JAMS

JENNER & BLOCK LLP,	§	
	§	
Claimant,	§	
	§	
v.	§	**JAMS ARBITRATION NO. 1310019934**
	§	
PARALLEL NETWORKS, LLC and epicRealm LICENSING LP,	§	
	§	
	§	
Respondents.	§	

RESPONDENT'S ORIGINAL ANSWERING STATEMENT AND COUNTERCLAIM

Subject to and without waiving its objection to the subject matter jurisdiction of the Arbitrator, Respondent **PARALLEL NETWORKS, LLC**[1] hereby answers the Demand for Arbitration filed by Claimant Jenner & Block LLP, and, by way of counterclaim, Parallel Networks complains of Jenner & Block.

INTRODUCTION

1. In its Demand for Arbitration (the "Demand"), Jenner & Block seeks payment of its hourly fees under a contingent fee agreement pursuant to which Jenner & Block agreed to represent Parallel Networks on a contingent fee basis in litigation against Oracle Corp. ("Oracle") and in separate litigation against Quinstreet, Inc. ("Quinstreet"). Jenner & Block lost the *Oracle* case on summary judgment, then without cause or notice terminated its representation of Parallel Networks in both the *Oracle* and *Quinstreet* cases. The Arbitrator should deny Jenner & Block's request for payment of its hourly fees because a lawyer that undertakes to represent a client pursuant to a contingent fee agreement cannot recover payment if the lawyer terminates the representation without cause prior to the occurrence of the contingency.

[1] Jenner & Block made its Demand for Arbitration against Parallel Networks, LLC ("Parallel Networks") and epicRealm Licensing, LP ("epicRealm"). As explained below, epicRealm was formally dissolved on October 31, 2007, and, Parallel Networks succeeded to all of epicRealm's rights and obligations in the transactions that are the subject of Jenner & Block's Demand. *See* Demand, Ex. B.

2. As an alternative basis for recovery, Jenner & Block advances a *quantum meruit* theory. Because Jenner & Block had no cause to terminate the Contingent Fee Agreement and terminated it voluntarily, Jenner & Block forfeited any claim to fees under *quantum meruit* or any other theory.

3. Jenner & Block lost the *Oracle* case on summary judgment of non-infringement. The grant of summary judgment in the *Oracle* case resulted in a take nothing judgment against Parallel Networks. Almost immediately after the entry of the take nothing judgment, Jenner & Block terminated its representation of Parallel Networks in both the *Oracle* and *Quinstreet* cases.

4. After Jenner & Block's abandonment, Parallel Networks was forced to retain new legal counsel to settle the *Quinstreet*[2] case and to handle the appeal in the *Oracle* case. Parallel Networks expended millions of dollars in legal fees and expenses to resuscitate a case that Jenner & Block had lost, which included retaining a new legal team (who, collectively expended thousands of hours in attorney time) to appeal the trial court's order granting summary judgment of non-infringement in the *Oracle* case and then to prepare the *Oracle* case for trial.

5. Jenner & Block terminated its representation of Parallel Networks during the short window in which Parallel Networks had to appeal the order granting summary judgment of non-infringement in favor of Oracle and while case dispositive deadlines were looming in the *Quinstreet* case. Due to the loss of summary judgment in the *Oracle* case and the lack of notice before Jenner & Block abandoned its representation, Parallel Networks could not find a law firm to handle the appeal in the *Oracle* case or to take over the *Quinstreet* case on a contingent fee

[2] Parallel Networks settled the *Quinstreet* case in May 2009 (more than three months after Jenner & Block abandoned Parallel Networks in that case). Jenner & Block never made a demand for payment for fees in the *Quinstreet* case until after Parallel Networks settled the *Oracle* case on May 13, 2011. If Jenner & Block truly believed that it was entitled to fees in the *Quinstreet* case, it begs the question why Jenner & Block waited for more than two years after Parallel Networks settled that case before making its demand for fees.

basis and was forced to retain replacement legal counsel on an hourly fee basis.[3] Unable to otherwise finance the appeal in the *Oracle* case or to continue litigating the *Quinstreet* case, Parallel Networks was forced to raise cash by entering into a premature "fire sale" settlement with Quinstreet.

6. Not only did Jenner & Block not obtain a successful result in either the *Oracle* case or the *Quinstreet* case, but Jenner & Block's unjustified termination of the representation caused substantial damages to Parallel Networks, including a sizeable reduction in the settlement value of the *Quinstreet* case. Parallel Networks seeks to recover those damages from Jenner & Block.

FACTUAL BACKGROUND

7. Since 2005, Parallel Networks[4] has owned a portfolio of valuable software patents related to client-server architecture and internet technologies. Parallel Networks' primary business is licensing its patents. Initially, Parallel Networks commenced its patent licensing program by filing patent infringement lawsuits against multiple defendants in federal court in the Eastern District of Texas with the law firm of Baker Botts, LLP as its lead trial counsel (the "Texas Actions"). In order to pursue its licensing program, Parallel Networks has always relied on law firms willing to accept the representation on a contingent fee basis. It is common practice for companies engaged in patent licensing activities to retain legal counsel on a contingent fee basis due to the high cost of patent infringement litigation.

