

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

**PARALLEL NETWORKS, LLC,**

**Plaintiff,**

v.

**ADIDAS AMERICA, INC., et al.,**

**Defendants.**

**6:10-CV-00491**

**JURY TRIAL DEMANDED**

**SUBARU’S ANSWER AND COUNTERCLAIM TO PARALLEL  
NETWORKS’ ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

Defendant Subaru of America, Inc., (“Subaru”) files this Answer and Counterclaim to Plaintiff Parallel Networks, LLC’s (“Parallel Networks”) Original Complaint for Patent Infringement (“Complaint”). Subaru denies the allegations and characterizations in Parallel Networks’ Complaint unless expressly admitted in the following paragraphs:

1. Subaru lacks knowledge sufficient to confirm or deny the allegations of Paragraph 1 and therefore denies the same.

2–56. Paragraphs 2 through 56 do not require a response by Subaru. To the extent that Paragraphs 2 through 56 are deemed to require a response, Subaru lacks knowledge sufficient to confirm or deny the allegations and therefore denies the same.

57. Subaru admits that it is a corporation with a place of business in Cherry Hill, New Jersey.

58–61. Paragraphs 58 through 61 do not require a response by Subaru. To the extent that Paragraphs 58 through 61 are deemed to require a response, Subaru lacks knowledge sufficient to confirm or deny the allegations and therefore denies the same.

## **JURISDICTION AND VENUE**

62. Subaru 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 of this action under 28 U.S.C. §§ 1331 and 1338(a). Subaru admits that it is subject to this Court's specific and general jurisdiction but denies it is due to any alleged infringement. Subaru further lacks knowledge sufficient to confirm or deny the allegations against the other defendants and therefore denies the same. Except as expressly admitted herein, Subaru denies each and every allegation of Paragraph 62.

63. Subaru admits that venue is proper under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b), but denies that venue is convenient. Subaru admits that it is subject to personal jurisdiction in the Eastern District of Texas but denies it is due to any alleged infringement. Subaru lacks knowledge sufficient to confirm or deny the allegations against the other defendants and therefore denies the same. Except as expressly admitted herein, Subaru denies each and every allegation of Paragraph 63.

## **COUNT I**

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

64. Subaru admits that U.S. Patent No. 6,446,111 (the "'111 Patent") issued on September 3, 2002. Subaru denies that the '111 Patent was duly and legally issued. Except as expressly admitted herein, Subaru denies each and every allegation of Paragraph 64.

65. Subaru lacks knowledge sufficient to confirm or deny the allegations of Paragraph 65 and therefore denies the same.

66. Subaru lacks knowledge sufficient to confirm or deny the allegations of Paragraph 66 and therefore denies the same.

67–282. Paragraphs 67 through 282 do not require a response by Subaru. To the extent that Paragraphs 67 through 282 are deemed to require a response, Subaru lacks knowledge sufficient to confirm or deny the allegations and therefore denies the same.

283. Subaru denies the allegations of Paragraph 283.

284. Subaru denies the allegations of Paragraph 284.

285. Subaru denies the allegations of Paragraph 285.

286. Subaru denies the allegations of Paragraph 286.

287–302. Paragraphs 287 through 302 do not require a response by Subaru. To the extent that Paragraphs 287 through 302 are deemed to require a response, Subaru lacks knowledge sufficient to confirm or deny the allegations and therefore denies the same.

303. Subaru denies the allegations of Paragraph 303 directed at Subaru. To the extent that Paragraph 303 is deemed to require a response with respect to the other Defendants, Subaru lacks knowledge sufficient to confirm or deny the allegations and therefore denies the same. Except as expressly admitted herein, Subaru denies each and every allegation of Paragraph 303.

304. Subaru denies the allegations of Paragraph 304 directed at Subaru. To the extent that Paragraph 304 is deemed to require a response with respect to the other Defendants, Subaru lacks knowledge sufficient to confirm or deny the allegations and therefore denies the same. Except as expressly admitted herein, Subaru denies each and every allegation of Paragraph 304.

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

305. Subaru denies that it received pre-suit notice of the '111 Patent. Subaru denies that it has infringed or is infringing the '111 Patent. Subaru further denies that it has

willfully infringed or is willfully infringing the '111 Patent. Subaru lacks knowledge sufficient to confirm or deny the allegations against the other defendants and therefore denies the same. Except as expressly admitted herein, Subaru denies each and every allegation of Paragraph 305.

