

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

Parallel Networks, LLC,

Plaintiff,

v.

Adidas America, Inc., *et al.*,

Defendants.

No. 6:10-cv-00491-LED

Jury Trial Demanded

**PLAINTIFF PARALLEL NETWORKS'S OPPOSITION TO
BERGDORFGOODMAN.COM, LLC'S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM OR, IN THE ALTERNATIVE,
FOR A MORE DEFINITE STATEMENT**

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Plaintiff Parallel Networks, LLC (“Parallel Networks”) hereby opposes the motion brought by BergdorfGoodman.com, LLC’s (“Bergdorf Goodman”) to Dismiss for Failure to State a Claim or, in the Alternative, for a More Definite Statement (D.I. 255, “BG Motion”). Bergdorf Goodman asks this Court to dismiss Parallel Networks’s accusation that Bergdorf Goodman directly, indirectly and willfully infringes U.S. Patent No. 6,446,111 (“the ‘111 patent”). For the reasons discussed below, Bergdorf Goodman’s motion should be denied.

I. SUMMARY OF THE ARGUMENT

Bergdorf Goodman’s motion should be denied:

1. On the issue of direct infringement, Bergdorf Goodman does not deny that a pleading of patent infringement is sufficient if it complies with pleading requirements as set forth in Form 18, Fed.R.Civ.P. (“Form 18”). (BG Motion at 6). In accordance with Form 18, a patent infringement complaint is sufficient, as here, if it recites four elements. Bergdorf Goodman only denies the sufficiency of one element; specifically, Bergdorf Goodman contends that Parallel Networks’s complaint does not identify the alleged infringing activities. This assertion is wrong. The complaint clearly identifies the directly infringing acts: the system that Bergdorf Goodman operates at its website is clearly and fully identified in the complaint as www.bergdorfgoodman.com. (D.I. 1, Original Complaint for Patent Infringement (“Complaint”) at ¶107). That website is the system that infringes at least claim 1 of the ‘111 patent and is a website that Bergdorf Goodman admits that it owns and does not deny that it operates. Plainly, Bergdorf Goodman’s central contention on the issue of direct infringement, *i.e.*, that Parallel Networks “failed to specifically identify” the Accused Instrumentality (BG Motion at 3), is flatly wrong and for that reason its motion should be denied.

2. Bergdorf Goodman’s attempt to seek dismissal of the charge of indirect infringement should also be denied. In support of its motion, Bergdorf Goodman offers three

meritless arguments. First, Bergdorf Goodman frivolously argues that it is unaware of “which claims of the ‘111 patent are asserted.” (BG Motion at 3-4). On the contrary, the complaint here clearly states that Bergdorf Goodman is “*infringing at least claim 1 of the ‘111 patent*” and that Bergdorf Goodman “is now indirectly infringing by way of *inducing infringement and contributing to the infringement of at least claim 1 of the ‘111 patent.*” (Complaint at ¶¶107, 108) (emphasis added). Secondly, Bergdorf Goodman asserts that Parallel Networks has not “pled that Bergdorf Goodman knew of” the ‘111 patent. (BG Motion at 3). This assertion is equally as wrong. The complaint clearly states:

108. On information and belief, *since becoming aware of the ‘111 patent*, BERGDORFGOODMAN.COM, LLC, has been and is now indirectly infringing by way of inducing infringement and contributing to the infringement of at least claim 1 of the ‘111 patent in the State of Texas, in this judicial district, and elsewhere in the United States, by providing the website www.bergdorfgoodman.com for use by BERGDORFGOODMAN.COM, LLC’s clients. BERGDORFGOODMAN.COM, LLC, is a direct and indirect infringer, and its clients using www.bergdorfgoodman.com are direct infringers.

(Complaint at ¶108) (emphasis added). Finally, Bergdorf Goodman’s assertion that it has not sold a “component” of the patented invention is baseless. (BG Motion at 10-11). Claim 1 of the ‘111 patent is directed to a system (not an article); Bergdorf Goodman admits that it operates the clearly identified infringing website as a system and therefore supplies the website “material” that constitutes illegal infringing activities under 35 U.S.C. § 271.

3. On the issue of willful infringement, Bergdorf Goodman argues that the complaint does not allege that Bergdorf Goodman was a willful infringer prior to the filing of the complaint. (BG Motion at 4). That assertion is false. The complaint clearly alleges that “*prior to the filing of this Complaint,*” Bergdorf Goodman’s infringement was willful and continues to be willful. (Complaint at ¶305) (emphasis added). Once again, Bergdorf Goodman is wholly wrong in its sole basis for its motion.

II. INTRODUCTION

The patent at issue, the ‘111 patent, was filed on June 18, 1999, and issued on September 3, 2002. It is entitled “Method and Apparatus for Client-Server Communication Using a Limited Capability Client Over a Low-Speed Communications Link.” (D.I. 1, Complaint at ¶64, Exh. A, the ‘111 patent). Parallel Networks owns all right, title and interest in the ‘111 patent. (*Id.* at ¶65). This Court has subject matter jurisdiction over this patent infringement action and venue is proper in this district. (*Id.* at ¶¶62-63).

A. U.S. Patent No. 6,446,111

The ‘111 patent is directed to, *inter alia*, websites that operate systems and methods that allow a server to receive a request from a Bergdorf Goodman customer using a “client device”; in response, the Bergdorf Goodman server at www.bergdorfgoodman.com then generates an “applet” that is transferred back to the client device. The client device may be any type of computing device, including a personal computer, a personal digital assistant, a mobile phone, or other handheld device (*e.g.*, Complaint at Exh. A, ‘111 patent at col. 8, ll. 14-18, 21-24, col. 9, ll. 49-50). An applet as disclosed and claimed in the ‘111 patent is a particular type of computer program that is generated by the server at the website and is then sent to the client device along with constituent systems comprising data that responds to the client request. For example, if a customer wants to purchase a particular type of article from Bergdorf Goodman, the accused website will provide the client with an applet with data responsive to the type of article requested, along with the capabilities of browsing or performing operations on that data. (*See, e.g.*, Complaint at Exh. A, ‘111 patent at col. 2, ll. 55-65).

As disclosed in the ‘111 patent, the patented invention provides many advantages over the prior art. (*Id.* at col. 2, ll. 55 – col. 3, ll. 22). One advantage of the patented invention is that it allows for the decrease of the total amount of data transferred between the client and the server

thus allowing for increased speed and efficiency. (*Id.* at col. 3, ll. 11-17). Another advantage of the invention is that it allows the client using a computing device that has limited storage capabilities to initiate and complete the transaction without having to load and store a variety of support programs that may be required by the server. (*Id.* at col. 2, ll. 67 – col. 3, ll. 5). Another advantage is that resources of the client device can be freed by discarding the applet after the transaction. (*Id.* at col. 3, ll. 6-10). Yet another advantage of the patented invention is the efficiency created by the avoidance of transmitting duplicate data. (*Id.* at col. 3, ll. 17-23). Because of these powerful advantages that can be achieved in the use of the patented invention, Parallel Networks believes that the ‘111 patent is being widely infringed.

B. Parallel Networks’s Allegation of Infringement

At present, Parallel Networks accuses Bergdorf Goodman of infringing claim 1 of the ‘111 patent. (Complaint at ¶¶107-110). Parallel Networks intends to assert additional claims and will identify those claims in a timely fashion after the Court’s case management conference or at such other time as may be appropriate or required by the Court.

Claim 1 of the ‘111 patent recites the following elements:

A data processing system comprising:

- a server coupled to a communications link and operable to receive a request from a client device and to collect a plurality of data items, wherein the data items comprise specific information collected as a function of the request;
- an executable applet dynamically generated by the server in response to the request, a constituent system associated with the applet comprising a subset of the data items, each data item in the subset used as at least [*sic*, least] one pre-loaded value in the applet;
- a further constituent system associated with the applet comprising a data interface capability configured to provide a plurality of operations on the pre-loaded values, the operations comprising operations associated with the subset of the data items; and

the applet operable to be transferred over the communications link to the client device.

(Complaint at Exh. A, '111 patent at col. 17, ll. 47-65).

The direct infringement accusation against Bergdorf Goodman specifically recites claim 1 and alleges:

107. On information and belief, Defendant BERGDORFGOODMAN.COM, LLC, has been and now is infringing ***at least claim 1*** 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.bergdorfgoodman.com, which comprises a server coupled to a communications link that receives a request from a client device and collects data items as a function of the requests; an executable applet dynamically generated by the server in response to the client request; a constituent system associated with the applet comprising a subset of the data items and a further constituent system comprising a data interface capability configured to provide a plurality of operations associated with the subset of data items; with such applet operable to be transferred over the communications link to the client device.

