

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

CFMT, INC. and CFM TECHNOLOGIES, INC.,	:	
	:	
	:	
Plaintiffs,	:	
v.	:	Civil Action No. 95-549-LON
	:	
YIELDUP INTERNATIONAL CORP.,	:	
	:	
Defendant.	:	

MAGISTRATE'S REPORT AND RECOMMENDATION

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Dated: April 5, 1996

Wilmington, Delaware

BACKGROUND FACTS AND DISCUSSION

This is a patent infringement action in which plaintiffs, CFMT, Inc. ("CFMT," the assignee and owner of the patent in suit) and CFM Technologies, Inc. ("CFM," the exclusive licensee), allege that defendant, YieldUp International Corp. ("YieldUp"), has infringed one or more claims of specified Patent No. 4,911,761 ("761 patent") related to a process and apparatus for drying surfaces. (D.I. 1). Presently before the Court is plaintiffs' motion to strike insufficient defenses and for a more definite statement pursuant to Rules 10(b), 12(e) and 12(f) of the Federal Rules of Civil Procedure (D.I. 8).

Federal Rule of Civil Procedure 12(e) provides, in relevant part: "If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading." Fed.R.Civ.P. 12(e). Rule 12(e) "is plainly designed to strike at unintelligibility rather than want of detail. If the pleading meets the requirements of Rule 8 and fairly notifies the opposing party of the nature of the claim, a motion for a more definite statement will not be granted." Thomson S.A. v. Time Warner, Inc., C.A. No. 94-83-LON, slip. op. at 3 (June 2, 1994). See also Schaedler v. Reading Eagle Publication, Inc., 370 F.2d 795, 798 (3d Cir. 1967) ("Although the motion for a more definite statement continues to exist in Rule 12(e), it is directed to the rare case where because of the vagueness or ambiguity of the pleading the answering party will not be able to frame a responsive pleading"); Beery v. Hitachi Home Electronics (America), Inc., 157 F.R.D. 477, 480 (C.D.Cal. 1993); Wood & Locker, Inc. v. Doran & Associates, 708 F.Supp. 684 (W.D.Pa. 1989) (unintelligibility, not lack of detail, is the basis for granting a Rule 12(e) motion); United States v. Board of Harbor Commissioners, 73 F.R.D. 460, 462 (D.Del. 1977).

Indeed, motions for a more definite statement under Rule 12(e), which are

within the discretion of the Court, are looked upon with disfavor and are consistently denied "where the information sought by the motion could easily be obtained by discovery." *Id.* at 2, 4. See also Wilson v. United States, 585 F.Supp. 202, 205 (M.D.Pa. 1984). Motions to strike under Fed.R.Civ.P. 12(f)¹ are likewise disfavored, *except* when they serve to expedite, rather than delay. Heller Financial, Inc. v. Midwhey Powder Co., Inc., 883 F.2d 1286, 1294-95 (7th Cir. 1989) (appellate court upheld district court's striking of affirmative defenses as insufficient on the face of the pleading, where defenses were nothing but "bare bones conclusory allegations," omitting any plain and short statement of facts and totally failing to allege the necessary elements of the alleged claims); Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure, §1274 (1990) ("[a]n affirmative defense may be pleaded in general terms and will be held to be sufficient, and therefore invulnerable to a motion to strike, as long as it gives plaintiffs fair notice of the nature of the defense").

Rule 8 of the Federal Rules of Civil Procedure states that, in addition to a declaration of jurisdiction and a demand for relief, a pleading need only contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8. This requirement does not change in a patent infringement action. Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure, §1251 (1990) ("[i]n drafting the complaint in an infringement action, plaintiff must identify the patent that has been infringed and indicate in what manner the patent has been encroached upon; however, no special laws of particularity of the statement is required.") (footnotes omitted). Nor does Fed.R.Civ.P.

¹ Fed.R.Civ.P. 12(f), **Motion to Strike**, provides that:

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

10, Form of Pleadings, which states in relevant part: "All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances...Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth." Fed.R.Civ.P. 10(b).

In the case at bar, plaintiffs claim that defendant's defense of patent invalidity due to the patent's failure to meet one or more of the patentability conditions specified in 35 U.S.C. §§ 102(a), 102(b), 102(e), 102(f), 102(g) and 112² is insufficient to comply with

² The cited parts of 35 U.S.C. §102, **Conditions for patentability; novelty and loss of right to patent**, provide as follows:

A person shall be entitled to a patent unless-

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or...

