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6 **UNITED STATES DISTRICT COURT**
 7 **DISTRICT OF NEVADA**

8 1ST TECHNOLOGY LLC,
 9
 10 vs.
 11 RATIONAL ENTERPRISES LTDA,
 12 RATIONAL POKER SCHOOL LIMITED,
 13 BODOG ENTERTAINMENT GROUP S.A.,
 14 BODOG.NET, BODOG.COM, and
 15 FUTUREBET SYSTEMS LTD.,
 Defendants.

Case No.: 06-cv-1110

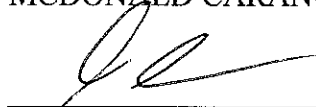
**RATIONAL POKER SCHOOL
 LIMITED'S REPLY IN SUPPORT
 OF ITS MOTION FOR MORE
 DEFINITE STATEMENT
 PURSUANT TO FED. R. CIV P. 12(e)**

Oral Argument Requested

16 Rational Poker School Limited ("Poker School"), by and through counsel, hereby files
 17 its Reply in support of its Motion for a More Definite Statement Pursuant to Fed. R. Civ. P.
 18 12(e). This Reply is made and based upon the papers and pleadings already on file herein, the
 19 following Memorandum of Points and Authorities, and any oral argument the Court may
 20 permit.

21 Dated this 12th day of January, 2007.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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2
3 1st Technology LLC's ("1st Technology") Opposition makes it clear that it knows the
4 product that it is accusing of infringement and can adequately identify that product. Nevertheless,
5 the Complaint provides no notice whatsoever that the only accused product is the software
6 available for download from Poker School's web site. The Court should require 1st Technology
7 to amend its Complaint to put the identity of the accused software where it properly belongs -- in
8 the Complaint itself. Otherwise the Complaint is unmoored from the facts allegedly justifying its
9 filing and the efficient progression of this case will be hindered.

II. ARGUMENT

10
11 1st Technology's assertion that Poker School simply takes exception to its failure to name
12 the accused products is a straw man. The issue is not 1st Technology's failure to use the
13 software's "name," but rather the Complaint's singular lack of any identifying facts regarding the
14 accused software. The Complaint nowhere states that the '001 Patent is an invention used in
15 online gaming software, and that the software available for download from Poker School's
16 www.pokerstars.net web site embodies that patented invention, as Form 16 of the Federal Rules
17 suggests is required.¹ The statements in paragraph 13 of the Complaint are not directed to the
18 asserted '001 patent, but to unknown patents not at issue in this case. See Complaint at ¶ 13. The
19 Complaint, on its face, does not provide sufficient information to put Poker School on notice of
20 what is accused of infringement and does not allow Poker School to prepare a complete Answer
21 without undue uncertainty and prejudice.

22 Moreover, Poker School did not receive any communications from 1st Technology before
23 1st Technology filed this suit. Recognizing this failure, 1st Technology attempts to confuse the
24 issue by referring to its communications with another defendant, Rational Enterprises LTDA

25
26 ¹ The example in Form 16 specifies that the patent involved in the case covered a particular
27 product, an electric motor, and identifies the allegedly infringing product as being an electric
28 motor embodying the patented invention.

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1 (“REL”). Regardless of any alleged similarities between their websites, Poker School is not REL
2 and the software available for download from its web site is not the same as REL’s. 1st
3 Technology never communicated its infringement allegations to Poker School prior to filing this
4 action.

5 1st Technology’s Opposition, which states that “the software being offered through
6 Rational Poker School’s PokerStars.net website is that which 1st Technology is accusing of
7 infringing the ‘001 Patent,” is the first document informing Poker School of the software that is
8 accused of infringing the ‘001 Patent. Indeed, 1st Technology goes to great lengths to provide
9 details specifying the accused software in its Opposition, going so far as to quote end-user
10 agreements found on Poker School’s PokerStars net website and producing screen shots of that
11 website. However, no matter how much detail 1st Technology presented in its Opposition
12 regarding the allegedly infringing software, 1st Technology cannot avoid the fact that the
13 governing pleading -- the Complaint -- lacks all of this detail.

14 1st Technology should not be permitted to maintain a vague, open-ended Complaint, when
15 it knows precisely for which software it believes it has a legally sufficient basis (in conformance
16 with Rule 11) to allege infringement of the ‘001 Patent. To allow otherwise would lead to
17 unnecessary discovery disputes, inefficient pleadings, and overall inefficient resolution of the
18 case. *See Bay Indus., Inc v. Tru-Arx Mfg, LLC*, 2006 WL 3469599, *2 (E.D. Wis. Nov. 29,
19 2006). Nor should 1st Technology be allowed to use its Opposition to rectify the deficiencies of
20 its Complaint. Another court faced with an insufficiently detailed Complaint but pleadings
21 providing details about the accused products still required the plaintiff to file an amended
22 complaint. The court in *Agilent Techs, Inc v. Micromuse, Inc*, 2004 WL 2346152, *6
23 (S.D.N.Y. Oct. 19, 2004), faced with a complaint that simply accused Defendant of “mak[ing],
24 sell[ing], or offer[ing] products for sale . . . that infringe [Plaintiff]’s patents,” stated:

25
26 Although [Plaintiff]’s papers submitted in opposition to
27 [Defendant]’s various motions suggest that [Defendant] possesses
28 at least four infringing products, those products have not been
formally accused. Under these circumstances, [Defendant] is
entitled to know which of its products or services are alleged to


1 In this case, 1st Technology's Opposition makes it clear that it is accusing only one
2 software of infringement -- "the software being offered through Rational Poker School's
3 PokerStars net website." Opposition at 4. As in *Agilent*, this Court should require Plaintiff to
4 amend its complaint to formally accuse that single software in order to ensure that Poker School's
5 Answer is efficient, complete, and limited to the issues presented in this case.

6 **III. CONCLUSION**

7 For the foregoing reasons, Poker School respectfully requests that this Court require 1st
8 Technology to amend its Complaint to contain a more definite statement of its claims.

9 RESPECTFULLY submitted this 12th day of January, 2007.

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17 **CERTIFICATE OF SERVICE**

18 I HEREBY CERTIFY that on this 12 day of January, 2007, I mailed a copy of the
19 foregoing ***RATIONAL POKER SCHOOL LIMITED'S RELY IN SUPPORT OF ITS MOTION***
20 ***FOR MORE DEFINITE STATEMENT PURSUANT TO FED.R.CIV.P. 12(e)*** to the following:

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