

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

LEVERAGED INNOVATIONS LLC,

Plaintiff,

v.

Case No. 14-2031-JTM

BATS EXCHANGE, INC., et al.,

Defendants.

MEMORANDUM AND ORDER

Plaintiff Leveraged Innovations LLC filed this patent infringement case against defendants BATS Exchange, Inc., BATS Global Markets, Inc., and Direct Edge Holdings LLC on January 23, 2014. Leveraged Innovations filed its Amended Complaint (Dkt. 16) on February 17, 2014. The defendants filed their initial Answer (Dkt. 26) on March 27, 2014, which included counterclaims seeking declarations of non-infringement and invalidity of the patents they are accused of infringing.

The court now has before it Leveraged Innovations's Motion to Dismiss (Dkt. 27), which asks the court to strike the defendants' third defense and dismiss counts IV, V, and VI of their counterclaims, all of which relate to an argument that the patents at issue are invalid. Generally, the motion argues that the defendants' Answer fails to provide any basis for their defense and counterclaims of invalid patents.

On May 2, 2014, the defendants filed an Amended Answer (Dkt. 29), which appears to set forth additional facts for the defense and counterclaims at issue. The

defendants argue that the court must deny the motion to dismiss as moot as a result of their filing an Amended Answer.

“A pleading that has been amended under Federal Rule of Civil Procedure 15(a) supercedes the pleading which it modifies.” *Nuvio Corp. v. Broadsoft, Inc.*, No. 09-2126-KHV, 2009 WL 1870883, at *1 (D. Kan. June 29, 2009) (citing *Gilles v. United States*, 906 F.2d 1386, 1389 (10th Cir. 1990)). “Therefore, a motion filed in response to a superceded pleading is rendered moot by the filing of the amended pleading.” *Id.* (citing *United States ex rel. Babb v. Northrop Grumman Corp.* No. 06-CV-00581-EWN-MJW, 2007 WL 1793795, at *1 (D. Colo. June 19, 2007)).

Here, the defendants’ Amended Answer supersedes its original Answer. Thus, regardless of whether the Amended Answer addresses the arguments asserted in the motion to dismiss, the fact of its filing renders the motion moot.

IT IS THEREFORE ORDERED this 29th day of May, 2014, that Leveraged Innovations’s Motion to Dismiss (Dkt. 27) is denied.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE