IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SATCO PRODUCTS, INC., Plaintiff, v. SEOUL SEMICONDUCTOR CO., LTD. and SEOUL SEMICONDUCTOR, INC., Defendants.	CIVIL ACTION FILE NO. 1:21-cv-643-TCB

O R D E R

I. Background

On February 12, 2021, Satco filed this action against Seoul Semiconductor Co., Ltd. ("SSC"), a Korean corporation, and its wholly owned U.S. subsidiary, Seoul Semiconductor, Inc. ("SSI"). The complaint alleges infringement of three patents related to LED lighting products.

On February 25, SSI was served with the summons and complaint. On March 17, SSI moved for a thirty-day extension of time to file its answer, which the Court granted. However, SSI did not file its answer until May 3—fourteen days late. That same day, it filed the instant motion for leave to file its out of time answer.[1]

Satco timely filed its response in opposition to the motion, which includes a cross-motion to strike the answer as untimely or to deem certain allegations admitted. The motions are ripe for the Court's review.

The parties are well-acquainted. SSC and Satco are currently engaged in two other, interrelated patent litigations, *Seoul Semiconductor Co. v. Satco Products, Inc.*, No. 2:19-cv-4951 (E.D.N.Y. filed Aug. 29, 2019), and *Seoul Semiconductor Co. v. Satco Products, Inc.*, No. 1:19-cv-6719 (E.D.N.Y. filed Nov. 27, 2019), and a number of inter partes review proceedings.

[1] After realizing his oversight, SSI's lead counsel immediately contacted Satco's counsel to request consent to the motion for leave, which Satco's counsel denied.

II. Legal Standards

A. Rule 6(b)

Rule 6(b) of the Federal Rules of Civil Procedure provides in pertinent part, "[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time: . . . on motion made after the time has expired if the party failed to act because of excusable neglect." FED. R. CIV. P. 6(b)(1)(B).

The Supreme Court has designated four factors that a court should consider when determining whether a late filing results from excusable neglect: (1) "the danger of prejudice to the debtor"; (2) "the length of the delay and its potential impact on judicial proceedings"; (3) "the reason for the delay, including whether it was within the reasonable control of the movant"; and (4) "whether the movant acted in good faith." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993) (citing *In re Pioneer Inv. Servs. Co.*, 943 F.2d 673, 677 (6th Cir. 1991)). Ultimately, the determination "is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Id.*

"Although inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable' neglect," the Supreme Court has clarified that "'excusable neglect' under Rule 6(b) is a somewhat 'elastic concept' and is not limited strictly to omissions caused by circumstances beyond the control of the movant." *Id.* at 392 (footnotes and citations omitted); *see also id.* at 394–95 (construing a bankruptcy rule and clarifying that excusable neglect can include an "inadvertent or negligent omission").

Moreover, the Eleventh Circuit expresses a "strong preference that cases be heard on the merits," *Wahl v. McIver*, 773 F.2d 1169, 1174 (11th Cir. 1985) (per curiam), and "strive[s] to afford a litigant his or her day in court, if possible," *Betty K Agencies, Ltd. v. M/V MONADA*, 432 F.3d 1333, 1339 (11th Cir. 2005).

B. Rule 8(b)

Rule 8(b) of the Federal Rules of Civil Procedure requires a party to "admit or deny the allegations asserted against it by an opposing party" unless it "lacks knowledge or information sufficient to form a belief about the truth" of the allegation. FED. R. CIV. P. 8(b)(1)(B), (b)(5).

Further, "[a] party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest." *Id.* 8(b)(4).

If a responsive pleading is required and a party does not deny or "fairly respond to the substance of the allegation" (other than one relating to the amount of damages), the allegation is deemed admitted. *Id.* 8(b)(2), (b)(6); *see also Ashley v. Jaipersaud*, 544 F. App'x 827, 829 (11th Cir. 2013) (per curiam) (citations omitted).

