief to Parallel Networks, including that requested by Parallel Networks in its Prayer for Relief.

P&G'S AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE
(Failure to State Sufficient Facts to Constitute Claims)

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

SECOND AFFIRMATIVE DEFENSE
(Invalidity)

3. 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)

4. Plaintiff is time barred under the doctrine of laches to bring this action against P&G. Plaintiff unreasonably delayed in filing this action, and unreasonably delayed in prosecuting the asserted claims, after Plaintiff knew, or should have known of the alleged

infringing acts. In the interim, P&G 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 P&G.

FOURTH AFFIRMATIVE DEFENSE
(Innocent Intent)

5. P&G 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)

6. By reason of 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 P&G under the doctrine of equivalents for one or more of Plaintiff's asserted claims.

SIXTH AFFIRMATIVE DEFENSE
(Non-Infringement)

7. No product or service made, used, imported, sold or offered for sale by P&G infringes directly or indirectly, any valid and enforceable claim of the Asserted Patent.

SEVENTH AFFIRMATIVE DEFENSE
(Absence of Liability for Infringement)

8. To the extent that Parallel Networks asserts that P&G indirectly infringes, either by contributory infringement or inducement of infringement, P&G is not liable to Parallel Networks for the acts alleged to have been performed before P&G knew that its actions would cause indirect infringement.

COUNTERCLAIMS

Counter-Plaintiffs The Procter and Gamble Company and The Gillette Company (collectively “P&G”) allege as follows for their Counterclaim against Counter-Defendant Parallel Networks, LLC.

NATURE OF THE LAWSUIT

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

1. Counterclaimant The Procter & Gamble Company is an Ohio corporation with its principal place of business at 1 Procter & Gamble Plaza, Cincinnati, OH 45202.
2. Counterclaimant The Gillette Company has its principal place of business at 1 Gillette Park Boston, MA 02127.
3. The 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 of the Complaint.

5. Venue is proper in this judicial district because the declaratory relief sought is a compulsory counterclaim to claims filed by Plaintiff in this case and pursuant to 28 U.S.C. §§ 1367 and 1391(b).

6. By virtue of the Complaint filed by Plaintiff in this action, there is an actual and justiciable controversy between P&G 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. P&G realleges and incorporates herein the foregoing responses and allegations.

8. P&G seeks a declaration that the products and services made, used, imported, sold or offered for sale by P&G have not and do 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 or more 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, P&G respectfully requests that this Court:

- A. Dismiss Plaintiff's Complaint with prejudice;
- B. Order and adjudge that P&G 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 requirements 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 P&G its reasonable attorney's fees; and
- F. Grant P&G such further relief as this Court deems just and appropriate.

JURY DEMAND

P&G hereby demands a jury trial on all issues so triable in this case.

Dated: November 24, 2010

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS
THE GILLETTE COMPANY and THE
PROCTER & GAMBLE COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) and served on all counsel who are deemed to have consented to electronic service pursuant to Local Rule CV-5(a)(3)(A) via the Court's CM/ECF system which will send notification electronically to all attorneys of record. Any other counsel of record will be served by first class mail on this date.

Dated: November 24, 2010

/s/ William C. Rooklidge
William C. Rooklidge