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[3] After Jenner & Block abandoned its representation, Parallel Networks attempted to engage Jenner & Block to handle the appeal in the *Oracle* case based on Jenner & Block's familiarity with the case. Notwithstanding its promise in the Contingent Fee Agreement to see the *Oracle* case through to conclusion on a contingent fee basis, Jenner & Block demanded payment of its hourly fee rates to handle the appeal in the *Oracle* case and only if Parallel Networks paid a retainer of $500,000 in advance. When Parallel Networks could only come up with a retainer of $200,000, Jenner & Block refused to handle the *Oracle* appeal.

[4] epicRealm was the predecessor in interest to Parallel Networks. On August 10, 2007, epicRealm assigned its patent portfolio and pending patent enforcement actions to Parallel Networks and subsequently dissolved. For ease of reference, epicRealm and Parallel Networks will be referred to herein as Parallel Networks.

8. **The *Oracle* Case and the *Quinstreet* Case.** In 2006, as a result of certain indemnification claims that were brought in the Texas Actions, Oracle and Quinstreet filed declaratory judgment actions in the United States District Court for the District of Delaware seeking a declaration that certain Parallel Networks' patents were either non-infringed or invalid (collectively, the "Delaware Actions").[5] Parallel Networks was forced to bring counterclaims for infringement and damages against Oracle and Quinstreet.

9. Parallel Networks decided to retain new legal counsel to handle the Delaware Actions because of the size and the complexity of those cases. As in the Texas Actions, Parallel Networks was looking for a law firm that was willing to share in the risks and the rewards of its patent licensing program. After Parallel Networks interviewed several law firms, Jenner & Block convinced Parallel Networks that it had the capabilities, resources, and desire to join forces with Parallel Networks to pursue the *Oracle* and *Quinstreet* cases on a contingency fee basis and under the same terms and conditions as the contingent fee agreement between Parallel Networks and Baker Botts in the Texas Actions.

10. **The Jenner & Block Contingent Fee Agreement.** Parallel Networks reviewed Baker Botts's pursuit of Parallel Network's infringement claims in the Texas Actions with Jenner & Block on several occasions prior to engaging Jenner & Block because the same patents were at issue in the Texas Actions and the Delaware Actions and because Parallel Networks desired a contingent fee arrangement with Jenner & Block similar to the one that it had with Baker Botts.

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[5] Oracle filed its declaratory judgment action on June 30, 2006, and Quinstreet filed its declaratory judgment action on August 8, 2006. On September 30, 2008, Quinstreet filed a third-party complaint against Microsoft seeking indemnification for Parallel Networks' claims of infringement in the *Quinstreet* case and Microsoft subsequently filed a declaratory judgment action against Parallel Networks in the Delaware court. References in this document to the "Delaware Actions" mean together, the *Oracle* and *Quinstreet* cases.

11. Harry Roper, the head of Jenner & Block's Intellectual Property Litigation Group, undertook Jenner & Block's due diligence on the patents in suit in the Delaware Actions.[6] Roper also spoke with Kevin Meek who lead Baker Botts's litigation team in the Texas Actions and Roper also reviewed a copy of the contingent fee agreement between Parallel Networks and Baker Botts.

12. After conducting its due diligence and committing to Parallel Networks that it would devote the resources necessary to handle the Delaware Actions through their conclusion on a contingent fee basis, Jenner & Block took the contingent fee agreement between Parallel Networks and Baker Botts and merely replaced its name as the lead trial counsel, changed the case caption names and forwarded the slightly revised contingent fee agreement to Parallel Networks (noting in the accompanying e-mail that Jenner & Block had elected to use the Baker Botts contingency fee agreement as a guide). The contingent fee agreement between Jenner & Block and Parallel Networks became effective on June 26, 2007 (the "Contingent Fee Agreement"), and is governed by Texas law.

13. The recitals of the Contingent Fee Agreement made clear that, because of the potential cost in prosecuting the Delaware Actions, Parallel Networks desired to compensate Jenner & Block on a contingent fee basis.[7] Both the express words of the Contingent Fee Agreement and the parties' discussions recognized that Parallel Networks did not have the financial ability to pursue the Delaware Actions on an hourly fee basis. Importantly, Jenner &

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[6] Roper entered more than 27 hours of purportedly billable time on time-sheets submitted to Parallel Networks for Jenner & Block's due diligence. It remains to be determined how Roper believed – under legal and/or ethical standards – that he could and should bill time to Parallel Networks for time related to Jenner & Block's due diligence activities before a contingent fee agreement was actually entered into between Jenner & Block and Parallel Networks.

[7] Recital #3 "WHEREAS, because of the potential cost in prosecuting the Enforcement Activities, [Parallel Networks] desires to compensate Jenner & Block on a contingent fee basis pursuant to the terms and conditions of this Agreement." The Contingent Fee Agreement defines "Enforcement Actions" as collectively, the *Oracle* and *Quinstreet* cases.

Block, pursuant to the express terms of the Contingent Fee Agreement represented to Parallel Networks that Jenner & Block would initiate, prosecute *and conclude* the Delaware Actions. Therefore, Jenner & Block always understood that its entitlement to any compensation under the terms of the Contingent Fee Agreement or otherwise depended upon the successful outcome of the Delaware Actions during the representation. Abandonment of its client without cause in violation of that express promise was a breach of the Contingent Fee Agreement, a wrongful abandonment of its client in violation of its ethical duties, and a decision by Jenner & Block to forfeit any claim to compensation under the Contingent Fee Agreement or otherwise.

14. **The *Oracle* Case.** In the 18-month period between June 27, 2007, and mid-December 2008, the Jenner & Block trial team pursued Parallel Networks' claims in the *Oracle* case. During that period, Jenner & Block never informed Parallel Networks that it had lost faith in the merits of Parallel Networks' infringement and damages claims against Oracle, never questioned the method and manner by which Parallel Networks' paid expenses and never mentioned that the Delaware Actions were creating any kind of financial hardship for Jenner & Block.

15. Indeed, the value of the *Oracle* case would be borne out when the damages expert retained by Jenner & Block's trial team – nationally-recognized damages expert, Michael Wagner, opined that Parallel Networks' claim for past damages in the *Oracle* case was in the hundreds of millions of dollars.[8] The size of the damages claim meant that Jenner & Block potentially stood to gain tens of millions of dollars in contingent fees if it prevailed in the *Oracle* case. Jenner & Block's initial due diligence of the value of Parallel Networks' case against

[8] Wagner's expert damages report only determined *past* damages. In the event of a favorable trial and appeal, Oracle would also have had to pay Parallel Networks *future* damages through the remaining life of the patents. At the time of Wagner's report, those patents had more than nine years before they expired.

Oracle as affirmed during Roper's discussions with Baker Botts was validated by Wagner's expert damages report.

16. In a memorandum to Jenner & Block's contingency fee committee, dated October 24, 2008, senior IP litigation practice group partner, George Bosy, recommended that Jenner & Block represent Parallel Networks in a follow-on suit to the *Oracle* case in order pursue claims and damages related to BEA's products. This memorandum noted:

> BEA was recently acquired by Oracle, and it is our understanding that Oracle is replacing the Oracle Application Server product accused of infringement in the *Oracle v. Parallel Networks* litigation to the BEA platform. A preliminary analysis of what we know about BEA is that, at minimum, BEA's middleware application server product infringes the patents in suit. That preliminary infringement analysis was done by Ben Bradford.[9] Also based on our preliminary estimates, it is our understanding that BEA's sales of its application server product exceed Oracle's sales of Oracle's application server product. Oracle's past sales of its application server product are about $ [REDACTED] billion (worldwide). Consequently, at a 3% royalty rate, BEA's exposure for past infringement is at least $75 million (not including pre-judgment interest). Moreover, there are additional BEA products that we likely would accuse of infringement. *BEA's exposure for all of its products could approach $7 billion worldwide.*

(emphasis added)

17. In sum, Parallel Networks' past damages claims against Oracle and the follow-on case contemplated against BEA's products were estimated to be close to $1 billion. A successful outcome in those two cases would have potentially resulted in even more lucrative contingent fee payments to Jenner & Block had it fulfilled its promises to Parallel Networks under the Contingent Fee Agreement to see the cases through to conclusion.

[9] Benjamin Bradford is an associate in Jenner & Block's IP litigation practice group and a member of Jenner & Block's trial team.

18. **The Oracle Take Nothing Judgment.** On July 31, 2008, Oracle and Parallel Networks filed cross-motions for summary judgment on the issue of infringement. The parties filed *Markman* briefs and the court held oral arguments on October 3, 2008.[10]

19. On October 8, 2008, Parallel Networks and Jenner & Block's trial team participated in a court-ordered mediation in the *Oracle* case. During the mediation, Jenner & Block's trial team recommended to Parallel Networks that it not settle the *Oracle* case for less than $60 million. Following the advice of Jenner & Block's trial team, Parallel Networks declined to reduce its demand below $60 million, and the mediation ultimately proved unsuccessful. At no point during this time did anyone at Jenner & Block ever suggest or opine that the *Oracle* case was worth less than the damages amount put forth in Wagner's expert damages report or that the *Oracle* case should be settled for less than the $60 million.

