

**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

**WAG'S ANSWER AND COUNTERCLAIM TO PARALLEL
NETWORKS' ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

Defendant Women's Apparel Group, LLC ("WAG") files this Answer and Counterclaim to Plaintiff Parallel Networks, LLC's ("Parallel Networks") Original Complaint for Patent Infringement ("Complaint"). WAG denies the allegations and characterizations in Parallel Networks' Complaint unless expressly admitted in the following paragraphs:

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

2-60. Paragraphs 2 through 60 do not require a response by WAG. To the extent that Paragraphs 2 through 60 are deemed to require a response, WAG lacks knowledge sufficient to confirm or deny the allegations and therefore denies the same.

61. WAG admits that it has a place of business in West Bridgewater, Massachusetts. Except as expressly admitted herein, WAG denies each and every allegation of Paragraph 61.

JURISDICTION AND VENUE

62. WAG 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). WAG admits that it is subject to this Court's specific and general jurisdiction but denies it is due to any alleged infringement. WAG further lacks knowledge sufficient to confirm or deny the allegations against the other defendants and therefore denies the same. Except as expressly admitted herein, WAG denies each and every allegation of Paragraph 62.

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

COUNT I

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

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

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

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

67–298. Paragraphs 67 through 298 do not require a response by WAG. To the extent that Paragraphs 67 through 298 are deemed to require a response, WAG lacks knowledge sufficient to confirm or deny the allegations and therefore denies the same.

299. WAG denies the allegations of Paragraph 299.

300. WAG denies the allegations of Paragraph 300.

301. WAG denies the allegations of Paragraph 301.

302. WAG denies the allegations of Paragraph 302.

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

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

COUNT II

WILLFUL INFRINGEMENT

305. WAG denies the allegations of Paragraph 305 directed at WAG. WAG lacks knowledge sufficient to confirm or deny the allegations against the other Defendants and therefore denies the same. Except as expressly admitted herein, WAG denies each and every allegation of Paragraph 305.

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

AFFIRMATIVE DEFENSES

WAG's Affirmative Defenses are listed below. WAG 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. WAG 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 WAG's actions allegedly infringed the '111 Patent, WAG 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 WAG indirectly infringes, either by contributory infringement or inducement of infringement, WAG is not liable to Parallel Networks for the acts alleged to have been performed before WAG knew that its actions would cause indirect infringement.

FIFTH DEFENSE

311. Parallel Networks' attempted enforcement of the '111 Patent against WAG 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.

COUNTERCLAIM

The Parties

313. Counterclaim Plaintiff Women's Apparel Group, LLC ("WAG") is a Delaware Limited Liability Company with its principal place of business located in 35 United Dr., West Bridgewater, MA 02379~~New York, New York~~.

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 WAG's First Defense, an actual controversy has arisen and now exists between the parties as to whether WAG infringes the '111 Patent.

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

PRAYER

WAG 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 WAG 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 WAG;
- F. Dismissal of the Complaint with prejudice;
- G. An award to WAG of its costs and attorneys' fees incurred in this action; and
- H. Further relief as the Court may deem just and proper.

JURY DEMAND

WAG hereby demands trial by jury on all issues.

Dated: November 29, 2010

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Neil J. McNabny

Thomas M. Melsheimer

Texas Bar No. 13922550

txm@fr.com

Neil J. McNabny

Texas Bar No. 24002583

njm@fr.com

Britnee M. Reamy

Texas Bar No. 24053439

bmr@fr.com

David B. Conrad

Texas Bar No. 24049042

dbc@fr.com

1717 Main Street, Suite 5000

Dallas, Texas 75201

(214) 747-5070 Telephone

(214) 747-2091 Facsimile

**Counsel for Defendant
WOMEN'S APPAREL GROUP, LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on November 29, 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

Neil J. McNabney