

**CAUSE NO. DC-13-01146**

**PARALLEL NETWORKS, LLC,**

**Plaintiff,**

**v.**

**JENNER & BLOCK LLP,**

**Defendant.**

**IN THE DISTRICT COURT OF**

**DALLAS COUNTY, TEXAS**

**101st JUDICIAL DISTRICT**

**JENNER & BLOCK LLP'S VERIFIED MOTION FOR TEMPORARY INJUNCTION**

TO THE HONORABLE COURT:

Judgment creditor Jenner & Block LLP respectfully moves for a temporary injunction to prevent judgment debtor Parallel Networks, LLC from dissipating or transferring assets to avoid satisfaction of this Court's April 29, 2013 judgment ("Judgment"), as follows.

**SUMMARY OF MOTION**

Judgment debtor Parallel Networks is a "non-practicing entity" that has no operations and no material assets other than its patents and patent infringement lawsuits. Its sole source of income is recovery from the enforcement of its patents. While Parallel Networks has received over REDACTED in income since 2011, and over REDACTED since the Arbitration Award in favor of Jenner & Block on January 16, 2013 (not including funds raised for the supersedeas bond), Parallel Networks consistently has transferred or dissipated those assets.<sup>1</sup> Parallel Networks concedes that it currently lacks capital sufficient to pay the unbonded amount of the Judgment. Discovery and investigation have revealed that Parallel Networks has taken and is likely to continue to take steps to dissipate and/or transfer assets to impede Jenner & Block from

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<sup>1</sup> Certain confidential information potentially covered by the October 1, 2013 protective order has been redacted from the publicly filed version of this motion pending review by the Court.

recovering the unbonded portion of the Court’s judgment. Parallel Networks’ conduct includes the following:

- On December 5, 2013, Parallel Networks (through its manager Terry Fokas), without disclosure to this Court or Jenner & Block, transferred to another entity the two patents at issue in the underlying arbitration. Then, in his Court-ordered deposition taken only eleven days later, Mr. Fokas denied under oath that Parallel Networks had transferred any patents over the last two years.
- Jenner & Block only discovered this transfer after Mr. Fokas’ deposition, when it learned of two major patent infringement suits filed by the transferee entity on December 20, 2013.
- In May 2013, Parallel Networks made a capital call on its members, raising approximately <sup>REDACTED</sup>. Apparently in an effort to avoid garnishment, Parallel Networks never deposited those funds in Parallel Networks’ account, but instead funneled the funds through the account of a “shell corporation.”
- Under the Regulations that govern Parallel Networks, members have no right to the return of capital contributions and may not receive distributions except to the extent cash on hand exceeds existing and anticipated obligations (such as the Judgment). Mr. Fokas testified, however, that following the capital call he unilaterally and informally recharacterized the members’ payments from capital contributions to loans. The effect of this change, if allowed, would be to enable Parallel Networks to try to pay money to its members as “debt” without regard for Jenner & Block’s Judgment.

- On the balance sheet prepared pursuant to the Court’s November 5, 2013 order, Parallel Networks does not list the Judgment as a liability, making it appear as if the company is solvent. Parallel Networks admits it could not pay the unbonded portion of the Judgment if required to do so today.
- As the Court is already aware, Parallel Networks actively concealed from the Court (and Jenner & Block) its January 2013 settlement with Oracle, the amount of which was a key element of Jenner & Block’s recovery under the arbitration award and the Court’s Judgment.
- In 2011, aware that Jenner & Block was seeking a fee, Parallel Networks made ~~REDACTED~~ in “guaranteed payments to partners.” No such payments were made in 2010.
- In 2012, aware that Jenner & Block had initiated an arbitration, and undoubtedly aware that the arbitration was going poorly for it, Parallel Networks reduced its cash on hand from ~~REDACTED~~ .
- In 2013, during the period January through June, Parallel Networks paid out over ~~REDACTED~~ to Mr. Fokas or companies owned by Mr. Fokas. According to the documents produced by Parallel Networks, it transferred or dissipated almost ~~REDACTED~~ between June 30, 2013 and September 30, 2013.
- Although Parallel Networks says it does not intend to make future distributions to members without reserving funds to pay Jenner & Block, it refuses to agree to a court order to that effect and already has taken steps to transfer assets and recharacterize obligations so as to impede Jenner & Block’s ability to collect its Judgment.

Jenner & Block therefore seeks a temporary injunction under Tex. R. App. P. 24.2(d), prohibiting Parallel Networks (or any entity owned or controlled by Parallel Networks) from distributing or transferring any funds, assets, claims, or causes of action except in the “normal course of business,” and defining the term “normal course of business” so that it excludes (a) payments or transfers of any kind to Parallel Networks’ members, (b) payments to Parallel Networks’ manager in excess of the annual management fee in effect on December 1, 2013 (REDACTED per year), (c) transfers of patents, or (d) transfers of causes of action, except as part of a bona fide settlement of litigation with a third party.

## FACTS

1. The Judgment. On April 29, 2013, this Court entered judgment confirming the arbitrator’s findings and awarding Jenner & Block \$3 million in damages and \$1,394,000 in attorney’s fees, plus pre-judgment and post-judgment interest.<sup>2</sup> The Judgment also provided that:

In the event Parallel Networks receives a recovery or settlement from Oracle in the arbitration contemplated by Parallel Networks’ prior settlement with Oracle, Jenner & Block is entitled to and shall recover from Parallel Networks, and Parallel Networks is obligated and ordered to pay Jenner & Block, 16% of the net proceeds of settlement or recovery paid to Parallel Networks.

This Judgment confirmed an Arbitration Award that had been issued on January 18, 2013.

2. Parallel Networks Conceals the New Oracle Settlement. Parallel Networks concealed from the Court and from Jenner & Block that shortly after the Arbitration Award but prior to the Judgment it had settled the referenced Oracle matter (the “New Settlement”) and had received substantial sums from Oracle. Parallel Networks actively hid this information despite

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<sup>2</sup> A copy of the judgment is attached as Exhibit A.

multiple requests from Jenner & Block<sup>3</sup> and the Arbitrator’s conclusion that Parallel Networks was contractually obligated to disclose settlements covered by the parties’ contingent fee agreement.<sup>4</sup>

3. Specifically, Parallel Networks had entered into the New Settlement with Oracle in mid-January, had received payment from Oracle, and had kept all of that information from Jenner & Block and the Court. Parallel Networks did not disclose the New Settlement when it filed its motion to vacate the award on January 29, 2013, or in response to Jenner & Block’s motion to confirm the award, or in its voluminous briefing, or in response to Jenner & Block’s direct requests for information. Parallel Networks also did not disclose the New Settlement when the Court granted extra time for Parallel Networks to review and approve the form of the Judgment, even though the Judgment refers to the potential settlement with Oracle in the future tense. And Parallel Networks did not disclose the New Settlement when it filed its supersedeas bond in an amount that did not cover the New Settlement, or when Parallel Networks represented to the Court in its June 4, 2013 Motion for Protective Order that the amount of the bond was “sufficient to cover the amount of damages plus pre- and post-judgment interest.”

4. Despite Supersedeas, Jenner & Block’s Judgment is Still Partially Unsecured. In May and June 2013, Parallel Networks filed its notice of appeal and a “Bond for Costs on Appeal” in the amount of \$3,386,636.79, equal to the amount of \$3 million in compensatory damages, pre-judgment interest on that amount, and post-judgment interest for one year. On June 28, 2013, Parallel Networks posted a cash deposit intended to supersede the portion of the

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<sup>3</sup> Jenner & Block made no fewer than three requests for information regarding the status of the Oracle arbitration. *See* letters from Joel Pelz to Jamil Alibhai dated January 25, 2013, February 6, 2013, and May 1, 2013, attached as Exhibits B, C and D respectively.

<sup>4</sup> *See* Arbitration Award at 33-34, Exhibit M to Parallel Networks’ Petition and Motion to Vacate Arbitration Award, filed January 29, 2013 (Parallel Networks “had refused to disclose the fact or the amounts of the settlements, as it was obligated to do by the CFA”).

Judgment related to the January 2013 New Settlement, which it had concealed until June 10, 2013. Neither the bond nor the cash deposit covers the award of \$1,394,000 in statutory attorney's fees, or interest on that amount.<sup>5</sup> Approximately \$1.4 million of the Judgment therefore remains unbonded and completely unsecured.

5. Parallel Networks Makes Capital Call, Uses Shell Corporation to Avoid Garnishment, and Then Tries to Classify the Capital Contributions as “Loans.” Two weeks after the judgment, Terry Fokas made a capital call on all Parallel Networks members. The capital call notice stated in relevant part “please be advised that Parallel Networks is making a capital call to all investors to raise<sup>REDACTED</sup> . . . In the even[t] that you choose not to participate in this capital call, your equity position will be significantly diluted or extinguished.”<sup>6</sup> On information and belief, the purpose of the capital call was to pay for an appellate bond.

6. The capital call notice immediately followed Jenner & Block's application for writ of garnishment against PlainsCapital Bank.<sup>7</sup> Mr. Fokas instructed the members not to send their capital contributions to Parallel Networks' account, but instead to wire the funds to the PlainsCapital Bank account of a company named “Performance Assessment Technologies, LLC,” apparently (on information and belief) for the purpose of avoiding Jenner & Block's collection efforts. Mr. Fokas testified that Performance Assessment Technologies is a “shell company” that has no operations.<sup>8</sup>

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<sup>5</sup> The Texas Supreme Court recently held that a judgment debtor need not include the amount of statutory attorney's fees in calculating the amount of a supersedeas bond. *In re Nalle Plastics Family Ltd. P'ship*, 406 S.W.3d 168 (Tex. 2013).

<sup>6</sup> See Exhibit E.

<sup>7</sup> *Jenner & Block LLP v. PlainsCapital Bank*, Cause No DC-13-05043, 101st Judicial District Court of Dallas County, Texas.

<sup>8</sup> Fokas Depo., at 10:18-11:21.

7. Not all members made the required capital contributions (the amount raised was approximately REDACTED rather than REDACTED). Mr. Fokas testified that Parallel Networks reduced the ownership interests of the non-paying members, as he had threatened in his capital call notice.<sup>9</sup> Parallel Networks sold the retracted interests of the non-paying members to new members.<sup>10</sup>

8. Shortly thereafter, Mr. Fokas unilaterally decided that, notwithstanding that he had raised the funds through a capital call and referred to the funds as capital contributions, Parallel Networks would treat the capital contributions as loans rather than capital contributions. There is no documentation of this decision, which contradicts the written capital call and the dilution of the company's non-paying members.<sup>11</sup> If the improper characterization of the capital contributions as loans is allowed to stand, Parallel Networks may argue that the change has consequences for Jenner & Block's ability to collect the unbonded portion of the judgment, as explained below.

9. Terry Fokas Transfers Patents, Then Denies Doing So Under Oath. In his Court-ordered deposition taken on December 16, 2013, Mr. Fokas was asked about transfers and distributions by Parallel Networks, including transfers of patents.

Q. Have the number of patents that Parallel Networks owns today changed over the last two years?

A. Yes.

Q. How has that changed?

A. They have increased.

Q. Is that because the PTO has issued new ones?

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<sup>9</sup> Fokas Depo., at 24:5-18.

<sup>10</sup> Fokas Depo., at 24:13-25:4.

<sup>11</sup> Fokas Depo., at 23:6-24:4

A. That's correct.

Q. Not because you went out and bought any new ones?

A. Correct.

Q. **And has Parallel Networks transferred any patents to anybody over the last two years?**

A. **No.**<sup>12</sup>

Mr. Fokas also was asked about the existence of companies owned by Parallel Networks.

Q. **And are there any other companies other than Performance Assessment Technologies that are owned by Parallel?**

A. **No.**<sup>13</sup>

Several weeks after the deposition, Jenner & Block discovered that this sworn testimony was false. On December 5, 2013 – only eleven days before his deposition – Mr. Fokas personally executed assignments of the very patents involved in the underlying arbitration.<sup>14</sup> Mr. Fokas assigned these patents to a Delaware LLC he formed on November 26, 2013 called “Parallel Networks Licensing, LLC” (“PNL”). Mr. Fokas is the managing member of PNL and it appears that PNL is at least partly owned by Parallel Networks, despite Mr. Fokas’ sworn denial.

10. The Patent Assignee Immediately Files New Lawsuits. Only days after Mr. Fokas’ false testimony, PNL filed two major infringement lawsuits in Delaware federal court.<sup>15</sup> There is no apparent reason for the assignment except to distance the patents and the lawsuits from Jenner & Block’s Judgment, and to attempt to impede Jenner & Block’s ability to recover on its Judgment through garnishment or execution against Parallel Networks.

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<sup>12</sup> Fokas Depo., at 15:14 to 15:25.

<sup>13</sup> Fokas Depo., at 11:10 to 11:13.

<sup>14</sup> See Exhibits F and G (assignments of U.S. Patent Nos. 5,894,554 and 6,415,335).

<sup>15</sup> See Exhibits H and I. (Complaints in *Parallel Networks Licensing, LLC v. International Business Machines Corporation*, Cause No 1:13-cv-02072-SLR (D. Del.) and *Parallel Networks Licensing, LLC v. Microsoft Corporation*, Cause No 1:13-cv-02073-SLR (D. Del.)).

