

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

LAMBDA OPTICAL SOLUTIONS, LLC,)
)
 Plaintiff,)
)
 v.)
)
 ALCATEL-LUCENT USA INC. and)
 ALCATEL-LUCENT HOLDINGS INC.,)
)
 Defendants.)
)
 _____)
 ALCATEL-LUCENT USA INC. and)
 ALCATEL-LUCENT HOLDINGS INC.,)
)
 Counter-Claimants,)
)
 v.)
)
 LAMBDA OPTICAL SOLUTIONS, LLC,)
 LAMBDA OPTICAL SYSTEMS CORP., and)
 ANASTASIOS TZATHAS,)
)
 Counter-Defendants.)

Civil Action No. 10-487-RGA-CJB

REPORT AND RECOMMENDATION

Plaintiff Lambda Optical Solutions, LLC (“Plaintiff” or “Lambda”) filed this action for infringement of U.S. Patent No. 6,973,229 against Defendants Alcatel-Lucent USA Inc. and Alcatel-Lucent Holdings Inc. (collectively, “Alcatel” or “Defendants”). Defendants in turn asserted counterclaims against Plaintiff, Lambda Optical Systems Corp. (“LOS”), and Anastasios Tzathas (collectively, “Counter-Defendants”). (D.I. 74; D.I. 222) Presently pending before the Court is a request by Counter-Defendants to dismiss certain counterclaims as procedurally improper. (D.I. 410, 427)¹ The Court will first address Counterclaims 1, 4, 5 and 6, and will

¹ Mr. Tzathas has indicated that he agrees with the arguments put forth by Counter-Defendants. (D.I. 410 at 3; D.I. 428 at 1)

then address Counterclaims 8 and 12.

I. Counterclaims 1, 4, 5 and 6

On January 7, 2014, Counter-Defendants submitted a letter to the Court alleging that the following four counterclaims asserted against Mr. Tzathas and/or LOS are procedurally improper, in violation of Federal Rule of Civil Procedure 13(h): Counterclaim 1 (Breach of Contract); Counterclaim 4 (Breach of Duty of Loyalty); Counterclaim 5 (Tortious Interference with Contractual Relations); and Counterclaim 6 (Misappropriation of Trade Secrets). (D.I. 410 at 3) Counter-Defendants requested leave of the Court to file a motion as to those issues. (*Id.*) On January 9, 2014, the Court issued an Order (the “Order”) allowing supplemental briefing on the issue of “whether counterclaim nos. 1, 4, 5 and 6 are procedurally improper.” (D.I. 419) Pursuant to that Order, on January 15, 2014, Lambda and LOS submitted a supplemental letter brief that provided argument with respect to that issue. (D.I. 427)

On August 6, 2015, the Court issued a Report and Recommendation Regarding Lambda and LOS’ Motion for Partial Summary Judgment, in which it recommended that, *inter alia*, Counterclaims 1, 4, 5 and 6 be dismissed via summary judgment. (D.I. 445 at 25) Accordingly, the Court recommends that Counter-Defendants’ dispute with respect to Counterclaims 1, 4, 5 and 6 be DENIED as MOOT.

II. Counterclaims 8 and 12

In their January 7, 2014 letter request, as noted above, Counter-Defendants took issue with only Counterclaims 1, 4, 5 and 6. (D.I. 410) As to certain other counterclaims, including Counterclaim 8 (Unfair Competition) and Counterclaim 12 (Inequitable Conduct), Counter-Defendants acknowledged that, procedurally, these counterclaims were properly asserted against

LOS and Mr. Tzathas (since these claims were also asserted against Lambda). (*Id.* at 2-3)

However, in Counter-Defendants' January 15, 2014 letter brief, they now argued for the first time that Counterclaims 8 and 12 were improperly brought against Mr. Tzathas. (D.I. 427 at 4-5) Counter-Defendants alleged that this was so because "the allegations against [Mr. Tzathas] arise out of a transaction and set of facts different from the transaction and facts that form the basis of the claims against Lambda." (*Id.*)

As for Counterclaim 8, the Court's August 6, 2015 Report and Recommendation recommended that it be dismissed via summary judgment, (D.I. 445 at 25), and the Court accordingly recommends that Counter-Defendants' dispute with respect to it be DENIED as MOOT. With respect to Counterclaim 12, the Court declines to consider new argument regarding a counterclaim that (1) was not asserted, in Lambda and LOS' initial letter, to be improperly filed; and (2) was addressed in Lambda and LOS's letter brief in violation of the Court's January 9, 2014 Order. *Cf. Telcordia Techs., Inc. v. Lucent Techs., Inc.*, 514 F. Supp. 2d 598, 606 n.5 (D. Del. 2007). Accordingly, the Court recommends that Counter-Defendants' dispute with respect to Counterclaim 12 be DENIED.

This Report and Recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b)(1), and D. Del. LR 72.1. The parties may serve and file specific written objections within fourteen (14) days after being served with a copy of this Report and Recommendation. Fed. R. Civ. P. 72(b). The failure of a party to object to legal conclusions may result in the loss of the right to de novo review in the district court. *See Sincavage v. Barnhart*, 171 F. App'x 924, 925 n.1 (3d Cir. 2006); *Henderson v. Carlson*, 812 F.2d 874, 878-79 (3d Cir. 1987).

The parties are directed to the Court's Standing Order in Non-Pro Se Matters For

Objections Filed Under Fed. R. Civ. P. 72, dated October 9, 2013, a copy of which is available on the District Court's website, located at <http://www.ded.uscourts.gov>.

Dated: August 11, 2015



Christopher J. Burke
UNITED STATES MAGISTRATE JUDGE