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent, or

(f) he did not himself invent the subject matter sought to be patented, or

(g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and

Fed.R.Civ.P. 8(e) and 10(b), where the alleged patent deficiencies are so inclusively asserted by defendant, without setting forth a ground of invalidity or any set of

last to reduce to practice, from a time prior to conception by the other.

35 U.S.C. §102.

Section 112 of the United States Code, **Specification**, provides as follows:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

A claim may be written in independent or, if the nature of the case admits, in dependent or multiple dependent form.

Subject to the following paragraph, a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

A claim in multiple dependent form shall contain a reference, in the alternative only, to more than one claim previously set forth and then specify a further limitation of the subject matter claimed. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of the particular claim in relation to which it is being considered.

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

35 U.S.C. §112.

circumstances giving rise to any invalidity defense. Plaintiffs also argue that defendant has failed to specify the grounds of claimed invalidity as to which defendant asserts entitlement to declaratory judgment (D.I. 8).³

Defendant counters that the pleading at issue fully comports with the well-established practice in this district, meets the requirements of Fed.R.Civ.P. 8 and fairly notifies the plaintiffs of the nature of the claim, thereby supporting denial of plaintiffs' motion (D.I. 13).

It is well recognized that where a party is able to discharge his pleading obligations under the Federal Rules of Civil Procedure, a Rule 12(e) motion made to obtain a *better* affirmative pleading, thus enabling the moving party to provide a more enlightened or accurate response, will be denied, particularly if the matter sought is a proper subject for discovery. Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure, §1377 (1990). With particular regard to patent infringement actions, for instance, plaintiff need not specify the claims of originality upon which he intends to rely at trial, or provide details of the respects in which defendant has infringed the patent; nor should defendant be required to explain his assertion of prior invention. Id. See also Beery, 157 F.R.D. at 480. Of

³ YieldUp's invalidity defense is contained in paragraphs 19 and 20 of its answer:

19. Upon information and belief, the claims of the '761 patent are invalid because the invention allegedly patented thereby fails to meet one or more of the conditions for patentability specified in Title 35, United States Code, in particular one or more of Sections 102(a), 102(b), 102(e), 102(f), 102(g) and 112.

20. Upon information and belief, the claims of the '761 patent are invalid because the averred invention allegedly patented thereby would have been obvious to a person of ordinary skill in the art at the time of the alleged invention and thus fails to meet the requirements of 35 U.S.C. § 103.

(D.I. 4).

course, federal law addresses potential deficiencies in this regard by requiring that a party (defendant) seeking to assert the defense of noninfringement or invalidity of the patent give the plaintiff 30 days written notice of certain elements of those defenses, if the defendant has chosen not to set forth those elements in his answer. 35 U.S.C. §282; Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure, §1251 (1990).

In the answer at issue in the case at bar, defendant bases its invalidity defense on specifically identified statutory sections applying to anticipation (35 U.S.C. §102), obviousness (35 U.S.C. §103) and patent specification defects (35 U.S.C. §112) (D.I. 4). This Court has held that pleading invalidity in such general terms satisfies the requirements of notice pleading. Calgon Corporation v. Nalco Chemical Company, C.A. No. 89-90-JRR, slip op. at 12 (July 3, 1990). Thus, while it is generally true that Fed.R.Civ.P. 10 requires a party to plead in separate paragraphs short, plain and direct statements of the contended grounds "whenever a separation facilitates the clear presentation of the matters set forth," as would be the case with different legal theories, where a party fails to do so "is not necessarily fatal especially when the adversary makes no objection." Vigor v. Chesapeake & Ohio R. Co., 101 F.2d 865, 869 (7th Cir.), cert. denied, 387 U.S. 635 (1939). And while the Court duly acknowledges plaintiffs' objections to defendant's form of answer, it nonetheless finds that YieldUp's affirmative defenses sufficiently comport with the Federal Rules of Civil Procedure, providing plaintiff with fair notice of the nature of the defense.

Furthermore, the parties have proceeded with discovery, serving interrogatories which ultimately will provide each party with the additional, more specific information required for litigation, effectively rendering plaintiffs' present motion moot. See, e.g., Lert v. A.C. Nielsen Company, 1993 U.S. Dist. Lexis 4235 at 5 (N.D.Ill. 1993).

Thus, in light of the aforementioned considerations, the Court must deny plaintiffs' motion to strike insufficient defenses and for a more definite statement motion.

See Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure, §1274 (1990).

CONCLUSION

In conclusion, for the reasons contained herein, I recommend that plaintiffs' motion to strike insufficient defenses and for a more definite statement be **DENIED**.

The appropriate Order consistent with this Report and Recommendation shall follow.