

United States District Court,  
C.D. California.

**COLD JET, LLC,**  
Plaintiff.

v.

**PHOENIX UNLIMITED LLC; Alfred E. Seguire, Jr.; Scott A. Schiefelbein; Gary L. Almann; Daniel B. Swanson; Ken Krefting; Russ Lawler; Scott Perkins; Thomas Pickard; Michael Weston; And Stephen Whitt,**  
Defendants.

No. CV-05-05295 VAP SSX

**Dec. 6, 2006.**

David E. Schmit, Frost Brown Todd LLC, (Pro Hac Vice), Cincinnati, OH.

Ann Marie Mortimer, Hunton & Williams LLP, Los Angeles, CA, for Plaintiff, COLD JET, LLC.

**ORDER RELATING TO AMENDMENT OF THE ANSWER, NEW DEFENSES AND MOTION TO  
CORRECT CLERICAL MISTAKE IN CONSTRUING PATENT CLAIM**

**VIRGINIA A. PHILLIPS, District Judge.**

*Amendment to Answer/New Affirmative Defenses*

Having read and considered the parties' Joint Stipulation Relating to Defendants Amendment to the Answer to Add New Defenses, and good cause appearing, the Court approves the withdrawal of Defendants' Motion to Amend, Plaintiff's Motion in Limine, and approves the following amendments without prejudice to the Plaintiff's right to challenge the legal merit of any newly added defenses:

Paragraph 33. As a sixth and separate affirmative defense to Plaintiff's Complaint, this Defendant alleges that Plaintiff's patent is invalid for anticipation and lack of novelty as set forth in 35 U.S.C. s. 102.

Paragraph 34. As a seventh and separate affirmative defense to Plaintiff's Complaint, this Defendant alleges that Plaintiff's patent is invalid for obviousness as set forth in 35 U.S.C. s. 103.

Paragraph 35. As an eighth and separate affirmative defense to Plaintiff's Complaint, this Defendant alleges that Plaintiff's patent was procured without fair and full disclosure of material information relating to the patentability of the invention in question.

Paragraph 36. As a ninth and separate affirmative defense to Plaintiff's complaint this Defendant alleges that Plaintiff is attempting to enforce its patent beyond the legitimate and lawful scope.

Paragraph 37. As a tenth and separate affirmative defense to Plaintiff's Complaint this Defendant alleges that he has not infringed upon Plaintiff's patent.

In addition, without prejudice to the Plaintiff's right to challenge the legal sufficiency of any affirmative

defense, the Defendant may also raise the following claimed affirmative defenses as specifically described in and limited by the Parties Joint Stipulation: (1) non-infringement; (2) invalidity/obviousness (35 U.S.C. s. 103); (3) anticipation/lack of novelty (35 U.S.C. s. 102); and (4) inadequate disclosure.

It is further ordered that within 30 days, Defendants will supplement and bring current the responses to the following discovery requests:

- a. Plaintiff's Interrogatories 5, 9, 13, 14, 15, and 16.
- b. Plaintiff's document requests 6, 12, 30, 33-35, 55, 59-62, and 72-76.

It is further ordered that the Plaintiff may supplement its expert designations, disclosures and reports, supplement its trial exhibits and fact witnesses as it deems necessary to respond to these newly added affirmative defenses.

1. Plaintiff may supplement its expert designations, disclosures and reports as it deems necessary to address the alleged defenses described above.
2. Plaintiff may supplement its trial exhibits as it deems necessary to address the alleged defenses described above.
3. Plaintiff may supplement its fact witnesses as it deems necessary to address the alleged defenses described above.

***Motion To Correct Clerical Mistake in Construing Patent Claims:***

Having read and considered the Plaintiff's Motion to Correct Clerical Mistake in Court's order Construing Patent Terms and the Defendants Statement of Non-Opposition, and good cause appearing, the Court has determined that the construction of the term "pad" in the Court's September 21, 2006 Order was a clerical mistake.

Pursuant to Rule 60(a) of the Federal Rules of Civil Procedure, the Court therefore corrects the clerical mistake by striking the definition of "non-rotating pad" from its September 21, 2006 Order, and inserting in its place the following definition: a "non-rotating pad" as used in the claims of the patent in suit is a pad that does not move with the rotor.

IT IS SO ORDERED.

C.D.Cal.,2006.  
Cold Jet, LLC v. Phoenix Unlimited LLC

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