20. After the unsuccessful mediation, Jenner & Block continued to lead Parallel Networks to believe that it had full confidence in the value of the *Oracle* case and that Jenner & Block was pleased with its relationship with Parallel Networks. This was further evidenced by Bosy's memorandum (discussed above) recommending that Jenner & Block accept additional contingency fee work from Parallel Networks.

21. On December 4, 2008, the Delaware court issued a *Markman* order and a separate summary judgment order. The *Markman* order largely mirrored the construction of disputed claims advanced by Parallel Networks. The *Markman* order, standing alone, was a huge victory for Parallel Networks as the construction of the claims advanced by Parallel Networks should have nearly guaranteed a finding that Oracle infringed Parallel Networks' patents.

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[10] *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), established that construction of disputed patent claims (the metes and bounds of the protections of a patent) are issues of law for the trial court. The claims construction process usually involves briefing and a hearing. Following the hearing, the trial court will typically issue what has become known as a *Markman* order, in which the trial court sets out the meaning of any disputed claims.

22. Notwithstanding the favorable *Markman* order, the Delaware court inexplicably found no infringement as a matter of law and granted Oracle's motion for summary judgment of non-infringement. The Delaware court's analysis was wholly inconsistent with its *Markman* order. On December 23, 2008, the Delaware court entered a take nothing judgment in Oracle's favor.

23. **The *Quinstreet* Case**. In order to focus on the *Oracle* case, Jenner & Block had decided not to aggressively pursue the *Oracle* and *Quinstreet* cases at the same time. Instead, Jenner & Block persuaded Parallel Networks to permit it to request extensions of the pre-trial settings in the *Quinstreet* case on two separate occasions in order to have the *Oracle* case proceed on a faster timeline. By September 29, 2008, the *Quinstreet* case was on its third scheduling order, with deadlines under that scheduling order looming in February, 2009.

24. Although there had been no expert damages report prepared by Wagner in the *Quinstreet* case, based on a damages model from Wagner in a related case, Parallel Networks anticipated that the past damages claim in the *Quinstreet* case would likely exceed $40 million.

25. Because of the similarity of the infringement claims in both the *Oracle* and *Quinstreet* cases, the grant of summary judgment of non-infringement in the *Oracle* case had an equally devastating impact on the *Quinstreet* case.

26. **Jenner & Block Abandoned Parallel Networks.** On December 18, 2008, just two weeks after the adverse summary judgment ruling in the *Oracle* case, Jenner & Block began for the first time to voice concerns regarding the expenses Jenner & Block had advanced on behalf of Parallel Networks in the Delaware Actions. Bosy e-mailed Terry Fokas (the managing member of Parallel Networks) and asked whether Parallel Networks was on track to pay before year-end the expenses that Jenner & Block had advanced in the Delaware Actions. Later that day, Bosy forwarded to Fokas an e-mail from Terri Mascherin (a member of Jenner & Block's

Management Committee) that Jenner & Block would stop performing additional work on the Delaware Actions if the expenses were not paid by year-end.

27. The following day, on December 19, 2008, Jenner & Block began to pressure Parallel Networks to settle its claims against Oracle and Quinstreet. Mascherin convened a telephone call that day with Bosy, Paul Margolis (an associate in Jenner & Block's IP litigation practice group and a member of Jenner & Block's trial team) and Fokas. During the call, Mascherin told Fokas that Parallel Networks should settle the *Oracle* and *Quinstreet* cases for "whatever [Parallel Networks] could get." Mascherin's rationale for recommending immediate settlement was that Jenner & Block's appellate lawyers (who were not members of the trial team) had reviewed the grant of summary judgment of non-infringement in the *Oracle* case and predicted a low likelihood of success in the *Oracle* appeal.

28. Obviously, in the face of the adverse summary judgment ruling, the settlement value of the *Oracle* and *Quinstreet* cases fell precipitously, making it the worst possible time to try to negotiate a settlement with Oracle and Quinstreet. This was underscored by the fact that just a few days prior to Mascherin's call recommending that Parallel Networks settle the *Oracle* and *Quinstreet* cases, James Gilliland (Oracle's lead trial counsel) had sent an e-mail to Bosy offering to settle the *Oracle* case but only for "significantly less than eight figures."[11] Several hours after Mascherin's call recommending that the *Oracle* and *Quinstreet* cases be settled for "whatever [Parallel Networks] could get," Fokas called Bosy and informed him that Parallel Networks did not want to settle and wanted instead to pursue an appeal.

29. On December 24, 2008 (within a week of Mascherin's e-mail demanding payment of expenses), Parallel Networks wired $548,795.32 to Jenner & Block, which

[11] Gilliland's e-mail to Bosy was dated December 15, 2008 (two weeks after the Delaware court's grant of summary judgment of non-infringement in favor of Oracle). On information and belief, Mascherin was aware of Oracle's *de minimus* settlement offer at the time she recommended to Fokas to settle the *Oracle* case.

represented *payment in full of all expenses* that had been previously advanced by Jenner & Block during the Delaware Actions.

