IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BEDROCK COMPUTER TECHNOLOGIES LLC,	§	
	§	
Plaintiff,	§	
	§	**CASE NO. 6:09-cv-269-LED**
v.	§	
	§	**Jury Trial Demanded**
SOFTLAYER TECHNOLOGIES, INC., et al.	§	
	§	
Defendants.	§	

BEDROCK'S MOTION TO DISMISS GOOGLE INC.'S AND MATCH.COM, LLC'S COUNTERCLAIMS (DKT. NOS. 476 AND 477)

I. INTRODUCTION

On January 12, 2011, Bedrock Computer Technologies LLC ("Bedrock") filed a letter brief seeking leave to file a motion for summary judgment of Defendants' affirmative defenses of lack of standing. Dkt. No. 387. The day after Bedrock's request for leave was denied, all Defendants joined in a Motion to Dismiss for Lack of Standing. Dkt. No. 452. After considering the Motion, Bedrock's Response, and Defendants' Reply, the Court recommended that the Motion be denied. Dkt. No. 542.

On February 10, Google Inc. and Match.com, LLC (collectively "Defendants") both asserted counterclaims seeking a declaratory judgment that Bedrock does not own U.S. Patent No. 5,893,120 (the "'120 patent") and does not have standing to sue for infringement. Dkt. Nos. 476, 477. Because Defendants have improperly characterized their standing defenses as counterclaims and because Bedrock is the legal owner of the '120 patent, the Court should strike Defendants' counterclaims.

II. ARGUMENT

A. Defendants Have Mislabeled Their Standing Defenses as Counterclaims.

Defendants improperly raise the issue of Bedrock's standing to sue as a counterclaim. "Standing is a jurisdictional issue, not a counterclaim." *Ardisam, Inc. v. Ameristep*, Inc., 302 F. Supp. 2d 991, 993 (W.D. Wis. 2004). For this reason alone, Defendants' counterclaims regarding standing and ownership of the '120 patent should be struck.

In addition, neither Google nor Match.com has asserted any ownership interest in the '120 patent. Instead, Defendants' argument boils down to a claim that Telcordia, a third party not named in this lawsuit, owns the '120 patent and is being harmed by Bedrock's enforcement of the patent. Even assuming Defendants' allegations to be true, Defendants are not Telcordia

and have not, themselves, been deprived of any opportunity to enforce the '120 patent. As such, Defendants cannot demonstrate an injury-in-fact and lack standing to seek a declaratory judgment that Bedrock does not own the '120 patent. *See Teva Pharm. USA, Inc. v. Novartis Pharm. Corp.*, 482 F.3d 1330, 1337 (Fed. Cir. 2007) (To establish Article III standing, "[a]an injury-in-fact must be 'personal,' 'concrete and particularized,' and 'actual or imminent.').

B. Bedrock Is the Legal Owner of the '120 Patent.

As made clear in both the summary judgment letter briefing and the motion to dismiss briefing,[1] Bedrock owns all interest in the '120 patent. Bedrock has affirmatively established such ownership, and Defendants' have not met their burden to establish that Dr. Nemes previously assigned the '120 patent to Bellcore. *See SiRF Tech., Inc. v. ITC*, 601 F.3d 1319, 1327 (Fed. Cir. 2010). There is, thus, no support for Defendants' assertion that Bedrock lacks standing to assert the '120 patent, and in light of the Court's ruling as to Defendants' joint Motion to Dismiss for Lack of Standing, Defendants' counterclaims are moot. *See* Dkt. No. 542.

III. CONCLUSION.

For the foregoing reasons, the Court should strike Defendants' counterclaims seeking a declaratory judgment that Bedrock does not own the '120 patent and does not have standing to sue for infringement.

[1] Bedrock hereby incorporates the arguments contained within its opening and reply summary judgment letter briefs on lack of standing (Dkt. Nos. 387-1, 436) and its Response in Opposition to Defendants' Motion to Dismiss for Lack of Standing (Dkt. No. 511).

DATED: March 7, 2011

Respectfully submitted,
McKOOL SMITH, P.C.

/s/ *Douglas A. Cawley*

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the forgoing document via the Court's CM/ECF system pursuant to the Court's Local Rules this 7th day of March, 2011.

/s/ Ryan A. Hargrave
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