## ARGUMENT AND AUTHORITIES

Standard for Rule 24.2(d) Injunction. The posting of a supersedeas bond in the statutorily required amount stays the enforcement of the judgment pending appeal. However, Tex. R. App. P. 24.2(d) authorizes a trial court to enjoin the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment.<sup>16</sup> *See also* Tex. Civ. Pract. & Rem. Code 52.006(e) (same). A Rule 24.2(d) injunction is available even if the judgment debtor has posted a supersedeas bond, where, as here, a portion of the judgment remains unbonded. *See Emeritus Corp. v. Ofczarzak*, 198 S.W.3d 222, 226 (Tex. App.—San Antonio 2006, no pet.) (upholding Rule 24.2(d) injunction despite supersedeas bond, when judgment included punitive damages not protected by bond).

In *Emeritus Corp. v. Ofczarzak*, the San Antonio Court of Appeals examined the standard for granting a Rule 24.2(d) injunction:

The purpose of a temporary injunction is to preserve the status quo of the litigation's subject matter pending a trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Id.* The first two elements require an applicant to prove his probable success on an undeveloped claim before a temporary injunction will be granted. In a post-judgment context, however, the very entry of the judgment against the defendant necessarily establishes that the plaintiff had a sufficient cause of action against the defendant to convince a trier of fact that he was entitled to the relief sought. *Accordingly, the first two elements that must be established to obtain a pre-trial temporary injunction are necessarily met when a judgment has been rendered against a defendant.*

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<sup>16</sup> Rule 24.2(d) provides:

*Injunction.* The trial court may enjoin the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.

*See also* Tex. R. App. P. 24.1(e). (“[t]he trial court may make any order necessary to adequately protect the judgment creditor against loss or damage that the appeal may cause.”)

198 S.W.3d at 226-27 (emphasis added).

Accordingly, there is but a single issue for the trial court to consider in deciding whether to grant a Rule 24.2(d) post-judgment injunction:

As to the third element, we believe that Rule 24.2(d) and section 52.006(e) expressly contain the applicable limit or standard governing the trial court's exercise of its discretion in issuing a post-judgment injunction. Rather than relying on the more general "probable, imminent and irreparable injury" that is applicable in a variety of pre-trial contexts, Rule 24.2(d) and section 52.006(e) contain a specific standard applicable in the post-judgment context with the limitation on the trial court's authority defined by the legislature. Both Rule 24.2(d) and section 52.006(e) provide that the trial court may enjoin the judgment debtor "from dissipating or transferring assets to avoid satisfaction of the judgment." Tex. Civ. Prac. & Rem. Code Ann. § 52.006(e) (Vernon Supp.2004–2005); Tex. R. App. P. 24.2(d). Accordingly, the applicable standard is a factual matter requiring the trial court to determine whether the judgment debtor is likely to dissipate or transfer its assets to avoid satisfaction of the judgment. *The trial court abuses its discretion in ordering a post-judgment injunction if the only reasonable decision that could be drawn from the evidence is that the judgment debtor would not dissipate or transfer its assets.*

*Emeritus Corp. v. Ofczarzak*, 198 S.W.3d at 227.

Further, for an injunction to be warranted it is not necessary for the Court to find that the judgment debtor already has dissipated or transferred assets, only that a likelihood exists based on the evidence. *Id.* at 228. (affirming Rule 24.2(d) injunction when no evidence of dissipation or transfer, but evidence of misrepresentations to court and parties regarding financial circumstances).

The "Normal Course of Business" Does Not Include Distributions. Rule 24.2(d) provides that the Court's injunction may not "interfere[s] with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business." Jenner & Block has located no authority interpreting the term "normal course of business" in the specific context of Rule 24.2(d). Texas courts have found, however, that the similar term "ordinary course of business" is "one of common use that has no special legal or technological meaning," and

therefore, “it need not be defined.” *Helpinstill v. Regions Bank*, 33 S.W.3d 401, 405 (Tex. App.—Texarkana 2000, pet. denied).

It is clear that an LLC’s normal or ordinary course of business does not include making distributions to its members. Making distributions may be a “normal” or “ordinary” activity, but they are not a part of the business operations of an LLC. For example, bankruptcy courts define transfers in the “ordinary course of business” as transfers that are:

(A) *in payment of a debt* incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee; (B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and (C) *made according to ordinary business terms*.

*In re The Heritage Organization, L.L.C.*, 413 B.R. 438, 505 (Bkrtcy. N.D. Tex. 2009) (citing 11 U.S.C. § 547(c)) (emphasis supplied). A dividend or distribution is not a debt. *See Kimberly-Clark Corp. v. Factory Mut. Ins. Co.*, 566 F.3d 541, 552 n.8 (5th Cir. 2009) (characterizing “dividend distribution” as an “*equitable* right”). Dividends and distributions are not made for the benefit of the entity, but purely for the individual benefit of members. *See In re Brentwood Lexford Partners, LLC*, 292 B.R. 255, 265 (Bkrtcy. N.D. Tex. 2003) (finding that “tax distributions” to members to reimburse for tax obligations resulting from LLC’s operations were made with intent to hinder or delay LLC’s creditors, because the LLC “transferred its assets to pay its members’ tax obligations, not its tax obligations”).

Parallel Networks’ Own Regulations Prohibit Distributions Without Regard to the Judgment. Section 5.1 of Parallel Networks’ Regulations<sup>17</sup> provides that the Manager may make

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<sup>17</sup> See Exhibit J.

distributions to members “at such times as the Manager shall determine,”<sup>18</sup> but expressly limits the Manager’s distribution authority to the defined term “Distributable Cash Flow.”

1.14 “**Distributable Cash Flow**” means any Available Funds not required to meet current or anticipated obligations of the Company. In determining what cash is available for distribution, the Manager may retain such amounts as the Manager in his reasonable discretion determines will be required to pay the Company’s debts, obligations and expenses, and to accomplish the Company’s goals and operating results, whether then accrued or anticipated to accrue in the future.

1.6 “**Available Funds**” means Company cash on hand . . .”

In other words, Parallel Networks may only make a distribution to members from cash on hand that is not required to meet the current or anticipated obligations of the Company. Mr. Fokas admitted that Parallel Networks considers the Jenner & Block Judgment to be a “current or anticipated obligation” of Parallel Networks.<sup>19</sup>

Delaware Law Prohibits Distributions Unless Parallel Networks Can Pay the Judgment.

The Delaware Limited Liability Company Act provides that:

A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company. (6 Del. C. § 18-607(a).)<sup>20</sup>

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<sup>18</sup> No provision of the Regulations requires or contemplates “tax distributions” to members (distributions sufficient to pay the members’ tax liability from LLC income).

<sup>19</sup> Fokas Depo., at 33:2-17.

<sup>20</sup> See Exhibit K.

Mr. Fokas admitted that Parallel Networks currently could not pay the unbonded part of the Judgment.<sup>21</sup> Taking in consideration the Jenner & Block Judgment (improperly omitted from Parallel Networks' balance sheets) the company is plainly insolvent.

Grounds For Rule 24.2(d) Injunction Against Parallel Networks. As noted above, the first two elements of a request for injunctive relief are automatically established by the existence of the Judgment in this case. The following grounds support the third and final element – that Parallel Networks is likely to dissipate or transfer its assets to avoid satisfaction of the Judgment.

1. Parallel Networks is a non-practicing entity, a/k/a “patent troll.” It has no assets to speak of other than patents and patent lawsuits. It has no equipment other than basic office furniture and supplies. It has no inventory or customers. It has no regular or predictable income. It does, however, receive funds as a result of its patent enforcement activities.

2. Parallel Networks is owned by its members, including managing member Terry Fokas. Mr. Fokas is a lawyer and a member of the Texas Bar. Although Parallel Networks refuses to reveal the identity of all of its current members, based on tax returns and testimony most of the members are limited liability entities. Some members are located outside of United States.

3. Historically, when Parallel Networks settles a lawsuit or enters into a patent license it uses the proceeds to pay creditors such as attorneys and experts, to pay Mr. Fokas, and then to distribute some or all of the remaining funds to its members, at the discretion of Mr. Fokas. According to Mr. Fokas, payment of distributions is entirely within his discretion, but is subject to the limits in the Regulations.

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<sup>21</sup> Fokas Depo., at 33:18-34:2.

4. Parallel Networks’ Regulations govern the respective rights and obligations of Parallel and its members. The Regulations do not require the payment of any distributions, including “tax” distributions. The Regulations prohibit distributions except from cash on hand that is not required to meet the current or anticipated obligations of the Company

5. Mr. Fokas has testified that he receives an annual payment of \$360,000 for his management services. There is no document governing the management arrangement or the amount of his fee, which is not guaranteed in any way.<sup>22</sup> Nothing in Parallel Networks’ Regulations would prevent Mr. Fokas from paying himself a management fee of \$1,000,000 or \$2,000,000 and claiming that such a payment was in the “normal course of business.” According to Parallel Networks’ “Profit and Loss” statement provided in response to this Court’s direction, Parallel Networks paid <sup>REDACTED</sup> in “Guaranteed Payment” in the first six months of 2013. In addition, an entity owned by Mr. Fokas received an “advance” of <sup>REDACTED</sup> in February 2013,<sup>23</sup> and Mr. Fokas, or one of his entities, was paid <sup>REDACTED</sup> in “interest” in the first half of 2013.<sup>24</sup>

6. To date, Parallel Networks has done everything in its power to avoid honoring its obligations to Jenner & Block. Based on testimony in the underlying arbitration, Parallel Networks incurred in excess of <sup>REDACTED</sup> to defend and prosecute the arbitration, using three separate law firms as counsel. That does not include fees and costs incurred in connection in this lawsuit and the ongoing appeal, in which Parallel Networks has retained two additional law firms. Prior to the initiation of the arbitration, then-counsel for Parallel Networks advised counsel for Jenner & Block that Parallel Networks would never pay a penny to Jenner & Block.

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<sup>22</sup> The fee is reported on Parallel Networks’ tax returns as a “Guaranteed Payment to Partners,” which allows the LLC’s manager tax-favorable treatment of management fees.

<sup>23</sup> Fokas Depo., at 14:10 through 14:16.

<sup>24</sup> Fokas Depo., at 26:11 through 26:16.

7. For over five months Parallel Networks concealed material facts from this Court and Jenner & Block related to the New Settlement, directly affecting the form of the Judgment and the amount needed to supersede the Judgment.

8. Parallel Networks used a shell company with no operations to funnel Parallel Networks' funds around Parallel Networks' own accounts, immediately after Jenner & Block sought garnishment.<sup>25</sup>

9. Parallel Networks has purportedly recharacterized REDACTED of capital contributions as "loans" in an improper attempt to permit it to argue that the company should be allowed to pay back the funds to members as a "normal course of business" debt repayment ahead of Jenner & Block's Judgment. Parallel Networks' Regulations expressly prohibit members from demanding repayment of capital contributions, but do authorize the manager to pay Company debt.<sup>26</sup> This improper mischaracterization of the capital contributions, if recognized, might allow Parallel Networks to argue that it is free to pay to its members the next REDACTED of income it receives, as a payment of debt "in the normal course of business."

10. Parallel Networks' September 30, 2013 balance sheet improperly reflects the May 2013 capital contributions as "current liabilities due to investors." Meanwhile, the balance sheet does not reflect the Court's Judgment to Jenner & Block as a liability.

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<sup>25</sup> Jenner & Block obtained a writ of garnishment from the Court on May 8, 2013, against Parallel Networks' account at PlainsCapital Bank. Apparently (on information and belief) for the purpose of circumventing the garnishment, Mr. Fokas had members wire REDACTED capital contributions to Parallel Networks into a different PlainsCapital Bank account – the account of a "shell company" called "Performance Assessment Technologies LLC."

<sup>26</sup> See Exhibit J at Sections 3.2(b) ("No member shall have the right to withdraw all of any part of its Capital Contribution or to receive any part return on any portion of its Capital Contribution, except as may be otherwise specifically provided in these Regulations.") and 4.1(a)(iii) (authorizing Manager to pay "debts and obligations of the Company").

11. With full knowledge of the Jenner & Block's pending motion for temporary injunction, Parallel Networks transferred the '554 and '335 patents to another entity, PNL, on December 5, 2013. Even though Mr. Fokas personally signed the assignment, eleven days later at his Court-ordered deposition he denied under oath that Parallel Networks had transferred any patents during the last two years. He also denied under oath that Parallel Networks had any subsidiaries other than Performance Assessment Technologies, LLC, even though PNL was formed less than two weeks before the assignment of patents. A few days later, PNL filed two major lawsuits for infringement of the '554 and '335 patents. Mr. Fokas' false testimony alone supports a Rule 24.2(d) injunction,<sup>27</sup> and by transferring the patents and associated claims to another entity, Parallel Networks has attempted to impede Jenner & Block's abilities to enforce the Judgment.

All of the foregoing facts support a finding that Parallel Networks is likely to transfer or to dissipate the future proceeds of any enforcement or enforcement activities by making distributions or other extraordinary payments to its members and others, in an attempt to avoid its obligation to pay Jenner & Block.

An injunction under Rule 24.2(d) is necessary to protect the unbonded portion of Jenner & Block's Judgment during appeal. Based on the unique nature of Parallel Network's business, its history of distributing all net income to members, its concealment of material facts from the Court and from Jenner & Block, its attempt to mischaracterize non-refundable contributions as loans, its misleading balance sheets that do not even reflect the Judgment as a liability, and its secret transfer of patents and related false testimony, there is a likelihood that Parallel Network

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<sup>27</sup> See *Emeritus Corp. v. Ofczarzak*, 198 S.W.3d at 228 (affirming Rule 24.2(d) injunction based on misrepresentations to court and discovery violations, even though no proof of previous dissipations or transfers).

will disburse funds outside the normal course of business during the appeal, depriving Jenner & Block of the ability to collect the Judgment in full. There is also a substantial reason not to trust any statements of “intent” by Parallel Networks or its Manager.

