UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

B.E. TECHNOLOGY, L.L.C., Plaintiff, vs. GROUPON, INC. Defendant.	Civil Action No. 2:12-cv-02781-JPM JURY DEMAND

GROUPON, INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS COUNTERCLAIMS AND TO STRIKE CERTAIN AFFIRMATIVE DEFENSES

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I. INTRODUCTION

The notice pleading requirement of Fed. R. Civ. P. 8 applies equally to plaintiffs and defendants in patent cases. Plaintiff B.E. Technology, LLC ("B.E.") filed nineteen patent lawsuits with non-specific allegations of infringement. Many defendants, including Defendant Groupon, Inc. ("Groupon"), filed answers asserting affirmative defenses and counterclaims of non-infringement and invalidity. Groupon pled the same level of specificity as B.E. had in the complaint. Neither the federal rules nor established case law support B.E.'s position that in patent cases a defendant should be held to a higher pleading standard when asserting counterclaims or defenses than a plaintiff is held to when filing an initial complaint.

Groupon's counterclaims satisfy both the notice pleading standard of Rule 8(a) and the "plausibility" test set forth in *Twombly* and *Iqbal*. Similarly, Groupon's affirmative defenses are adequately stated under Rules 8(b) and 8(c), including the applicable Fed. R. Civ. P. Forms and case precedent. B.E.'s claims of unfair prejudice also ring hollow as the local rules and scheduling order require Groupon to provide B.E. detailed non-infringement and invalidity contentions.

Alternatively, and to the extent the Court grants B.E.'s Motion, Groupon requests leave to amend its Answer to amend any counterclaims or affirmative defenses found to be insufficiently pled.

II. RELEVANT BACKGROUND

B.E. sued Groupon on September 10, 2012, accusing Groupon of infringing U.S. Patent No. 6,628,314 ("'314 patent"). B.E. filed similar lawsuits against eighteen other defendants as well. In its Complaint, B.E. alleged that "Groupon has infringed the '314 patent by using a method of providing demographically targeted advertising that directly infringes at least Claim 11 of the '314 patent either literally or under the doctrine of equivalents." (D.E. 1, ¶11.) The

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