30. On December 31, 2008, Margolis and Roper called Fokas. During that call, Jenner & Block made it clear that it did not intend to continue representing Parallel Networks on the same terms going forward. Jenner & Block offered to continue as Parallel Networks' counsel only if it immediately settled the *Oracle* and *Quinstreet* cases, and retained Jenner & Block in the newly filed *Microsoft* case and settled that case immediately as well. Not surprisingly, Parallel Networks turned down that offer. Jenner & Block made clear it did not intend to continue litigating the *Quinstreet* case under any circumstance.

31. On January 2, 2009, (1) after receiving Parallel Networks' payment of expenses, (2) after making absurd proposals for how Jenner & Block would continue acting as Parallel Networks' counsel, and (3) after making no attempt to help Parallel Networks secure new counsel, Margolis called Fokas to inform him that Jenner & Block was going to immediately terminate pursuant to Section 9(b) of the Contingent Fee Agreement and would cease representing Parallel Networks in all matters. When Margolis stated that Jenner & Block would seek its hourly fees under paragraph 9(b) of the Contingent Fee Agreement, Fokas told Margolis that he was out of his mind if he thought Jenner & Block was entitled to its hourly fees.

32. Shortly after the call from Margolis, Jenner & Block e-mailed a letter to Fokas terminating Jenner & Block's representation of Parallel Networks. In its termination letter, Jenner & Block cited Section 9(b) as its sole basis for terminating the Contingent Fee Agreement. Jenner & Block could not and did not cite any cause recognized under Texas law for the termination of its representation of Parallel Networks, especially where Jenner & Block knew that the timing and circumstances of its withdrawal would cause severe harm to Parallel Networks. Jenner & Block had no cause to terminate its representation of Parallel Networks and

to abandon its client. As a result, Jenner & Block not only breached its duties to its client, but forfeited any right to compensation (whether under the Contingent Fee Agreement or *quantum meruit*) when it abandoned Parallel Networks without cause and without notice.

33. Abandoning Parallel Networks when it did violated Jenner & Block's ethical duties to not abandon a client without cause and was a breach of its common law duties to not put its own interests above its client's interests.

34. The timing and circumstances of Jenner & Block's termination of its representation was also a breach of the express provisions of the Contingent Fee Agreement. For example, Section 7 of the Contingent Fee Agreement forbids a party from taking any action that "could reasonably be expected to impair...any Enforcement Activity in which Jenner & Block is representing [Parallel Networks]." Section 9(b) of the Contingent Fee Agreement (the very same section relied upon by Jenner & Block in its termination letter to Parallel Networks) requires Jenner & Block to give Parallel Networks 30-day's notice prior to termination. By abandoning Parallel Networks after it lost summary judgment – at a point in time when Parallel Networks would not be able to retain new legal counsel on a contingency fee basis – and by not giving Parallel Networks *any* notice before it terminated the Contingent Fee Agreement, Jenner & Block materially breached the Contingent Fee Agreement.

35. **Jenner & Block Abandoned Its Client at the Worst Possible Time.** Jenner & Block's termination came at the worst possible time for Parallel Networks because there were immediate deadlines looming in both the *Oracle* and *Quinstreet* cases. The notice of appeal in the *Oracle* case was due on January 22, 2009, giving Parallel Networks almost no time to find new counsel to take over the appeal.

36. In the *Quinstreet* case, pre-trial deadlines were quickly approaching. Under the third amended scheduling order, Parallel Networks had an expert report deadline of February 9,

2009. Importantly, Parallel Networks had not previously met its expert report deadline or the other deadlines in the *Quinstreet* case because Jenner & Block had not made any serious attempt to advance Parallel Networks' claims during the entire time that the *Quinstreet* case had been pending.

37. Jenner & Block knew or should have known that Parallel Networks would never be able to obtain new legal counsel on a contingent fee basis in the *Oracle* and *Quinstreet* cases after the entry of the summary judgment order of non-infringement in the *Oracle* case. Jenner & Block was also aware of Parallel Networks' financial position and should have known that after Parallel Networks had just paid more than $500,000 to Jenner & Block, that Parallel Networks did not have the financial resources to pay new legal counsel on an hourly fee basis in the *Oracle* and *Quinstreet* cases.

38. Obtaining reasonable settlements in the *Oracle* and *Quinstreet* cases was also not a viable option for Parallel Networks because Oracle had a favorable summary judgment order in hand and Quinstreet would not be far behind Oracle in seeking a summary judgment of non-infringement on the same grounds and before the same judge.

39. In sum, after promising to see the *Oracle* and *Quinstreet* cases through to the end on a contingent fee basis and then ignoring its ethical obligation to faithfully discharge its duties, Jenner & Block abandoned its client in bet-the-company litigation at a time when Parallel Networks would not be able to find replacement counsel on a contingent fee basis and at a time when Parallel Networks did not have the financial wherewithal to pay new legal counsel on an hourly basis.

