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6 **UNITED STATES DISTRICT COURT**
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 MOTION FOR MORE
 DEFINITE STATEMENT PURSUANT TO
 FED.R.CIV.P. 12(e)**


Oral Argument Requested

16 Rational Poker School Limited ("Rational Poker School"), by and through counsel, hereby
 17 moves this Court for an Order pursuant to Fed. R. Civ. P. 12(e) requiring a more definite
 18 statement by Plaintiff 1st Technology LLC. ("Plaintiff").
 19

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

22 Dated this 4th day of December, 2006.

McDONALD CARANO WILSON LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Complaint of Plaintiff 1st Technology LLC (“Plaintiff”) fails to name the products or actions it asserts infringe the asserted patent, United States Patent No. 5,564,001 (the “’001 Patent”), entitled “Method and System for Interactively Transmitting Multimedia Information Over a Network Which Requires a Reduced Bandwidth.” Without this information, Rational Poker School Limited (“Rational Poker School”) cannot reasonably formulate a response to the charges in the Complaint. Rational Poker School therefore seeks an order under Fed. R. Civ. P. 12(e) for a more definite statement of the claims against it, to allow it to formulate a proper response.

II. STATEMENT OF FACTS

On September 8, 2006, Plaintiff filed its Complaint against Rational Poker School and other parties, asserting that they had infringed the ‘001 Patent. Plaintiff’s assertion of infringement against Rational Poker School was limited to the following statements:

Rational Poker School has previously and is presently making, using, selling, offering for sale, and/or importing into the United States software products that infringe one or more claims of the ‘001 Patent. Rational Poker School has infringed the ‘001 Patent either directly or through acts of contributory infringement or inducement in violation of 35 U.S.C. § 271. (Complaint, ¶ 6)

...
Rational Poker School has infringed and continues to infringe at least Claim 26 of the ‘001 Patent. (Complaint, ¶ 16)

Plaintiff also stated that the alleged infringement was willful, and sought an injunction against the sale of “products or services that come within the scope of the ‘001 Patent.” Complaint, ¶ 22. Nowhere in the Complaint does Plaintiff specify which Rational Poker School “software products” allegedly infringe the ‘001 Patent.

III. ARGUMENT

Rule 8(a)(2) requires a plaintiff to provide a “short and plain statement of the claim showing the claimant is entitled to relief.” Fed. R. Civ. 8(a)(2). Rule 12(e) allows a party to move for a more definite statement “if a pleading to which a responsive pleading is permitted is so

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1 vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading.”¹
 2 These rules offer clarity to the court and litigants as to who is being sued and on what grounds,
 3 “thereby facilitating the just, speedy, and inexpensive determination of the action.” *Bay Indus.*,
 4 *Inc. v. Tru-Arx Mfg, LLC*, 2006 WL 3469599 (E.D. Wis. Nov. 29, 2006) (citing *McHenry v.*
 5 *Renne*, 84 F.3d 1172, 1179-1180 (9th Cir. 1996)). Moreover, these rules prevent unintelligible
 6 claims to which a defendant cannot effectively respond. See *Woods v. Reno Commodities, Inc.*,
 7 600 F. Supp. 574, 580 (D. Nev. 1984).

8 Prior to filing this suit on September 8, Plaintiff did not communicate with Rational Poker
 9 School and did not inform Rational Poker School which of its products and/or actions allegedly
 10 infringe the ‘001 Patent. Continuing this pattern, Plaintiff’s Complaint also does not identify any
 11 Rational Poker School products or actions that allegedly infringe the ‘001 Patent. Rational Poker
 12 School, therefore, cannot formulate a concise, efficient, and complete response to the Complaint.

13 Under similar circumstances, courts have ordered plaintiffs to provide a more definite
 14 statement setting forth which products they are accusing of infringement. In *Agilent Techs, Inc.*
 15 *v. Micromuse, Inc.*, 2004 WL 2346152 (S.D.N.Y. Oct. 19, 2004), the plaintiff’s Complaint, like
 16 the Complaint in this case, merely alleged that defendant “makes, sells, or offers products for
 17 sale” that infringed the plaintiff’s patents without specifying the accused products. *Agilent*
 18 *Techs.*, 2004 WL 2346152 at *6. The court stated that “[defendant] is entitled to know which of
 19 its products and services are alleged to have infringed [plaintiff’s] patents,” and granted
 20 defendant’s motion for a more definite statement under Rule 12(e). *Id.* at *6. Other courts have
 21 noted that “[d]efendant[s] cannot realistically be expected to frame a responsive pleading without
 22 risk of prejudice in the absence of any indication as to which of its products are accused.” *eSoft,*
 23 *Inc. v. Astaro Corp.*, 2006 WL 2164454, *2 (D. Colo. July 31, 2006); see also *In re Papst*
 24 *Licensing GmbH Patent Litigation*, 2001 WL 179926 (E.D. La. Feb. 22, 2001) (ordering plaintiff
 25 to specify the allegedly infringing products in an amended complaint). An Amended Complaint
 26 specifying the accused products will also serve the interests of judicial efficiency, by focusing the

27
 28 ¹ A Rule 12(e) motion is committed to the discretion of the Court. See *Rendon v. Fresno*
Police Dept., 2005 WL 1925859, at *2 (E.D. Cal. Aug. 11, 2005).

1 discovery process on the appropriate products and limiting potential controversies in discovery.
2 *See Bay Indus.*, 2006 WL 3469599 at *2.

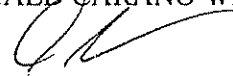
3 Requiring Plaintiff to amend its Complaint to provide a more definite statement of its
4 claim against Rational Poker School should not unreasonably burden Plaintiff. To comply with its
5 Rule 11 obligation, Plaintiff should have identified the accused products and made a good-faith
6 comparison of the asserted claims to them prior to filing suit. The Federal Circuit has held that
7 Rule 11 requires attorneys in patent infringement actions to “interpret the asserted patent claims
8 and *compare the accused device with those claims* before filing a claim alleging infringement.”
9 *See Q-Pharma, Inc. v. The Andrew Jergens Co.*, 360 F.3d 1295, 1300-01 (Fed. Cir. 2004)
10 (emphasis added); *Bay Indus.*, 2006 WL 3469599 at *2 (stating that the Rule 11 requirement
11 “insures that plaintiff has a proper basis for bringing suit in the first place”). Requiring Plaintiff
12 simply to reveal the names of those products in an Amended Complaint places no significant
13 burden on it. *Bay Indus.*, 2006 WL 3469599 at *2 (“if a plaintiff cannot describe with some
14 specificity the product he claims infringes his patent, there is reason to question” whether plaintiff
15 has made a “reasonable inquiry . . . to insure that the factual allegations have evidentiary
16 support”). “Assuming plaintiff has properly investigated his claim before filing suit, there is no
17 reason not to inform [Rational Poker School] precisely which products are at issue.” *Bay Indus.*,
18 2006 WL 3469599 at *2.

19 **IV. CONCLUSION**

20 For the reasons discussed herein, Rational Poker School respectfully requests that the
21 Court order Plaintiff to amend its Complaint under Fed. R. Civ. P. 12(e) to provide a more definite
22 statement and specifically identify the allegedly infringing product and/or conduct.

23 RESPECTFULLY submitted this 14th day of December, 2006.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14 day of December, 2006, I mailed a copy of the foregoing ***RATIONAL POKER SCHOOL LIMITED'S MOTION FOR MORE DEFINITE STATEMENT PURSUANT TO FED.R.CIV.P. 12(e)*** to the following:

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