

1st Technology LLC VS Sportingbet PLC, et al

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9 SPORTINGBET, PLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

1ST TECHNOLOGY LLC,
Plaintiff,

CASE NO. CV-S-05-0788-RLH-PAL

vs.

**MOTION TO DISMISS PURSUANT TO
FED. R. CIV. P. 12(b)(2);
MOTION FOR MORE DEFINITE
STATEMENT PURSUANT TO FED. R.
CIV. P. 12(e)**

SPORTINGBET PLC, NDS GROUP PLC,
ONGAME E-SOLUTIONS AB, and ORBIS
TECHNOLOGY,
Defendants.

Defendant Sportingbet PLC ("Defendant"), by and through counsel, hereby moves this Court for entry of an order dismissing the Complaint filed by 1st Technology LLC ("Plaintiff") for lack of jurisdiction over the person, pursuant to Fed. R. Civ. P. 12(b)(2). If the Court finds jurisdiction, then Sportingbet asks for an order requiring a more definite statement by Plaintiff, pursuant to Fed. R. Civ. P. 12(e).

This Motion is made and based upon the papers and pleadings on file herein, the following Memorandum of Points and Authorities, the Declaration of Daniel Talisman, and any oral argument that the Court may permit.

Dated this 10th day of October 2005.

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12, 13

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 There are two major deficiencies in Plaintiff's Complaint in the present action. First,
5 Plaintiff has failed to establish personal jurisdiction, requiring a dismissal pursuant to Federal
6 Rule of Civil Procedure 12(b)(2). Second, Plaintiff has failed to articulate what products and/or
7 what actions by the Defendants, including Sportingbet, allegedly infringe upon its patent.
8 Therefore, even if there was personal jurisdiction (which there is not), Plaintiff must be required
9 to present Sportingbet and the other Defendants with a Complaint containing more specific
10 allegations of infringement.

11 **II.**

12 **STATEMENT OF FACTS**

13 On June 27, 2005, 1st Technology filed its complaint (the "Complaint") alleging patent
14 infringement against multiple Defendants, including Sportingbet. As pled, the Complaint alleges
15 infringement of U.S. Patent No. 5,564,001 entitled "Method and System of Interactively
16 Transmitting Multimedia Information Over a Network Which Requires Reduced Bandwidth"
17 (the "'001 Patent"), U.S. Patent No. 5,745,379 "Method for the Production and Transmission of
18 Enhanced Multimedia Information" (the "'379 Patent"), and U.S. Patent No. 5,845,088 entitled
19 "Method for the Production and Transmission of Interactive Enhanced Multimedia Information"
20 (the "'088 Patent"). (See Complaint).

21
22 On September 27, 2005, 1st Technology filed a Rule 41(a)(1) Notice of Partial Dismissal
23 of Complaint for Patent Infringement ("Notice"). (See Notice). In this Notice, 1st Technology
24 voluntarily dismissed its claims of infringement of the '379 and '088 Patents against Sportingbet
25 and all other named defendants. (Id.) After 1st Technology's voluntary dismissal, only its claim
26 for infringement of the '001 Patent remains. The Complaint, however, does not identify a single
27 Sportingbet product that allegedly infringes the '001 Patent, nor does the Complaint allege a
28

1 specific act of infringement by any named Defendant, including Sportingbet.¹ In addition, with
2 regard to personal jurisdiction, Plaintiff has made conclusory allegations but has cited to no
3 specific activities by Sportingbet within Nevada that would confer jurisdiction.

4
5 **III.**

6 **LEGAL ARGUMENT**

7 **A. MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION.**

8 **1. Legal Standard For Motion To Dismiss For Lack Of Personal Jurisdiction.**

9 The burden of establishing personal jurisdiction rests with a plaintiff. Farmers Ins. Exch.
10 v. Portage la Prairie Mut. Ins. Co., 907 F.2d 911, 912 (9th Cir. 1990). Where a defendant moves
11 to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of
12 demonstrating that jurisdiction is appropriate. Sher v. Johnson, 911 F.2d 1357, 1361 (9th Cir.
13 1990). To establish that personal jurisdiction over a defendant is proper, a plaintiff must show
14 that (1) Nevada's long-arm statute confers personal jurisdiction; and (2) that the exercise of
15 jurisdiction comports with the Constitutional principles of due process. Omeluk v. Langsten Slip
16 & Batbyggeri A/S, 52 F.3d 267, 269 (9th Cir. 1995). Nevada's long-arm statute, in turn, permits
17 the exercise of jurisdiction to the same extent as the U.S. Constitution. Nev. Rev. Stat. 14.065
18 (2005). As set by the Constitution, for a court to exercise personal jurisdiction over a non-
19 resident defendant, that defendant must have at least "minimum contacts" with the relevant
20 forum such that the exercise of jurisdiction "does not offend judicial notions of fair play and
21 substantial justice." International Shoe Co. v. Washington, 326 U.S. P.S. 310, 316 (1945); Asahi
22 Metal Indus. Co. v. Superior Court, 480 U.S. 102 (1987).

23 ...

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25 ¹ Plaintiff simply alleges that Sportingbet "either" directly infringed "or through [unidentified] acts of contributory
26 infringement or inducement" infringed at least "Claim 26 of the '001 patent." (See Complaint, ¶¶ 12-13). Several
27 months before filing this action, 1st Technology sent Sportingbet's UK counsel a letter saying that Sportingbet's
28 "Paradise Poker operation" infringed all three of the patents in the Complaint. Sportingbet responded by arguing
that it did not infringe any of the three patents. As noted, *supra*, "Paradise Poker" is not mentioned in the
Complaint, and Plaintiff has jettisoned claims of infringement of the '379 and '088 Patents. Therefore, it cannot be
determined whether "Paradise Poker" or some other product forms the basis for Plaintiff's remaining infringement
claim.

1 **2. The Court Lacks General Jurisdiction.**

2 General jurisdiction refers to jurisdiction to adjudicate claims that do not arise from a
3 defendant's contacts within the forum state. Thus, if a defendant is amenable to general
4 jurisdiction in a state, the state may exercise jurisdiction over the defendant based on any claim,
5 including claims unrelated to the defendant's contacts with the state. See Brayton Purcell LLP v.
6 Recordon & Recordon, 361 F. Supp. 2d 1135, 1139 (N.D. Cal. 2005) (citing 16-108 Moore's
7 Fed. Prac. Civ. § 108.40). The test for general jurisdiction has been summarized by the Ninth
8 Circuit as follows:

9 For general jurisdiction to exist over a non-resident defendant . . .the defendant
10 must engage in "continuous and systematic general business contacts" that
11 "approximate physical presence" in the forum state. **This is an exacting**
12 **standard**, as it should be, because a finding of general jurisdiction permits a
13 defendant to be haled into court in the forum state to answer for any of its
14 activities anywhere in the world.

15 Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 801 (9th Cir. 2004). (emphasis
16 added). When a court takes on the issue of general jurisdiction, factors to be taken into
17 consideration are whether the defendant makes sales, solicits or engages in business in the state,
18 serves the state's markets, designates an agent for service of process, holds a license, or is
19 incorporated there. See Bancroft & Masters, Inc. v. Augusta Nat'l, Inc., 223 F.3d 1082, 1086
20 (9th Cir. 2000).

