

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

B.E. TECHNOLOGY, L.L.C.,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

**Civil Action No. 12-cv-02830 – JPM -
TMP**

**DEFENDANT'S MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION TO STRIKE PURSUANT TO FED. R. CIV. P. 12(f)**

TABLE OF CONTENTS

Page

I.	RELEVANT BACKGROUND	1
II.	APPLICABLE LAW	2
A.	Motion to Strike Under Federal Rule of Civil Procedure 12(f)	2
B.	The <i>Iqbal/Twombly</i> Standard Does Not Apply to Defenses.....	3
III.	ARGUMENT.....	4
A.	B.E.’s Claim That The <i>Iqbal/Twombly</i> Standard Applies to Affirmative Defenses Should be Rejected.....	4
B.	B.E.’s Motion to Strike Google’s Affirmative Defenses Should be Denied	8
1.	Non-Infringement	9
2.	No Injunctive Relief.....	10
3.	No Contributory Infringement	11
4.	Waiver, Acquiescence, Equitable Estoppel, Implied License, and Unclean Hands	11
5.	Laches	12
6.	Invalidity	12
7.	Limitation on Patent Damages.....	14
8.	Failure to State a Claim under Rule 12(b)(6).....	15
IV.	CONCLUSION.....	15

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>AGFA Photo USA Corp. v. Parham</i> , No. 1:06-cv-216, 2007 WL 1655891 (E.D. Tenn., June 5, 2007)	7
<i>Avocent Redmond Corp. v. U.S.</i> , No. 08-69C, 2009 WL 367499 (Ct. Fed. Cl. Feb. 5, 2009)	9
<i>Barry Fiala, Inc. v. Arthur Blank & Co., Inc.</i> , No. 2:02-cv-2282, 2003 WL 22309442 (W.D. Tenn., Feb. 19, 2003)	2
<i>Bayer CropScience AG v. Dow AgroSciences LLC</i> , CIV. 10-1045 RMB/JS, 2011 WL 6934557 (D. Del. Dec. 30, 2011).....	6
<i>Bennett v. Sprint Nextel Corp.</i> , No. 09–2122, 2011 WL 4553055 (D. Kan. Sept. 29, 2011)	6
<i>Brown & Williamson Tobacco Corp. v. United States</i> , 201 F.2d 819 (6th Cir.1953)	2
<i>Damron v. ATM Central LLC</i> , No. 1:10-cv-01210-JDB-egb, 2010 WL 6512345 (W.D. Tenn. Oct. 29, 2010).....	<i>passim</i>
<i>Falley v. Friends University</i> , 787 F. Supp. 2d 1255 (D. Kan. 2011)	5
<i>Gen-Probe Inc. v. Becton Dickinson and Co.</i> , No. 09-cv-2319-BEN, 2010 WL 4442731 (S.D. Cal. Nov. 1, 2010)	12
<i>Hon Hai Precision Indus. Co., Ltd. v. Wi-LAN, Inc.</i> , No. 12 Civ. 7900(SAS), 2013 WL 2322675 (S.D.N.Y., May 28, 2013).....	15
<i>Hughes v. Lavender</i> , No. 2:10–cv–674, 2011 WL 2945843 (S.D. Ohio, July 20, 2011)	7
<i>Kilgore-Wilson v. Home Depot U.S.A.</i> , 2:11-cv-02601-JTF, 2012 WL 4062663 (W.D. Tenn. Sept. 14, 2012)	<i>passim</i>
<i>Kohler v. Big 5 Corp.</i> , No. 12 Civ. 00500, 2012 WL 1511748 (C.D. Cal. Apr. 30, 2012).....	6
<i>Kohler v. Islands Rests., LP</i> , 280 F.R.D. 560 (S.D. Cal. 2012)	6

McLemore v. Regions Bank,
 Nos. 3:08-cv-0021; 3:08-cv-1003, 2010 WL 1010092 (M.D. Tenn. Mar. 18, 2010),
aff'd, 682 F.3d 414 (6th Cir. 2012).....5, 6

Montgomery v. Wyeth,
 580 F.3d 455 (6th Cir. 2009)3, 10

Paducah River Painting, Inc. v. McNational Inc.,
 5:11-cv-00135-R, 2011 WL 5525938 (W.D. Ky. Nov. 14, 2011).....13, 14

Sun Microsystems, Inc. v. Versata Enterprises, Inc.,
 630 F. Supp. 2d 395 (D. Del. 2009).....14

Trading Tech. Int'l., Inc. v. BCG Partners, Inc.,
 No. 10-cv-715, 2011 WL 3946581 (N.D. Ill. Sept. 2, 2011).....10

Tyco Fire Prods LP v. Victaulic Co.,
 777 F. Supp. 2d 893 (E.D. Pa. 2011)13

U.S. Bank Nat'l Ass'n v. Educ. Loans Inc.,
 No. 11 Civ. 1445, 2011 WL 5520437 (D. Minn. Nov. 14, 2011).....6

Unicredit Bank AG v. Bucheli,
 No. 10–2436, 2011 WL 4036466 (D. Kan. Sept. 12, 2011)6

Wistron Corp. v. Phillip M. Adams & Assocs., LLC,
 No. C–10–4458 EMC, 2011 WL 1654466 (N.D. Cal. Apr. 28, 2011).....8

STATUTES

35 U.S.C. § 101.....12, 13, 14

35 U.S.C. § 102.....12, 13, 14

35 U.S.C. § 103.....12, 13, 14

35 U.S.C. § 112.....12, 13, 14

35 U.S.C. § 271(c)11

35 U.S.C. § 286.....14

35 U.S.C.A. § 287(a)14

OTHER AUTHORITIES

5 Wright & Miller, Federal Practice & Procedure: Civil 3D § 1274.....3

Fed. R. Civ. P. 8..... *passim*

Fed. R. Civ. P. 12..... *passim*
Fed. R. Civ. P. 84.....4
Fed. R. Civ. P. App. Form 304
U.S. Patent No. 6,628,314.....1
U.S. Patent No. 6,771,290.....1

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.