This Court's Instructions to Parties and Counsel build upon Rule 8(b). They require candor in responsive pleadings and explain that "evasive denials shall be disregarded, and the averments to which they are directed shall be deemed admitted in accordance with Rule 8(d)." [38] at 7.

III. Discussion

A. SSI's Motion for Leave to File Out of Time Answer

The Court first considers whether SSI's delay in filing its answer was the result of excusable neglect, focusing on the factors articulated

by the Supreme Court in *Pioneer* and considering all relevant circumstances. 507 U.S. at 395.

This case is in its infancy; no scheduling order has been issued, and SSC filed its answer just recently (July 19). Further, the length of the delay was fourteen days—a relatively short time having little if any impact on the judicial proceedings. For these reasons, the Court finds there is little danger of prejudice to Satco.[2] Thus, the first and second factors weigh in favor of a finding of excusable neglect. *See also Cheney v. Anchor Glass Container Corp.*, 71 F.3d 848, 850 (11th Cir. 1996) (noting that in *Pioneer*, the Supreme Court "accorded primary importance to the absence of prejudice to the nonmoving party and to

[2] Moreover, Satco does not argue that it was prejudiced by the fourteen-day delay. Instead, it contends that it has suffered prejudice because SSI has failed to assert a meritorious defense, which it argues is a factor relevant to the Rule 6(b) excusable neglect analysis. However, the "meritorious defense" factor is considered on a motion to set aside final default judgment for excusable neglect under Rule 60(b)(1), *In re Wordwide Web Systems, Inc.*, 328 F.3d 1291, 1295 (11th Cir. 2003), or on a motion to set aside an entry of default for good cause under Rule 55(c), *Federal Insurance Co. v. Team Air Express*, No. 1:19-cv-5325-CAP, 2020 WL 10086549, at *2 (N.D. Ga. Oct. 15, 2020) (citing *Compania Interamericana Export-Import, S.A. v. Compania Dominicana de Aviacion*, 88 F.3d 948, 951 (11th Cir. 1996)).

Here, Satco has not requested an entry of default, nor has default judgment been entered. Thus, the Court's analysis will not include consideration of the "meritorious defense" factor. *See also Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1337–38 (11th Cir. 2014); *Wade v. Rowan Cabinet Co.*, No. 14-cv-2206-SCJ, 2015 WL 12857076, at *1 (N.D. Ga. Mar. 13, 2015).

the interest of efficient judicial administration" when considering whether neglect was excusable).

As for the reason for the delay, SSI explains that its lead counsel recently moved to a new law firm and inadvertently missed the deadline due to the transition. It admits that this oversight was within its control, though the COVID-19 pandemic compounded the difficulties of the remote transition process.

The Supreme Court has explained that "excusable neglect" can include instances of "inadvertent or negligent omission[s]." *Pioneer*, 507 U.S. at 394–95; *see also Cheney*, 71 F.3d at 850 (finding that a failure in communication between an associate attorney and lead counsel was only an "omission caused by carelessness" and could be considered excusable neglect (quoting *Pioneer*, 507 U.S. at 388)). And SSI's error does not appear to be based on a misunderstanding or misinterpretation of the law, which cannot constitute excusable neglect. *See United States v. Davenport*, 668 F.3d 1316, 1324 (11th Cir. 2012) (citations omitted). Thus, the reason for delay also weighs in favor of finding SSI's neglect excusable. *See also Jackson v. Norfolk S. Ry. Co.*, No. 1:20-cv-859-MLB-

AJB, 2021 WL 2582615, at *4 (N.D. Ga. Jan. 22, 2021) (recognizing the challenges and difficulties created by the COVID-19 pandemic when considering the reason for delay).

Finally, the Court finds that SSI acted in good faith. Upon realizing his oversight, SSI's counsel conferred with Satco's counsel concerning the instant motion, and he filed the answer and the motion that same day. There is no indication that he deliberately disregarded local rules, intended to delay the case, or sought an advantage by filing late. *See Cheney*, 71 F.3d at 850 (finding no bad faith under such circumstances).

