

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

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**PARALLEL NETWORKS, LLC,**

**Plaintiff,**

**v.**

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

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**Case No. 6:10-cv-00491-LED**

**JURY TRIAL DEMANDED**

**NAVISTAR'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS PARALLEL  
NETWORKS' ALLEGATIONS OF INDIRECT AND WILLFUL INFRINGEMENT**

In further support of its Motion To Dismiss Parallel Networks' Allegations Of Indirect And Willful Infringement, Navistar, Inc. ("Navistar") respectfully submits this reply memorandum and requests that the Court dismiss Parallel Networks, LLC's ("PN's") claims against Navistar of induced, contributory, and willful infringement. Furthermore, Navistar hereby joins the Reply In Support Of Its Motion To Dismiss (D.I. 419) filed by the Kodak co-defendants.

**I. ARGUMENT**

The Federal Rules of Civil Procedure require that PN's Complaint plead sufficient *factual* matter to state a claim of relief that is plausible on its face. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Moreover, "[t]he tenet that this court must accept as true all allegations contained in PN's Complaint is *inapplicable to legal conclusions.*" *Iqbal*, 129 S. Ct. at 1949 (emphasis added). "A Pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Iqbal*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555).

Conspicuously absent from PN's Opposition To Navistar's Motion To Dismiss (D.I. 370, "Opposition") is any mention of PN's identification of any facts pled in its Complaint supporting its conclusory allegations of induced, contributory, and willful infringement. PN is forced to avoid mentioning any specific facts because its Complaint contains none. Instead, PN's Opposition merely restates the language of its deficient Complaint, while avoiding the real issue of the sufficiency of PN's pleadings.

The relief Navistar seeks—dismissal of PN's indirect and willful infringement claims against Navistar—is based on a proper reading of the Federal Rules and Supreme Court precedent. PN's allegations of induced, contributory, and willful infringement against Navistar fall short of the pleading standards required by Rule 8 of the Federal Rules of Civil Procedure. Therefore, those claims should be dismissed.

**A. Parallel Networks Fails To Plead Facts Sufficient To Establish That Navistar Possessed The Requisite Knowledge For Indirect Infringement**

PN has not pled sufficient facts to support an allegation that Navistar possessed the requisite knowledge of the '111 patent at the time of infringement, which is required in order to sufficiently plead both indirect and willful infringement. *See XPoint Techs., Inc. v. Microsoft Corp.*, No. 09-628-SLR, 2010 WL 3187025, at\*5-\*6 (D. Del. August 12, 2010). Rather, PN's Complaint resorts to repeating the same formulaic recitation of the elements of indirect infringement it makes against the other fifty-seven defendants in this case. Such conclusory and boilerplate allegations fall well short of the pleading standards required by Rule 8 of the Federal Rules of Civil Procedure. *See Iqbal*, 129 S. Ct. at 1949.

Moreover, PN's conclusory allegation—directed generically to "Defendants"—in the last paragraph of its Complaint that "prior to the filing of this Complaint, Defendants were aware of the '111 patent," does not establish that Navistar specifically possessed the requisite knowledge

required for indirect or willful infringement. *See XPoint Techs., Inc.*, 2010 WL 3187025, at\*6-\*7 (dismissing indirect infringement claims and finding that the general allegation that "[a]t all relevant times, Defendants have had actual and constructive notice that their conduct infringed on the claims of the [patent in suit]" did not establish that a specific defendant possessed the requisite knowledge required for indirect infringement). Notably, the only paragraphs in PN's Complaint specifically directed to Navistar make no allegations that Navistar knew of the '111 patent before PN filed its Complaint. (D.I. 1, ¶¶ 50, 255-58) Nor does PN's Complaint state any facts plausibly suggesting that Navistar ever possessed that knowledge.

**B. Parallel Networks Fails To Plead Facts Sufficient To Establish That Navistar Possessed The Requisite Intent For Indirect Infringement**

PN similarly fails to plead sufficient facts that support an allegation that Navistar had the requisite level of intent to support indirect infringement. And PN's reliance on Fed. R. Civ. P. 9(b) for the assertion that intent may be alleged generally is both misplaced and irrelevant, as that rule specifically applies to fraud or mistake, neither of which are at issue here. Instead, PN once again repeats the exact same conclusory allegations it makes against the other fifty-seven defendants in this case. Such allegations are exactly the type of "formulaic recitation of the elements of a cause of action" that do not meet the required standard for pleading those causes of action. *Iqbal*, 129 S. Ct. at 194.

Because PN does not provide any facts suggesting that Navistar had the specific intent to encourage infringement, its Complaint fails to plead that Navistar possessed the requisite intent required to induce infringement, and therefore its inducement claim against Navistar should be dismissed. Nor does PN provide any facts suggesting that Navistar specifically designed any product to infringe the '111 patent, and therefore its contributory infringement claim against Navistar should be dismissed.

### **C. Willfulness**

Likewise, PN's claim of willful infringement against Navistar should be dismissed, because PN has not pled facts to suggest that Navistar had knowledge of the '111 patent before the filing of the Complaint. The Federal Circuit has instructed that willfulness will largely depend on an accused infringer's pre-litigation conduct. *See Realtime Data, LLC v. Stanley*, 721 F. Supp. 2d 538, 545 (E.D. Tex. 2010) (Love, J.) (citing *In re Seagate Tech., LLC*, 497 F.3d 1360, 1374 (Fed. Cir. 2007) (en banc)). Here, PN pleads no facts related to Navistar's pre-filing conduct, let alone facts that would support an allegation of willful infringement. Furthermore, PN's entire willful infringement allegation consists of one lone paragraph generally accusing all fifty-eight defendants. (D.I. 1, ¶ 305) But vague and general allegations against large groups of defendants do not provide the minimal specificity required by Rule 8. *See Realtime Data*, 721 F. Supp. 2d at 539-40. Thus, PN's claim of willful infringement should be dismissed.

Under Rule 8 and the Supreme Court case law interpreting it, PN was required to set forth sufficient facts to state a facially plausible claims of induced, contributory, and willful patent infringement. PN's boilerplate allegations do not meet this standard. Accordingly, PN's complaint should be dismissed.

## II. CONCLUSION

For the reasons set forth in above and in Kodak's Motion to Dismiss, Parallel Networks' allegations of induced, contributory, and willful infringement against Navistar should be dismissed.

Dated: December 20, 2010

Respectfully submitted,

/s/ Paul R. Steadman

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing has been served upon counsel of record through the Court's CM/ECF system on this 20th day of December, 2010.

*Paul R. Steadman*