

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PARALLEL TECHNOLOGY, LLC, a :
Delaware limited liability :
company, :
 :
Plaintiff, :
 :
vs. : Civil Action :
 : No. 5190-CC :
3COM CORPORATION, a Delaware :
corporation, :
 :
Defendant. :

- - -

Chancery Court Chambers
New Castle County Courthouse
Wilmington, Delaware
Tuesday, January 19, 2010
4:00 p.m.

- - -

BEFORE: HON. WILLIAM B. CHANDLER, III Vice Chancellor

- - -

THE COURT'S RULING

- - -

CHANCERY COURT REPORTERS
500 North King Street - Suite 11400
Wilmington, Delaware 19801-3759
(302) 255-0525

1 APPEARANCES:

2 DAVID J. MARGULES, ESQ.
3 JAMES. L. MERKINS, ESQ.
4 Bouchard Margules & Friedlander, P.A.
for Plaintiff Parallel Technology, LLC

5 WILLIAM M. LAFFERTY, ESQ.
6 CHRISTINE DEALY HAYNES, ESQ.
7 LESLIE A. POLIZOTI, ESQ.

8 -and-
9 BORIS FELDMAN, ESQ.
of the California Bar
Wilson, Sonsini, Goodrich & Rosati

10 -and-
11 GIDEON SCHOR, ESQ.
12 of the New Jersey Bar
13 Wilson, Sonsini, Goodrich & Rosati
14 for Defendant 3Com Corporation

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1 THE COURT: Good afternoon, counsel.

2 MR. MARGULES: Good afternoon, Your
3 Honor.

4 MR. LAFFERTY: Good afternoon, Your
5 Honor.

6 THE COURT: I understand that there
7 are a number of folks on the line. I don't think we
8 have time for a roll call. I wanted to be sure we
9 have a court reporter with us.

10 Thank you, counsel, for being
11 available in short notice. I read your submissions,
12 and I don't know whether you want to add anything to
13 those before I rule on the application. If anyone
14 wants to, now would be the time.

15 MR. MARGULES: Your Honor,
16 David Margules. Just very briefly. The merger
17 agreement, I think it's important to note, has a
18 drop-dead date of November of 2010. And the only
19 injunction out are injunctions that would stop the
20 deal. So even if the Court enters this -- if the
21 Court were to grant the relief that we request, it
22 doesn't -- the agreement doesn't indicate that it
23 would do anything to prevent the deal. So the harm
24 that the defendants are concerned about doesn't appear

1 to be a harm that's really on the table here. Other
2 than that, we'll rely on our papers, Your Honor.

3 THE COURT: Anything from anyone else?

4 MR. LAFFERTY: Your Honor, this is
5 Bill Lafferty. I don't think there's anything more to
6 add. I don't think the point that Mr. Margules just
7 raised has anything to do with the arguments that
8 we've raised. I don't think I'm going to say anything
9 more about it. There is indeed a drop-dead date in
10 our merger agreement, but that's not the question
11 before Your Honor today. This is a motion to expedite
12 that the other side has filed, and they haven't met
13 the applicable standard for the reasons we set forth
14 in our letter to you earlier today.

15 THE COURT: All right. Thank you,
16 Mr. Lafferty.

17 I'm not going to expedite or grant the
18 application, for basically the three reasons that are
19 identified in Mr. Lafferty's January 19 letter to the
20 Court. First, and perhaps principally, I'm not
21 convinced or satisfied that there is a genuine threat
22 of irreparable harm, given that the agreement in
23 question specifically provides that the approximate
24 measure of damages for the harms that the plaintiff

1 will assertedly suffer because of 3Com's conduct here
2 is expressly defined in the agreement to limit the
3 plaintiff to recovering a million dollars from 3Com
4 for claims arising under or related to the agreement,
5 or up to \$17 million being the purchase price paid to
6 3Com for the patent for certain other claims that
7 aren't pertinent now. So at the time this agreement
8 was entered into by the parties, it appears to the
9 Court that the plaintiff obviously thought that these
10 damages measures could and would fully and adequately
11 compensate the plaintiff for the purported improper
12 conduct by 3Com. And the ability to pursue therefore
13 an action for damages for the approximate measures
14 that are defined in the relevant provision of the
15 agreement obviates the need in this case for expedited
16 proceedings, or for injunctive relief on such an
17 emergency basis.

