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8
 9 UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

10	1ST TECHNOLOGY LLC,)	
11)	
12	Plaintiff,)	Case No.: 2:06-cv-1110-RLH-GWF
13)	
14	v.)	
15	RATIONAL ENTERPRISES LTDA,)	
16	RATIONAL POKER SCHOOL LIMITED,)	<u>ORAL ARGUMENT REQUESTED</u>
17	BODOG ENTERTAINMENT GROUP S.A.,)	
18	BODOG.NET, BODOG.COM, and)	
19	FUTUREBET SYSTEMS LTD.,)	
20)	
21	Defendants.)	

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**1ST TECHNOLOGY LLC'S OPPOSITION TO RATIONAL
 POKER SCHOOL LIMITED'S MOTION FOR A MORE
 DEFINITE STATEMENT PURSUANT TO FED. R. CIV. P. 12(e)**

Plaintiff 1st Technology LLC, by and through its counsel of record HUTCHINSON & STEFFEN, LLC, hereby files this Opposition to Defendant Rational Poker School Limited's motion for a more definite statement pursuant to FED.R.CIV.P. 12(e). This Opposition is based on the attached Memorandum of Points and Authorities, the exhibits attached hereto, and the papers and pleadings on file herein in this case.

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DATED this 29th day of December, 2006

Respectfully submitted,



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Attorneys for Plaintiff
1st Technology LLC

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendant Rational Poker School Limited ("Rational Poker School") has moved this
3 Court for an order pursuant to FED.R.CIV.P. 12(e) requiring 1st Technology LLC's ("1st
4 Technology") to provide a more definite statement in its complaint. 1st Technology's
5 complaint provides specificity beyond that required by notice pleading and satisfies all other
6 applicable federal rules. This Court should deny Rational Poker School's motion.

7 **I. 1ST TECHNOLOGY'S COMPLAINT SATISFIES THE**
8 **REQUIREMENTS OF FEDERAL NOTICE PLEADING**

9 1st Technology's complaint has adequate specificity for notice pleading. Under Rule
10 8(a)(2) of the Federal Rules of Civil Procedure, a complaint must contain nothing more than "a
11 short and plain statement of the claim showing that the pleader is entitled to relief." FED. R.
12 CIV. P. 8(a)(2). The appendix to the Federal Rules of Civil Procedure sets out the following
13 form as a guideline for pleading patent infringement:

14 1. Allegation of jurisdiction.

15 2. On May 16, 1934, United States Letters Patent No. XX were duly and
16 legally issued to plaintiff for an invention in an electric motor; and since that date
17 plaintiff has been and still is the owner of those Letters Patent.

18 3. Defendant has for a long time past been and still is infringing those Letters
19 Patent by making, selling, and using electric motors embodying the patented
20 invention, and will continue to do so unless enjoined by this court.

21 4. Plaintiff has placed the required statutory notice on all electric motors
22 manufactured and sold by him under said Letters Patent, and has given written
23 notice to defendant of his said infringement. Wherefore plaintiff demands a
24 preliminary and final injunction against continued infringement, an accounting for
25 damages, and an assessment of interest and costs against defendant.

26 FED. R. CIV. P. Form 16. 1st Technology's complaint is at least as specific as Form 16, and
27 comports entirely with the Federal Rules. In its complaint, 1st Technology alleges that
28 Rational Poker School has previously made, used offered for sale and/or imported into the
United States and is presently making, using, selling, offering for sale and/or importing into
the United States software products that infringe 1st Technology's United States Patent No.

1 5,564,001 ("the '001 patent"). (Exhibit A, Complaint at ¶6). 1st Technology even alleges a
2 specific claim of the '001 patent that Rational Poker School is infringing. (Exhibit A,
3 Complaint at ¶16).