21 In the present matter, Plaintiffs have neither alleged nor demonstrated the existence of
22 facts sufficient to support a finding of general jurisdiction over Sportingbet. Sportingbet is not
23 incorporated in Nevada, it does not hold any licenses to conduct business in Nevada, it has not
24 designated any agent for service of process in Nevada, and it does not conduct business in
25 Nevada. (See Declaration of Daniel Talisman ("Talisman Declaration"), a true and correct copy
26 of which is attached hereto as Exhibit "A," ¶¶ 6-9). In fact, named Defendant Sportingbet Plc is
27 merely a holding company that, in and of itself, does not conduct business anywhere in the
28 world. (See id., ¶¶ 5-6). Of the Sportingbet entities actually engaged in business activities, but
not named as parties to the present lawsuit, those entities operate outside of the United States.
(See id., ¶ 7). Although Plaintiff alleges that Sportingbet Plc has transacted business within the

1 State of Nevada, it cites to no actual examples of actual business transactions. Likely this is
2 because Sportingbet Plc has not made, used, sold, or offered to sell or distribute software
3 products that infringe the '001 in Nevada.

4 Plaintiff has not and cannot allege that Sportingbet Plc or any Sportingbet entity has
5 designated an agent or sought licensing or incorporation within this jurisdiction. While Plaintiffs
6 have raised bald allegations of transactions within Nevada, these allegations are simply
7 unfounded. As such, Plaintiff has failed to demonstrate sufficient grounds to support a finding of
8 general jurisdiction over Sportingbet.

9 **3. The Court Lacks Specific Jurisdiction.**

10 When there is no general jurisdiction over a defendant, a court may still find that specific
11 jurisdiction exists. The Ninth Circuit has established a three-prong test for analyzing a claim of
12 specific jurisdiction:

13 (1) The non-resident defendant must purposely direct his activities or consummate
14 some transaction with the forum or resident thereof; or perform some act by
15 which he purposely avails himself of the privilege of conducting activities in the
16 forum, thereby evoking the benefits and protection of its laws; (2) the claim must
be one which arises out of or relates to the defendant's forum-related activities;
and (3) the exercise of jurisdiction must comport with fair play and substantial
justice, i.e., it must be reasonable.

17 Lake v. Lake, 817 F.2d 1416, 1421 (9th Cir. 1987). The plaintiff bears the burden of satisfying
18 the first two prongs of the test. Sher, 911 F.2d at 1361. If the plaintiff fails to satisfy either of
19 these prongs, personal jurisdiction is not established in the forum state. Schwarzenegger, 374
20 F.3d at 802. Only upon success by the plaintiff in satisfying both of the first two prongs does the
21 burden shift to the defendant to present a compelling case, under the third prong, that the
22 exercise of jurisdiction would not be reasonable. See id. (citing Burger King Corp. v. Rudzewicz,
23 471 U.S. 462, 476- 78 (1985)).

24 Under the first prong of the three-part specific jurisdiction test, a plaintiff must establish
25 that a defendant either purposely availed itself of the privilege of conducting activities in the
26 jurisdiction, or purposely directed its activities toward the jurisdiction. See id. Although courts
27 often use the phrase "purposeful availment" in shorthand fashion, to include both purposeful
28 availment and purposeful direction, availment and direction are, in fact, two distinct concepts.

1 See id. A purposeful availment analysis is most often used in suits sounding in contract. See id.
2 (citing Dow v. Unocal Corp., 248 F.3d 915, 924 (9th Cir. 2001). A purposeful direction analysis,
3 on the other hand, is most often used in suits sounding in tort. Id. (citing Dole Food Co., Inc. v.
4 Watts, 303 F.3d 1104, 1111 (9th Cir. (2002))). In the present action there is no asserted contract
5 between Plaintiffs and Sportingbet parties in Nevada, nor was there performance of any
6 agreement by Sportingbet within Nevada. Accordingly, the appropriate standard for the analysis
7 of specific jurisdiction in the present matter is the purposeful direction analysis.

8 The purposeful direction requirement insures that a non-resident defendant will not be
9 haled into court based upon random, fortuitous, or attenuated contacts with the forum state. Rio
10 Properties, Inc. v. Rio International Interlink, 284 F.3d 1007, 1019 (9th Cir. 2002). The
11 purposeful direction test consists of three elements: (1) the defendant committed an intentional
12 act; (2) the defendant expressly aimed that act at the forum state; and (3) the act caused harm, the
13 brunt of which is suffered – and which the defendant knows is likely to be suffered – in the
14 forum. Id. (citing Calder v. Jones, 465 U.S. 783, 788-89 (1984)).

