UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

I.E.E. INTERNATIONAL ELECTRONICS & ENGINEERING, S.A. and IEE SENSING, INC.,

Plaintiffs/Counter-Defendants, Case No. 10-13487

v. Hon. Gerald E. Rosen

TK HOLDINGS INC. and TAKATA-PETRI A.G.,

Defendants/Counter-Plaintiffs.
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ORDER GRANTING DEFENDANT'S MOTION FOR LEAVE TO FILE ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT

At a session of said Court, held in the U.S. Courthouse, Detroit, Michigan on January 26, 2012

PRESENT: Honorable Gerald E. Rosen
Chief Judge, United States District Court

On February 14, 2011, Plaintiffs filed a first amended complaint in which they named Defendant Takata-Petri A.G. as an additional party. The party named as the sole Defendant in Plaintiffs' initial complaint, TK Holdings Inc., inadvertently failed to file a timely answer to Plaintiffs' first amended complaint. Upon discovering this oversight, Defendant TK Holdings filed the present motion on November 30, 2011, seeking leave to rectify its omission by filing an out-of-time answer to Plaintiffs' first amended complaint. In an entirely predictable development, given the parties' demonstrated inclination to litigate even the most trivial quarrel, Plaintiffs have refused to consent to this untimely

filing, and instead have filed a response in opposition to Defendant's motion for leave. For the reasons stated briefly below, the Court readily concludes that Defendant's request for leave to file an untimely answer should be granted.

In opposing this request for leave, Plaintiffs do not claim that they would be prejudiced in any way by virtue of Defendant's delay in filing an answer to Plaintiffs' first amended complaint. Nor could they, given that (i) the claims asserted against Defendant in the first amended complaint do not differ in any material respect from those asserted against Defendant in Plaintiffs' initial complaint,[1] and (ii) by the same token, Defendant's proposed answer to Plaintiffs' first amended complaint, as well as the counterclaims accompanying this proposed answer, are substantively identical to the answer and counterclaims filed by Defendant in response to Plaintiffs' initial complaint. Because there have been no material or substantive changes in the pleadings exchanged (or proposed to be exchanged) between Plaintiffs and Defendant since the outset of this litigation, Plaintiffs cannot (and do not) point to any confusion, uncertainty, or other detriment of any sort they have suffered as a result of Defendant's failure to timely file an answer to the first amended complaint.[2] To the contrary, Plaintiffs evidently remained

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[1]As noted earlier, the sole purpose of Plaintiffs' first amended complaint was to add a new party, Defendant Takata-Petri A.G., and to assert claims against this newly-added party.

[2]Indeed, because the claims asserted against Defendant and their supporting allegations remain wholly unaltered by the filing of Plaintiffs' first amended complaint, it is open to debate whether Defendant is even required to file an answer to this amended pleading, or whether Defendant instead may rest upon its answer to Plaintiffs' original — and, so far as Defendant is concerned, substantively identical — complaint. *See, e.g.*, *Doe v. State of Hawaii Department of Education*, 351 F. Supp.2d 998, 1008 n.18 (D. Haw. 2004) (treating an answer to the initial

wholly unaware of this oversight until Defendant brought it to their attention in

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complaint as the defendant's answer to a substantively identical amended complaint); *Dennis v. Thurman*, 959 F. Supp. 1253, 1257 n.2 (C.D. Cal. 1997) (same); *Stanley Works v. Snydergeneral Corp.*, 781 F. Supp. 659, 665 (E.D. Cal. 1990) (observing that the plaintiffs in that case "cite[d] no authority that defendants are required to file an Answer to a First Amended Complaint"); *UPEK, Inc. v. Authentec, Inc.*, No. 10-424, 2010 WL 2681734, at *3 (N.D. Cal. July 6, 2010) ("When an amended pleading does not add new parties, new claims, or significant new factual allegations, courts are often willing to allow the previously filed response to the original pleading to suffice." (internal quotation marks, alteration, and citations omitted)). *But see Johnson v. Berry*, 228 F. Supp.2d 1071, 1079 (E.D. Mo. 2002) (opining, without explanation, that "[t]he last sentence of Fed. R. Civ. P. 15(a) requires a party to plead in response to an amended pleading"). The case law is similarly unsettled as to whether Defendant must re-file its counterclaims in response to Plaintiffs' first amended complaint, or whether Defendant instead may continue to rely on the (substantively identical) counterclaims that accompanied its answer to the original complaint. *See, e.g.*, *Wagner v. Choice Home Lending*, 266 F.R.D. 354, 358 (D. Ariz. 2009) (observing that the language of the pertinent Federal Rules "sheds no light on the issue of whether or not a response to an amended complaint may (or must) include counterclaims," and that "[t]he case law addressing this particular situation . . . is all over the map" (internal quotation marks and citation omitted)); *Cairo Marine Service, Inc. v. Homeland Insurance Co.*, No. 4:09CV1492, 2010 WL 4614693, at *1 (E.D. Mo. Nov. 4, 2010) ("There is some confusion among federal district courts regarding whether a party abandons or waives a counterclaim by failing to re-plead it in its answer to an amended complaint." (footnote with citations omitted)); *Dunkin' Donuts Inc. v. Romanias*, No. 00-1886, 2002 WL 32955492, at *2 (W.D. Pa. May 29, 2002) (concluding that "[r]evisions to a complaint do not require revisions to a counterclaim"). *But see Johnson*, 228 F. Supp.2d at 1079 (holding that a counterclaim was abandoned by virtue of the defendant's failure to re-plead it in response to the plaintiff's filing of an amended complaint).