After considering all relevant circumstances and balancing the equities, the Court finds that good cause exists to extend the time for SSI to file its answer and that SSI's neglect was excusable. The Court is mindful of the Eleventh Circuit's "strong preference for deciding cases on the merits—not based on a single missed deadline—whenever reasonably possible," *Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1332 (11th Cir. 2014). Accordingly, the Court will grant SSI's motion for leave to file an out of time answer.

B. Satco's Motion to Deem Allegations Admitted

Having determined that leave to file an out of time answer is appropriate, Satco's motion to strike the answer will be denied. The Court now turns to Satco's motion to deem certain allegations of the complaint admitted.

In its motion, Satco takes issue with four types of responses in SSI's answer. It argues that these responses are evasive, improper, and prohibited by Rule 8(b) and this Court's Instructions to Parties and Counsel [38]. Thus, it asks the Court to deem those allegations admitted. The Court will consider each category of responses in turn.

First, SSI denies averments relating to either SSC alone or SSI and SSC together on the basis that it is "unable to answer on behalf of SSC." [36] ¶¶ 3–4, 10–16, 69; *see also id.* ¶¶ 5, 25, 30, 37–40, 47–48, 52–55, 68, 73–76, 89–90.[3] It also refuses to respond to averments directed at SSI and SSC together as "Seoul Semiconductor," claiming that Satco

[3] The Court notes that SSI makes this same denial in paragraphs 7–8 and 17–18, though Satco does not object to these paragraphs in its motion.

has engaged in improper group pleading. *Id.* ¶¶ 4–5, 25, 30, 37–40, 47–48, 52–55, 68, 73–76, 89–90.

> For example, in paragraph 4 of the complaint, Satco avers,
>
> On information and belief, defendant SSC and its direct and indirect subsidiaries, including defendant SSI (collectively, "Seoul Semiconductor"), operate, manage and direct the worldwide "Seoul Semiconductor" business. Seoul Semiconductor makes, sells, and offers for sale LED lighting products throughout the United States, including in the Northern District of Georgia.

[1] ¶ 4. In response, SSI answers,

> Admitted that SSI is a subsidiary of SSC. The remainder of the allegations are directed to SSC and *SSI is unable to answer on behalf of SSC*. In addition, *SSI objects to the collective definition of "Seoul Semiconductor," which appears to be an attempt to ignore the distinction between separate corporate entities and engage in improper group pleading. On that basis*, the remaining allegations in paragraph 4 are denied.

[36] ¶ 4 (emphasis added). Satco argues that such responses are obstructionist and that SSI is obligated to answer on behalf of itself and at least plead lack of sufficient knowledge and information as to the allegations directed at SSC. The Court agrees.

The Court finds that SSI should have answered—for itself—the allegations involving conduct of SSC. As Satco explains, "SSI's

purported inability to answer on behalf of its own parent company, SSC, does not relieve it of its obligation to answer based on its own knowledge and information." [47] at 13. And this is true even in the few instances where SSI explicitly admits or denies the averments in the contested paragraphs on behalf of itself, *see* [36] ¶¶ 10–16, 47, 68–69, 89.[4]

While the Court expects SSI to ordinarily have knowledge and information as to the activities of its parent company, SSI is obligated by Rule 8(b) to plead lack of sufficient knowledge or information regarding SSC's activities *at the very least*. SSI's denials fall far short of Rule 8(b)'s requirements and fail to reflect candor to the Court.

Moreover, SSI's argument that Satco has engaged in improper group pleading is meritless, as are its conditional denials of averments directed at "Seoul Semiconductor" on the basis that the averments ignore the distinction between the two corporate entities. SSI's position

[4] In one instance, SSI entirely fails to respond to averments explicitly directed at its own activities. *See, e.g.*, [36] ¶ 3 (denying the averment because it is "directed solely to SSC" but failing to respond to the paragraph's averment that "defendant SSI is a wholly-owned subsidiary of defendant SSC," [1] ¶ 3).

is a weak attempt to circumvent the requirement that it respond to the factual averments with candor.