The trial court has broad discretion in determining whether a judgment debtor is likely to dissipate assets, and the court’s decision is subject to review only for abuse of discretion. *Emeritus Corp. v. Ofczarzak*, 198 S.W.3d at 226-27 “The trial court abuses its discretion in ordering a post-judgment injunction if the *only reasonable decision* that could be drawn from the evidence is that the judgment debtor would *not* dissipate or transfer its assets.” *Id.* at 227 (emphasis added). The above-referenced facts certainly meet this standard.

#### **CONCLUSION AND PRAYER**

WHEREFORE, judgment creditor Jenner & Block LLP therefore respectfully moves for an order enjoining Parallel Networks, LLC (and any entity owned in whole or in part by, under complete control of, or under partial common control with Parallel Networks, LLC) and employees and all agents and persons acting in concert with Parallel Networks, LLC, (or any entity owned in whole or in part by, under complete control of, or under partial common control with Parallel Networks, LLC), from transferring assets or funds to any person or entity except in the “normal course of business,” which term shall expressly exclude (a) payments or transfers of any kind to Parallel Networks, LLC’s members for any purpose whatsoever, including without limitation a distribution of earnings or a repayment of an actual or purported debt, (b) payments to Parallel Networks, LLC’s manager in excess of the annual management fee in effect on December 1, 2013 (<sup>REDACTED</sup> per year), (c) transfers of patents or any other intellectual property in which Parallel Networks, LLC (or any entity owned in whole or in part by, under complete control of, or under partial common control with Parallel Networks, LLC), or (d) transfers of causes of action, except as part of a bona fide settlement of litigation with a third party. Jenner

& Block further moves the Court to order that the temporary injunction continue until the judgment entered in this case is paid in full or is reversed by a final order of an appellate court, and to and grant such other relief as to which Jenner & Block may be justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT**  
**JENNER & BLOCK LLP**

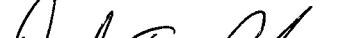
## VERIFICATION

THE STATE OF ILLINOIS

§

## COUNTY OF COOK

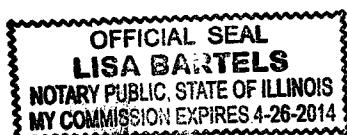
On this day personally appeared Joel Pelz, who being duly sworn, deposed and said that he is counsel for Jenner & Block LLP, and the facts stated in this Verified Motion for Temporary Injunction are true and correct based upon personal knowledge, knowledge obtained from review of documents produced by Parallel Networks, LLC, the deposition of Terry Fokas, matter of public record, and/or the pleadings and orders in this case.

  
Joel Pelz

SUBSCRIBED AND SWORN to before me on this 3rd day of February, 2014.

  
Gini Barth  
Notary Public in and for the State of Illinois

[SEAL OF OFFICE]



**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that an email conference on this Motion was held prior to the date of this Motion between the undersigned counsel and counsel for Parallel Networks, Daniel Sheehan, and that the parties could not reach agreement.

/s/ Paul M. Koning

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause in accordance with the Texas Rules of Civil Procedure, on this 3rd day of February, 2014.

/s/ Paul M. Koning

448E

000237

CAUSE NO. DC-13-01146

PARALLEL NETWORKS LLC, ) IN THE DISTRICT COURT OF  
vs. )  
Plaintiff, )  
vs. ) DALLAS COUNTY, TEXAS  
JENNER & BLOCK LLP, )  
Defendant. ) 101st JUDICIAL DISTRICT

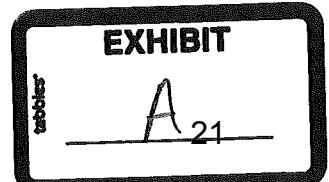
**FINAL JUDGMENT CONFIRMING ARBITRATION AWARD**

Pending before the Court are (1) Plaintiff's Petition and Motion to Vacate Arbitration Award ("Motion to Vacate"), and (2) Jenner & Block's Motion for Confirmation of Arbitration Award ("Motion to Confirm"). After considering the pleadings, the briefs and exhibits, the evidence, the arguments of counsel and the law, the Court finds and hereby orders that the Motion to Vacate should be and is DENIED and the Motion to Confirm should be and is GRANTED. Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the arbitration award issued on January 18, 2013 in the arbitration captioned *Jenner & Block LLP vs. Parallel Networks, LLC et al.*, JAMS Reference No 1310019934, be and hereby is CONFIRMED, and it is further

ORDERED, ADJUDGED AND DECREED that final judgment is entered that Jenner & Block LLP have and recover from Defendant Parallel Networks LLC ("Parallel Networks") the following amounts, for which execution may issue:

- 1) The amount of \$3,000,000 in damages, plus
- 2) Pre-award interest on the damages in the amount of \$162,328.77, consisting of interest at the rate of 5% from December 20, 2011 to January 18, 2013, plus
- 3) The amount of \$1,394,000 as reasonable and necessary attorneys' fees, plus



4) Post-award, prejudgment interest on the amounts set forth in items 1-3 above at the rate of 5%, equaling \$63,039.60 from January 18, 2013 until the date of this judgment, plus

5) Post-judgment interest on all amounts set forth in items 1-4 above, at the rate of 5% from the date of this judgment until paid; plus

6) In the event Parallel Networks receives a recovery or settlement from Oracle in the arbitration contemplated by Parallel Networks' prior settlement with Oracle, Jenner & Block is entitled to and shall recover from Parallel Networks, and Parallel Networks is obligated and ordered to pay Jenner & Block, 16% of the net proceeds of settlement or recovery paid to Parallel Networks, and it is further

ORDERED, ADJUDGED AND DECREED that Parallel Networks recover nothing on its Petition and Motion to Vacate, and it is further

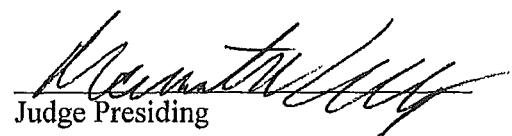
ORDERED, ADJUDGED AND DECREED that all counterclaims asserted by Parallel Networks' in the arbitration are denied, with prejudice to refiling.

All costs of court are awarded against Parallel Networks.

All writs and processes for the enforcement and collection of this Judgment or the costs of Court may issue as necessary.

This judgment finally disposes of all parties and claims and is appealable

SIGNED this 29th day of April, 2013



Judge Presiding

January 25, 2013

Joel T. Pelz  
Tel 312 923-2609  
Fax 312 840-7609  
jpelz@jenner.com

**VIA E-MAIL AND U.S. MAIL**

Jamil N. Alibhai  
Munck Wilson Mandala, LLP  
600 Banner Place Tower  
12770 Colt Road  
Dallas, TX 75251

Jeffrey S. Lowenstein  
Bell Nunnally  
3232 McKinney Ave  
Suite 1400  
Dallas, TX 75204

**Re: Jenner & Block, LLP v. Parallel Networks, LLC, et al.,  
JAMS Arbitration No.: 1310019934**

Dear Jamil and Jeff,

Paragraph 6(a) of the Contingent Fee Agreement ("CFA") between Jenner & Block and epicRealm Licensing LP (which subsequently was assigned to Parallel Networks) provides that Parallel Networks "shall provide Jenner & Block with a bi-annual accounting of all Gross Revenues arising out of or related to any Enforcement Activities in which Jenner & Block has represented" Parallel Networks. "Enforcement Activities" includes "any litigation, arbitration, mediation, judicial or administrative hearing, legal or equitable cause of action or such other similar proceedings that [Parallel Networks] (or its legal counsel) may initiate, prosecute and conclude or threaten to initiate against an Infringing Party for infringement of the Intellectual Property." CFA ¶ 1(b). "Infringing Party" includes "Oracle Corporation and Oracle U.S.A," and "Oracle parent, subsidiaries, and otherwise related companies." *Id.* ¶ 1(e). "Intellectual Property" includes the '335 and '554 patents. See ¶ 1(f) and Exhibit A to the CFA.

The Arbitration Findings and Award issued by Arbitrator Grissom on January 18, 2013 provides that "[i]n the event that Parallel receives a recovery or settlement from Oracle in the arbitration contemplated by Parallel's prior settlement with Oracle, Jenner is entitled to and shall recover

**EXHIBIT**

EXHIBIT

**B**

January 25, 2013

Page 2

from Parallel, and Parallel is obligated to pay Jenner, 16% of the net proceeds of settlement or recovery paid to Parallel." Award ¶ 1(B).

Thus, pursuant to the CFA and the Arbitration Findings and Award, we request that you provide us with the status of the arbitration proceedings between Parallel Networks and Oracle contemplated by the Oracle settlement agreement.

Please feel free to contact me if you would like to discuss this matter further.

Very truly yours,



Joel T. Pelz

cc:      Norman M. Hirsch (via email)  
          David Jimenez-Ekman (via email)  
          Paul M. Konling (via email)

February 6, 2013

VIA U.S. MAIL and E-MAIL

Joel T. Pelz  
Tel 312 923-2609  
Fax 312 840-7609  
jpelz@jenner.com

Jamil N. Alibhai  
Munck Wilson Mandala  
600 Banner Place Tower  
12770 Coit Road  
Dallas, TX 75251

Re: *Parallel Networks, LLC v. Jenner & Block, LLP*  
Cause No. DC-13-01146-E, 101st Judicial District Court, Dallas County, TX

Dear Jamil:

This letter is to address several issues in your letter of January 30, 2012. First, we have requested information on the status of the arbitration with Oracle. We believe such information is required under Section 6(a) of the CFA. Your letter contends that Jenner & Block is not entitled to this information because the CFA was terminated. This is the same argument asserted by Parallel Networks when it refused, in 2011, to disclose the amount of the Oracle settlement. That argument was rejected by the Arbitrator, who ruled that Parallel Networks "had refused to disclose to Jenner the fact or the amounts of the settlements, as it was obligated to do by the CFA." (Findings and Award, pp. 33-34.) Your letter is merely the latest example of Parallel Networks' "chronic failure to uphold its contract obligations." (Findings and Award, p. 38.) We ask again that Parallel Networks provide the requested information.

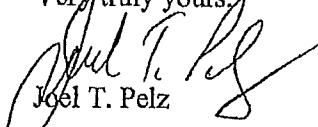
Second, we strongly disagree with Parallel Networks' position on "confidential" information, particularly in light of the public filings it made. Those filings include documents and statements that could be deemed confidential and that were covered by the protective orders in the arbitration. To the extent that protective orders are involved, we will either seek to file redacted versions of the Findings and Award and any documents to address information covered by those orders or seek modification of the protective orders. However, with respect to "confidential" information, we believe Parallel Networks has waived any right to object to disclosures by Jenner & Block. More specifically, our letter of January 28, 2013, recognized that portions of the Findings and Award contained information that might be deemed confidential. Thus, we asked that Parallel Networks identify any portion of the Findings and Award that it deemed confidential. You have refused to do so. Instead, Parallel Networks made a court filing

Jamil N. Alibhai  
February 6, 2013  
Page 2

that publicly disclosed documents and information that could have been protected by the attorney-client or work product privileges. Having done so, Parallel Networks has no right to object to disclosures by Jenner & Block of "confidential" information in either the Findings and Award or the documents produced in the arbitration. In addition, even apart from Parallel Networks' action in disclosing such information, Rule 1.05(c) of the Texas Rules of Professional Conduct and the applicable case law clearly establish that we are entitled to disclose what otherwise may be confidential information here to obtain confirmation of the Arbitration Award and to respond to Parallel Networks' baseless assertions in its petition seeking to overturn the Award. Nonetheless, if there are specific documents or specific portions of the Findings and Award that Parallel Networks contends are confidential, please identify them by the end of the day on February 7, 2013.

Finally, we note that Jenner & Block offered to have the entire arbitration treated as confidential in February 2012. That offer was rejected by Parallel Networks. As Mr. Fokas testified at his deposition, Parallel Networks wanted to be able to publicly disclose information about the arbitration. It cannot hold Jenner & Block to a different standard.

Very truly yours,



Joel T. Pelz

cc: Paul M. Koning (via email)  
Jeffrey S. Lowenstein (via email)  
David Jimenez-Ekman (via email)

CHICAGO LOS ANGELES NEW YORK WASHINGTON, DC

JENNER & BLOCK LLP

May 1, 2013

Joel T. Pelz  
Tel 312 923-2609  
Fax 312 840-7609  
jpelz@jenner.com

***VIA E-MAIL AND U.S. MAIL***

Jamil N. Alibhai, Esq.  
Munck Wilson Mandala, LLP  
600 Banner Place Tower  
12770 Coit Road  
Dallas, TX 75251

Jeffrey S. Lowenstein, Esq.  
Bell Nunnally  
3232 McKinney Ave  
Suite 1400  
Dallas, TX 75204

***Re: Jenner & Block LLP v. Parallel Networks, LLC***

Dear Jamil and Jeff,

The Texas state court has entered judgment in favor of Jenner & Block confirming the arbitration Award.

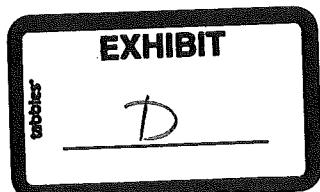
We ask once again (see my letters of January 23, 2013 and February 6, 2013) that you provide us with a report on the status of the arbitration with Oracle and a copy of any filings in that arbitration.

