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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ACCO BRANDS USA LLC, a Delaware
corporation,

Plaintiff,

v.

JENS E. SORENSEN, as Trustee of the
SORENSEN RESEARCH &
DEVELOPMENT TRUST,

Defendant.

Case No. 08cv1670-BTM (CAB)

**ORDER RE MOTION TO STRIKE
AND PARTIAL JUDGMENT ON THE
PLEADINGS**

Counterclaimant Sorensen moves to strike Counterdefendant Acco's Third Affirmative Defense for laches and equitable estoppel and seeks partial judgment on the pleadings on the Third Affirmative Defense. For the reasons that follow, Sorensen's motion to strike is **GRANTED**, Acco is granted leave to amend, and Sorensen's motion for partial judgment on the pleadings is **DENIED**.

Acco's answer to Sorensen's Counterclaim for patent infringement contains the following affirmative defense:

**Third Affirmative Defense
(Laches/Equitable Estoppel)**

Upon information and belief, Sorensen's claims for relief are barred by laches and/or equitable estoppel.

[Dock. #21.]

Affirmative defenses are governed by the same pleading standard as complaints.

1 *Qarbon.com Inc. v. eHelp Corp.*, 315 F. Supp. 2d 1046, 1049 (N.D. Cal. 2004). Under
2 Fed. R. Civ. P. 8, an affirmative defense must be pled with the minimal specificity to give
3 the plaintiff “fair notice” of the defense. *Wyshak v. City Nat’l Bank*, 607 F.2d 824, 826 (9th
4 Cir. 1979). “Where an affirmative defense simply states a legal conclusion or theory
5 without the support of facts explaining how it connects to the instant case, it is insufficient
6 and will not withstand a motion to strike.” *Solis v. Zenith Capital, LLC*, No. C 08-4854
7 PJH, 2009 WL 1324051, at *2 (N.D.Cal. Oct. 26,2009). Acco’s “Upon information and
8 belief” statement does not provide the requisite supporting facts for this defense, and
9 thus, Sorensen’s motion to strike is **GRANTED**, and the Court strikes the Third
10 Affirmative Defense without prejudice.

11 Sorensen argues that leave would be futile “because Acco openly concedes it
12 cannot amend” and “because laches and equitable estoppel are fundamentally
13 inconsistent with Acco’s request for declaratory judgment of non-infringement.” (Mot. at
14 7-8) Neither argument is persuasive.

15 Acco explains that its offer to stipulate to dismissal of the Third Affirmative Defense
16 – presumably the basis for Sorensen’s belief that Acco “concedes it cannot amend” –
17 was not made because it lacked facts to support its defenses, but rather because it
18 sought “to avoid troubling this Court with another needless motion in a case that is largely
19 stayed.” (Black Decl. ¶ 5) Moreover, contrary to Sorensen’s assertion that Acco “cannot
20 allege facts to support this defense,” in its response, Acco cites facts to support its laches
21 and equitable estoppel defenses. (Opp. at 5, 6)

22 Sorensen supports its latter argument with only a two sentence paragraph that
23 states:

24 Unlike the other ‘184 patent cases currently before this Court, it is Acco that
25 affirmatively brought the issue of whether or not they infringed the ‘184 patent to
26 be decided by this Court via a declaratory relief action. They cannot obtain the
very relief they requested via a claim that the defendant patent holder should be
equitably precluded from asserting the contrary position.

27 (Mot. at 8) Absent any authority for Sorensen’s position, the Court declines to find that
28 leave to amend would be futile merely because Acco originally brought a declaratory

1 judgment action.

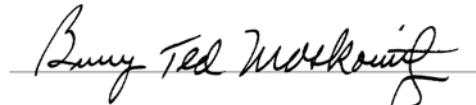
2 Because the Court strikes Acco's Third Affirmative Defense and grants Acco leave
3 to amend its answer, Sorensen's motion for partial motion for partial judgment on the
4 pleadings is **DENIED**.

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6 **IT IS SO ORDERED.**

7 DATED: February 24, 2011

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Honorable Barry Ted Moskowitz
United States District Judge

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