Accordingly, the relevant allegations in paragraphs 3–5, 10–16, 25, 30, 38, 47–48, 53, 68–69, 74, and 89–90 of the complaint will be deemed admitted, with the following three exceptions:

(1) With respect to paragraphs 10–12 of the complaint, the Court will deem it admitted that SSI manufactures, uses, offers for sale, sells, and/or imports the accused products listed. However, it will not deem it admitted that these products infringe one or more claims of the asserted patents.

(2) The Court will not deem admitted the last sentence of paragraph 13, which alleges that "SSI conducts infringing activities on behalf of SSC." [1] ¶ 13.

(3) With respect to paragraphs 47, 68, and 89 of the complaint, the Court will not deem it admitted that "Seoul Semiconductor has made, used, sold, offered for sale, and/or imported products under different names or part numbers that infringe" the asserted patent "in a similar manner." *Id.* ¶¶ 47, 68, 89.

The Court will not go so far as to deem admitted paragraphs 37, 39–40, 52, 54–55, 73, and 75–76 of the complaint, which accuse Seoul Semiconductor of direct infringement.

With respect to the second category, SSI denies averments that it "manufactures, uses, offers for sale, sells, and/or imports" certain

(allegedly infringing) multi-junction products, LED packaging products, and LED filament products. *Id.* ¶¶ 10–12; *see* [36] ¶¶ 10–12.

Satco contends that these denials were made in bad faith because it is undisputed that SSI is in the business of selling LED lighting products throughout the United States. In response, SSI explains that it denied these averments because they track the language of the patent infringement statute, which defines making, using, offering to sell, selling, and/or importing as acts of infringement. *See* 35 U.S.C. § 271(a).

SSI also attempts to justify its denials by explaining that Satco similarly denied allegations that track the infringement statute in an answer it served in a case pending in the Eastern District of New York. *See* [45-3] ¶ 22 (denying allegations that "Satco has infringed and continues to infringe one or more claims" of the asserted patent by "making, using, offering to sell, and/or selling" the product within the United States "or importing" the product into the United States, *see* [45-2] ¶ 22).

Not only do SSI's denials violate Rule 8(b)(4)'s requirement that a party intending to deny part of an allegation "admit the part that is

true and deny the rest," SSI's denials also violate this Court's rules. In its instructions requiring candor in responsive pleadings, the Court explains that a party may not deny an averment in its opponent's pleading on the grounds that the averment raises a matter of law rather than fact.

As to SSI's argument that Satco is guilty of the same misconduct in other cases, Satco's denials of allegations that it "has infringed and continues to infringe," [45-2] ¶ 22, is not analogous to SSI's denial that it sells or offers for sale certain LED products in the United States. And the Court is not particularly interested in what was done in other courts in other contexts. Thus, for this additional reason the Court will deem admitted the averments in paragraphs 10–12 of the complaint that SSI manufactures, uses, offers for sale, sells, and/or imports the accused products. However, as already noted, the Court will not deem it admitted that these products are infringing.

Third, in response to several of Satco's averments made on information and belief, SSI answers that "[Satco's] subjective belief as to what it intends to accuse of infringement is not a fact that can be

admitted or denied, and on that basis the remaining allegations" are denied. [36] ¶¶ 26, 31. In three instances, SSI even goes so far as to plead lack of sufficient knowledge and information as to Satco's subjective beliefs: "SSI lacks knowledge or information sufficient to form a belief as to the state of Plaintiff's subjective belief about the extent of alleged infringement." *Id.* ¶¶ 47, 68, 89. In its opposition brief, SSI offers no explanation for this evasiveness, nor can it; these responses are manifestly improper.

Every day in pleadings filed across the country, allegations are made upon information and belief. In fact, it is a perfectly proper and well-accepted practice for parties to so hedge their allegations, and good lawyers routinely use this tactic. *See also* FED. R. CIV. P. 11(b); 5 Charles Alan Wright et al., *Federal Practice & Procedure* § 1224 (3d ed. 2004). No experienced practitioner thinks that this type of averment calls for the defendant to address the plaintiff's subjective belief or state of mind.