Very truly yours,

Joel T. Pelz

JTP:pjh

cc: Peggy E. Bruggman, Esq. (via email)  
James G. Gilliland, Jr., Esq. (via email)



## **EXHIBIT E**

**Page Nos. 28-35**

**REDACTED**

## PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1  
 Stylesheet Version v1.2

EPAS ID: PAT2640914

SUBMISSION TYPE:	NEW ASSIGNMENT																			
NATURE OF CONVEYANCE:	ASSIGNMENT																			
CONVEYING PARTY DATA																				
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<table border="1"> <tr> <td>Name:</td> <td colspan="2">PARALLEL NETWORKS LICENSING, LLC</td> </tr> <tr> <td>Street Address:</td> <td colspan="2">1700 PACIFIC AVENUE</td> </tr> <tr> <td>Internal Address:</td> <td colspan="2">SUITE 2320</td> </tr> <tr> <td>City:</td> <td colspan="2">DALLAS</td> </tr> <tr> <td>State/Country:</td> <td colspan="2">TEXAS</td> </tr> <tr> <td>Postal Code:</td> <td colspan="2">75201</td> </tr> </table>			Name:	PARALLEL NETWORKS LICENSING, LLC		Street Address:	1700 PACIFIC AVENUE		Internal Address:	SUITE 2320		City:	DALLAS		State/Country:	TEXAS		Postal Code:	75201	
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PROPERTY NUMBERS Total: 1																				
<table border="1"> <tr> <td>Property Type</td> <td colspan="2">Number</td> </tr> <tr> <td>Patent Number:</td> <td colspan="2">5894554</td> </tr> </table>			Property Type	Number		Patent Number:	5894554													
Property Type	Number																			
Patent Number:	5894554																			
CORRESPONDENCE DATA																				
Fax Number: (214)661-4937 Phone: 214.953.6507 Email: PTOMail1@bakerbotts.com <i>Correspondence will be sent via US Mail when the email attempt is unsuccessful.</i>																				
Correspondent Name: BAKER BOTTS L.L.P. Address Line 1: 2001 ROSS AVENUE Address Line 2: SUITE 600 Address Line 4: DALLAS, TEXAS 75201-2980																				
ATTORNEY DOCKET NUMBER: 066241.0119																				
NAME OF SUBMITTER: JUDY BAGGETT																				
Signature: /JUDY BAGGETT/																				
Date: 12/09/2013																				

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PATENT  
REEL: 031738 FRAME: 0313

EXHIBIT

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Total Attachments: 4

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PATENT  
REEL: 031738 FRAME: 0314

## PATENT ASSIGNMENT

WHEREAS, PARALLEL NETWORKS, LLC (hereafter "Assignor"), a Delaware limited liability company, having an address of 1700 Pacific Avenue, Suite 2320, Dallas, Texas 75201, is the owner of the patents set forth on Exhibit A hereto and the invention described and claimed therein (hereafter the "Patents"); and

WHEREAS, PARALLEL NETWORKS LICENSING, LLC (hereafter "Assignee"), a Delaware limited liability company, having an address of 1700 Pacific Avenue, Suite 2320, Dallas, Texas 75201, desires to acquire all right, title and interest in and to the Patent Property.

NOW, THEREFORE, for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor does hereby irrevocably convey, sell, assign, transfer and set over to Assignee, and Assignee hereby accepts, all of Assignor's right, title, and interest in and to:

- (a) the Patents;
- (b) any and all U.S. and foreign patent applications that claim, or could claim, priority to any of the Patents or patent applications on which any of the Patents are based;
- (c) any and all U.S. and foreign patent applications from which the Patents or patent applications on which any of the Patents are based claim, or could claim, priority from;
- (d) any and all issuances, provisionals, continuations, divisions, continuations-in-part, reissues, extensions, substitutions, renewals, certificates of reexamination and certificates of correction with respect to any of the foregoing (subparts (a), (b), (c) and (d) collectively, the "Patent Property");
- (e) the inventions disclosed in the Patent Property throughout the world, including the right to file applications and obtain patents, utility models, industrial models, and designs for the Patent Property in its own name throughout the world, including all rights to publish cautionary notices reserving ownership of said inventions and all rights to register the Patent Property in appropriate registries;

(f) any and all rights of any kind whatsoever of Assignor accruing under any of the foregoing provided by applicable law of any jurisdiction, by international treaties and conventions and otherwise throughout the world;

(g) any and all royalties, fees, income, payments and other proceeds now or hereafter due or payable with respect to any and all of the foregoing; and

(h) any and all claims and causes of action, with respect to any of the foregoing, whether accruing before, on and/or after the date hereof, including all rights to and claims for damages, restitution and injunctive and other legal and equitable relief for past, present and future infringement, misappropriation, violation, misuse, breach or default, with the right but no obligation to sue for such legal and equitable relief and to collect, or otherwise recover, any such damages, the same to be held and enjoyed by Assignee for its own use and benefit, and for the use and benefit of its successors, assigns, or legal representatives as fully and entirely as the same would have been held and enjoyed by Assignor if this assignment and sale had not been made.

Assignor further agrees to execute any and all powers of attorney, applications, assignments, declarations, affidavits, and any other papers and to perform such other lawful acts as Assignee, its successors and assigns may deem necessary to fully secure, maintain, perfect and enforce its rights, titles or interests as outlined herein.

Assignor, at the expense of Assignee, will testify in any legal proceedings, sign all lawful papers, execute all provisional, divisional, continuation, continuation-in-part, reissue and substitute applications, make lawful oaths and declarations, and generally do everything possible to vest title in Assignee and to aid Assignee to obtain and enforce proper protection for said Patent Property in all countries.

IN WITNESS WHEREOF, Assignor and its duly authorized representative has caused this Patent Assignment to be executed on the date and in the capacity shown below.

PARALLEL NETWORKS, LLC

By: Terry Fokas

Its: Managing Member

Signed:

Dated: 10/25/2013

PARALLEL NETWORKS LICENSING, LLC

By: Terry Fokas

Its: Managing Member

Signed:

Dated: 10/25/2013

EXHIBIT A

<u>U.S. Patent No.</u>	<u>Issue Date</u>	<u>Title</u>
5894554	13 April 1999	System for Managing Dynamic Web Page Generation Requests by Intercepting Request at Web Server and Routing to Page Server Thereby Releasing Web Server to Process Other Requests
6413335	02 July 2002	System and Method for Managing Dynamic Web Page Generation Requests

## PATENT ASSIGNMENT COVER SHEET

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EPAS ID: PAT2640935

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CORRESPONDENCE DATA													
<p>Fax Number: (214)661-4937      Phone: 214.953.6507      Email: PTOMail1@bakerbotts.com</p> <p><i>Correspondence will be sent via US Mail when the email attempt is unsuccessful.</i></p> <p>Correspondent Name: BAKER BOTT'S L.L.P.      Address Line 1: 2001 ROSS AVENUE      Address Line 2: SUITE 600      Address Line 4: DALLAS, TEXAS 75201-2980</p>													
ATTORNEY DOCKET NUMBER: 066241.0125													
NAME OF SUBMITTER: JUDY BAGGETT													
Signature: /judy baggett/													
Date: 12/09/2013													

PATENT

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REEL: 031738 FRAME: 0419

EXHIBIT

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Total Attachments: 4

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PATENT  
REEL: 031738 FRAME: 0420

PATENT ASSIGNMENT

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- (a) the Patents;
- (b) any and all U.S. and foreign patent applications that claim, or could claim, priority to any of the Patents or patent applications on which any of the Patents are based;
- (c) any and all U.S. and foreign patent applications from which the Patents or patent applications on which any of the Patents are based claim, or could claim, priority from;
- (d) any and all issuances, provisionals, continuations, divisions, continuations-in-part, reissues, extensions, substitutions, renewals, certificates of reexamination and certificates of correction with respect to any of the foregoing (subparts (a), (b), (c) and (d) collectively, the "Patent Property");
- (e) the inventions disclosed in the Patent Property throughout the world, including the right to file applications and obtain patents, utility models, industrial models, and designs for the Patent Property in its own name throughout the world, including all rights to publish cautionary notices reserving ownership of said inventions and all rights to register the Patent Property in appropriate registries;

(f) any and all rights of any kind whatsoever of Assignor accruing under any of the foregoing provided by applicable law of any jurisdiction, by international treaties and conventions and otherwise throughout the world;

(g) any and all royalties, fees, income, payments and other proceeds now or hereafter due or payable with respect to any and all of the foregoing; and

(h) any and all claims and causes of action, with respect to any of the foregoing, whether accruing before, on and/or after the date hereof, including all rights to and claims for damages, restitution and injunctive and other legal and equitable relief for past, present and future infringement, misappropriation, violation, misuse, breach or default, with the right but no obligation to sue for such legal and equitable relief and to collect, or otherwise recover, any such damages, the same to be held and enjoyed by Assignee for its own use and benefit, and for the use and benefit of its successors, assigns, or legal representatives as fully and entirely as the same would have been held and enjoyed by Assignor if this assignment and sale had not been made.

Assignor further agrees to execute any and all powers of attorney, applications, assignments, declarations, affidavits, and any other papers and to perform such other lawful acts as Assignee, its successors and assigns may deem necessary to fully secure, maintain, perfect and enforce its rights, titles or interests as outlined herein.

Assignor, at the expense of Assignee, will testify in any legal proceedings, sign all lawful papers, execute all provisional, divisional, continuation, continuation-in-part, reissue and substitute applications, make lawful oaths and declarations, and generally do everything possible to vest title in Assignee and to aid Assignee to obtain and enforce proper protection for said Patent Property in all countries.

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PARALLEL NETWORKS, LLC

By: Terry Fokas

Its: Managing Member

Signed:

Dated:

2013

PARALLEL NETWORKS LICENSING, LLC

By: Terry Fokas

Its: Managing Member

Signed:

Dated:

2013

EXHIBIT A

<u>U.S. Patent No.</u>	<u>Issue Date</u>	<u>Title</u>
5894554	13 April 1999	System for Managing Dynamic Web Page Generation Requests by Intercepting Request at Web Server and Routing to Page Server Thereby Releasing Web Server to Process Other Requests
6415335	02 July 2002	System and Method for Managing Dynamic Web Page Generation Requests

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

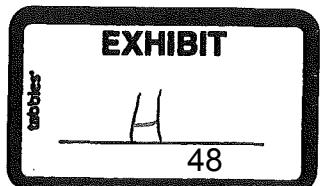
PARALLEL NETWORKS  
LICENSING, LLC, }  
Plaintiff, }  
v. }  
INTERNATIONAL BUSINESS  
MACHINES CORPORATION, }  
Defendant. }  
C.A. No. \_\_\_\_\_  
JURY TRIAL DEMANDED

**PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Parallel Networks Licensing, LLC ("Parallel Networks" or "Plaintiff") files this Complaint for patent infringement against Defendant International Business Machines Corporation ("IBM" or "Defendant"), and alleges as follows:

**I. PARTIES**

1. Plaintiff Parallel Networks Licensing, LLC is a Delaware limited liability company with a place of business as 1105 N. Market Street, Suite 300, Wilmington, DE 19801.
2. Upon information and belief, IBM is incorporated, organized and existing under the laws of the State of New York. IBM maintains its principal place of business at One New Orchard Road, Armonk, New York 10504. IBM may be served with process through its registered agent, Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.



## II. JURISDICTION AND VENUE

3. Plaintiff repeats and re-alleges the allegations in Paragraphs 1 and 2 as though fully set forth in their entirety.

4. This action arises under the patent laws of the United States, Title 35, United States Code § 1, *et seq.* This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

5. Personal jurisdiction exists generally over the Defendant because it has sufficient minimum contacts with the forum as a result of business conducted within the State of Delaware. Personal jurisdiction also exists specifically over the Defendant because it, directly or through subsidiaries or intermediaries, makes, uses, offers for sale, sells, imports, advertises, makes available and/or markets products and services within the State of Delaware that infringe the Asserted Patents, as described more particularly below.

6. Venue is appropriate in the District of Delaware under 28 U.S.C. §§ 1391(b), 1391(d) and 1400(b). Venue is further supported by the fact that this District and Court has significant experience with the patents asserted in this lawsuit and the related technology because of the activities and experience garnered in *Oracle Corporation et al. v. Parallel Networks LLC*, C.A. No. 06-414-SLR (D. Del. June 30, 2006) and *Quinstreet, Inc. v. Parallel Networks LLC*, C.A. No. 06-495-SLR (D. Del. Aug. 8, 2006) as set forth in the dockets, orders, and pleadings associated with each case.

## III. GENERAL ALLEGATIONS

7. United States Patent No. 5,894,554 ("the '554 Patent") entitled "SYSTEM FOR MANAGING DYNAMIC WEB PAGE GENERATION REQUESTS BY INTERCEPTING

REQUEST AT WEB SERVER AND ROUTING TO PAGE SERVER THEREBY RELEASING WEB SERVER TO PROCESS OTHER REQUESTS," was duly and legally issued by the United States Patent and Trademark Office on April 13, 1999 after full and fair examination. Three requests for *ex parte* reexamination of the '554 Patent were filed on November 27, 2006, March 29, 2007, and April 3, 2007, respectively. On July 24, 2012, the United States Patent Office duly and legally issued an *Ex Parte* Reexamination Certificate No. 5,894,554 C1 confirming the patentability of claims 12 – 49. On October 2, 2012, the United States Patent Office duly and legally issued a Certificate of Correction for claims 12 – 49. Parallel Networks is the assignee of all rights, title, and interest in the '554 Patent, including the right to recover damages for past infringement. A copy of the '554 Patent is attached as Exhibit A to this Complaint.

