

1 '671, '649 and '231 patents. GuideTech maintains that Brilliant's
2 infringement has been and continues to be willful.

3 Brilliant moves to strike the background section of
4 GuideTech's counterclaim, which contains the following allegations.
5 Shalom Kattan is Brilliant's founder and president. Brilliant and
6 GuideTech compete in the market for "precision time and frequency
7 measurement instruments." GuideTech's Answer ¶ 62. Prior to
8 founding Brilliant, Mr. Kattan founded and was employed by Guide
9 Technologies, Inc., which was the predecessor of GuideTech.¹
10 During his employment, Mr. Kattan invented the patents-at-issue in
11 GuideTech's counterclaim and had access to Guide Technologies'
12 confidential information and trade secrets. In 2004, Mr. Kattan
13 resigned from his employment with Guide Technologies. As part of
14 his resignation, he signed an "Employment Separation Agreement,"
15 which included a non-disclosure clause that required him to, among
16 other things, protect Guide Technologies' proprietary information.

17 LEGAL STANDARD

18 Pursuant to Federal Rule of Civil Procedure 12(f), the Court
19 may strike from a pleading "any insufficient defense or any
20 redundant, immaterial, impertinent or scandalous matter." The
21 purpose of a Rule 12(f) motion is to avoid spending time and money
22 litigating spurious issues. Fantasy, Inc. v. Fogerty, 984 F.2d
23 1524, 1527 (9th Cir. 1993), rev'd on other grounds, 510 U.S. 517

24
25 ¹ Brilliant complains that GuideTech's use of the name
26 "GuideTech" to refer to Guide Technologies is intended to mislead
27 and confuse. For the purposes of this motion, because GuideTech
28 does not distinguish between itself and its predecessor, the Court
assumes that the background section refers to Guide Technologies.
Notably, the patents accompanying Brilliant's complaint name Guide
Technologies as the assignee.

1 (1994).

2 DISCUSSION

3 Brilliant moves to strike the background section in its
4 entirety, arguing that it contains "immaterial, impertinent or
5 scandalous matter." Mot. at 2. Matter is immaterial if it has no
6 essential or important relationship to the claim for relief plead.
7 Fantasy, Inc., 984 F.2d at 1527. Matter is impertinent if it does
8 not pertain and is not necessary to the issues in question in the
9 case. Id. Brilliant asserts that the allegations against Mr.
10 Kattan do not pertain to the purported infringement of the patents-
11 at-issue and that GuideTech makes them only to cast Mr. Kattan in a
12 negative light and to cause confusion.

13 GuideTech responds that these allegations, among other things,
14 support its claim that Brilliant has been and continues to be
15 willful in its infringement of GuideTech's patents. To demonstrate
16 that a defendant willfully infringed, a patentee must show at least
17 "objective recklessness." In re Seagate Tech., LLC, 497 F.3d 1360,
18 1371 (Fed. Cir. 2007). Proving objective recklessness entails a
19 two-step process. First, a patentee must prove by "clear and
20 convincing evidence that the infringer acted despite an objectively
21 high likelihood that its actions constituted infringement of a
22 valid patent." Id. Once this threshold showing is made, "the
23 patentee must also demonstrate that this objectively-defined risk
24 (determined by the record developed in the infringement proceeding)
25 was either known or so obvious that it should have been known to
26 the accused infringer." Id.

27 If GuideTech proves that Brilliant's products infringe, Mr.
28 Kattan's prior employment with Guide Technologies could illuminate

1 whether Brilliant's actions were objectively reckless. Mr. Kattan
2 purportedly has personal knowledge of the development of the
3 inventions claimed by the patents-in-suit. Furthermore, he stands
4 in a position to prevent Brilliant from infringing GuideTech's
5 intellectual property. Brilliant argues that Mr. Kattan's state of
6 mind is not relevant to proving the objectively high likelihood of
7 infringement under Seagate. See Seagate, 497 F.3d at 1371 ("The
8 state of mind of the accused infringer is not relevant to this
9 objective inquiry."). Although this is true, these allegations do
10 not go only to Mr. Kattan's state of mind; instead, they provide a
11 context from which a fact-finder can determine whether Brilliant
12 acted despite a high likelihood that its products would infringe.
13 Moreover, these allegations provide a factual basis that suggests
14 that GuideTech knew of the risk of infringement.

15 As Brilliant acknowledges, motions to strike are disfavored
16 remedies. GuideTech's allegations concerning Mr. Kattan are
17 relevant to its claim, among others, that Brilliant has been and
18 continues to be willful in allegedly infringing the patents-in-
19 suit. Accordingly, the Court does not strike GuideTech's
20 background section.

21 CONCLUSION

22 For the foregoing reasons, the Court DENIES Brilliant's Motion
23 to Strike Specified Portions of GuideTech's Counterclaim (Docket
24 No. 11). A case management conference is scheduled for May 4, 2010
25 at 2:00 p.m.

26 Dated: March 24, 2010



27 CLAUDIA WILKEN
28 United States District Judge