Accordingly, the relevant allegations in paragraphs 26 and 31 of the complaint will be admitted, except that SSI will be permitted to

maintain its denials in paragraphs 26 and 31 that any accused product meets each and every limitation of any claim of the asserted patent. The allegations in paragraphs 47, 68, and 89 of the complaint will be deemed admitted, with the exception previously noted.

Fourth, Satco contends that SSI's responses to averments about documents violate this Court's instructions requiring candor. The instructions give the following example of an evasive response:

> For example, if the complaint alleges, "A copy of the parties' contract is attached hereto as Exhibit A," the defendant's answer must either admit or deny this averment, or plead that he is without knowledge or information sufficient to form a belief as to whether Exhibit A is in fact a copy of the parties' contract; the defendant may not plead, e.g., "Defendant admits that Exhibit A is attached to the complaint," or "The document speaks for itself."

[38] at 7.

Here, where the complaint avers that copies of the letters patent are attached as exhibits, Satco responds, "[a]dmitted that the Complaint appears to accurately reproduce the title and issue date of the . . . patent and that [the] Exhibit . . . appears to be an accurate reproduction of that patent." [36] ¶¶ 22, 27, 32. And in response to three averments that reproduce language of claims of the asserted patents,

SSI answers that "the complaint appears to accurately reproduce the language" of the claims. *Id.* ¶¶ 41, 56, 77. SSI's responses fly in the face of this Court's instructions requiring candor.[5] As such, the Court will deem the relevant allegations in the complaint admitted.

In its response in opposition to Satco's motion to deem allegations admitted, SSI wholly fails to address this Court's prohibition against evasiveness or Rule 8(d)'s standards for proper pleading. Instead, it offers justifications for its answer that are almost too weak to be considered.

The Court expects much more from members of the bar of this Court and those admitted to practice pro hac vice. The Court has wasted countless hours reviewing the parties' pleadings and writing this Order.

SSI has been cautioned that "evasive denials shall be disregarded, and the averments to which they are directed shall be deemed admitted in accordance with Rule 8(d)." [38] at 7. For its egregious failure to

[5] Again, the Court rejects SSI's argument that Satco has employed similar language in its answers in other matters, in part because SSI is bound by *this* Court's instructions.

comply with Rule 8(b) and provide candor to the Court, the Court will deem the allegations in the relevant paragraphs of the complaint admitted with respect to SSI, except that the Court will not require SSI to admit infringement.

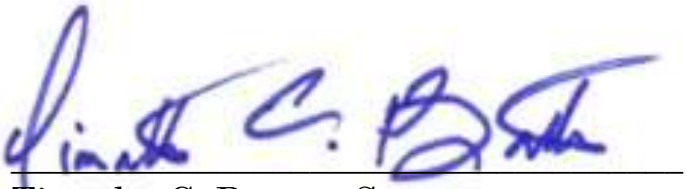
IV. Order Setting Rule 16 Pretrial Conference

Pursuant to Rule 16(a) of the Federal Rules of Civil Procedure, this matter is hereby set for a pretrial conference on August 11, 2021 at 10:00 a.m. in Courtroom 2106 of the federal courthouse in Atlanta. Defendants' lawyer(s) who signed off on or otherwise approved SSI's answer are directed to appear before the Court at this conference.

V. Conclusion

After a thorough review of the record, SSI's motion [37] for leave to file its out of time answer is granted. Satco's cross-motion [42] to strike or deem allegations admitted is granted in part. The allegations in paragraphs 3–5, 10–16, 22, 25–27, 30–32, 38, 41, 47–48, 53, 56, 68–69, 74, 77, and 89–90 of the complaint are hereby deemed admitted with respect to SSI, with the exceptions specifically noted.

IT IS SO ORDERED this 27th day of July, 2021.



Timothy C. Batten, Sr.
Chief United States District Judge