

**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.	§	
	§	

**BRUNSWICK CORPORATION AND BRUNSWICK BOWLING & BILLIARDS  
CORPORATION’S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS  
TO PARALLEL NETWORKS, LLC’S ORIGINAL COMPLAINT FOR PATENT  
INFRINGEMENT AND DAMAGES**

Defendants Brunswick Corporation and Brunswick Bowling & Billiards Corporation<sup>1</sup> (collectively “Brunswick”) hereby answer the Original Complaint of Parallel Networks, LLC (“Parallel”) as follows:

**ANSWER TO PARAGRAPHS 1-16:** Brunswick lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 1-16 of the Complaint, and on that basis, Brunswick denies all allegations therein.

**ANSWER TO PARAGRAPH 17:** Brunswick admits that Brunswick Bowling & Billiards Corporation is a corporation having a place of business in Bristol, Wisconsin. Except as expressly admitted herein, Brunswick denies all allegations set forth in paragraph 17.

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<sup>1</sup> The Original Complaint incorrectly identifies Brunswick Billiards, Inc., which is not a legal entity. Brunswick Corporation submits this answer on behalf of itself and its subsidiary Brunswick Bowling & Billiards Corporation.

**ANSWER TO PARAGRAPH 18:** Brunswick admits that Brunswick Corporation is a corporation having a place of business in Lake Forest, Illinois. Except as expressly admitted herein, Brunswick denies all allegations set forth in paragraph 18.

**ANSWER TO PARAGRAPHS 19-61:** Brunswick lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 19-61 of the Complaint, and on that basis, Brunswick denies all allegations therein.

**ANSWER TO PARAGRAPH 62:** Brunswick 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. Brunswick 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. Brunswick admits that this Court has subject matter jurisdiction over Brunswick pursuant to 28 U.S.C. §§ 1331 and 1338(a). Except as expressly admitted herein, Brunswick denies the allegations in paragraph 62 as they relate to Brunswick. Brunswick 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:** Brunswick admits that venue over it exists in this District under 28 U.S.C. § 1391(c). However, Brunswick does not admit that this is the most appropriate or convenient forum to exercise jurisdiction over this case. Brunswick denies that it committed the tort of patent infringement within Texas and this district. Brunswick denies having committed acts within this judicial district that would give rise to this action. Except as expressly admitted herein, Brunswick denies the allegations in paragraph 63 as they relate to Brunswick. Brunswick 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:** Brunswick admits that the '111 shows on its face that it was issued on September 3, 2002. Except as expressly admitted herein, Brunswick denies any other allegations in paragraph 64.

**ANSWER TO PARAGRAPH 65:** Brunswick 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, Brunswick denies all allegations therein.

**ANSWER TO PARAGRAPH 66:** Brunswick 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, Brunswick denies all allegations therein.

**ANSWER TO PARAGRAPHS 67-126:** Brunswick lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 67-126 of the Complaint, and on that basis, Brunswick denies all allegations therein.

**ANSWER TO PARAGRAPHS 127-134:** Brunswick denies each and every allegation set forth in paragraphs 127-134.

**ANSWER TO PARAGRAPHS 135-302:** Brunswick lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 135-302 of the Complaint, and on that basis, Brunswick denies all allegations therein.

**ANSWER TO PARAGRAPH 303:** Brunswick denies the allegations in paragraph 303 as they relate to Brunswick. Brunswick 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:** Brunswick denies the allegations in paragraph 304 as they relate to Brunswick. Brunswick 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:** Brunswick denies the allegations in paragraph 305 as they relate to Brunswick. Brunswick 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. Brunswick requests that the Court deny all relief to Parallel Networks, including that requested by Parallel Networks in its Prayer for Relief.

**BRUNSWICK'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 Brunswick. 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, Brunswick 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 Brunswick.

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

5. Brunswick 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 Brunswick 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 Brunswick 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 Brunswick indirectly infringes, either by contributory infringement or inducement of infringement, Brunswick is not liable to Parallel Networks for the acts alleged to have been performed before Brunswick knew that its actions would cause indirect infringement.

## **COUNTERCLAIMS**

Counter-Plaintiffs Brunswick Corporation and Brunswick Bowling & Billiards Corporation (collectively “Brunswick”) allege as follows for its 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 Brunswick Corporation is a Delaware corporation with its principal place of business at 1 North Field Court, Lake Forest, IL 60045.
2. Counterclaimant Brunswick Bowling & Billiards Corporation has its principal place of business at 8663 196<sup>th</sup> Avenue, Bristol, WI 53104.
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 Brunswick 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. Brunswick realleges and incorporates herein the foregoing responses and allegations.

8. Brunswick seeks a declaration that the products and services made, used, imported, sold or offered for sale by Brunswick 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, Brunswick respectfully requests that this Court:

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

**JURY DEMAND**

Brunswick hereby demands a jury trial on all issues so triable in this case.

DATED: November 24, 2010

Respectfully submitted,

/s/ Jason C. White

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ATTORNEYS FOR DEFENDANTS  
BRUNSWICK CORPORATION AND  
BRUNSWICK BOWLING & BILLIARDS  
CORPORATION



### **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/ Jason C. White  
Jason C. White