15 In the present case, no Sportingbet entity meets the requirements of the purposeful
16 direction test. As has been noted previously, Sportingbet Plc is a holding company that does not
17 direct any activity toward the state of Nevada. (See Talisman Declaration, ¶¶ 4-6). In addition,
18 there has been no demonstration of any purposefully-directed activity in Nevada by an unnamed
19 Sportingbet entity. As Plaintiff is unable to demonstrate purposeful direction in Nevada by
20 Sportingbet, its claims are insufficient to establish that this Court has jurisdiction. Therefore,
21 Sportingbet respectfully requests that the Complaint be dismissed pursuant to Fed. R. Civ. P.
22 12(b)(2).²

23 If the Court determines that dismissal for lack of jurisdiction is appropriate, the remaining
24 sections of this Motion become superfluous and may be disregarded. If, however, the Court is
25 able to find sufficient grounds for the exercise of jurisdiction over Sportingbet it will be
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27 ² Assuming, *arguendo*, that Sportingbet meets the requirements of the purposeful direction test, dismissal is still
28 appropriate as Plaintiff's claim is not one which arises out of or relates to Sportingbet's activities within this forum.
See Lake, 817 F.2d. at 1421.

1 necessary for Plaintiff to file a more definite statement for the reasons discussed below.

2 **B. IN THE EVENT THAT PLAINTIFF DEMONSTRATES JURISDICTION OVER**
3 **SPORTINGBET IS APPROPRIATE, PLAINTIFF SHOULD BE REQUIRED TO**
4 **FILE A MORE DEFINITE STATEMENT.**

5 **1. Sportingbet is Unable to Ascertain What Product(s) and/or Process(es) the**
6 **Complaint Concerns.**

7 Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, a complaint must contain a
8 “short and plain statement of the claim showing that the pleader is entitled to relief.” Rule 12(e)
9 of the Federal Rules of Civil Procedure provides a remedy in cases where “a complaint is so
10 vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading.”
11 Fed. R. Civ. P. 12(e)(2005); see generally Conley v. Gibson, 355 U.S. 41, 47 (1957) (a complaint
12 must give “fair notice of what the plaintiff’s claim is and the grounds upon which it rests”); See
13 also Woods v. Reno Commodities, Inc., 600 F. Supp. 574, 580 (D. Nev. 1984) (Rule 12(e) “is
14 designed to strike at unintelligibility”). A Rule 12(e) motion is committed to the discretion of
15 the trial court. Rendon v. Fresno Police Department, No. 1:05-CV-00661OWWDLB, 2005 WL
16 1925859, at *2 (E.D. Cal. Aug. 11, 2005).

17 1st Technology’s Complaint contains three alternatively pleaded theories of infringement:
18 (direct, contributory, “or” inducement (see Complaint, ¶¶ 12-13)), without any specificity as to
19 time, place, actor, or product. Thus, as presently pled, the Complaint could be alleging any,
20 some, or all of the following at some unspecified point during the last nine years:

- 21 • Infringement by one or more (unspecified) number of Sportingbet (unspecified)
22 products;
- 23 • Infringement by some (unspecified) third party through the use of one or more of
24 Sportingbet’s (unspecified) products in a particular (unspecified) manner;
- 25 • Infringement by Sportingbet’s own use of one of its (unspecified) products in
26 combination with some other (unspecified) processes or products;
- 27 • Infringement by Sportingbet’s (unspecified) use of (unspecified) products or
28 processes of some (unspecified) third party;
- Infringement by Sportingbet acting in an (unspecified) way to encourage an
(unspecified) third party to perform an (unspecified) process.

1 See 35 U.S.C. § 271(a) (direct infringement); id. § 271 (b) (inducement by infringement);
2 id. § 271 (c) (contributory infringement); see generally 5 Donald S. Chisum, CHISUM ON
3 PATENTS §§ 16-17 (Matthew Bender 2001).