8. United States Patent No. 6,415,335 ("the '335 Patent") entitled "SYSTEM AND METHOD FOR MANAGING DYNAMIC WEB PAGE GENERATION REQUESTS," was duly and legally issued by the United States Patent and Trademark Office on July 2, 2002 after full and fair examination. Three requests for *ex parte* reexamination of the '335 Patent were filed on November 27, 2006, March 28, 2007, and April 3, 2007, respectively. On July 17, 2012, the United States Patent Office duly and legally issued an *Ex Parte* Reexamination Certificate No. 6,415,335 C1 confirming the patentability of claims 30 – 85. On September 11, 2012, the United States Patent Office duly and legally issued a Certificate of Correction for claims 30 – 85. Parallel Networks is the assignee of all rights, title, and interest in the '335 patent, including the right to recover damages for past infringement. A copy of the '335 Patent is attached as Exhibit B to this Complaint.

9. The '554 Patent and the '335 Patent are referred to collectively as the "Asserted Patents." The Asserted Patents each disclose methods and apparatuses "for creating and

managing custom Web sites.” In the summary of the invention section of the Asserted Patents it is explained: “[s]pecifically, the present invention claims a method and apparatus for managing dynamic web page generation requests.” Figure 4 of the Asserted Patents provides an example of one embodiment of the claimed inventions.

10. IBM is engaged in the business of making, developing and selling systems and software that manage dynamic Web page generation requests. More particularly, IBM has made, offered and continues to offer for sale IBM WebSphere Application Server (WAS) (version 5.0 and later), including EJBs, Workload Management (WLM) facilities, InfoSphere, and related Web page generation and dynamic load balancing components, Load Balancer and/or Caching Proxy, On-Demand Router (ODR), IBM HTTP Server, Plug-Ins for web servers such as the IBM HTTP Server and other third party servers, Network Dispatcher and Metric Server systems and software, Tivoli systems and software including Tivoli Access Manager WebSEAL and/or WebSEAL proxy, and DB2 systems and software including the pureScale workload balancing feature (this and any and all similar products are referred to herein as “the Accused Instrumentalities”). The Accused Instrumentalities are embodied on machine readable medium and perform the claimed methods of the Asserted Patents.

11. IBM has infringed and continues to infringe each of the Asserted Patents by engaging in acts constituting infringement under 35 U.S.C. § 271, including, but not necessarily limited to one or more of making, using, selling, and/or offering to sell, in this District and elsewhere in the United States, and importing into this District and elsewhere in the United States, certain Accused Instrumentalities, including but not limited to, IBM WebSphere Application Server (WAS) (version 5.0 and later), including EJBs, Workload Management (WLM) facilities, InfoSphere, and related Web page generation and dynamic load balancing

components, Load Balancer and/or Caching Proxy, On-Demand Router (ODR), IBM HTTP Server, Plug-Ins for web servers such as the IBM HTTP Server and other third party servers, Network Dispatcher and Metric Server systems and software, Tivoli systems and software including Tivoli Access Manager WebSEAL and/or WebSEAL proxy, and DB2 systems and software including the pureScale workload balancing feature for management of dynamic Web page generation requests.

#### **IV. COUNT I: INFRINGEMENT OF THE '554 PATENT**

12. Plaintiff repeats and re-alleges the allegations in Paragraphs 1 through 11 as though fully set forth in their entirety.

13. IBM has directly infringed and continues to infringe, directly and/or indirectly, the '554 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority the Accused Instrumentalities, that infringe one or more claims of the '554 Patent.

14. IBM has induced and is inducing infringement of the '554 Patent under 35 U.S.C. § 271(b) by others in this District and elsewhere in the United States. The direct infringement occurs by activities performed by IBM, its contractors and employees, and/or end users of the Accused Instrumentalities, in their intended use, including the management of dynamic Web page generation requests.

15. IBM specifically intends the users of the Accused Instrumentalities to infringe the '554 Patent, or, alternatively, has been willfully blind to the possibility that its inducing acts would cause infringement. By way of example, and not as a limitation, IBM induces such infringement by its affirmative actions of at least making its website and/or website functionality

available to customers and providing links and/or other directions on its website and/or the internet to instruct and teach users to use the Accused Instrumentalities in an infringing manner.

Example                    instructions                    are                    found                    in:

[https://jazz.net/library/article/464/;http://pic.dhe.ibm.com/infocenter/wxdinfo/v6r0/index.jsp?topic=%2Fcom.ibm.websphere.xd.doc%2Finfo%2Fodoe\\_task%2Fcxportaltopology.html](https://jazz.net/library/article/464/;http://pic.dhe.ibm.com/infocenter/wxdinfo/v6r0/index.jsp?topic=%2Fcom.ibm.websphere.xd.doc%2Finfo%2Fodoe_task%2Fcxportaltopology.html);

[http://publib.boulder.ibm.com/infocenter/iisinfo/v8r5/index.jsp?topic=/com.ibm.swg.im.iis.productization.iisinfo.ha.install.doc/topics/wsisinst\\_pln\\_ha\\_frontendwebservers.html](http://publib.boulder.ibm.com/infocenter/iisinfo/v8r5/index.jsp?topic=/com.ibm.swg.im.iis.productization.iisinfo.ha.install.doc/topics/wsisinst_pln_ha_frontendwebservers.html);

[http://pic.dhe.ibm.com/infocenter/iisinfo/v8r5/index.jsp?topic=%2Fcom.ibm.swg.im.iis.productization.iisinfo.ha.install.doc%2Ftopics%2Fwsisinst\\_pln\\_ha\\_xmeta\\_db2cluster.html](http://pic.dhe.ibm.com/infocenter/iisinfo/v8r5/index.jsp?topic=%2Fcom.ibm.swg.im.iis.productization.iisinfo.ha.install.doc%2Ftopics%2Fwsisinst_pln_ha_xmeta_db2cluster.html);

<http://public.dhe.ibm.com/software/dw/data/bestpractices/MDMS-HA.pdf>; [http://www.ibm.com/developerworks/websphere/techjournal/1010\\_page/1010\\_page.html](http://www.ibm.com/developerworks/websphere/techjournal/1010_page/1010_page.html);

<http://www.ibm.com/developerworks/data/library/techarticle/dm-1002mdmavailability/>;

<http://www.ibm.com/developerworks/tivoli/tutorials/tvwastam/>;

[http://publib.boulder.ibm.com/tividd/td/ITAME/SC32-1134-01/en\\_US/HTML/amweb41\\_admin04.htm#ws-overview1031525](http://publib.boulder.ibm.com/tividd/td/ITAME/SC32-1134-01/en_US/HTML/amweb41_admin04.htm#ws-overview1031525);

[http://publib.boulder.ibm.com/infocenter/wsdoc400/v6r0/index.jsp?topic=/com.ibm.websphere.iseries.doc/info/ae/ae/tsec\\_inteover.html](http://publib.boulder.ibm.com/infocenter/wsdoc400/v6r0/index.jsp?topic=/com.ibm.websphere.iseries.doc/info/ae/ae/tsec_inteover.html); [http://publib.boulder.ibm.com/tividd/td/ITAME/SC32-1134-01/en\\_US/HTML/amweb41\\_admin04.htm#i1032038](http://publib.boulder.ibm.com/tividd/td/ITAME/SC32-1134-01/en_US/HTML/amweb41_admin04.htm#i1032038);

[http://publib.boulder.ibm.com/tividd/td/ITAME/SC32-1134-01/en\\_US/HTML/amweb41\\_admin04.htm#i1032038](http://publib.boulder.ibm.com/tividd/td/ITAME/SC32-1134-01/en_US/HTML/amweb41_admin04.htm#i1032038); <http://www-03.ibm.com/software/products/us/en/extended-deployment/>;

<http://www-01.ibm.com/support/docview.wss?uid=swg21219567>. IBM's customers use the Accused

Instrumentalities to manage and host dynamic Web pages as described and claimed in the Asserted Patents.

16. Through its sales and support activities, IBM specifically intends its customers to infringe the '554 Patent. IBM was and remains aware that the normal and customary use of the Accused Instrumentalities in connection with the management of dynamic Web page generation requests infringes the '554 Patent. Thus, IBM's customers, by using the Accused Instrumentalities, directly infringe the claimed method(s) of the '554 Patent.

17. IBM possesses knowledge that use of the Accused Instrumentalities infringes the '554 Patent. For example, in January 2006, IBM was the subject of a Third-Party Complaint, in which a customer of IBM sought indemnification for claims of patent infringement on the Asserted Patents. Therefore, IBM has had knowledge of the claims of the Asserted Patents and specific knowledge that customers' use of the Accused Instrumentalities infringes the '554 Patent at least as early as January 26, 2006. Parallel Networks also provided IBM specific notice concerning the Asserted Patents on November 27, 2012.

18. Accordingly, a reasonable inference is that IBM specifically intends for others, such as resellers and end-users, to directly infringe one or more claims of the '554 Patent in the United States because IBM has knowledge of the '554 Patent and IBM actually induces others, such as resellers and end-users, to directly infringe the '554 Patent by using, selling, offering to sell, exporting, supplying and/or distributing within the United States the Accused Instrumentalities. Upon information and belief, IBM has generated significant revenue in connection with the sales of the Accused Instrumentalities. IBM knew or should have known that such actions would induce actual infringement.

19. IBM indirectly infringes one or more claims of the '554 Patent by contributory infringement under 35 U.S.C. § 271(c). Direct infringement is the result of activities performed by resellers and end users of the Accused Instrumentalities. IBM had actual notice of the '554 Patent at least by January 26, 2006 and again after the reexamination on November 27, 2012.

20. The Accused Instrumentalities include particular functionality within web servers, dispatchers, page servers, and data sources relating to the management of dynamic Web page generation requests. The Accused Instrumentalities do not function in an acceptable manner absent the claimed functionality for managing dynamic Web page generation requests. Furthermore, the functionality of managing dynamic Web page generation requests does not operate in isolation, but is designed to operate with the Accused Instrumentalities, and absent the claimed functionality of managing dynamic Web page generation requests, the Accused Instrumentalities would not operate in an acceptable manner.

21. The Accused Instrumentalities, including but not limited to, IBM WebSphere Application Server (WAS) (version 5.0 and later), including EJBs, Workload Management (WLM) facilities, InfoSphere, and related Web page generation and dynamic load balancing components, Load Balancer and/or Caching Proxy, On-Demand Router (ODR), IBM HTTP Server, Plug-Ins for web servers such as the IBM HTTP Server and other third party servers, Network Dispatcher and Metric Server systems and software, Tivoli systems and software including Tivoli Access Manager WebSEAL and/or WebSEAL proxy, and DB2 systems and software including the pureScale workload balancing feature are especially adapted to operate in Accused Instrumentalities for managing dynamic Web page generation requests.

22. The system and software for managing dynamic Web page generation requests is not a staple article or commodity of commerce and the use of this system and software is

required for operation of the Accused Instrumentalities. Any other use would be unusual, far-fetched, illusory, impractical, occasional, aberrant, or experimental.

23. The system and software for managing dynamic Web page generation requests in the Accused Instrumentalities are a material part of the invention of the '554 Patent and are especially made or adapted for the infringing manufacture, sale, and/or use of the Accused Instrumentalities. The Accused Instrumentalities, including but not limited to, IBM WebSphere Application Server (WAS) (version 5.0 and later), including EJBs, Workload Management (WLM) facilities, InfoSphere, and related Web page generation and dynamic load balancing components, Load Balancer and/or Caching Proxy, On-Demand Router (ODR), IBM HTTP Server, Plug-Ins for web servers such as the IBM HTTP Server and other third party servers, Network Dispatcher and Metric Server systems and software, Tivoli systems and software including Tivoli Access Manager WebSEAL and/or WebSEAL proxy, and DB2 systems and software including the pureScale workload balancing feature are especially made or adapted for management of dynamic Web page requests that infringe the '554 Patent. Because sales and use of the Accused Instrumentalities, including the system and software for managing dynamic Web page generation requests infringe the '554 Patent, IBM's sales of the Accused Instrumentalities have no substantial non-infringing uses.

24. Accordingly, IBM makes, offers for sale, or sells, within 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 adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

IBM provides to others the Accused Instrumentalities. IBM has generated significant revenue in connection with the sales of the Accused Instrumentalities.

25. By providing the Accused Instrumentalities identified above, which have no substantial non-infringing uses, IBM contributes to the direct infringement of users of said applications, software, and computer equipment. As discussed *supra* at Paragraph 17, IBM possesses knowledge that its use of the Accused Instrumentalities infringes the '554 Patent.

26. As a direct and proximate consequence of the acts and practices of the Defendant in infringing, directly and/or indirectly, one or more claims of the '554 Patent, Parallel Networks has suffered, is suffering, and, unless such acts and practices are enjoined by the Court, will continue to suffer injury to its business and property rights.

27. As a direct and proximate consequence of the acts and practices of the Defendant in infringing, directly and/or indirectly, one or more claims of the '554 Patent, Parallel Networks has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284, in an amount to be determined at trial.

28. In addition, the infringing acts and practices of the Defendant have caused, is causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Parallel Networks for which there is no adequate remedy at law, and for which Parallel Networks is entitled to injunctive relief under 35 U.S.C. § 283.

29. IBM has known about each of the Asserted Patents, as set forth *supra* at Paragraph 17. Moreover, IBM lacks justifiable belief that there is no infringement, or that the infringed claims are invalid, and has acted with objective recklessness in its infringing activity.

IBM's infringement is therefore willful, and Parallel Networks is entitled to an award of exemplary damages, attorneys' fees, and costs in bringing this action.