4 Rational Poker School apparently takes exception to the fact that 1st Technology's
5 complaint does not identify Rational's infringing software by name. (Rational Poker School's
6 Motion at p.2). As stated in 1st Technology's complaint, the inventions of the '001 patent are
7 used in many online wagering systems. (Exhibit A, Complaint at ¶13). Rational Poker School
8 owns and operates the online gaming website found at www.PokerStars.net. (Exhibit B,
9 PokerStars.net End User License Agreement). The infringing software which Rational Poker
10 School provides through the PokerStars.net website does not have a specific name – Rational
11 Poker School merely identifies it as "the Software":

12 END USER LICENSE AGREEMENT

13 This agreement (the "Agreement") should be read by you (the "User" or "you") in
14 its entirety. Please note that the Agreement constitutes a legally binding
15 agreement between you and Rational Poker School Limited (referred to herein as
16 "PokerStars") which owns and operates the Internet site found at
www.pokerstars.net (the "Site")

17 Introduction

18 The software (the "Software") is being licensed to you by PokerStars for your
19 private personal use solely on "AS IS" basis. Please note that the Software is not
20 for use by (i) individuals under 18 years of age, (ii) individuals under the legal age
21 of majority in their jurisdiction and (iii) individuals connecting to the Site from
jurisdictions from which it is illegal to do so.

22 You shall use the Software together with your unique Player ID ("Player ID") and
23 unique and secret password ("Password") known only to you, to access the
24 PokerStar's servers (the "Servers") in order to play the PokerStars "play for
free"/"play money" games (the "Games").

25 (Exhibit B, PokerStars.net End User License Agreement). It follows that the specific name of
26 the infringing software which Rational Poker School provides through the PokerStars.net
27 website (to the extent such a name even exists) is presently unknown to 1st Technology.
28 Aside from Rational Poker School's operations in connection with its PokerStars.net website,

1 1st Technology is aware of no other software products (infringing or otherwise) which are
2 presently offered by Rational Poker School.

3 Another defendant in the present case, Rational Enterprises LDТА, owns and operates
4 the online gaming website found at www.PokerStars.com. (Exhibit C, PokerStars.com End
5 User License Agreement). Prior to filing suit in this case, 1st Technology informed Rational
6 Enterprises LDТА of its belief that the '001 patent covered the software being provided by
7 Rational Enterprises LDТА through the PokerStars.com website. The infringing software
8 which Rational Enterprises LDТА provides through the PokerStars.com website is the "play
9 for real money" counterpart to the "play for free" software provided by Rational Poker School
10 through the PokerStars.net website. Rational Enterprises LDТА likewise identifies its
11 software with no greater specificity than "the Software":

12 END USER LICENSE AGREEMENT

13 This agreement (the "Agreement") should be read by you (the "User" or "you") in
14 its entirety. Please note that the Agreement constitutes a legally binding
15 agreement between you and Rational Enterprises LTDA. (referred to herein as
16 "PokerStars") which owns and operates the Internet site found at
www.pokerstars.com (the "Site"). In addition to the terms and conditions of this
17 Agreement, please review our Privacy Policy, which is incorporated herein by
18 reference.

18 Introduction

19 The software that you are about to download (the "Software") is being licensed to
20 you by PokerStars for your private personal use solely on "AS IS" basis. Please
21 note that the Software is not for use by (i) individuals under 18 years of age, (ii)
22 individuals under the legal age of majority in their jurisdiction and (iii)
23 individuals connecting to the Site from jurisdictions from which it is illegal to do
24 so.

25 You shall use the Software together with your unique Player ID ("Player ID") and
26 unique and secret password ("Password") chosen by and known only to you, to
27 access the PokerStars' servers (the "Servers") in order to play the PokerStars "play
28 for real money" or "play for demo money" games (the "Games").

(Exhibit C, PokerStars.com End User License Agreement). As such, the specific name of the
infringing software which Rational Enterprises LDТА provides through the PokerStars.com

1 website is unknown to 1st Technology. Aside from Rational Enterprises LDTA's operations in
2 connection with its PokerStars.com website, 1st Technology is aware of no other software
3 products (infringing or otherwise) which are presently offered by Rational Enterprises LDTA.

4 Notably, Rational Poker School and Rational Enterprises LDTA both simply refer to
5 themselves as "PokerStars" with respect to their business operations. The software
6 screenshots depicting the interactive display of the online gaming system offered through the
7 Pokerstars.net and PokerStars.com websites are identical. (Exhibit D, website screenshots
8 from PokerStars.net and PokerStars.com). Upon information and belief, the core structure,
9 function and operation of the software provided through the PokerStars.net website and the
10 counterpart PokerStars.com website is for all practical purposes the same. The extent of any
11 formal corporate relationship which may exist between Rational Poker School and Rational
12 Enterprises LDTA is unknown to 1st Technology at the present time, but will certainly be
13 explored during discovery in this case. Regardless of the existence of any such corporate
14 relationship, the nature and scope of Rational Poker School's business in combination with the
15 allegations of 1st Technology's complaint make clear that the software being offered through
16 Rational Poker School's PokerStars.net website is that which 1st Technology is accusing of
17 infringing the '001 patent.