(Complaint at ¶107) (emphasis added). It is thus completely clear that in specifically reciting claim 1, Bergdorf Goodman was put on notice that Bergdorf Goodman is accused of infringing at least claim 1. Parallel Networks also recited the pertinent elements of claim 1, therefore further putting Bergdorf Goodman on notice that it infringes at least claim 1 (even though a patentee need not identify any infringed claim in the complaint). *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1357 (Fed.Cir. 2007). Thus, rather than pleading less than is required, as Bergdorf Goodman argues, Parallel Networks pled more than is required.

On the issue of indirect infringement, Parallel Networks pleads as follows:

108. On information and belief, since becoming aware of the '111 patent, BERGDORFGOODMAN.COM, LLC, has been and is now indirectly infringing by way of inducing infringement and contributing to the infringement of ***at least claim 1*** of the '111 patent in the State of Texas, in this judicial district, and elsewhere in the United States, by providing the website www.bergdorfgoodman.com for use by BERGDORFGOODMAN.COM, LLC's clients.

BERGDORFGOODMAN.COM, LLC, is a direct and indirect infringer, and its clients using www.bergdorfgoodman.com are direct infringers.

109. On information and belief, since becoming aware of the ‘111 patent BERGDORFGOODMAN.COM, LLC, is and has been committing the act of inducing infringement by specifically intending to induce infringement by providing the identified website to its clients and by aiding and abetting its use. On information and belief, BERGDORFGOODMAN.COM, LLC, knew or should have known that through its acts it was and is inducing infringement of the ‘111 patent. On information and belief, BERGDORFGOODMAN.COM, LLC, is and has been committing the act of contributory infringement by intending to provide the identified website to its clients knowing that it is a material part of the invention, knowing that its use was made and adapted for infringement of the ‘111 patent, and further knowing that the system is not a staple article or commodity of commerce suitable for substantially noninfringing use.

110. Defendant BERGDORFGOODMAN.COM, LLC, is thus liable for infringement of the ‘111 patent pursuant to 35 U.S.C. § 271.

(Complaint at ¶¶108-110) (emphasis added). The Complaint alleges that Bergdorf Goodman as a direct infringer is also an indirect infringer of at least claim 1 by inducing or contributing to the using of its website at www.bergdorfgoodman.com by Bergdorf Goodman’s clients. The clients in Parallel Networks’s accusation of indirect infringement are the direct infringers. The requisite level of intent required for the assertion of contributory infringement is also alleged, as is the relevant statute (35 U.S.C. §271). (*Id.*).

On the issue of willful infringement, Parallel Networks pleads as follows:

305. On information and belief, ***prior to the filing of the complaint***, Defendants’ infringement was willful and continues to be willful. On information and belief, prior to the filing of this Complaint, Defendants were aware of the ‘111 patent and knew or should have known that Defendants were infringing at least claim 1 of the ‘111 patent. On information and belief, Defendants in their infringing activities acted as they did despite an objectively high likelihood that their actions constituted infringement of a valid patent. The Defendants’ infringing activities were intentional and willful in that the risk of infringement was known to Defendants or was so obvious that it should have been known to Defendants.

(Complaint at ¶305) (emphasis added). Plainly, Bergdorf Goodman’s contention that Parallel Networks did not plead pre-filing willful infringement is false. That sole ground for seeking to dismiss the allegation of willful infringement is therefore entirely baseless.

III. THE APPLICABLE LAW

The applicable law is well-settled. Regional circuit law applies to motions to dismiss for the failure to state a claim under Rule 12(b)(6), Fed.R.Civ.P. *McZeal*, 501 F.3d at 1356; *Eolas Techs., Inc. v. Adobe Systems, Inc.*, C.A. No. 6:09-cv-446, slip op. at 2 (E.D. Tex. May 6, 2010) (Davis, J.) (Doc. 282) (Exhibit A); *Clear with Computers, LLC v. Bergdorf Goodman, Inc.*, C.A. No. 6:09-cv-481, slip op. at 2 (E.D. Tex. Mar. 29, 2010) (Davis, J.) (Doc. 77) (Exhibit B). The standard for deciding a Rule 12(b)(6) motion has been summarized by the Court of Appeals for the 5th Circuit as follows:

A motion to dismiss under rule 12(b)(6) “is viewed with disfavor and is rarely granted.” *Kaiser Aluminum & Chem. Sales v. Avondale Shipyards*, 677 F.2d 1045, 1050 (5th Cir. 1982). The complaint must be liberally construed in favor of the plaintiff, and all facts pleaded in the complaint must be taken as true. *Campbell v. Wells Fargo Bank*, 781 F.2d 440, 442 (5th Cir. 1986). The district court may not dismiss a complaint under rule 12(b)(6) “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”

Lowery v. Texas A&M Univ. Sys., 117 F.3d 242, 247 (5th Cir. 1997) (citations omitted); *see Phonometrics, Inc. v. Hospitality Franchise Systems*, 203 F.3d 790, 793-794 (Fed.Cir. 2000) (“the dismissal standard is extraordinary, and one not to be taken lightly”; a motion to dismiss “is viewed with disfavor and rarely granted.” “Dismissal of a claim... is a precarious disposition with a high mortality rate.” (citing and quoting *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1368 (11th Cir. 1997))).

Under Rule 8(a)(2), a pleading is sufficient if it contains “a short and plain statement of the claim showing that the pleader is entitled to relief.” Rule 8(a)(2), Fed.R.Civ.P. What is

required in a complaint are allegations sufficient to show that the complainant is plausibly entitled to relief. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56, 570 (2007) (“[W]e do not require heightened fact pleadings of specifics, but only enough facts to state a claim to relief that is plausible on its face.”). In deciding whether a complaint states a plausible claim for relief is a context-specific task that requires this Court “to draw on its judicial experience and common sense.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1950 (2009).

To state a claim of patent infringement, “a patentee need only plead facts sufficient to place the alleged infringer on notice as to what he must defend.” *McZeal*, 501 F.3d at 1357 (citing *Twombly*, 550 U.S. at 565 n.10). To that end, the Federal Rules provide specific guidance for pleading in patent infringement actions. Rule 84, Fed.R.Civ.P., provides forms in an appendix that give examples of correct and sufficient pleadings. In patent infringement actions, Form 18, Fed.R.Civ.P., provides an example of a proper and sufficient patent infringement complaint. Form 18, Fed.R.Civ.P. (2007); *see also McZeal*, 501 F.3d at 1356-57 (describing the requirements of the form (current Form 18 was previously numbered Form 16 prior to the revision of the Federal Rules in 2007)); *Clear with Computers*, C.A. No. 6:09-cv-481, slip op. at 3; *accord Phonometrics*, 203 F.3d at 793-794. Bergdorf Goodman freely admits that if the pleading guidelines set forth in Form 18 are met—as they are here—the complaint is sufficient. (BG Motion at 6).

In accordance with Form 18, only the following is required: (1) an allegation of jurisdiction; (2) a statement that plaintiff owns the patent; (3) a statement that defendant has been infringing the patent by making, selling or using an identified system or method; and (4) a demand for an injunction and damages. *McZeal*, 501 F.3d at 1357; *see also Xpoint Technologies, Inc. v. Microsoft Corp.*, C.A. No. 09-628-SLR, slip op. at 4 (D.Del. Aug. 12,

2010) (Exhibit C) (interpreting Form 18 to require the same elements). Importantly, Bergdorf Goodman agrees that a complaint that pleads the above elements identified in Form 18 is sufficient under the law.¹

The issue here is whether Parallel Networks's complaint puts Bergdorf Goodman on notice so that it can defend itself, not the nature of Parallel Networks's pre-filing investigation. For that reason, Bergdorf Goodman's apparent reliance on Rule 11 should be dismissed. (*See, e.g.,* BG Motion at 5). In any event, it is Bergdorf Goodman, not Parallel Networks, that failed to comply with Rule 11. That is so because the assertion that an action does not comply with Rule 11 requires the complaining party to first give notice to the opposing party ***prior to filing with the court***, allowing that party 21 days to correct (or withdraw) the pleading. Rule 11(c)(2), Fed.R.Civ.P. Bergdorf Goodman never even bothered to attempt to comply with Rule 11 by giving Parallel Networks 21 days' notice—***or any notice at all***—before filing its motion. In short, Bergdorf Goodman's Rule 11 argument is undeniably fallacious and an irrelevant distraction that should be disregarded.

IV. PARALLEL NETWORKS'S COMPLAINT FULLY COMPLIES WITH THE APPLICABLE LAW

As shown below, Parallel Networks's complaint complies with the pleading requirements for direct infringement, indirect infringement and willful infringement.

