

**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’S OPPOSITION TO NAVISTAR’S
MOTION TO DISMISS PARALLEL NETWORKS’S ALLEGATIONS OF
INDIRECT AND WILLFUL INFRINGEMENT**

Plaintiff Parallel Networks, LLC (“Parallel Networks”) hereby responds to and opposes Navistar, Inc.’s (“Navistar”) Motion to Dismiss Parallel Networks’ Allegations of Indirect and Willful Infringement (“Navistar Motion”) (D.I. 324). Navistar asks this Court to dismiss Parallel Networks’ accusation that Navistar indirectly infringes U.S. Patent No. 6,446,111 (“the ‘111 patent”) and the further accusation that Navistar willfully infringes the ‘111 patent. Importantly, Navistar *does not ask* for dismissal of the accusation of direct infringement, thus conceding that the charge of direct infringement has been properly pled. For the reasons discussed below, Navistar’s Motion should be denied. In the event that this Court grants Navistar’s Motion in whole or in part, Parallel Networks respectfully asks this Court to grant Parallel Networks leave to amend its complaint.

Navistar’s motion should be denied:

1. Navistar seeks the same relief sought by the Kodak co-defendants in a motion to dismiss filed on November 22, 2010 (D.I. 268), and incorporates by reference and adopts Kodak’s motion to dismiss. (Navistar Motion at 1). Parallel Networks incorporates fully herein

its showing in its opposition to Kodak's motion (D.I. 369). For the reasons stated in Parallel Networks's opposition to Kodak's motion, Navistar's motion should be denied.

2. Navistar further alleges that Parallel Networks's complaint fails to distinguish Navistar from the other defendants in this action. On the contrary, as to Navistar, Parallel Networks correctly identified—as Navistar does not deny—the accused infringing website as www.internationaltrucks.com. (See D.I. 1, Original Complaint for Patent Infringement (“Complaint”) at ¶¶255-56). Navistar further agrees that the allegation of direct infringement has been properly pled against Navistar:

255. On information and belief, Defendant NAVISTAR, INC. 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.internationaltrucks.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 ¶255). Navistar thus does not offer any argument at all that the allegation of direct infringement against Navistar or the identification of the Accused Instrumentality is anything other than fully complete and proper.

3. Navistar also incompletely quotes the allegations of indirect and willful infringement against Navistar. With respect to indirect infringement, the complaint alleges:

256. On information and belief, since becoming aware of the '111 patent, NAVISTAR, INC. 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.internationaltrucks.com for use by NAVISTAR, INC.'s clients.

NAVISTAR, INC. is a direct and indirect infringer, and its clients using www.internationaltrucks.com are direct infringers.

257. On information and belief, since becoming aware of the '111 patent NAVISTAR, INC. 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, NAVISTAR, INC. knew or should have known that through its acts it was and is inducing infringement of the '111 patent. On information and belief, NAVISTAR, INC. 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.

(Complaint at ¶¶256-7). Navistar offers no specific argument in support of its motion to dismiss the allegation of indirect infringement.

4. On the issue of willful infringement, Parallel Networks alleges:

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). Again, Navistar offers no specific argument in support of its motion to dismiss the allegation of willful infringement.

CONCLUSION

For the foregoing reasons, Navistar's motion should be denied. In the alternative, in the event this Court grants Navistar's motion either in whole or in part, Parallel Networks requests leave to file an amended complaint at a time ordered by the Court.

Dated: December 10, 2010

Respectfully submitted,

By: /s/ Charles Craig Tadlock

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CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this 10th 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