

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

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Parallel Networks, LLC,)		
)		
Plaintiff,)		Civil Action No. 6:10cv491-LED
)		
v.)		
)		
Adidas America, Inc., et al.,)		JURY TRIAL DEMANDED
)		
Defendants.)		
<hr/>)	
American Suzuki Motor Corporation,)		
)		
Counterclaimant,)		
)		
v.)		
)		
Parallel Networks, LLC,)		
)		
Counterdefendant.)		
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AMERICAN SUZUKI MOTOR CORPORATION'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS TO PARALLEL NETWORKS' ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Defendant American Suzuki Motor Corporation (Suzuki) respectfully submits this Answer, these Affirmative Defenses, and these Counterclaims in response to the Original Complaint for Patent Infringement (Complaint) filed by Plaintiff Parallel Networks, LLC (Parallel Networks). To the extent not specifically admitted herein, the allegations of the Complaint are denied.

ANSWER

THE PARTIES

1. Suzuki is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1, and on that basis denies them.

2–5. The allegations set forth in Paragraphs 2–5 are not directed to Suzuki, and

therefore no answer is required. To the extent that a response is required, Suzuki lacks information sufficient to form a belief as to the truth of the allegations of Paragraphs 2–5, and therefore denies them.

6. Suzuki admits that it is a corporation with a place of business in Brea, California. Suzuki denies the remaining allegations of Paragraph 6.

7–61. The allegations set forth in Paragraphs 7–61 are not directed to Suzuki, and therefore no answer is required. To the extent that a response is required, Suzuki lacks information sufficient to form a belief as to the truth of the allegations of Paragraphs 7–61, and therefore denies them.

JURISDICTION AND VENUE

62. Suzuki admits that the Complaint purports to set forth a cause of action that arises under the patent laws of the United States, Title 35 of the United States Code, but Suzuki denies that Parallel Networks' claims against Suzuki have any factual or legal basis. Suzuki admits that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) inasmuch as the Complaint purports to state claims for patent infringement arising under Title 35 of the United States Code, but Suzuki denies any wrongdoing or infringement. Suzuki admits that it does business and derives revenue from goods provided to persons or entities in the State of Texas and that its website is accessible from Texas. Except as expressly admitted herein, to the extent that Paragraph 62 contains any other allegations of fact directed to Suzuki, they are denied. To the extent that Paragraph 62 contains conclusions of law as opposed to allegations of fact, no answer is required. Suzuki lacks information sufficient to form a belief as to the allegations of Paragraph 62 directed to the other defendants, and on that basis denies them.

63. Suzuki admits that the Complaint purports to base venue in this District on 28

U.S.C. §§ 1391(b), 1391(c), and 1400(b); however Suzuki denies that this District is the most appropriate or convenient forum to exercise jurisdiction over this case. To the extent that Paragraph 63 contains any other allegations of fact directed to Suzuki, they are denied. To the extent that Paragraph 63 contains conclusions of law as opposed to allegations of fact, no answer is required. Suzuki lacks information sufficient to form a belief as to the allegations of Paragraph 63 directed to the other defendants, and on that basis denies them.

COUNT I

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

64. Suzuki admits that, on its face, U.S. Patent No. 6,446,111 (the '111 patent) is titled “Method and Apparatus for Client-Server Communication Using a Limited Capability Client Over a Low-Speed Communications Link.” Suzuki further admits that, on its face, the '111 patent bears an issue date of September 3, 2002.

65. Suzuki is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 65, and therefore denies them.

66. To the extent that this allegation purports to characterize what the claim of the '111 patent “cover,” this allegation states a legal conclusion to which no response is required. To the extent that a response is required, Suzuki lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 66, and therefore denies them.

67–82. The allegations set forth in Paragraphs 67–82 are not directed to Suzuki and therefore no answer is required. To the extent that a response is required, Suzuki lacks information sufficient to form a belief as to the truth of the allegations of Paragraphs 67–82, and therefore denies them.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

87–302. The allegations set forth in Paragraphs 67–82 are not directed to Suzuki and therefore no answer is required. To the extent that a response is required, Suzuki lacks information sufficient to form a belief as to the truth of the allegations of Paragraphs 87–302, and therefore denies them.

303. Suzuki denies any wrongdoing or infringement, and denies that Parallel Networks is entitled to recover damages, or any other compensation, in any amount. Suzuki lacks information sufficient to form a belief as to the allegations of Paragraph 303 directed to the other defendants, and on that basis denies them.

