IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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SILICON GRAPHICS, INC.,

ORDER

Plaintiff,

06-C-611-C

v.

ATI TECHNOLOGIES ULC,

Defendant.

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In this action for patent infringement, plaintiff Silicon Graphics, Inc. contends that products produced by defendant ATI Technologies ULC infringed three of plaintiff's patents relating to advanced graphics processing technology. In its answer to plaintiff's complaint, defendant asserted counterclaims and numerous affirmative defenses. Now before the court is plaintiff's motion to strike seven of defendant's affirmative defenses.

Rule 12(f) provides that the court may "order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Generally speaking, motions to strike portions of pleadings are disfavored as they consume scarce judicial resources and may be used for dilatory purposes. Custom Vehicles, Inc. v. Forest River, Inc., 464 F.3d 725, 727 (7th Cir. 2006); Heller Financial, Inc.

v. Midwhey Powder Co., 883 F.2d 1286, 1294 (7th Cir. 1989). Ordinarily, defenses will not be stricken if they are sufficient as a matter of law or if they present questions of law or fact. Heller Financial, Inc., 883 F.2d at 1294. Finally, a moving party faces an uphill battle to show that the defense has no bearing on the subject matter of the litigation and that failure to strike the defenses will cause prejudicial harm.

Plaintiff asks that the court strike the following seven affirmative defenses from defendant's answer: "First Affirmative Defense: SGI fails to state a claim upon which relief can be granted," "Third Affirmative Defense: No claim of the SGI asserted patents can be validly construed to cover any ATI product," "Sixth Affirmative Defense: One or more of the SGI asserted patents are unenforceable against ATI under the doctrines of waiver and/or acquiescence," "Eighth Affirmative Defense: ATI has not infringed one or more of the SGI asserted patents because ATI is a licensee, either in fact or implied, of the SGI asserted patent," "Tenth Affirmative Defense: Plaintiff's claims are barred in whole or in part by contract," "Eleventh Affirmative Defense: Plaintiff lacks standing to bring all or some of the claims asserted in the Amended Complaint" and "Twelfth Affirmative Defense: Plaintiff's claims are barred in whole or in part because SGI failed to disclose one or more of the SGI asserted patents and/or the application leading to the SGI asserted patents to relevant standards committees." Plaintiff moves to strike defendant's third, sixth, eighth and tenth affirmative defenses on the grounds that they are conclusory or redundant. It moves to

strike the first affirmative defense, "failure to state a claim," on the grounds that it is frivolous. Finally, plaintiff moves to strike defendant's eleventh and twelfth affirmative defenses on the grounds that they are frivolous.

Although the factual grounds for some of defendant's affirmative defenses are somewhat murky (for example, "[p]laintiff's claims are barred in whole or in part by contract"), plaintiff has failed to show the existence of extraordinary circumstances that would justify taking the unusual step of editing defendant's answer by striking some of its affirmative defenses. First, there is no indication that defendant was engaged in a scattershot approach to litigation that is either sloppy or intended solely to drive up plaintiff's litigation costs. Although some of the defenses overlap, they are not so frivolous or redundant that the court must step in to "remove unnecessary clutter" to avoid delay. Nor are plaintiff's defenses so vague that they fail as a matter of law to comply with Rule 8. The Court of Appeals for the Seventh Circuit has stated repeatedly that Rule 8 requires notice pleading only. Hefferman v. Bass, 467 F.3d 596, 600 (7th Cir. 2006) ("In federal court under Rule 8, the rules are simple: Notice is what counts. Not facts; not elements of 'causes of action'; not legal theories."). Defendant has satisfied Rule 8. If plaintiff wants more information about the facts underlying defendant's affirmative defenses, it would be better off pursuing such information through discovery rather than a motion to strike. Finally, it does not appear that plaintiff faces any real risk of prejudice. Therefore, plaintiff's motion to strike

seven of defendant's affirmative defenses will be denied.

Plaintiff's motion to strike appears to have been docketed twice, once as docket number 20 on January 3, 2007 and once as docket number 22 on January 4, 2007. The only difference between the two appears to be the large number of supportive documents attached to the motion in docket number 22. Therefore, this order disposes of both docket number 20 and 22.

ORDER

IT IS ORDERED that plaintiff Silicon Graphics Inc.'s motion to strike seven of defendant ATI Technologies ULC's affirmative defenses, dkt. ##20, 22, is DENIED.

Entered this 12th day of March, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge