UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

B.E. Technology, L.L.C., **Plaintiff,** **v.** **Sony Computer Entertainment America, LLC,** **Defendant.**	Civil Action No. 12-cv-02826-JPM-tmp
B.E. Technology, L.L.C., **Plaintiff,** **v.** **Sony Mobile Communications (USA) Inc.,** **Defendant.**	Civil Action No. 12-cv-02827-JPM-tmp
B.E. Technology, L.L.C., **Plaintiff,** **v.** **Sony Electronics Inc.** **Defendant.**	Civil Action No. 12-cv-02828-JPM-tmp

DEFENDANTS SONY COMPUTER ENTERTAINMENT AMERICA LLC, SONY MOBILE COMMUNICATIONS (USA) INC., AND SONY ELECTRONICS INC.'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE PURSUANT TO FED. R. CIV. P. 12(f)

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I. INTRODUCTION

On September 21, 2012, Plaintiff B.E. Technology, L.L.C. ("BET") filed three lawsuits in this District against Defendants Sony Computer Entertainment America LLC ("SCEA"), Sony Mobile Communications (USA) Inc. ("SoMC"), and Sony Electronics Inc. ("SEL") (collectively, "Sony") asserting claims for infringement of U.S. Patent No. 6,771,290 ("the '290 Patent"). *See* Case Nos. 12-cv-02826-JPM-tmp ("SCEA Case"), 12-cv-02827-JPM-tmp ("SoMC Case"), and 12-cv-02828-JPM-tmp ("SEL Case"). Sony filed answers on December 31, 2012, denying BET's claims of infringement and raising five affirmative defenses. *See* SCEA Case, Doc. 21; SoMC Case, Doc. 25; SEL Case, Doc. 20. On January 25, 2013, BET moved to strike Sony's affirmative defenses. SCEA Case, Doc. 24; SoMC Case, Doc. 28; SEL Case, Doc. 23. BET has filed similar motions in all of its other cases pending in this District.[1]

BET's motion to strike Sony's affirmative defenses should be denied. In its motion, BET argues for a pleading standard for affirmative defenses that has been addressed and rejected by the Sixth Circuit. *See Montgomery v. Wyeth*, 580 F.3d 455, 468 (6th Cir. 2009) ("The Federal Rules of Civil Procedure do not require a heightened pleading standard for a . . . defense."); *see also Damron v. ATM Central LLC*, No. 110-cv-01210, 2010 WL 6512345 (W.D. Tenn. Oct. 29, 2010) ("as Defendant correctly notes, there is a Sixth Circuit case" that rejects the pleading standard that Plaintiff proffers (citing *Montgomery,* 580 F.3d at 468)). Sony has pleaded its affirmative defenses in accordance with the well established fair notice standard, and thus, BET's motion should be denied.

[1] In addition to the lawsuits filed against Sony, BET has filed suit against 16 other defendants, asserting infringement of the '290 Patent and two related patents not asserted against Sony.

II. NATURE AND STAGE OF THE PROCEEDINGS

A. BET's Allegations of Infringement

In its complaints, BET has alleged that Sony "has infringed at least claim 2 of the '290 patent by using, selling, and offering to sell in the United States [] [] products that directly infringe at least claim 2 of the '290 patent either literally or under the doctrine of equivalents." *See* SCEA Case, Doc. 1 ¶ 11; SoMC Case, Doc. 1 ¶ 11; SEL Case, Doc. 1 ¶ 11. On January 7, 2013, BET served Initial Infringement Contentions on Sony, accusing additional Sony products and services of infringement and accusing Sony of willful infringement.

B. Sony's Affirmative Defenses

Sony answered BET's complaints on December 31, 2012, denying BET's claims of infringement, and raising five affirmative defenses: invalidity, noninfringement, laches, the statutory costs bar, and the statutory time limit on recovery. *See* SCEA Case, Doc. 21; SoMC Case, Doc. 25; SEL Case, Doc. 20. All of Sony's affirmative defenses are stated in plain and unambiguous terms:

> [i] The '290 Patent is wholly or partially invalid for failure to comply with one or more of the conditions and requirements of the patent laws, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and 112, and the rules, regulations and laws pertaining to those provisions[;] . . .
>
> [ii] [Sony] has not directly infringed, induced others to infringe, or committed acts of contributory infringement of any valid and enforceable claim of the '290 Patent, either literally or by the doctrine of equivalents[;] . . .
>
> [iii] BET's claims of infringement are barred in whole or in part by the equitable doctrine of laches[;] . . .
>
> [iv] BET is barred from receiving costs associated with this action under 35 U.S.C.§ 288[; and] . . .
>
> [v] BET's claims for damages for any alleged infringement are time limited under 35 U.S.C. § 286.

See SCEA Case, Doc. 21 ¶¶ 12-16; SoMC Case, Doc. 25 ¶¶ 12-16; SEL Case, Doc. 20 ¶¶ 12-16.

BET subsequently filed a motion to strike Sony's affirmative defenses, stating that the "*Twombly/Iqbal* pleading standards should apply to affirmative defenses," that the pleadings fail to meet the *Twombly/Iqbal* standard, and that the pleadings do "not provide 'fair notice' of the defense." *See* SCEA Case, Doc. 24 at 5, 8; SoMC Case, Doc. 28 at 5, 8; SEL Case, Doc. 23 at 5, 8.

III. BET'S MOTION TO STRIKE SHOULD BE DENIED

A. Motions to Strike Are a Drastic Remedy and Are Rarely Granted.

The Sixth Circuit characterizes motions to strike affirmative defenses as "a drastic remedy to be resorted to only when required for the purposes of justice." *Brown & Williamson Tobacco Corp. v. United States*, 201 F.2d 819, 822 (6th Cir. 1953) (internal citations omitted); *see also* 5C Wright & Miller, FEDERAL PRACTICE & PROCEDURE § 1380, at 647-49 ("motions under Rule 12(f) are viewed with disfavor and are infrequently granted."); *id.* § 1381, at 672 ("even when technically appropriate and well-founded, [motions to strike] are often not granted in the absence of a showing of prejudice to the moving party."); *Kilgore-Wilson v. Home Depot U.S.A.*, 2:11-cv-02601-JTF, 2012 WL 4062663, at *2 (W.D. Tenn. Sept. 14, 2012) ("It is 'well established that the action of striking a pleading should be sparingly used by the courts.'" (quoting *Brown & Williamson Tobacco Corp.*, 201 F.2d at 822)).

Generally, motions to strike affirmative defenses are only granted where the defenses "are 'so unrelated to plaintiff's claims as to be unworthy of any consideration as a defense and that their presence in the pleading throughout the proceeding will be prejudicial to the moving party.'" *Damron*, 2010 WL 6512345, at *1 (quoting 5C Wright & Miller, FEDERAL PRACTICE & PROCEDURE § 1380); *Brown & Williamson Tobacco Corp.*, 201 F.2d at 822 ("The motion to strike should be granted only when the pleading to be stricken has no possible relation to the controversy.").

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