18 Secondly, I'm also of the mind that,
19 if this matter was going to be brought before the
20 Court on an accelerated basis, it should have been
21 done so earlier than it was. There was at least a
22 period of a month or two that went by when it seems to
23 me would have been more prudent to have immediately
24 filed the action and to have alerted the Court and all

1 the parties involved that there was the possibility or
2 the potential for accelerated proceedings being
3 convened. That not being done, it seems to me the
4 plaintiff now knocks on the door of equity too late,
5 having waited too long and slept on its rights too
6 long for equity to respond in the type of manner that
7 would inflict enormous costs and burdens not only on
8 the parties but on the resources of the Court as well.
9 So, for those two reasons, I would not in the ordinary
10 course expedite this matter.

11 I have gone further than that,
12 however, and read the agreement which you supplied,
13 and have looked carefully at the various counts of the
14 complaint that asserts claims based on conduct of 3Com
15 hereunder that purported agreement, and the purported
16 rights and representations that were made under the
17 agreement. Having reviewed all those counts, I'm not
18 satisfied here that there is truly a colorable claim.
19 It seems to me that the agreement not only
20 contemplates but specifically envisions that there
21 could be an acquisition of 3Com. It obligated any
22 potential acquirer to abide by the provisions of the
23 agreement. And to the extent that 3Com, or rather
24 Parallel in its papers suggests that there's some

1 risks which it speculates about that HP may not be
2 willing to, or be able or willing to abide by those
3 restrictions in the way that 3Com was obligated to,
4 that, it strikes me, is a matter for the Federal Court
5 where the patent litigation is pending to referee that
6 potential dispute, if it ever becomes a dispute, which
7 at this point it isn't ripe anyway because it's not
8 any more than the speculative musings of plaintiffs at
9 this point.

10 Without repeating all of the reasons
11 that are identified in Mr. Lafferty's January 19
12 letter on this third ground, the lack of a colorable
13 claim being asserted, I'm also going to decline to
14 schedule the expedited trial, or hearing that's being
15 requested, or injunctive proceeding that's being
16 requested. So, for all three reasons, the delay in
17 bringing the action, the lack of the true threat of
18 irreparable harm, and the lack of colorable claims, I
19 decline to award the requested relief for an expedited
20 hearing or trial.

21 If there's anything about my ruling
22 that's unclear, counsel, I invite to you ask me now;
23 otherwise, to the extent that it's necessary to
24 implement this ruling, it's so ordered.

1 MR. MARGULES: Your Honor,
2 David Margules. I don't have a question. And
3 obviously, while we're disappointed in the ruling, I
4 did want to thank the Court. I know that this is --
5 I'm sure this is a full day for Your Honor, and I just
6 wanted to express my appreciation for the Court's
7 availability on such notice.

8 THE COURT: Not necessary. I
9 appreciate all your submissions and, despite my ruling
10 that I think you should have brought it earlier,
11 Mr. Margules, you did tee it up very quickly for me.
12 I wanted to assure you that, despite the pressures of
13 the Court and it's calendar and other matters, I've
14 given all of this day to reading your submissions,
15 Mr. Lafferty's, looking at the agreement very
16 carefully and your complaint very carefully. And I
17 want you to know that I've thought long and hard about
18 it before I reached my conclusion. I realize you're
19 disappointed and that you disagree with it. I
20 understand that fully. But I do want you to know that
21 I gave it very careful attention before I came to the
22 conclusion I did.

23 So with that, I wish everyone a good
24 day.

1 MR. LAFFERTY: Your Honor, this is
2 Mr. Lafferty. I do want to chime in. This is one
3 point we obviously are appreciative of you jumping on
4 this on short notice.

5 One housekeeping matter that I wanted
6 to ask about, which is simply, I take it from Your
7 Honor's ruling that there were two motions that were
8 pending: one was the motion for a temporary
9 restraining order and the motion to expedite. I take
10 it from Your Honor's ruling that both are denied.

11 THE COURT: That's correct.

12 MR. LAFFERTY: Thank you.

13 MR. MARGULES: Thank you, Your Honor.

14 THE COURT: All right. Have a good
15 day, counsel.

16 (Teleconference adjourned at
17 4:13 p.m.)