304. To the extent that Paragraph 304 contains any allegations of fact directed to Suzuki, they are denied. To the extent that Paragraph 304 contains conclusions of law as opposed to allegations of fact, no answer is required. Suzuki lacks information sufficient to form a belief as to the allegations of Paragraph 304 directed to the other defendants, and on that basis denies them.

COUNT II

WILLFUL INFRINGEMENT

305. To the extent that Paragraph 305 contains any allegations of fact directed to Suzuki, they are denied. To the extent that Paragraph 305 contains conclusions of law as opposed to allegations of fact, no answer is required. Suzuki lacks information sufficient to form a belief as to the allegations of Paragraph 305 directed to the other defendants, and on that basis denies them.

RESPONSE TO PARALLEL NETWORKS' PRAYER FOR RELIEF

Suzuki denies that it infringes or has infringed any valid claim of the '111 patent. Suzuki

further denies that Parallel Networks is entitled to any aspect of the relief requested against Suzuki, including actual damages, costs, expenses, interest, enhanced damages, attorneys' fees, and/or any other relief of any kind.

GENERAL DENIAL

Suzuki denies each and every allegation contained in the Complaint to which Suzuki has not specifically responded or expressly admitted.

AFFIRMATIVE DEFENSES

Suzuki alleges and asserts the following defenses in response to the allegations in the Complaint, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition to the affirmative defenses described below, Suzuki specifically reserves all rights to allege additional affirmative defenses that become known through the course of discovery. For its affirmative defenses to the Complaint, Suzuki alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

306. Parallel Networks' Complaint fails to state any claim against Suzuki upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Noninfringement)

307. Parallel Networks' claims are barred because Suzuki has not directly or indirectly infringed any valid and enforceable claim of the '111 patent. Suzuki has no liability for alleged infringement of the '111 patent. No valid and enforceable claim of the '111 patent literally or equivalently covers or includes within its scope any products and/or related parts and components ever made, used, offered for sale, or sold by Suzuki. To the extent that Parallel

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

THIRD AFFIRMATIVE DEFENSE

(Invalidity)

308. Parallel Networks' claims are barred because the claims of the '111 patent are invalid for failure to comply with the requirements of 35 U.S.C. § 101, *et seq.*, including without limitation each of the requirements in 35 U.S.C. §§ 101, 102, 103, 112, and/or 116.

FOURTH AFFIRMATIVE DEFENSE

(Waiver, Laches, Estoppel)

309. Parallel Networks' claims are barred, in whole or in part, by the doctrines of waiver, laches, and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

(Prosecution History Estoppel, Prosecution Disclaimer, Prosecution Laches)

310. Parallel Networks' claims are barred by the doctrines of prosecution history estoppel, prosecution disclaimer, and prosecution laches.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Mark)

311. Parallel Networks' claim for relief is limited in whole or in part by its failure to comply with 35 U.S.C. § 287.

SEVENTH AFFIRMATIVE DEFENSE

(No Injunctive Relief)

312. Parallel Networks' claim for injunctive relief is barred because, at a minimum, there exists adequate remedies at law and because Parallel Networks' claim otherwise fails to

meet the requirements for such relief, including at least that Parallel Networks will not suffer irreparable harm.

EIGHTH AFFIRMATIVE DEFENSE

(Impermissible Venue)

313. Venue in this judicial district is improper and/or inconvenient.

NINTH AFFIRMATIVE DEFENSE

(Impermissible Joinder of Defendants)

314. Parallel Networks' joinder of multiple, unrelated defendants into this single action is improper under Rule 20 of the Federal Rules of Civil Procedure in that the claims asserted by Parallel Networks in the Complaint do not arise out of the same transaction or occurrence or series of transactions or occurrences as required by the Federal Rules, and is prejudicial to Suzuki.

TENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

315. Parallel Networks had a duty to mitigate its alleged damages and failed to do so. Its damages are therefore either barred or reduced.

ELEVENTH AFFIRMATIVE DEFENSE

(Defense - Other)

316. Suzuki provides notice that it intends to rely upon any additional defenses that become available or apparent during discovery, and reserve its right to amend this pleading and to assert such additional defenses or, if appropriate, delete any of the above-delineated defenses as discovery proceeds.

