

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
DRONE TECHNOLOGIES, INC.,

Plaintiff,

14cv0111

**ELECTRONICALLY FILED**

v.

PARROT S.A., PARROT, INC.,

Defendants.

**ORDER OF COURT RE: DEFENDANTS' MOTION FOR LEAVE TO FILE  
AFFIRMATIVE DEFENSE TO PLAINTIFF'S DAMAGES CLAIMS AND REQUEST  
FOR EQUITABLE RELIEF BASED UPON UNCLEAN HANDS (DOC. NO. 188)**

As the Parties are well aware, on November 3, 2014, this Court struck Defendants' Answer and Counterclaims and entered default judgment against Defendants as to liability, based upon Defendants' repeated failure to comply with this Court's Orders. Doc. Nos. 106-107. A jury trial solely to determine issues related to damages is scheduled to begin on April 27, 2015. Doc. Nos. 126-127.

Presently before this Court is Defendants' Motion for Leave to File an Affirmative Defense, in which Defendants move this Court to permit them to file a so-called affirmative defense to Plaintiff's damages claim and request for equitable relief based upon the doctrine of unclean hands. Doc. Nos. 188, 208. Defendants' Motion is premised on an assertion that Yu-Tuan ("Diane") Lee, who is identified as the sole inventor and assignee of the patents at issue, is not the sole inventor of the patents. Doc. No. 188, ¶¶ 4-6. Rather, Defendants posit that her husband, Bruce Ding, is at least the co-owner of the patents at suit and, therefore, the named Plaintiff is barred from claiming damages for those patents. *Id.* at ¶¶ 8-9. Plaintiff wholly opposes this Motion. Doc. No. 204.

Pursuant to the Federal Rules of Civil Procedure, Defendants may only amend their pleadings in this instance if Plaintiff gives written consent or if Defendants are provided with leave of court. Fed.R.Civ.P. 15(a)(2). The Court is mindful that leave to amend should be “freely given” unless there is any “apparent or declared reason” to deny such a request. *See Grayson v. Mayview State Hospital*, 293 F.3d 103, 108 (3d Cir. 2002), cited by Defendants at Doc. No. 188, 5. Here, based upon the procedural posture of this case and the outstanding issues, it is apparent that Defendants’ Motion must be denied, just as similar Motions have been denied outright or denied as moot by the Court. *See* Defendants’ Answer and Counterclaims, Doc. No. 16 (struck by the Court on November 3, 2014, Doc. No. 107) and Defendants’ Motion for Leave to File Amended Answer and Counterclaims, Doc. No. 97 (denied as moot in the same Order).

As noted by Plaintiff, in October 2014, Defendants sought leave to file an amended answer and counterclaims “to add more specificity to the already pled defense and counterclaim for invalidity” based on Diane Lee’s alleged “fraud on this Court.” Doc. Nos. 16 and 98, 1-2. The Court denied this Motion as moot when judgment was entered against Defendants on liability because this issue sounds in liability, not in damages. Doc. No. 107. Defendants, in a June 27, 2014 Motion seeking to have the Court bifurcate discovery and damages, recognized that if liability were established, the only remaining issues would be those “relating to monetary relief.” Doc. No. 44, 1. Defendants contended that separating liability and damages would be “in the interests of judicial economy, efficiency, and justice.” *Id.* This Court agrees. That is why Defendants’ Motion, which is an attempt to re-litigate issues that have been already been denied by this Court based upon similar arguments, filed over three months after liability has been established, will be denied.

Defendants' present Motion is also the product of undue delay and would impede the resolution of remaining damages issues, which would unduly prejudice Plaintiff. Defendants have been aware of their position that Ms. Lee is purportedly not the sole inventor of the relevant patents as early as four months ago when they filed their Motion for Leave to File First Amended Answer and Counterclaims, but have only re-raised this issue now, approximately eight weeks prior to the damages trial. Further, Defendants have raised nearly identical issues in a Motion to Dismiss for lack of standing, which was filed on February 5, 2015 (more than two weeks before Defendants filed their Motion for Leave to File an Affirmative Defense). Doc. No. 172. Therefore, Defendants' contention that their present Motion is not brought in a dilatory manner because Plaintiff did not provide complete initial disclosures or responses on interrogatories on damages until February 17, 2015 is not persuasive. Doc. No. 188, ¶ 17.

The Court also finds that granting Defendants' Motion, at this late stage, would delay the disposition of remaining damage issues, which would further impede the just, speedy and inexpensive determination of the remaining issues. Fed.R.Civ.P. 1. This case has already presented unprecedented efforts by Defendants to stymie final resolution of the Parties' dispute in this forum; further delay cannot be permitted.

In sum, Defendants' Motion for Leave to File an Affirmative Defense will be denied because the Court has previously denied similar relief and the requested relief is untimely in light of the "exceptional" procedural posture of this case and the narrow remaining unresolved issues. Therefore, the following Order is entered:

AND NOW, this 2<sup>nd</sup> day of March, 2015, IT IS HEREBY ORDERED THAT Defendants' Motion for Leave to File Affirmative Defense to Plaintiff's Damages Claims and Request for Equitable Relief Based Upon Unclean Hands (Doc. No. 188) is **DENIED**.

s/ Arthur J. Schwab  
Arthur J. Schwab  
United States District Judge

cc: All Registered ECF Counsel and Parties