#### **V. COUNT II: INFRINGEMENT OF THE '335 PATENT**

30. Plaintiff repeats and re-alleges the allegations in Paragraphs 1 through 29 as though fully set forth in their entirety.

31. IBM has directly infringed and continues to infringe, directly and/or indirectly, the '335 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority the Accused Instrumentalities, that infringe one or more claims of the '335 Patent.

32. IBM has induced and is inducing infringement of the '335 Patent under 35 U.S.C. § 271(b) by others in this District and elsewhere in the United States. The direct infringement occurs by activities performed by IBM, its contractors and employees, and/or end users of the Accused Instrumentalities, in their intended use, including the management of dynamic Web page generation requests.

33. IBM specifically intends the users of the Accused Instrumentalities to infringe the '335 Patent, or, alternatively, has been willfully blind to the possibility that its inducing acts would cause infringement. By way of example, and not as a limitation, IBM induces such infringement by its affirmative actions of at least making its website and/or website functionality available to customers and providing links and/or other directions on its website and/or the internet to instruct and teach users to use the Accused Instrumentalities in an infringing manner.

Example                    instructions                    are                    found                    in:

<https://jazz.net/library/article/464/>; <http://pic.dhe.ibm.com/infocenter/wxdinfo/v6r0/index.jsp?topi>

c=%2Fcom.ibm.websphere.xd.doc%2Finfo%2Fodoe\_task%2Fcxportaltopology.html;  
[http://publib.boulder.ibm.com/infocenter/iisinfo/v8r5/index.jsp?topic=/com.ibm.swg.im.iis.productization.iisinfo.ha.install.doc/topics/wsisinst\\_pln\\_ha\\_frontendwebservers.html](http://publib.boulder.ibm.com/infocenter/iisinfo/v8r5/index.jsp?topic=/com.ibm.swg.im.iis.productization.iisinfo.ha.install.doc/topics/wsisinst_pln_ha_frontendwebservers.html);  
[http://pic.dhe.ibm.com/infocenter/iisinfo/v8r5/index.jsp?topic=%2Fcom.ibm.swg.im.iis.productization.iisinfo.ha.install.doc%2Ftopics%2Fwsisinst\\_pln\\_ha\\_xmeta\\_db2cluster.html](http://pic.dhe.ibm.com/infocenter/iisinfo/v8r5/index.jsp?topic=%2Fcom.ibm.swg.im.iis.productization.iisinfo.ha.install.doc%2Ftopics%2Fwsisinst_pln_ha_xmeta_db2cluster.html);  
<http://public.dhe.ibm.com/software/dw/data/bestpractices/MDMS-HA.pdf>; [http://www.ibm.com/developerworks/websphere/techjournal/1010\\_page/1010\\_page.html](http://www.ibm.com/developerworks/websphere/techjournal/1010_page/1010_page.html);  
<http://www.ibm.com/developerworks/data/library/techarticle/dm-1002mdmavailability/>;  
<http://www.ibm.com/developerworks/tivoli/tutorials/tvwastam/>;  
[http://publib.boulder.ibm.com/tividd/td/ITAME/SC32-1134-01/en\\_US/HTML/amweb41\\_admin04.htm#ws-overview1031525](http://publib.boulder.ibm.com/tividd/td/ITAME/SC32-1134-01/en_US/HTML/amweb41_admin04.htm#ws-overview1031525);  
[http://publib.boulder.ibm.com/infocenter/wsdock400/v6r0/index.jsp?topic=/com.ibm.websphere.iseries.doc/info/ae/ae/tsec\\_inteover.html](http://publib.boulder.ibm.com/infocenter/wsdock400/v6r0/index.jsp?topic=/com.ibm.websphere.iseries.doc/info/ae/ae/tsec_inteover.html); [http://publib.boulder.ibm.com/tividd/td/ITAME/SC32-1134-01/en\\_US/HTML/amweb41\\_admin04.htm#i1032038](http://publib.boulder.ibm.com/tividd/td/ITAME/SC32-1134-01/en_US/HTML/amweb41_admin04.htm#i1032038);  
[http://publib.boulder.ibm.com/tividd/td/ITAME/SC32-1134-01/en\\_US/HTML/amweb41\\_admin04.htm#i1032038](http://publib.boulder.ibm.com/tividd/td/ITAME/SC32-1134-01/en_US/HTML/amweb41_admin04.htm#i1032038); <http://www-03.ibm.com/software/products/us/en/extended-deployment/>; <http://www-01.ibm.com/support/docview.wss?uid=swg21219567>. IBM's customers use the Accused Instrumentalities to manage and host dynamic Web pages as described and claimed in the Asserted Patents.

34. Through its sales and support activities, IBM specifically intends its customers to infringe the '335 Patent. IBM was and remains aware that the normal and customary use of the Accused Instrumentalities in connection with the management of dynamic Web page generation

requests infringes the '335 Patent. Thus, IBM's customers, by using the Accused Instrumentalities, directly infringe the claimed method(s) of the '335 Patent.

35. IBM possesses knowledge that use of the Accused Instrumentalities infringes the '335 Patent. For example, in January 2006, IBM was the subject of a Third-Party Complaint, in which a customer of IBM sought indemnification for claims of patent infringement on the Asserted Patents. Therefore, IBM has had knowledge of the claims of the Asserted Patents and specific knowledge that customers' use of the Accused Instrumentalities infringes the '335 Patent at least as early as January 26, 2006. Parallel Networks also provided IBM specific notice concerning the Asserted Patents on November 27, 2012.

36. Accordingly, a reasonable inference is that IBM specifically intends for others, such as resellers and end-users, to directly infringe one or more claims of the '335 Patent in the United States because IBM has knowledge of the '335 Patent and IBM actually induces others, such as resellers and end-users, to directly infringe the '335 Patent by using, selling, offering to sell, exporting, supplying and/or distributing within the United States the Accused Instrumentalities. Upon information and belief, IBM has generated significant revenue in connection with the sales of the Accused Instrumentalities. IBM knew or should have known that such actions would induce actual infringement.

37. IBM indirectly infringes one or more claims of the '335 Patent by contributory infringement under 35 U.S.C. § 271(c). Direct infringement is the result of activities performed by resellers and end users of the Accused Instrumentalities. IBM had actual notice of the '335 Patent at least by January 26, 2006 and again after the reexamination on November 27, 2012.

38. The Accused Instrumentalities include particular functionality within web servers, dispatchers, page servers, and data sources relating to the management of dynamic Web page generation requests. The Accused Instrumentalities do not function in an acceptable manner absent the claimed functionality for managing dynamic Web page generation requests. Furthermore, the functionality of managing dynamic Web page generation requests does not operate in isolation, but is designed to operate with the Accused Instrumentalities, and absent the claimed functionality of managing dynamic Web page generation requests, the Accused Instrumentalities would not operate in an acceptable manner.

39. The Accused Instrumentalities, including but not limited to, IBM WebSphere Application Server (WAS) (version 5.0 and later), including EJBs, Workload Management (WLM) facilities, InfoSphere, and related Web page generation and dynamic load balancing components, Load Balancer and/or Caching Proxy, On-Demand Router (ODR), IBM HTTP Server, Plug-Ins for web servers such as the IBM HTTP Server and other third party servers, Network Dispatcher and Metric Server systems and software, Tivoli systems and software including Tivoli Access Manager WebSEAL and/or WebSEAL proxy, and DB2 systems and software including the pureScale workload balancing feature are especially adapted to operate in Accused Instrumentalities for managing dynamic Web page generation requests.

40. The system and software for managing dynamic Web page generation requests is not a staple article or commodity of commerce and the use of this system and software is required for operation of the Accused Instrumentalities. Any other use would be unusual, far-fetched, illusory, impractical, occasional, aberrant, or experimental.

41. The system and software for managing dynamic Web page generation requests in the Accused Instrumentalities are a material part of the invention of the '335 Patent and are

especially made or adapted for the infringing manufacture, sale, and/or use of the Accused Instrumentalities. The Accused Instrumentalities, including but not limited to, IBM WebSphere Application Server (WAS) (version 5.0 and later), including EJBs, Workload Management (WLM) facilities, InfoSphere, and related Web page generation and dynamic load balancing components, Load Balancer and/or Caching Proxy, On-Demand Router (ODR), IBM HTTP Server, Plug-Ins for web servers such as the IBM HTTP Server and other third party servers, Network Dispatcher and Metric Server systems and software, Tivoli systems and software including Tivoli Access Manager WebSEAL and/or WebSEAL proxy, and DB2 systems and software including the pureScale workload balancing feature are especially made or adapted for management of dynamic Web page requests that infringe the '335 Patent. Because sales and use of the Accused Instrumentalities, including the system and software for managing dynamic Web page generation requests infringe the '335 Patent, IBM's sales of the Accused Instrumentalities have no substantial non-infringing uses.

42. Accordingly, IBM makes, offers for sale, or sells, within 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 adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use. IBM provides to others the Accused Instrumentalities. IBM has generated significant revenue in connection with the sales of the Accused Instrumentalities.

43. By providing the Accused Instrumentalities identified above, which have no substantial non-infringing uses, IBM contributes to the direct infringement of users of said

applications, software, and computer equipment. As discussed *supra* at Paragraph 35, IBM possesses knowledge that its use of the Accused Instrumentalities infringes the '335 Patent.

44. As a direct and proximate consequence of the acts and practices of the Defendant in infringing, directly and/or indirectly, one or more claims of the '335 Patent, Parallel Networks has suffered, is suffering, and, unless such acts and practices are enjoined by the Court, will continue to suffer injury to its business and property rights.

45. As a direct and proximate consequence of the acts and practices of the Defendant in infringing, directly and/or indirectly, one or more claims of the '335 Patent, Parallel Networks has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284, in an amount to be determined at trial.

46. In addition, the infringing acts and practices of the Defendant have caused, is causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Parallel Networks for which there is no adequate remedy at law, and for which Parallel Networks is entitled to injunctive relief under 35 U.S.C. § 283.

47. IBM has known about each of the Asserted Patents, as set forth *supra* at Paragraph 35. Moreover, IBM lacks justifiable belief that there is no infringement, or that the infringed claims are invalid, and has acted with objective recklessness in its infringing activity. IBM's infringement is therefore willful, and Parallel Networks is entitled to an award of exemplary damages, attorneys' fees, and costs in bringing this action.

## VI. NOTICE OF REQUIREMENT OF LITIGATION HOLD

48. Defendant is hereby notified it is legally obligated to locate, preserve, and maintain all records, notes, drawings, documents, data, communications, materials, electronic

recordings, audio/video/photographic recordings, and digital files, including edited and unedited or “raw” source material, and other information and tangible things that Defendant knows, or reasonably should know, may be relevant to actual or potential claims, counterclaims, defenses, and/or damages by any party or potential party in this lawsuit, whether created or residing in hard copy form or in the form of electronically stored information (hereafter collectively referred to as “Potential Evidence”).

49. As used above, the phrase “electronically stored information” includes without limitation: computer files (and file fragments), e-mail (both sent and received, whether internally or externally), information concerning e-mail (including but not limited to logs of e-mail history and usage, header information, and deleted but recoverable e-mails), text files (including drafts, revisions, and active or deleted word processing documents), instant messages, audio recordings and files, video footage and files, audio files, photographic footage and files, spreadsheets, databases, calendars, telephone logs, contact manager information, internet usage files, and all other information created, received, or maintained on any and all electronic and/or digital forms, sources and media, including, without limitation, any and all hard disks, removable media, peripheral computer or electronic storage devices, laptop computers, mobile phones, personal data assistant devices, Blackberry devices, iPhones, video cameras and still cameras, and any and all other locations where electronic data is stored. These sources may also include any personal electronic, digital, and storage devices of any and all of Defendant’s agents, resellers, or employees if Defendant’s electronically stored information resides there.

50. Defendant is hereby further notified and forewarned that any alteration, destruction, negligent loss, or unavailability, by act or omission, of any Potential Evidence may result in damages or a legal presumption by the Court and/or jury that the Potential Evidence is

not favorable to Defendant's claims and/or defenses. To avoid such a result, Defendant's preservation duties include, but are not limited to, the requirement that Defendant immediately notify its agents and employees to halt and/or supervise the auto-delete functions of Defendant's electronic systems and refrain from deleting Potential Evidence, either manually or through a policy of periodic deletion.

## **VII. PRAYER FOR RELIEF**

Plaintiff prays for the following relief:

- A. A judgment that IBM has directly infringed the '554 Patent, contributorily infringed the '554 Patent, and/or induced the infringement of the '554 Patent;
- B. A judgment that IBM has directly infringed the '335 Patent, contributorily infringed the '335 Patent, and/or induced the infringement of the '335 Patent;
- C. A judgment and order enjoining IBM, its employees and agents, and any other person(s) in active concert or participation with it from directly infringing, contributorily infringing, and/or inducing the infringement of the '554 Patent;
- D. A judgment and order enjoining IBM, its employees and agents, and any other person(s) in active concert or participation with it from directly infringing, contributorily infringing, and/or inducing the infringement of the '335 Patent;
- E. A judgment and order requiring IBM to pay Plaintiff's actual damages under 35 U.S.C. § 284 (but in no event less than a reasonable royalty), and supplemental damages for any continuing post-verdict infringement up until entry of the final judgment with an accounting as needed;

F. A judgment and order requiring IBM to pay Plaintiff pre-judgment and post-judgment interest on the damages awarded, including an award of pre-judgment interest, pursuant to 35 U.S.C. § 284, from the date of each act of infringement of the Asserted Patents by IBM to the day a damages judgment is entered, and an award of post-judgment interest, pursuant to 28 U.S.C. § 1961, continuing until such judgment is paid, at the maximum rate allowed by law;

G. A judgment and order finding this to be an exceptional case and requiring IBM to pay the costs of this action (including all disbursements) and attorneys' fees, pursuant to 35 U.S.C. § 285;

H. A judgment and order finding that IBM's infringement is willful and deliberate, entitling Plaintiff to enhanced damages pursuant to 35 U.S.C. § 284;

I. In the alternative, in the event injunctive relief is not granted as requested by Plaintiff, an award of a compulsory future royalty; and

J. Such other and further relief as the Court deems just and equitable.

### **VIII. DEMAND FOR JURY TRIAL**

Plaintiff hereby demands that all issues be determined by a jury.