40. **Parallel Networks Retained New Counsel.** Jenner & Block put Parallel Networks in the untenable position of having to immediately find new legal counsel to simultaneously take on two large patent infringement cases. Parallel Networks contacted other

firms, requesting they take over the *Oracle* and *Quinstreet* cases on a contingent fee basis. Not surprisingly, and despite longstanding relationships with the firms it contacted, Parallel Networks could not find new legal counsel to represent Parallel Networks in the *Oracle* and *Quinstreet* cases on a contingent fee basis after the Delaware court's entry of summary judgment of non-infringement.

41. The best Parallel Networks could do was persuade Baker Botts to take up the *Oracle* appeal and the *Quinstreet* case on an hourly fee basis and only after Parallel Networks agreed to pay Baker Botts a retainer of $100,000.

42. **The *Quinstreet* Settlement.** With nowhere else to turn and with very limited funds left with which to pay hourly fees to Baker Botts, Parallel Networks engaged in settlement negotiations with Quinstreet to resolve that case and in order to generate sufficient funds to pay Baker Botts to handle the *Oracle* appeal.

43. Quinstreet conditioned settlement discussions on Parallel Networks agreeing to give Quinstreet a license that would cover Quinstreet's websites and all of Quinstreet's customers' websites. These conditions were extremely damaging because Parallel Networks could not pursue patent infringement claims against Quinstreet's customers.

44. Out of options and in danger of running out of money, Parallel Networks was forced to accept Quinstreet's paltry settlement offer and to abandon what could have been very lucrative claims against Quinstreet and its customers in order to come up with the money to pay Baker Botts on an hourly fee basis to represent it in the *Oracle* appeal.[12]

[12] The importance of the appeal in the *Oracle* case was further underscored by the potentially devastating effect that the Delaware court's adverse summary judgment ruling would have had on Parallel Network's licensing program. If that adverse ruling were not reversed on appeal, Microsoft and other entities in litigation with Parallel Networks in a related Texas case would have sought similar rulings of non-infringement by arguing collateral estoppel. When Fokas raised the collateral estoppel issue to Mascherin during her call recommending that Parallel Networks settle the *Oracle* and *Quinstreet* cases, she conceded that there was no guarantee that the Delaware court would vacate its summary judgment order even if settlement was reached with Oracle.

45. By leaving Parallel Networks no choice but to settle the *Quinstreet* case in a fire sale, Jenner & Block's abandonment of its client was the direct and proximate cause of substantial damages to Parallel Networks, including, but not limited to, the very substantial damages suffered by Parallel Networks in being forced to include a license with Quinstreet at a settlement figure significantly less than its actual damages and by foregoing the ability to pursue licensing settlements with Quinstreet's customers.

46. **The *Oracle* Appeal.** Baker Botts assembled an appellate team of three partners and three senior associates to prosecute the appeal of the adverse summary judgment order in the *Oracle* case. The Baker Botts appellate team expended more than 1,800 hours and at a cost of nearly $1 million to Parallel Networks in the prosecution of the appeal. On April 9, 2010, the Federal Circuit issued an order vacating the grant of summary judgment of non-infringement in favor of Oracle and remanding the case to the Delaware court for further proceedings.

47. After remand, Parallel Networks retained the law firm of Bosy & Bennett, LLP to assist it with preparing the *Oracle* case for a May 16, 2011, trial.[13] In anticipation of the extensive work that would be needed to prepare the case for trial and in anticipation of a lengthy and complex trial and subsequent appeal, Parallel Networks added Baker Botts, LLP, Hinshaw & Culbertson LLP, and Young Conaway Stargatt & Taylor LLP to its trial team (in addition to Bosy & Bennett). After the appeal, Parallel Networks expended more than $2 million in order to get the *Oracle* case ready for trial.[14] On May 13, 2011, just three days before trial, the case settled.

[13] Bosy & Bennett, LLP was formed by former partners of Jenner & Block, who were members of the trial team.

[14] In addition to preparing the case right up until it settled just three days before trial, the new trial team, among other tasks, (a) defeated a motion to stay; (b) re-argued and won a claim construction dispute over a case-dispositive claim limitation; and (c) defeated a second round of summary judgment motions filed by Oracle. The aggregate cost of the appeal in the *Oracle* case and preparation for trial totaled nearly $3 million.

48. **Jenner & Block Demanded Compensation.** On June 17, 2011, more than two and a half years after it abandoned its client and terminated its contingent fee representation, Jenner & Block sent a letter to Parallel Networks demanding more than $10 million in hourly fees under the terms of the Contingent Fee Agreement.

