

**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.	§	

**BRIGGS & STRATTON CORPORATION AND BRIGGS & STRATTON POWER  
PRODUCTS GROUP, LLC'S ANSWER, AFFIRMATIVE DEFENSES, AND  
COUNTERCLAIMS TO PARALLEL NETWORKS, LLC'S ORIGINAL COMPLAINT  
FOR PATENT INFRINGEMENT AND DAMAGES**

Defendants Briggs & Stratton Corporation and Briggs & Stratton Power Products Group, LLC (collectively "Briggs & Stratton") hereby answer the Original Complaint of Parallel Networks, LLC ("Parallel") as follows:

**THE PARTIES**

**ANSWER TO PARAGRAPHS 1-14:** Briggs & Stratton lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 1-14 of the Complaint, and on that basis, Briggs & Stratton denies all allegations therein.

**ANSWER TO PARAGRAPH 15:** Briggs & Stratton admits that Briggs & Stratton Corporation is a corporation having a place of business in Wauwatosa, Wisconsin. Except as expressly admitted herein, Briggs & Stratton denies all allegations of paragraph 15.

**ANSWER TO PARAGRAPH 16:** Briggs & Stratton admits that Briggs & Stratton Power Products Group, LLC is a corporation having a place of business in Wauwatosa, Wisconsin. Except as expressly admitted herein, Briggs & Stratton denies all allegations of paragraph 16.

**ANSWER TO PARAGRAPHS 17-61:** Briggs & Stratton lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 17-61 of the Complaint, and on that basis, Briggs & Stratton denies all allegations therein.

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

**ANSWER TO PARAGRAPH 65:** Briggs & Stratton 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, Briggs & Stratton denies all allegations therein.

**ANSWER TO PARAGRAPH 66:** Briggs & Stratton 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, Briggs & Stratton denies all allegations therein.

**ANSWER TO PARAGRAPHS 67-118:** Briggs & Stratton lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 67-118 of the Complaint, and on that basis, Briggs & Stratton denies all allegations therein.

**ANSWER TO PARAGRAPHS 119-126:** Briggs & Stratton denies each and every allegation set forth in paragraphs 119-126.

**ANSWER TO PARAGRAPHS 127-302:** Briggs & Stratton lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 127-302 of the Complaint, and on that basis, Briggs & Stratton denies all allegations therein.

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

#### **BRIGGS & STRATTON'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 Briggs & Stratton. 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, Briggs & Stratton 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 Briggs & Stratton.

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

5. Briggs & Stratton 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 Briggs & Stratton 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 Briggs & Stratton 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 Briggs & Stratton indirectly infringes, either by contributory infringement or inducement of infringement, Briggs & Stratton

is not liable to Parallel Networks for the acts alleged to have been performed before Briggs & Stratton knew that its actions would cause indirect infringement.

### **COUNTERCLAIMS**

Counter-Plaintiffs Briggs & Stratton Corporation and Briggs & Stratton Power Products Group, LLC (collectively “Briggs & Stratton”) 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 Briggs & Stratton Corporation is a Wisconsin corporation with its principal place of business at 12301 West Wirth Street, Wauwatosa, Wisconsin 53222.

2. Counterclaimant Briggs & Stratton Power Products Group, LLC is a Limited Liability Company with its principal place of business at 3300 N. 124<sup>th</sup> St., Wauwatosa, Wisconsin 53222.

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 Briggs & Stratton 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. Briggs & Stratton realleges and incorporates herein the foregoing responses and allegations.

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

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

**JURY DEMAND**

Briggs & Stratton hereby demands a jury trial on all issues so triable in this case.

DATED: November 24, 2010

Respectfully submitted,

/s/ Matthew M. Wolf

Matthew M. Wolf – Lead Attorney

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ATTORNEYS FOR DEFENDANTS  
BRIGGS & STRATTON CORPORATION AND  
BRIGGS & STRATTON POWER PRODUCTS  
GROUP, LLC

**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/ Matthew M. Wolf  
Matthew M. Wolf