¹ Nor could Bergdorf Goodman have argued otherwise. The pertinent authorities have uniformly held that the Supreme Court's decisions in *Twombly* and *Iqbal* did not affect the applicability of Form 18. *Eolas Techs.*, C.A. No. 6:09-cv-446, slip op. at 3; *see Clear with Computers*, C.A. No. 6:09-cv-481, slip op. at 3. To hold otherwise would render Rule 84 and Form 18 invalid, which cannot be done by judicial action. *See Twombly*, 550 U.S. at 569 n.14; *Eolas Techs.*, C.A. No. 6:09-cv-446, slip op. at 3. Form 18 is addressed generally to the pleading requirements of direct infringement but it also provides sound guidance on the pleading requirements for indirect infringement, a fact that Bergdorf Goodman does not deny. *See, e.g., Fotomedia Techs., LLC v. AOL*, C.A. No. 2:07-CV-255, slip op. at 3-4 (E.D. Tex. Aug. 29, 2008, adopted Sept. 24, 2008) (Exhibit D).

A. Parallel Networks’s Accusation of Direct Infringement is Properly Pled

Generally, Bergdorf Goodman does not dispute that Parallel Networks’s complaint complies with Form 18. It is undisputed that Parallel Networks has made a proper allegation of jurisdiction (Complaint at ¶1), further stating that it owns the ‘111 patent (*id.* at ¶¶64-65), making a demand for injunction and damages (*id.* at ¶303, p. 87 (Prayer for Relief)), and also providing Bergdorf Goodman with notice of its infringing activities (*id.* at ¶¶107-110). In support of its motion, Bergdorf Goodman contends only that the complaint does not comply with one element of Form 18, which requires the identification of the alleged infringing system. This assertion is incorrect. Parallel Networks clearly identified the infringing system as the www.bergdorfgoodman.com website owned and operated by Bergdorf Goodman.

In accordance with Form 18, all that is required is a general identification of the accused system; no further detail is required. Form 18, Fed.R.Civ.P. As the courts have consistently held, the identification of a general category of infringing systems is sufficient, and it is not necessary to identify specific products, *e.g.*, model names. *Xpoint*, C.A. No. 09-628-SLR, slip op. at 5; *Eolas Techs.*, C.A. No. 6:09-cv-446, slip op. at 4. Parallel Networks fully complied with the admittedly applicable Form 18 by identifying the accused Bergdorf Goodman website as www.bergdorfgoodman.com. This identification is sufficient under the law as Bergdorf Goodman does not seriously deny. *Eolas Techs.*, C.A. No. 6:09-cv-446, slip op. at 4 (“Although JPMorgan contends that Eolas does not adequately specify how JPMorgan directly infringes, Eolas does identify the accused instrumentality as JPMorgan’s website. Given the nature of the patents, this is a sufficient identification.”).

Bergdorf Goodman offers two arguments in an attempt to somehow rebut the plain sufficiency of Parallel Networks’s pleading in accordance with Form 18. First, Bergdorf Goodman argues that the identification of a website is insufficiently specific. That assertion is

contrary to law. *Id.* Secondly, Bergdorf Goodman alleges that the allegedly infringing system cannot infringe because claim 1 in Bergdorf Goodman's view contains "certain narrow limitations.) (BG Motion at 6). This is plainly an improper attempt to argue Bergdorf Goodman's non-infringement position as an improper justification for its motion to dismiss. And so, Bergdorf Goodman's attempt to dismiss the charge of direct infringement should be denied.

B. Parallel Networks's Accusation of Indirect Infringement is Properly Pled

On the issue of indirect infringement, Bergdorf Goodman's offers two arguments in an attempt to dismiss the allegation of indirect infringement. Both should be rejected.

First, Bergdorf Goodman asserts that the required level of intent to support a charge of indirect infringement (*i.e.*, inducement) has not been pled. (BG Motion at 9-10). On the contrary, the complaint clearly states:

108. On information and belief, since becoming aware of the '111 patent, BERGDORFGOODMAN.COM, LLC, has been and is now indirectly infringing by way of inducing infringement and contributing to the infringement of at least claim 1 of the '111 patent in the State of Texas, in this judicial district, and elsewhere in the United States, by providing the website www.bergdorfgoodman.com for use by BERGDORFGOODMAN.COM, LLC's clients. BERGDORFGOODMAN.COM, LLC, is a direct and indirect infringer, and its clients using www.bergdorfgoodman.com are direct infringers.