Depending on the Court's resolution of these open questions — which the parties notably fail to address (or even identify) in their briefs — Defendant's present request for leave might be utterly unnecessary. Alternatively, even if Defendant's failure to timely file an answer to the first amended complaint were "considered to at least be a technical violation of [Fed. R. Civ. P.] 15," the "courts will usually relieve a party of the technical waiver and permit the party to make whatever responsive pleading is required to the amended pleading at a later time," at least "so long as no other party is prejudiced" by this untimely filing. *Wagner*, 266 F.R.D. at 357 n.1 (internal quotation marks and citation omitted); *see also Cairo Marine Service*, 2010 WL 4614693, at *1-*2 (granting leave for the defendant to re-file its counterclaim, where the plaintiff did not suffer any prejudice as a result of the defendant's arguable failure to timely re-plead this counterclaim when filing its answer to the plaintiff's amended complaint); *Hitachi Medical Systems America, Inc. v. Horizon Medical Group*, No. 5:07CV02035, 2008 WL 5723531, at *4-*5 (N.D. Ohio Aug. 29, 2008) (same). In the end, the Court finds it unnecessary to take a stance on these thorny procedural questions, because Plaintiffs have failed to suggest any tenable basis for denying the leave sought by Defendant.

connection with the filing of the present motion.

In the absence of any conceivable prejudice, Plaintiffs' opposition to Defendant's request for leave rests solely upon the proposition that the counterclaims accompanying Defendant's proposed answer are inadequately pleaded, and thus would not survive scrutiny under Fed. R. Civ. P. 12(b)(6). The Court agrees with Defendant that this objection is utterly beside the point, and likely meritless as well. If Plaintiffs truly believe that Defendant's counterclaims are susceptible to challenge under Rule 12(b)(6), they are free to bring an appropriate motion upon the filing of these counterclaims. Tellingly, however, Plaintiffs brought no such motion in response to the counterclaims that accompanied Defendant's answer to the original complaint, and these previously-filed counterclaims are materially indistinguishable from those that Defendant proposes to file with its answer to the first amended complaint.

Indeed, Defendant correctly observes that the level of specificity and detail provided in its proposed counterclaims — as well as the counterclaims it previously filed — is precisely the same as the level of specificity and detail found in Plaintiffs' initial and amended complaints. Moreover, the parties have been given ample opportunity in discovery to flesh out any vagueness in the pleadings that might have left them genuinely uncertain as to the nature of and factual bases for the opposing party's claims and defenses, and they certainly have not been reticent to seek relief from the Court if they believe that the opposing party has been insufficiently forthcoming with such supporting detail.

Against this backdrop, the Court agrees with Defendant that Plaintiffs' opposition to the present motion reflects "transparent gamesmanship," (Defendant's Reply Br. at 2), rather than a well-founded or good-faith challenge to Defendant's request for leave to file an out-of-time answer to the first amended complaint. In its prior orders in this case, the Court has cautioned against such gamesmanship, has expressly stated that the parties' "contentious conduct must end," and has warned that escalating rounds of sanctions would be imposed for each successive violation of the standards set forth in Fed. R. Civ. P. 11(b) and Fed. R. Civ. P. 37(a)-(c). (*See* 8/24/2011 Order at 3-4; 7/6/2011 Order at 3 n.2.) Plaintiffs' response in opposition to Defendant's motion fails to measure up to these standards, as the arguments advanced in this response lack a basis in law, and instead appear to have been presented for the improper purposes of delay and needless increase in the cost of this litigation. *See* Fed. R. Civ. P. 11(b)(1)-(2). In addition, Plaintiffs and their counsel have unreasonably withheld their consent to the relief sought in Defendant's motion, in contravention of Local Rule 7.1(a)(3) of this District. Accordingly, Plaintiffs' counsel is sanctioned in the amount of **$1,000.00,** to be paid to the Clerk of the Court within ten (10) days of the date of this order.

For these reasons,

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant's November 30, 2011 motion for leave to file an answer to Plaintiffs' first amended complaint (docket #208) is GRANTED. IT IS FURTHER ORDERED that, within ***seven (7) days*** of the date of this order, Defendant shall file and serve the answer, affirmative defenses, and

counterclaims as found in Exhibit A to its motion. Finally, IT IS FURTHER ORDERED that, within ***ten (10) days*** of the date of this order, Plaintiffs' counsel shall pay to the Clerk of the Court a sanction in the amount of **$1,000.00.**

s/Gerald E. Rosen
Chief Judge, United States District Court

Dated: January 26, 2012

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 26, 2012, by electronic and/or ordinary mail.

s/Ruth A. Gunther
Case Manager