49. Jenner & Block apparently reads Section 9(b) of the Contingent Fee Agreement as a unilateral option that permitted Jenner & Block, at any time and at its sole discretion, to terminate the attorney-client relationship (even after it lost the case and after its client declined its advice to settle), and then to convert the contingent fee agreement to an hourly fee agreement.[15] In other words, Jenner & Block contends Section 9(b) of the Contingent Fee Agreement gave it the option, depending on which course of action was in Jenner & Block's best financial interest, to unilaterally elect whether it would represent Parallel Networks on a contingent fee basis or whether to elect to terminate (at any time and for whatever reason) and demand an hourly fee.

50. Jenner & Block's interpretation of Section 9(b) is unconscionable, unethical, and unenforceable as a matter of law.

51. Nearly three years after it abandoned its client without cause, Jenner & Block now attempts to concoct a for-cause basis for its termination. In its Demand, Jenner & Block claims that Parallel Networks' alleged delay in paying litigation expenses gave it cause to terminate the Contingent Fee Agreement.

52. Prior to the grant of summary judgment of non-infringement in the *Oracle* case on December 4, 2008, Jenner & Block never had *any* issue or complaint with the manner in which

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[15] Jenner & Block's interpretation of Section 9(b) – that it had the unfettered right to terminate the representation at any time and for any or no reason – ignores Section 7 which provides that Jenner & Block could not take any action that would have an adverse effect on the *Oracle* and *Quinstreet* cases. Under Jenner & Block's self-serving interpretation of Section 9(b), it could abandon Parallel Networks at any time and under any circumstances regardless of what impact such abandonment would have on the *Oracle* and *Quinstreet* cases.

Parallel Networks paid expenses that Jenner & Block had advanced in the Delaware Actions. For example, on August 28, 2008, in response to an e-mail inquiry from Bosy on whether Parallel Networks would be able to pay all of the expenses advanced by Jenner & Block, Fokas responded that he only had sufficient funds to pay a portion of those expenses. Neither Bosy nor anyone else at Jenner & Block had any issue or complaint with Parallel Network's payment of less than all of the advanced expenses. In point of fact, after this e-mail exchange Jenner & Block continued to send monthly invoices to Parallel Networks merely noting the expenses advanced. Only *after* Jenner & Block lost the *Oracle* case did payment of expenses suddenly become an issue.

53. Furthermore, repayment of litigation expenses was never cited by Jenner & Block as a basis for the termination of the Contingent Fee Agreement. The termination letter merely noted that Jenner & Block was terminating under Section 9(b) of the Contingent Fee Agreement. There was no mention of termination of the Contingent Fee Agreement for cause and certainly there was no mention that Jenner & Block was terminating the Contingent Fee Agreement due to the manner in which Parallel Network's was paying expenses.

54. The one time that Jenner & Block did raise the payment of expenses was in Mascherin's e-mail of December 18, 2008 (two weeks after Jenner & Block lost the *Oracle* case), but Mascherin's e-mail merely noted that if Parallel Networks did not pay expenses by year-end, that Jenner & Block would discontinue further work on the Delaware Actions (not that Jenner & Block would terminate its representation of Parallel Networks). As noted above, Parallel Networks paid the expenses *in full* on December 24, 2008. Because Parallel Networks paid the expenses in full before Mascherin's demand deadline of December 31, 2008, Jenner & Block cannot now justify its unilateral and unjustified termination based on Parallel Networks' alleged delay in paying expenses.

55. After conceding in its Demand that Parallel Networks did pay the full amount of the expenses immediately after the one time that Jenner & Block did demand payment, Jenner & Block also suggests in its Demand that it was justified in terminating the Contingent Fee Agreement on an apparent theory of anticipatory breach, stating that termination was permissible because Jenner & Block "did not believe Parallel Networks had the financial resources to comply with the Agreement going forward . . . ." That theory fails as a matter of law. Parallel Networks never made a positive and unconditional declaration of its intent not to perform under the Contingent Fee Agreement in the future (as required under well-settled Texas law for a party to cease its performance under a contract due to an anticipatory breach). As a result, Jenner & Block's subjective concern about Parallel Networks' ability to pay litigation expenses in the future is simply not a basis to terminate the Contingent Fee Agreement.

56. Moreover, even if Parallel Networks had been in breach of the obligation to pay expenses (which Parallel Networks denies), that breach is not a basis for termination under Section 9(b) or of any other provision of the Contingent Fee Agreement.

57. Jenner & Block's abandonment of Parallel Networks was voluntary and without cause. As such, and under well-settled Texas law, Jenner & Block forfeited its right to recover anything from Parallel Networks.

ANSWER TO DEMAND

58. Parallel Networks denies each and every, all and singular, the allegations of the Demand for Arbitration and demands strict proof thereof by a preponderance of the evidence.

AFFIRMATIVE DEFENSES

59. The Arbitrator lacks subject matter jurisdiction over this dispute because the arbitration provision of the Contingent Fee Agreement does not apply to the claims and counterclaims herein.