109. On information and belief, since becoming aware of the '111 patent BERGDORFGOODMAN.COM, LLC, is and has been committing the act of inducing infringement by specifically intending to induce infringement by providing the identified website to its clients and by aiding and abetting its use. On information and belief, BERGDORFGOODMAN.COM, LLC, knew or should have known that through its acts it was and is inducing infringement of the '111 patent. On information and belief, BERGDORFGOODMAN.COM, LLC, is and has been committing the act of contributory infringement by intending to provide the identified website to its clients knowing that it is a material part of the invention, knowing that its use was made and adapted for infringement of the '111 patent, and further knowing that the system is not

a staple article or commodity of commerce suitable for substantially noninfringing use.

110. Defendant BERGDORFGOODMAN.COM, LLC, is thus liable for infringement of the ‘111 patent pursuant to 35 U.S.C. § 271.

(Complaint at ¶¶108-110). Thus, the complaint alleges that Bergdorf Goodman “is and has been committing the act of inducing infringement by specifically intending to induce infringement by providing the identified website to its clients and by aiding and abetting its use.” (Complaint at ¶109). The complaint also alleges that it “knew or should have known that through its acts it was and is inducing infringement of the ‘111 patent.” (*Id.*). With respect to pleading intent or knowledge, it is well settled under Rule 9(b), Fed.R.Civ.P., that “intent, knowledge, and other conditions of a person’s mind may be alleged generally.” Bergdorf Goodman never cites Rule 9(b) and therefore does not dispute its applicability. Thus, Parallel Networks’s pleading even according to Bergdorf Goodman’s view of the law is thus plainly more than sufficient to satisfy its contention that the pleading must allege the defendant’s “intent” to induce infringement. (BG Motion at 10).

On the issue of contributory infringement, Bergdorf Goodman argues that in order to be guilty of contributory infringement, it must sell a “component” of the invention. The relevant statute, 35 U.S.C. § 271, distinguishes between patented articles and patented processes:

Whoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.

35 U.S.C. § 271. Here, the ‘111 patent claims systems and methods, not article claims as Bergdorf Goodman has argued. And so, Bergdorf Goodman has framed the issue incorrectly.

Bergdorf Goodman does not and cannot deny that it supplied “material” (the accused website and apparatus) to its clients and customers, “knowing that its use was made and adapted for infringement of the ‘111 patent, and further knowing that the system is not a staple article or commodity of commerce suitable for substantially noninfringing use.” (Complaint at ¶109). Bergdorf Goodman gains nothing from its citation to *Hewlett-Packard Co. v. Intergraph Corp.*, C.A. No. 03-2517, 2003 WL 23884794 (N.D. Cal. Sept. 6, 2003) (Exhibit E). There, the defendant was charged with infringement based on 150 types of products having more than 4000 end-user applications. *Id.* at *1. Here, on the contrary, Parallel Networks has specified the accused infringing website. Furthermore, Bergdorf Goodman by its own admission offers and markets the Accused Instrumentality to its clients for its own admitted commercial benefit.

C. Parallel Networks’s Accusation of Willful Infringement is Properly Pled

In Bergdorf Goodman’s attempt to seek dismissal of Parallel Networks’s charge of willful infringement, Bergdorf Goodman offers just one erroneous argument: that Parallel Networks did not plead that Bergdorf Goodman’s willful infringement conduct occurred prior to the filing of the complaint. (BG Motion at 4, 11-12). On the contrary, Parallel Networks’s complaint clearly accuses Bergdorf Goodman of willful infringement with respect to conduct that occurred “*prior to the filing of the complaint.*” (Complaint at ¶305) (emphasis added). Thus, Bergdorf Goodman’s attempt to dismiss the charge of willful infringement is equally as fruitless as all of its other assertions.

D. Bergdorf Goodman’s Request For a More Definitive Statement Should be Denied

A complaint by a patentee “need only plead facts sufficient to place the alleged infringer on notice as to what he must defend.” *McZeal*, 501 F.3d at 1357. As explained above, Parallel Networks sufficiently pled a claim for direct infringement, indirect infringement, and willful

infringement. For that reason, Bergdorf Goodman's request for a more definite statement should be denied.

CONCLUSION

For the foregoing reasons, Bergdorf Goodman's motion should be denied.

Dated: December 6, 2010

Respectfully submitted,

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PARALLEL NETWORKS, LLC

CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this 6th day of December, 2010, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Charles Craig Tadlock _____

Charles Craig Tadlock