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*/s/ Adam W. Poff*

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*Attorneys for Plaintiff Parallel Networks  
Licensing, LLC*

Dated: December 20, 2013

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

PARALLEL NETWORKS }  
LICENSING, LLC, }  
Plaintiff, }  
v. }  
MICROSOFT CORPORATION, }  
Defendant. }  
C.A. No. \_\_\_\_\_  
**JURY TRIAL DEMANDED**

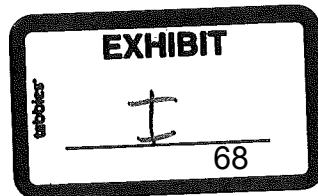
**PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Parallel Networks Licensing, LLC ("Parallel Networks" or "Plaintiff") files this Complaint for patent infringement against Defendant Microsoft Corporation ("Microsoft" or "Defendant"), and alleges as follows:

**I. PARTIES**

1. Plaintiff Parallel Networks Licensing, LLC is a Delaware limited liability company with a place of business as 1105 N. Market Street, Suite 300, Wilmington, DE 19801.

2. Upon information and belief, Microsoft is incorporated, organized and existing under the laws of the State of Washington. Microsoft maintains its principal place of business at One Microsoft Way, Redmond, Washington 98052. Microsoft may be served with process through its registered agent, Corporation Service Company, 2711 Centerville Rd., Suite 400, Wilmington, DE 19808.



## II. JURISDICTION AND VENUE

3. Plaintiff repeats and re-alleges the allegations in Paragraphs 1 and 2 as though fully set forth in their entirety.

4. This action arises under the patent laws of the United States, Title 35, United States Code § 1, *et seq.* This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

5. Personal jurisdiction exists generally over the Defendant because it has sufficient minimum contacts with the forum as a result of business conducted within the State of Delaware. Personal jurisdiction also exists specifically over the Defendant because it, directly or through subsidiaries or intermediaries, makes, uses, offers for sale, sells, imports, advertises, makes available and/or markets products and services within the State of Delaware that infringe the Asserted Patents, as described more particularly below.

6. Venue is appropriate in the District of Delaware under 28 U.S.C. §§ 1391(b), 1391(d) and 1400(b). Venue is further supported because on September 30, 2008, Microsoft filed a declaratory judgment of patent invalidity and non-infringement involving the same patents Parallel Networks is asserting against Microsoft in this litigation. Venue is further supported by the fact that this District and Court have significant experience with the patents asserted in this lawsuit and the related technology because of the activities and experience garnered in *Oracle Corporation et al. v. Parallel Networks LLC*, C.A. No. 06-414-SLR (D. Del. June 30, 2006) and *Quinstreet, Inc. v. Parallel Networks LLC*, C.A. No. 06-495-SLR (D. Del. Aug. 8, 2006) as set forth in the dockets, orders, and pleadings associated with each case.

### III. GENERAL ALLEGATIONS

7. United States Patent No. 5,894,554 (“the ’554 Patent”) entitled “SYSTEM FOR MANAGING DYNAMIC WEB PAGE GENERATION REQUESTS BY INTERCEPTING REQUEST AT WEB SERVER AND ROUTING TO PAGE SERVER THEREBY RELEASING WEB SERVER TO PROCESS OTHER REQUESTS,” was duly and legally issued by the United States Patent and Trademark Office on April 13, 1999 after full and fair examination. Three requests for *ex parte* reexamination of the ’554 Patent were filed on November 27, 2006, March 29, 2007, and April 3, 2007, respectively. On July 24, 2012, the United States Patent Office duly and legally issued an *Ex Parte* Reexamination Certificate No. 5,894,554 C1 confirming the patentability of claims 12 – 49. On October 2, 2012, the United States Patent Office duly and legally issued a Certificate of Correction for claims 12 – 49. Parallel Networks is the assignee of all rights, title, and interest in the ’554 Patent, including the right to recover damages for past infringement. A copy of the ’554 Patent is attached as Exhibit A to this Complaint.

8. United States Patent No. 6,415,335 (“the ’335 Patent”) entitled “SYSTEM AND METHOD FOR MANAGING DYNAMIC WEB PAGE GENERATION REQUESTS,” was duly and legally issued by the United States Patent and Trademark Office on July 2, 2002 after full and fair examination. Three requests for *ex parte* reexamination of the ’335 Patent were filed on November 27, 2006, March 28, 2007, and April 3, 2007, respectively. On July 17, 2012, the United States Patent Office duly and legally issued an *Ex Parte* Reexamination Certificate No. 6,415,335 C1 confirming the patentability of claims 30 – 85. On September 11, 2012, the United States Patent Office duly and legally issued a Certificate of Correction for claims 30 – 85. Parallel Networks is the assignee of all rights, title, and interest in the ’335 patent, including the

right to recover damages for past infringement. A copy of the '335 Patent is attached as Exhibit B to this Complaint.

9. The '554 Patent and the '335 Patent are referred to collectively as the "Asserted Patents." The Asserted Patents each disclose methods and apparatuses "for creating and managing custom Web sites." In the summary of the invention section of the Asserted Patents it is explained: "[s]pecifically, the present invention claims a method and apparatus for managing dynamic web page generation requests." Figure 4 of the Asserted Patents provides an example of one embodiment of the claimed inventions.

10. Microsoft is engaged in the business of making, developing and selling systems and software that manage dynamic Web page generation requests. More particularly, Microsoft has made, offered and continues to offer for sale Microsoft Internet Information Services (IIS) (versions 7.0 and later), including Application Request Routing and/or Component Load Balancing and Network Load Balancing (NLB) used, for example, in conjunction with Microsoft's SQL Server Reporting Services (these and any and all similar products are referred to herein as "the Accused Instrumentalities"). The Accused Instrumentalities are embodied on machine readable medium and perform the claimed methods of the Asserted Patents.

11. Microsoft has infringed and continues to infringe each of the Asserted Patents by engaging in acts constituting infringement under 35 U.S.C. § 271, including, but not necessarily limited to one or more of making, using, selling, and/or offering to sell, in this District and elsewhere in the United States, and importing into this District and elsewhere in the United States, certain Accused Instrumentalities, including but not limited to, Microsoft Internet Information Services (IIS) (versions 7.0 and later), including Application Request Routing and/or Component Load Balancing and Network Load Balancing (NLB) used, for example, in

conjunction with Microsoft's SQL Server Reporting Services, for management of dynamic Web page generation requests.

#### IV. COUNT I: INFRINGEMENT OF THE '554 PATENT

12. Plaintiff repeats and re-alleges the allegations in Paragraphs 1 through 11 as though fully set forth in their entirety.

13. Microsoft has directly infringed and continues to infringe, directly and/or indirectly, the '554 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority the Accused Instrumentalities, that infringe one or more claims of the '554 Patent.

14. Microsoft has induced and is inducing infringement of the '554 Patent under 35 U.S.C. § 271(b) by others in this District and elsewhere in the United States. The direct infringement occurs by activities performed by Microsoft, its contractors and employees, and/or end users of the Accused Instrumentalities, in their intended use, including the management of dynamic Web page generation requests.

15. Microsoft specifically intends the users of the Accused Instrumentalities to infringe the '554 Patent, or, alternatively, has been willfully blind to the possibility that its inducing acts would cause infringement. By way of example, and not as a limitation, Microsoft induces such infringement by its affirmative actions of at least making its website and/or website functionality available to customers and providing links and/or other directions on its website and/or the internet to instruct and teach users to use the Accused Instrumentalities in an infringing manner. Example instructions are found at [http://www.iis.net/learn/extensions/configuring-application-request-routing-\(arr\)/achieving-high-](http://www.iis.net/learn/extensions/configuring-application-request-routing-(arr)/achieving-high-)

availability-and-scalability-arr-and-hardware-load-balancer; <http://technet.microsoft.com/en-us/library/cc770634.aspx>; <http://www.iis.net/learn/get-started/introduction-to-iis/introduction-to-iis-architecture>; <http://www.iis.net/learn/get-started/whats-new-in-iis-8/installing-iis-8-on-windows-server-2012>; [http://technet.microsoft.com/en-us/library/cc735084\(v=ws.10\).aspx](http://technet.microsoft.com/en-us/library/cc735084(v=ws.10).aspx); <http://msdn.microsoft.com/en-us/magazine/cc163357.aspx> and <http://www.iis.net/downloads/microsoft/application-request-routing>. On information and belief, Microsoft's customers use the Accused Instrumentalities to manage and host dynamic Web pages as described and claimed in the Asserted Patents.

16. Through its sales and support activities, Microsoft specifically intends its customers to infringe the '554 Patent. Microsoft was and remains aware that the normal and customary use of the Accused Instrumentalities in connection with the management of dynamic Web page generation requests infringes the '554 patent. Thus, Microsoft's customers, by using the Accused Instrumentalities, directly infringe the claimed method(s) of the '554 Patent .

17. Microsoft possesses knowledge that use of the Accused Instrumentalities infringes the '554 Patent. For example, in October 2008, Microsoft was the subject of a Third-Party Complaint, in which a customer of Microsoft sought indemnification for claims of patent infringement on the Asserted Patents. In November 2008, Microsoft filed a Complaint in Delaware against Parallel Network's predecessor-in-interest, seeking a declaratory judgment of non-infringement and invalidity of the Asserted Patents. Therefore, Microsoft has had knowledge of the claims of the Asserted Patents and specific knowledge that customers' use of the Accused Instrumentalities infringes the '554. Parallel Networks provided Microsoft further notice on September 14, 2012.

18. Accordingly, a reasonable inference is that Microsoft specifically intends for others, such as resellers and end-users, to directly infringe one or more claims of the '554 Patent in the United States because Microsoft has knowledge of the '554 Patent, and Microsoft actually induces others, such as resellers and end-users, to directly infringe the '554 Patent by using, selling, offering to sell, exporting, supplying and/or distributing within the United States the Accused Instrumentalities. Upon information and belief, Microsoft has generated significant revenue in connection with the sales of the Accused Instrumentalities. Microsoft knew or should have known that such actions would induce actual infringement.

19. Microsoft indirectly infringes one or more claims of the '554 Patent by contributory infringement under 35 U.S.C. § 271(c). Direct infringement is the result of activities performed by resellers and end users of the Accused Instrumentalities. Microsoft had actual notice of the '554 Patent at least by October 2008 and received further notice from Parallel Networks as of September 14, 2012.

20. The Accused Instrumentalities include particular functionality within web servers, dispatchers, page servers, and data sources relating to the management of dynamic Web page generation requests. The Accused Instrumentalities do not function in an acceptable manner absent the claimed functionality for managing dynamic Web page generation requests. Furthermore, the functionality of managing dynamic Web page generation requests does not operate in isolation, but is designed to operate with the Accused Instrumentalities, and absent the claimed functionality, the Accused Instrumentalities would not operate in an acceptable manner.

21. The accused Microsoft Internet Information Services (IIS) including Application Request Routing and/or Component Load Balancing and Network Load Balancing (NLB) used, for example, in conjunction with Microsoft's SQL Server Reporting Services, are especially

adapted to operate in the Accused Instrumentalities for managing dynamic Web page generation requests.

22. The system and software for managing dynamic Web page generation requests is not a staple article or commodity of commerce and the use of this system and software is required for operation of the Accused Instrumentalities. Any other use would be unusual, far-fetched, illusory, impractical, occasional, aberrant, or experimental.

23. The system and software for managing dynamic Web page generation requests in the Accused Instrumentalities are a material part of the invention of the '554 Patent and are especially made or adapted for the infringing manufacture, sale, and/or use of the Accused Instrumentalities. The Accused Instrumentalities, including the Microsoft Internet Information Services (IIS) including Application Request Routing and/or Component Load Balancing and Network Load Balancing (NLB) used, for example, in conjunction with Microsoft's SQL Server Reporting Services are especially made or adapted for management of dynamic Web page requests that infringe the '554 Patent. Because sales and use of the Accused Instrumentalities, including the system and software for managing dynamic Web page generation requests infringe the '554 Patent, Microsoft's sales of the Accused Instrumentalities have no substantial non-infringing uses.

24. Accordingly, Microsoft makes, offers for sale, or sells, within 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 adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

Microsoft provides to others the Accused Instrumentalities. Microsoft has generated significant revenue in connection with the sales of the Accused Instrumentalities.

25. By providing the Accused Instrumentalities identified above, which have no substantial non-infringing uses, Microsoft contributes to the direct infringement of users of said applications, software, and computer equipment. As discussed *supra* at Paragraph 17, Microsoft possesses knowledge that its use of the Accused Instrumentalities infringes the '554 Patent.

26. As a direct and proximate consequence of the acts and practices of the Defendant in infringing, directly and/or indirectly, one or more claims of the '554 Patent, Parallel Networks has suffered, is suffering, and, unless such acts and practices are enjoined by the Court, will continue to suffer injury to its business and property rights.