60. Jenner & Block's claims are barred by estoppel.

61. Jenner & Block's claims are barred by its prior material breach.

62. Jenner & Block's claims are barred by the failure of conditions precedent.

63. Jenner & Block's claims are barred by laches.

64. Jenner & Block's claims are barred by waiver.

65. Jenner & Block's claims for *quantum meruit* are barred by the doctrine of unclean hands.

66. Section 9(b) of the Contingent Fee Agreement, as interpreted by Jenner & Block, is unenforceable because it violates public policy.

67. Section 9(b) of the Contingent Fee Agreement, as interpreted by Jenner & Block, is unenforceable because the clause is unconscionable.

COUNTERCLAIM

68. For its counterclaim, Parallel Networks complains of Jenner & Block as follows.

COUNT ONE-BREACH OF CONTRACT

69. A lawyer cannot terminate a client without consent unless the lawyer has good cause for the termination and complies with the terms of the contract.

70. Jenner & Block did not have good cause for terminating its representation of Parallel Networks prior to the conclusion of the *Quinstreet* and *Oracle* cases.

71. Jenner & Block's termination of the Contingent Fee Agreement constitutes a breach of the Contingent Fee Agreement.

72. Also, Section 7 of the Contingent Fee Agreement prohibits Jenner & Block from taking an action that would impair the *Oracle* and *Quinstreet* cases.

73. The timing and circumstances in which Jenner & Block terminated the Contingent Fee Agreement and failure to provide notice constitutes breaches of Sections 7 and 9 of the Contingent Fee Agreement.

74. Jenner & Block's breach of the Contingent Fee Agreement caused Parallel Networks damages, including damaging Parallel Networks in the amount of the reduction in the settlement of the *Quinstreet* case caused by a forced settlement at an unfavorable time.

ATTORNEYS' FEES

75. Parallel Networks has retained attorneys to represent it in this action and has agreed to pay the attorneys' reasonable and necessary attorneys' fees. Parallel Networks requests attorneys' fees pursuant to applicable law. *See* TEX. CIV. PRAC. & REM. CODE § 38.001, *et seq.* (Vernon 2008).

COUNT TWO – BREACH OF FIDUCIARY DUTY

76. Jenner & Block owed Parallel Networks a duty not to put its interest above those of its client.

77. Jenner & Block owed Parallel Networks a duty not to terminate the representation without cause.

78. Jenner & Block put its interest ahead of those of Parallel Networks by terminating the representation prior to conclusion without cause and for the reason that Jenner & Block no longer saw the contingent fee arrangement as financially favorable to Jenner & Block.

79. As a result of Jenner & Block's breach of fiduciary duty to Parallel Networks, Parallel Networks is entitled to forfeiture of any fees to which Jenner & Block might otherwise be entitled and to recover the reduced settlement value of the *Quinstreet* case.

COUNT THREE – LEGAL MALPRACTICE

80. In the alternative, Jenner & Block's termination of the Contingent Fee Agreement constitutes a breach of the duty to represent Parallel Networks in the *Oracle* and *Quinstreet* cases.

81. Jenner & Block's breach of that duty caused Parallel Networks damages, including, but not limited to, the reduced settlement value in the *Quinstreet* case.

COUNT FOUR – DTPA

82. Section 9(b) of the Contingent Fee Agreement, as interpreted by Jenner & Block, is unconscionable.

83. Jenner & Block's attempt to enforce Section 9(b) as an option clause is unconscionable.

84. Jenner & Block's actions constitute a deceptive trade practice under the Texas Deceptive Trade Practices Act (the "DTPA"), TEX. BUS. & COM. CODE § 17.41 (Vernon 2011).

85. Jenner & Block's actions were the producing cause of damages to Parallel Networks, including the reduced settlement value of the *Quinstreet* case.

86. In addition to actual damages, the actions of Jenner & Block were committed knowingly and intentionally such that Parallel Networks is entitled to recover additional damages of up to three times its economic damages. TEX. BUS. & COM. CODE § 17.50(b)(1).

87. Parallel Networks has retained attorneys to represent it in this action and has agreed to pay the attorneys' reasonable and necessary attorneys' fees. Parallel Networks seeks recovery of its attorneys' fees incurred in prosecution of this claim. TEX. BUS. & COM. CODE § 17.50(d).

WHEREFORE, Parallel Networks prays that the Arbitrator render an award that Jenner & Block take nothing by its claims, and award Parallel Networks damages in an amount to be proven at the hearing, additional damages of up to three times its economic damages, and

reasonable attorneys' fees, plus interest as applicable, costs of this arbitration, expenses, and fees, and such other and further relief, legal or equitable, to which it may be justly entitled or which the Arbitrator deems proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing pleading was served upon the counsel listed below in the manner indicated on the date indicated.

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Dated this the 14th day of February, 2012.

_____
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