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CERTIFICATE

I, DIANE G. MCGRELLIS, Official Court Reporter of the Chancery Court, State of Delaware, do hereby certify that the foregoing pages numbered 3 through 9 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 20th day of January, 2010.

/s/Diane G. McGrellis
Official Court Reporter
of the Chancery Court
State of Delaware

Certification Number: 108-PS
Expiration: Permanent

Not Reported in A.2d, 2010 WL 718139 (Del.Ch.)
(Cite as: 2010 WL 718139 (Del.Ch.))

HOnly the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

**This decision was reviewed by West editorial staff
and not assigned editorial enhancements.**

Court of Chancery of Delaware.
Re: **PARALLEL TECHNOLOGY**
v.
3COM CORP.
Civil Action No. 5190-CC.

Submitted: Feb. 4, 2010.
Decided: Feb. 12, 2010.

[David J. Margules](#), Bouchard Margules & Fried-
lander, P.A., Wilmington, DE.

[William M. Lafferty](#), [Leslie A. Polizoti](#), [Christine
Dealy Haynes](#), Morris Nichols Arsht & Tunnell LLP,
Wilmington, DE.

[WILLIAM B. CHANDLER III](#), Chancellor.

*1 Dear Counsel:

I have carefully reviewed the arguments in support of and in opposition to plaintiff's Motion to Certify Interlocutory Appeal. Plaintiff's motion is denied for the simple reason that it does not seek appeal of one of the grounds for the Court's January 19, 2010 Order, namely that plaintiff waited too long to file its motion for a TRO and expedited proceedings. Plaintiff did not challenge this ground for the January 19 Order in its certification motion and, therefore, even if its challenges to the other grounds for the January 19 Order were successful, the Order would still stand.

IT IS SO ORDERED.

Very truly yours,

/s/William B. Chandler III

William B. Chandler III

Del.Ch.,2010.
Parallel Technology v. 3Com Corp.
Not Reported in A.2d, 2010 WL 718139 (Del.Ch.)

END OF DOCUMENT

988 A.2d 938, 2010 WL 572110 (Del.Supr.)
(Table, Text in WESTLAW), Unpublished Disposition
(Cite as: 988 A.2d 938, 2010 WL 572110 (Del.Supr.))

HOnly the Westlaw citation is currently available.

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

NOTE: THIS OPINION WILL NOT APPEAR IN A PRINTED VOLUME. THE DISPOSITION WILL APPEAR IN A REPORTER TABLE.

This decision was reviewed by West editorial staff and not assigned editorial enhancements.

Supreme Court of Delaware.

PARALLEL TECHNOLOGY, LLC, a Delaware limited liability company, Plaintiff Below, Appellant,
v.

3COM CORPORATION, a Delaware corporation,
Defendant Below, Appellee.

No. 74,2010.

Submitted: Feb. 16, 2010.

Decided: Feb. 18, 2010.

Court Below: Court of Court of Chancery of the State of Delaware, C.A. No. 5190.

Before [HOLLAND](#), [BERGER](#) and [JACOBS](#), Justices.

ORDER

[CAROLYN BERGER](#), Justice.

*1 This 18th day of February 2010, it appears to the Court that:

(1) The plaintiff/appellant, **Parallel Technology, LLC** (“**Parallel**”), has petitioned this Court, pursuant to [Supreme Court Rule 42](#) (“[Rule 42](#)”), to appeal from the Court of Chancery’s January 19, 2010 denial of **Parallel’s** motions for a temporary restraining order and for expedited proceedings. By order dated February 12, 2010, the Court of Chancery denied **Parallel’s** application for certification on the basis

that the interlocutory appeal would be futile.

(2) Applications for interlocutory review are addressed to the sound discretion of this Court and are granted only in exceptional circumstances. We have examined the Court of Chancery’s January 19, 2010 ruling according to the criteria set forth in [Rule 42](#) and have concluded that exceptional circumstances as would merit review of the ruling do not exist in this case.

NOW, THEREFORE, IT IS HEREBY ORDERED that the interlocutory appeal is REFUSED.

Del.Supr.,2010.

Parallel Technology, LLC v. 3Com Corp.
988 A.2d 938, 2010 WL 572110 (Del.Supr.)

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