WHEREFORE, Suzuki denies that it infringes or has infringed any valid and enforceable claim of the '111 patent and further denies that Parallel Networks is entitled to any judgment

against Suzuki whatsoever. Suzuki asks that Parallel Networks' Complaint be dismissed with prejudice, that judgment be entered for Suzuki, and that Suzuki be awarded its attorneys' fees, expenses, and costs incurred in defending against Parallel Networks' Complaint, together with such other relief the Court deems appropriate.

COUNTERCLAIMS

For its counterclaims against Parallel Networks, LLC (Parallel Networks), Counterclaimant American Suzuki Motor Corporation (Suzuki) alleges as follows:

PARTIES

1. Suzuki is a California corporation with a principal place of business at 3251 East Imperial Highway, Brea, California 92821-6722.

2. On information and belief, Parallel Networks is a Texas Limited Liability Company with its place of business at 100 E. Ferguson Street, Suite 602, Tyler, Texas 75702-5756.

JURISDICTION AND VENUE

3. This is an action for declaratory relief for which this Court has jurisdiction under 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

4. By filing its Original Complaint for Patent Infringement (Complaint), Parallel Networks has consented to the personal jurisdiction of this Court and purports to assert claims against Suzuki for infringement of U.S. Patent No. 6,446,111 (the '111 patent).

5. To the extent the underlying action brought by Parallel Networks against Suzuki proceeds in this District, then venue as to these counterclaims is proper under 28 U.S.C. §§ 1391(c) and 1400(b) because Parallel Networks is subject to the Court's personal jurisdiction in this District and because the facts and circumstances alleged in the counterclaims are related to the facts and circumstances alleged in the Complaint filed by Parallel Networks.

6. Suzuki denies Parallel Networks' claims of infringement of the '111 patent.

7. An actual controversy has arisen and now exists between Suzuki and Parallel Networks as to the noninfringement and invalidity of the '111 patent.

COUNTERCLAIM ONE

(Declaratory Judgment of Noninfringement of the '111 patent)

8. Suzuki restates and incorporates by reference each of the allegations in Paragraphs 1–7 of its Counterclaims.

9. Parallel Networks purports to be the assignee of all right, title and interest in the '111 patent.

10. In this action, Parallel Networks asserts in Paragraph 83 of its Complaint that Suzuki “has been and now is infringing at least claim 1 [of] the '111 patent in the State of Texas, in this judicial district, and elsewhere in the United States, by actions comprising making and using its website at www.suzukicycles.com.”

11. Suzuki denies Parallel Networks' claims of infringement and believes that the Complaint has been filed without good cause.

12. An immediate, real, and justiciable controversy exists between Suzuki and Parallel Networks concerning the alleged infringement of the '111 patent.

13. Suzuki is entitled to declaratory judgment that it has not infringed, and is not infringing, the '111 patent.

COUNTERCLAIM TWO

(Declaratory Judgment of Invalidity of the '111 patent)

14. Suzuki restates and incorporates by reference each of the allegations in Paragraphs 1–13 of its Counterclaims.

15. Suzuki denies that the '111 patent is valid and asserts that the '111 patent is

invalid for failure to comply with the requirements of 35 U.S.C. § 101 *et seq.*, including without limitation each of the requirements in 35 U.S.C. §§ 101, 102, 103, 112, and/or 116.

16. An immediate, real, and justiciable controversy exists between Suzuki and Parallel Networks concerning the validity of the '111 patent.

17. Suzuki is entitled to declaratory judgment that the '111 patent is invalid.

PRAYER FOR RELIEF

WHEREFORE, Suzuki respectfully requests that the Court find and declare as follows:

A. That Parallel Networks take nothing by its Original Complaint for Patent Infringement and that the Original Complaint for Patent Infringement be dismissed with prejudice;

B. That Suzuki has not infringed, and is not infringing, any valid and enforceable claim of the '111 patent;

C. That the claims of the '111 patent are invalid;

D. That this is an exceptional case under 35 U.S.C. § 285 and that Suzuki be awarded all of its costs, expenses, and attorneys' fees, together with interest; and

E. That Suzuki be granted such other and additional relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Counterclaimant Suzuki demands trial by jury on all issues so triable.

Dated: November 29, 2010

Respectfully submitted,

/s/ Michael E. Jones

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**Attorneys for Defendant and
Counterclaimant American Suzuki Motor
Corporation**

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on November 29, 2010. Any other counsel of record will be served by electronic mail or first class U.S. mail on this same date.

/s/ Michael E. Jones

Michael E. Jones