18 The cases which Rational Poker School relies upon in support of its motion are
19 distinguishable. In the present case, there is not a laundry list of 503 patent claims from 20
20 asserted patents to be applied to several hundred possibly infringing products, as in one of the
21 cases cited by Rational Poker School. See, *In re Pabst Licensing GmbH Patent Litigation*,
22 2001 U.S. Dist. LEXIS 2255, *3-4 (E.D. La., Feb. 22, 2001). Nor is the present case one in
23 which Rational Poker School would be required to "compare its approximately 40 products to
24 at least 20 claims." See, *Bay Indus., Inc. v. Tru-Arx Mfg, LLC*, 2006 U.S. Dist. LEXIS 86757,
25 * (E.D. Wis., Nov. 29, 2006). In another case cited by Rational Poker School, the court held
26 that "dismissal for failure to comply with the requirements of Rule 8 is usually reserved for
27 those cases in which the complaint is so confused, ambiguous, vague, or otherwise
28 unintelligible that its true substance, if any, is well disguised." *Agilent Technologies, Inc. v.*

1 *Micromuse, Inc.*, 2004 U.S. Dist. LEXIS 20723, *3 (S.D.N.Y., Oct. 19, 2004) (internal
2 citations omitted). While the court in *Agilent* ultimately required a more detailed pleading
3 from the plaintiff, the court distinguished itself from a decision where (as is the case presently
4 before the Court) there "was a finite set of potentially infringing products under identified
5 patents." *Id.* at *15 (distinguishing *Symbol Techs., Inc. v. Hand Held Prods.*, 2003 U.S. Dist.
6 LEXIS 21002 (D. Del., Nov. 14, 2003).

7 1st Technology has alleged infringement of a single patent, and has further identified a
8 specific claim of said patent which Rational Poker School is infringing. (Exhibit A,
9 Complaint at ¶¶ 6, 16). The software which Rational Poker School provides through its
10 PokerStars.net website (for which Rational provides no specific name) infringes 1st
11 Technology's '001 patent, and 1st Technology is aware of no other software products
12 (infringing or otherwise) which are offered by Rational Poker School. 1st Technology will, as
13 part of ordinary discovery, provide Rational Poker School with claim charts showing the
14 application of specific claims of the '001 patent to Rational Poker School's infringing software.
15 There is no necessity for additional pleading. See 2 James Wm. Moore, et al., *Moore's Federal*
16 *Practice* § 8.04[1] (3d ed. 1999) ("[A] more extensive pleading of fact is not required because
17 the Federal Rules of Procedure provide other devices besides pleadings that will serve to
18 define the facts and issues and to dispose of unmeritous claims.").

19 Moreover, to qualify for a Rule 12(e) motion, the complaint "must be so vague or
20 ambiguous that the opposing party cannot respond to it, even with a simple denial as permitted
21 by Rule 8(b), with a pleading that can be interposed in good faith or without prejudice to
22 himself." *Wright & Miller, Federal Practice & Procedure* § 1376 at 311 (3d ed. 2004). 1st
23 Technology's complaint fulfills the requirements of Rule 8 and is not so vague that it cannot be
24 responded to by Rational Poker School in good faith. The Court should deny Rational Poker
25 School's Rule 12(e) motion and allow any confusion on the part of Rational Poker School to
26 be resolved with prompt discovery.

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II. CONCLUSION

For the foregoing reasons, 1st Technology respectfully requests that the Court deny Rational Poker School's motion for a more definite statement.

DATED this 29th day of December, 2006

Respectfully Submitted,



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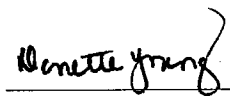
Attorneys for Plaintiff
1st Technology LLC

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CERTIFICATE OF SERVICE

I hereby certify that, on the 29th day of December, 2006, I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **1ST TECHNOLOGY LLC'S OPPOSITION TO RATIONAL POKER SCHOOL LIMITED'S MOTION FOR A MORE DEFINITE STATEMENT PURSUANT TO FED. R. CIV. P. 12(e)** to the following counsel of record:

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An Employee of Hutchinson & Steffen, LLC