4 In sum, the allegations in the Complaint could be directed to a considerable range of
5 products and/or conduct on the part of Sportingbet, as well as various unnamed third parties.
6 Sportingbet cannot determine what defenses are available, nor can it prepare an adequate
7 responsive pleading, until it understands what products or acts allegedly are infringing. The lack
8 of precision in the Complaint also makes it difficult for Sportingbet to meet its initial disclosure
9 obligations under Fed. R. Civ. P. 26(a)(1). Rule 26(a)(1) requires Sportingbet to disclose certain
10 information that it “may use to support ... defenses”; however, there are no facts alleged with
11 specificity in the pleadings that would assist Sportingbet in determining what information it may
12 so use.

13 **2. The Failure to Identify Allegedly Infringing Products Is a Basis for Relief.**

14 There is ample support in federal case law for the present request. See, e.g., Agilent
15 Technologies, Inc. v. Micromuse, Inc., No. 04 Civ. 3090 (RWS), 2004 WL 2346152, at *5-6
16 (S.D.N.Y. Oct. 19, 2004) (where a complaint “does not specify which products” allegedly
17 infringed plaintiffs’ patents, defendant is “entitled to know which of its products or services are
18 alleged to have infringed ... and a more definite statement setting forth that information is
19 appropriate”); Ondeo Nalco Co v. EKA Chemicals, Inc., No. Civ. A. 01-537-SLR, 2002 WL
20 1458853, at *1, n.2 (D. Del. June 10, 2002) (where counterclaims contained minimal description
21 of infringed products, counterclaims were too vague to provide the plaintiff with fair notice of
22 which products were accused of infringing) (citation omitted); In re Papst Licensing GmbH
23 Patent Litig., No. Civ. A. MDL 1298, Civ. A. 99-3118, 2001 WL 179926, at *1 (E.D. La. Feb.
24 22, 2001) (granting Rule 12(e) motion and requiring plaintiff to amend complaint to specify
25 which products allegedly infringed); see also MacNeill Eng. Co. v. Trisport Ltd., 59 F. Supp.2d
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1 199, 201-02 (D. Mass. 1999) (denying, as futile, plaintiff's motion to amend complaint to add
2 claim for contributory infringement, where proposed amendment failed to specify component or
3 part alleged to be enabling direct infringement). Indeed, under similar circumstances, one court
4 has been willing to grant outright dismissal of the complaint under Rule 12(b)(6), albeit with
5 leave to replead, where the complaint pointed "vaguely" to "products and/or kits" of the
6 defendants, but was otherwise "devoid of any reference to infringing products." See Gen-Probe,
7 Inc. v. Amoco Corp., 926 F. Supp. 948, 961 (S.D. Cal. 1996). Sportingbet, however, is not
8 seeking such a drastic remedy: Sportingbet merely requests a more particularized complaint that
9 will enable it to frame a responsive pleading.
10

11 **3. Requiring 1st Technology to Amend its Complaint Will Impose No**
12 **Unreasonable Burden.**

13 Requiring Plaintiff to make a more definite statement will impose no unreasonable
14 burden. Rule 11 of the Federal Rules of Civil Procedure required Plaintiff to make a reasonable
15 pre-suit inquiry entailing a comparison of specific Sportingbet products to the specific claims of
16 the '001 patent. See, e.g., Q-Pharma, Inc. v. Andrew Jergens Co., 360 F.3d 1295, 1300-01 (Fed.
17 Cir. 2004) (in patent cases, Rule 11 requires "at a minimum, that an attorney interpret the
18 asserted patent claims and compare the accused device with those claims before filing a claim
19 alleging infringement"); see also Gen-Probe, 926 F. Supp. at 962 (a complaint's "vague[]"
20 description of products at issue "does not reflect the reasonable inquiry required by the Rules").
21 Thus, in making the present Motion, Sportingbet simply asks Plaintiff to articulate, in its
22 Complaint, conclusions Plaintiff necessarily must have made prior to the commencement of this
23 action.
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IV.
CONCLUSION

Plaintiff has not demonstrated that Sportingbet has the required minimum contacts within the state of Nevada sufficient to support a finding of jurisdiction. Therefore, Plaintiff's claims against Sportingbet should be dismissed, pursuant to Fed. R. Civ. P. 12(b)(2), for lack of jurisdiction. Assuming *arguendo* that jurisdiction exists, Plaintiff's claim against Sportingbet fails to meet proper standards of clarity and definition, and Plaintiff should be required to file a more definite statement pursuant to Fed. R. Civ. P. 12(e).

Dated this 10th day of October 2005.

GORDON & SILVER, LTD.



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CERTIFICATE OF SERVICE

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The undersigned, an employee of Gordon & Silver, Ltd., hereby certifies that on the 10 day of October 2005, she served a copy of the foregoing **MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(2); MOTION FOR MORE DEFINITE STATEMENT PURSUANT TO FED. R. CIV. P. 12(e)**, by facsimile, and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

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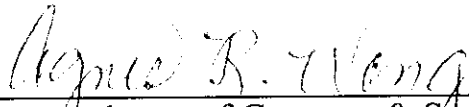

An employee of GORDON & SILVER, LTD.

EXHIBIT “A”

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

1ST TECHNOLOGY LLC,

Plaintiff,

vs.

SPORTINGBET PLC, NDS GROUP PLC,
ONGAME E-SOLUTIONS AB, and ORBIS
TECHNOLOGY,

Defendants.

CASE NO. CV-S-05-0788-RLH-PAL

**DECLARATION OF DANIEL JEREMY
TALSIMAN IN SUPPORT OF MOTION
TO DISMISS PURSUANT TO FED. R.
CIV. P. 12(b)(2)**

I, Daniel Jeremy Talisman, hereby declare as follows:

1. I am currently employed by Sportingbet Plc ("Sportingbet"). I reside in London, England. I am the Company Secretary for, and General Counsel of, Sportingbet. The only other employees of Sportingbet are three executive directors of the board. I am more than 18 years old. I have personal knowledge of the facts stated herein and I would be competent to testify to them.

2. As Company Secretary for Sportingbet, I am familiar with the corporate structure and operations of Sportingbet and its subsidiaries.

3. Sportingbet is a company incorporated under the laws of England and Wales, with its principal place of business in London, England.

4. Sportingbet is a holding company whose primary role is to hold the shares of its subsidiary trading companies. Sportingbet is listed, and its shares are traded, on the Alternative Investment Market of the London Stock Exchange, an institution that requires strict levels of corporate governance from its listed companies.

1 5. Sportingbet Plc is not licensed to provide bookmaking or gaming services and does
2 not engage in, and has never engaged in or conducted, the business of online gaming.

3 6. As a holding company, Sportingbet Plc does not transact, and never has transacted, any
4 business in Nevada or anywhere in the United States or any other jurisdiction.

5 7. All group business is conducted through Sportingbet licensed, trading subsidiaries,
6 and it is Sportingbet's licensed, trading subsidiaries that hold the necessary licenses to conduct
7 the business of online bookmaking and gaming and which have their own respective information
8 technology structures – none of which are located within the United States. Sportingbet does not
9 own or operate any sports betting or gaming website.

10 8. Sportingbet Plc is not incorporated in Nevada, it does not hold any licenses to conduct
11 business in Nevada, and it has not designated an agent for service of process in Nevada.

12 9. None of Sportingbet Plc's licensed, trading subsidiaries hold any licenses to conduct
13 business in Nevada, none are incorporated in Nevada, and none have designated an agent for
14 service of process in Nevada.

15 Dated this 10th day of October, 2005.

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17 D. J. Talisman
18 Daniel Jeremy Talisman
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