27. As a direct and proximate consequence of the acts and practices of the Defendant in infringing, directly and/or indirectly, one or more claims of the '554 Patent, Parallel Networks has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284, in an amount to be determined at trial.

28. In addition, the infringing acts and practices of the Defendant has caused, is causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Parallel Networks for which there is no adequate remedy at law, and for which Parallel Networks is entitled to injunctive relief under 35 U.S.C. § 283.

29. Microsoft has known about each of the Asserted Patents, as set forth *supra* at Paragraph 17. Moreover, Microsoft lacks justifiable belief that there is no infringement, or that the infringed claims are invalid, and has acted with objective recklessness in its infringing

activity. Microsoft's infringement is therefore willful, and Parallel Networks is entitled to an award of exemplary damages, attorneys' fees, and costs in bringing this action.

#### **V. COUNT II: INFRINGEMENT OF THE '335 PATENT**

30. Plaintiff repeats and re-alleges the allegations in Paragraphs 1 through 29 as though fully set forth in their entirety.

31. Microsoft has directly infringed and continues to infringe, directly and/or indirectly, the '335 Patent in this District or otherwise within the United States by making, using, selling, offering to sell, and/or importing in or into the United States, without authority the Accused Instrumentalities, that infringe one or more claims of the '335 Patent.

32. Microsoft has induced and is inducing infringement of the '335 Patent under 35 U.S.C. § 271(b) by others in this District and elsewhere in the United States. The direct infringement occurs by activities performed by Microsoft, its contractors and employees, and/or end users of the Accused Instrumentalities, in their intended use, including the management of dynamic Web page generation requests.

33. Microsoft specifically intends the users of the Accused Instrumentalities to infringe the '335 Patent, or, alternatively, has been willfully blind to the possibility that its inducing acts would cause infringement. By way of example, and not as a limitation, Microsoft induces such infringement by its affirmative actions of at least making its website and/or website functionality available to customers and providing links and/or other directions on its website and/or the internet to instruct and teach users to use the Accused Instrumentalities in an infringing manner. Example instructions are found at [http://www.iis.net/learn/extensions/configuring-application-request-routing-\(arr\)/achieving-high-](http://www.iis.net/learn/extensions/configuring-application-request-routing-(arr)/achieving-high-)

availability-and-scalability-arr-and-hardware-load-balancer; <http://technet.microsoft.com/en-us/library/cc770634.aspx>; <http://www.iis.net/learn/get-started/introduction-to-iis/introduction-to-iis-architecture>; <http://www.iis.net/learn/get-started/whats-new-in-iis-8/installing-iis-8-on-windows-server-2012>; [http://technet.microsoft.com/en-us/library/cc735084\(v=ws.10\).aspx](http://technet.microsoft.com/en-us/library/cc735084(v=ws.10).aspx); <http://msdn.microsoft.com/en-us/magazine/cc163357.aspx> and <http://www.iis.net/downloads/microsoft/application-request-routing>. On information and belief, Microsoft's customers use the Accused Instrumentalities to manage and host dynamic Web pages as described and claimed in the Asserted Patents.

34. Through its sales and support activities, Microsoft specifically intends its customers to infringe the '335 Patent. Microsoft was and remains aware that the normal and customary use of the Accused Instrumentalities in connection with the management of dynamic Web page generation requests infringes the '335 Patent. Thus, Microsoft's customers, by using the Accused Instrumentalities, directly infringe the claimed method(s) of the '335 Patent .

35. Microsoft possesses knowledge that use of the Accused Instrumentalities infringes the '335 Patent. For example, in October 2008, Microsoft was the subject of a Third-Party Complaint, in which a customer of Microsoft sought indemnification for claims of patent infringement on the Asserted Patents. In November 2008, Microsoft filed a Complaint in Delaware against Parallel Network's predecessor-in-interest, seeking a declaratory judgment of non-infringement and invalidity of the Asserted Patents. Therefore, Microsoft has had knowledge of the claims of the Asserted Patents and specific knowledge that customers' use of the Accused Instrumentalities infringes the '335 Patent. Parallel Networks provided Microsoft further notice on September 14, 2012.

36. Accordingly, a reasonable inference is that Microsoft specifically intends for others, such as resellers and end-users, to directly infringe one or more claims of the '335 Patent in the United States because Microsoft has knowledge of the '335 Patent, and Microsoft actually induces others, such as resellers and end-users, to directly infringe the '335 Patent by using, selling, offering to sell, exporting, supplying and/or distributing within the United States the Accused Instrumentalities. Upon information and belief, Microsoft has generated significant revenue in connection with the sales of the Accused Instrumentalities. Microsoft knew or should have known that such actions would induce actual infringement.

37. Microsoft indirectly infringes one or more claims of the '335 Patent by contributory infringement under 35 U.S.C. § 271(c). Direct infringement is the result of activities performed by resellers and end users of the Accused Instrumentalities. Microsoft had actual notice of the '335 Patent at least by October 2008 and received further notice from Parallel Networks as of September 14, 2012.

38. The Accused Instrumentalities include particular functionality within web servers, dispatchers, page servers, and data sources relating to the management of dynamic Web page generation requests. The Accused Instrumentalities do not function in an acceptable manner absent the claimed functionality for managing dynamic Web page generation requests. Furthermore, the functionality of managing dynamic Web page generation requests does not operate in isolation, but is designed to operate with the Accused Instrumentalities, and absent the claimed functionality, the Accused Instrumentalities would not operate in an acceptable manner.

39. The accused Microsoft Internet Information Services (IIS) including Application Request Routing and/or Component Load Balancing and Network Load Balancing (NLB) used, for example, in conjunction with Microsoft's SQL Server Reporting Services, are especially

adapted to operate in the Accused Instrumentalities for managing dynamic Web page generation requests.

40. The system and software for managing dynamic Web page generation requests is not a staple article or commodity of commerce and the use of this system and software is required for operation of the Accused Instrumentalities. Any other use would be unusual, far-fetched, illusory, impractical, occasional, aberrant, or experimental.

41. The system and software for managing dynamic Web page generation requests in the Accused Instrumentalities are a material part of the invention of the '335 Patent and are especially made or adapted for the infringing manufacture, sale, and/or use of the Accused Instrumentalities. The Accused Instrumentalities, including the Microsoft Internet Information Services (IIS) including Application Request Routing and/or Component Load Balancing and Network Load Balancing (NLB) used, for example, in conjunction with Microsoft's SQL Server Reporting Services are especially made or adapted for management of dynamic Web page requests that infringes the '335 Patent. Because sales and use of the Accused Instrumentalities, including the system and software for managing dynamic Web page generation requests infringe the '335 Patent, Microsoft's sales of the Accused Instrumentalities have no substantial non-infringing uses.

42. Accordingly, Microsoft makes, offers for sale, or sells, within 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 adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

Microsoft provides to others the Accused Instrumentalities. Microsoft has generated significant revenue in connection with the sales of the Accused Instrumentalities.

43. By providing the Accused Instrumentalities identified above, which have no substantial non-infringing uses, Microsoft contributes to the direct infringement of users of said applications, software, and computer equipment. As discussed *supra* at Paragraph 35, Microsoft possesses knowledge that its use of the Accused Instrumentalities infringes the '335 Patent.

44. As a direct and proximate consequence of the acts and practices of the Defendant in infringing, directly and/or indirectly, one or more claims of the '335 Patent, Parallel Networks has suffered, is suffering, and, unless such acts and practices are enjoined by the Court, will continue to suffer injury to its business and property rights.

45. As a direct and proximate consequence of the acts and practices of the Defendant in infringing, directly and/or indirectly, one or more claims of the '335 Patent, Parallel Networks has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284, in an amount to be determined at trial.

46. In addition, the infringing acts and practices of the Defendant has caused, is causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Parallel Networks for which there is no adequate remedy at law, and for which Parallel Networks is entitled to injunctive relief under 35 U.S.C. § 283.

47. Microsoft has known about each of the Asserted Patents, as set forth *supra* at Paragraph 35. Moreover, Microsoft lacks justifiable belief that there is no infringement, or that the infringed claims are invalid, and has acted with objective recklessness in its infringing

activity. Microsoft's infringement is therefore willful, and Parallel Networks is entitled to an award of exemplary damages, attorneys' fees, and costs in bringing this action.

#### **VI. NOTICE OF REQUIREMENT OF LITIGATION HOLD**

48. Defendant is hereby notified it is legally obligated to locate, preserve, and maintain all records, notes, drawings, documents, data, communications, materials, electronic recordings, audio/video/photographic recordings, and digital files, including edited and unedited or "raw" source material, and other information and tangible things that Defendant knows, or reasonably should know, may be relevant to actual or potential claims, counterclaims, defenses, and/or damages by any party or potential party in this lawsuit, whether created or residing in hard copy form or in the form of electronically stored information (hereafter collectively referred to as "Potential Evidence").

49. As used above, the phrase "electronically stored information" includes without limitation: computer files (and file fragments), e-mail (both sent and received, whether internally or externally), information concerning e-mail (including but not limited to logs of e-mail history and usage, header information, and deleted but recoverable e-mails), text files (including drafts, revisions, and active or deleted word processing documents), instant messages, audio recordings and files, video footage and files, audio files, photographic footage and files, spreadsheets, databases, calendars, telephone logs, contact manager information, internet usage files, and all other information created, received, or maintained on any and all electronic and/or digital forms, sources and media, including, without limitation, any and all hard disks, removable media, peripheral computer or electronic storage devices, laptop computers, mobile phones, personal data assistant devices, Blackberry devices, iPhones, video cameras and still cameras, and any and all other locations where electronic data is stored. These sources may also include any personal

electronic, digital, and storage devices of any and all of Defendant's agents, resellers, or employees if Defendant's electronically stored information resides there.

50. Defendant is hereby further notified and forewarned that any alteration, destruction, negligent loss, or unavailability, by act or omission, of any Potential Evidence may result in damages or a legal presumption by the Court and/or jury that the Potential Evidence is not favorable to Defendant's claims and/or defenses. To avoid such a result, Defendant's preservation duties include, but are not limited to, the requirement that Defendant immediately notify its agents and employees to halt and/or supervise the auto-delete functions of Defendant's electronic systems and refrain from deleting Potential Evidence, either manually or through a policy of periodic deletion.

## **VII. PRAYER FOR RELIEF**

Plaintiff prays for the following relief:

- A. A judgment that Microsoft has directly infringed the '554 Patent, contributorily infringed the '554 Patent, and/or induced the infringement of the '554 Patent;
- B. A judgment that Microsoft has directly infringed the '335 Patent, contributorily infringed the '335 Patent, and/or induced the infringement of the '335 Patent;
- C. A judgment and order enjoining Microsoft, its employees and agents, and any other person(s) in active concert or participation with it from directly infringing, contributorily infringing, and/or inducing the infringement of the '554 Patent;
- D. A judgment and order enjoining Microsoft, its employees and agents, and any other person(s) in active concert or participation with it from directly infringing, contributorily infringing, and/or inducing the infringement of the '335 Patent;

E. A judgment and order requiring Microsoft to pay Plaintiff's actual damages under 35 U.S.C. § 284 (but in no event less than a reasonable royalty), and supplemental damages for any continuing post-verdict infringement up until entry of the final judgment with an accounting as needed;

F. A judgment and order requiring Microsoft to pay Plaintiff pre-judgment and post-judgment interest on the damages awarded, including an award of pre-judgment interest, pursuant to 35 U.S.C. § 284, from the date of each act of infringement of the Asserted Patents by Microsoft to the day a damages judgment is entered, and an award of post-judgment interest, pursuant to 28 U.S.C. § 1961, continuing until such judgment is paid, at the maximum rate allowed by law;

G. A judgment and order finding this to be an exceptional case and requiring Microsoft to pay the costs of this action (including all disbursements) and attorneys' fees, pursuant to 35 U.S.C. § 285;

H. A judgment and order finding that Microsoft's infringement is willful and deliberate, entitling Plaintiff to enhanced damages pursuant to 35 U.S.C. § 284;

I. In the alternative, in the event injunctive relief is not granted as requested by Plaintiff, an award of a compulsory future royalty; and

J. Such other and further relief as the Court deems just and equitable.

### **VIII. DEMAND FOR JURY TRIAL**

Plaintiff hereby demands that all issues be determined by a jury.

OF COUNSEL

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**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

*/s/ Adam W. Poff*

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*Attorneys for Plaintiff Parallel Networks  
Licensing, LLC*

Dated: December 20, 2013

## **EXHIBIT J**

**Page Nos. 86-114**

**REDACTED**

C

**Effective:[See Text Amendments]**West's Delaware Code Annotated Currentness

## Title 6. Commerce and Trade

## Subtitle II. Other Laws Relating to Commerce and Trade

¶ Chapter 18. Limited Liability Company Act¶ Subchapter VI. Distributions and Resignation→ → **§ 18-607. Limitations on distribution**

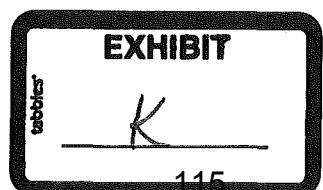
(a) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability. For purposes of this subsection (a), the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(b) A member who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (c) of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(c) Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of 3 years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said 3-year period and an adjudication of liability against such member is made in the said action.

## CREDIT(S)

68 Laws 1992, ch. 434, § 1; 69 Laws 1994, ch. 260, § 29; 72 Laws 2000, ch. 389, § 23, eff. Aug. 1, 2000.



Current through 79 Laws 2013, chs. 1 - 185 (end). Revisions by the Delaware Code Revisors were unavailable at the time of publication.

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