306. Subaru requests that the Court deny all relief to Parallel Networks, including that requested by Parallel Networks in its Prayer for Relief.

### **AFFIRMATIVE DEFENSES**

Subaru's Affirmative Defenses are listed below. Subaru reserves the right to amend its Answer to add additional Affirmative Defenses, including instances of inequitable conduct, consistent with the facts discovered in the case.

#### **FIRST DEFENSE**

307. Subaru does not infringe and has not infringed any claim of the '111 Patent under any theory (including directly (whether individually or jointly) or indirectly (whether contributorily or by inducement)).

#### **SECOND DEFENSE**

308. The '111 Patent is invalid because the alleged invention fails to satisfy the conditions for patentability specified in 35 U.S.C. § 100 *et seq.*, including §§ 101, 102, 103, and 112.

#### **THIRD DEFENSE**

309. To the extent that Parallel Networks, and alleged predecessors-in-interest to the '111 Patent, failed to properly mark any of their relevant products as required by 35 U.S.C. § 287 or otherwise give proper notice that Subaru's actions allegedly infringed the '111 Patent, Subaru 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.

#### **FOURTH DEFENSE**

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

#### **FIFTH DEFENSE**

311. Parallel Networks' attempted enforcement of the '111 Patent against Subaru is barred by laches and estoppel.

#### **SIXTH DEFENSE**

312. Parallel Networks' claims directed to indirect infringement, either by contributory infringement or inducement of infringement, and willful infringement fail to state a claim for which relief may be granted.

#### **COUNTERCLAIMS**

##### **The Parties**

313. Counterclaim Plaintiff Subaru of America, Inc., ("Subaru") is a corporation with its principal place of business located in Cherry Hill, New Jersey.

314. On information and belief based solely on Paragraph 1 of the Complaint as pled by Parallel Networks, Parallel Networks is a Texas Limited Liability Company with its principal place of business located in Tyler, Texas.

##### **Jurisdiction**

315. This counterclaim arises under the patent laws of the United States, Title 35, United States Code. The jurisdiction of this Court is proper under at least 35 U.S.C. § 271 *et seq.* and 28 U.S.C. §§ 1331, 1338, 1367, and 2201 *et seq.*

316. Venue is proper in this District pursuant to at least 28 U.S.C. §§ 1391 and 1400. Venue is further proper in the Tyler Division.

### **Count I**

#### **Declaratory Relief Regarding Non-infringement**

317. Based on Parallel Networks' filing of this action and Subaru's First Defense, an actual controversy has arisen and now exists between the parties as to whether Subaru infringes the '111 Patent.

318. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, Subaru requests a declaration by the Court that it does not infringe any claim of the '111 Patent under any theory (including directly (whether individually or jointly) or indirectly (whether contributorily or by inducement)).

### **Count II**

#### **Declaratory Relief Regarding Invalidity**

319. Based on Parallel Networks' filing of this action and Subaru's Second Defense, an actual controversy has arisen and now exists between the parties as to the validity of the claims of the '111 Patent.

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

### **Count III**

#### **Declaratory Relief Regarding Unenforceability**

321. Based on Parallel Networks' filing of this action and Subaru's Third, Fourth, and Fifth Defenses, an actual controversy has arisen and now exists between the parties as to the enforceability of the '111 Patent.

322. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, Subaru requests a declaration by the Court that the claims of the '111 Patent are unenforceable.

#### **PRAYER**

Subaru respectfully requests a judgment against Parallel Networks as follows:

- A. A declaration that the '111 Patent is unenforceable;
- B. A declaration that the asserted claims of the '111 Patent are invalid;
- C. A declaration that Subaru does not infringe, under any theory, any valid claim of the '111 Patent that may be enforceable;
- D. A declaration that Parallel Networks take nothing by its Complaint;
- E. Judgment against Parallel Networks and in favor of Subaru;
- F. Dismissal of the Complaint with prejudice;
- G. An award to Subaru of its costs and attorneys' fees incurred in this action; and
- H. Further relief as the Court may deem just and proper.

#### **JURY DEMAND**

Subaru hereby demands trial by jury on all issues.

Dated: November 24, 2010

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Neil J. McNabny

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**Counsel for Defendant  
SUBARU OF AMERICA, INC.**



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on November 24, 2010, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

*/s/ Neil J. McNabney*

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Neil J. McNabney