

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MICHAEL J. HOUSE,

Plaintiff,

-against-

**REPORT & RECOMMENDATION
23 CV 71 (LDH)(LB)**

GENERAL ELECTRIC COMPANY, GE
AVIATION, GE AEROSPACE, CFM
INTERNATIONAL, AMERICAN AIRLINES
GROUP INC., SOUTHWEST AIRLINES CO.,
DELTA AIR LINES INC., UNITED AIRLINES
HOLDING INC., JETBLUE AIRWAYS INC.,
SPIRIT AIRLINES INC., and EASTERN
AIRLINES LLC,

Defendants.

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BLOOM, United States Magistrate Judge:

Defendants General Electric Company, GE Aerospace,¹ and CFM International, Inc.² (collectively “General Electric”) move for sanctions against *pro se* plaintiff Michael J. House pursuant to Fed. R. Civ. P. 11. ECF No. 69. The Honorable LaShann DeArcy Hall referred General Electric’s motion to me.³ ECF Order dated September 30, 2024. For the reasons discussed below, it is respectfully recommended that General Electric’s motion should be denied.

BACKGROUND

Plaintiff filed the complaint in this action on January 3, 2023 against the General Electric defendants and American Airlines, Inc., Delta Air Lines, Inc., Eastern Airlines, LLC, JetBlue Airways Corporation, Southwest Airlines Co., United Airlines Holdings, Inc., and Spirit Airlines,

¹ GE Aerospace was formerly known as GE Aviation. ECF No. 69 at 1. Plaintiff names both GE Aerospace and GE Aviation as defendants.

² Plaintiff’s complaint alleges that CFM International is “a Subsidiary of General Electric.” ECF No. 1 at 1.

³ The Second Circuit has not decided whether magistrate judges are authorized to impose Rule 11 sanctions by order in cases referred under 28 U.S.C. § 636(b), or “only to make a recommendation of Rule 11 sanctions to the district court[.]” *Kiobel v. Millson*, 592 F.3d 78, 106-07 (2d Cir. 2010) (Jacobs, C.J., concurring) (“I respectfully suggest that this knot needs to be untied by Congress or by the Supreme Court.”).

Inc. (the “Airline Defendants”). Compl., ECF No. 1. Plaintiff, an inventor, holds the patent for a “Multi All Fuel Processor System and Method of Pretreatment For All Combustion Devices,” United States Patent No. 7,140,873 (the “’873 Patent”). Id. ¶¶ 2, 31. The patent “involves a processing system for super preheating of any fuel prior to burning in a combustion chamber or a combustion device.” Patent, ECF No. 1-2 at 4. In brief, the ‘873 Patent’s independent claim describes a process of increasing the pressure and temperature of fuel “within a multi-chambered combustion device” before burning it. Id. at 18. Plaintiff’s patent states that this process can be used for “any combustible fuels: liquid, gaseous, and solids,” and “may increase the efficiency of all fuels, while reducing emissions.” Id. at 4.

Plaintiff submitted this fuel-processing method to General Electric in 1998, while his patent was pending. Compl. ¶ 3; ECF No. 1-2 at 24. Plaintiff alleges that General Electric infringed his patent by producing and distributing products “including for example, Jet Engines, GE9x Jet Engines, GENx Jet Engines, GE CFM Leap Jet Engines, GE CF6 Jet Engines, GE CFM56 Jet Engines, GE90 and GE CF34 Jet Engines” (the “Accused Engines”). Compl. ¶ 32. Plaintiff also alleges that the Airline Defendants infringed his patent by using one or more of the Accused Engines. Id. ¶¶ 36-42. Plaintiff’s complaint attaches “claim charts” and other documents about the Accused Engines. ECF No. 1-2 at 26-99.

Plaintiff filed a similar lawsuit in the Eastern District of Michigan on February 26, 2019. House v. Gen. Elec. Co., No. 19-CV-10586, 2019 WL 12070341 (E.D. Mich. Dec. 11, 2019) (“House I”).⁴ In House I, plaintiff named only General Electric Co. and Lawrence Culp as defendants. Id. at 1. On December 11, 2019, the Court granted General Electric Co.’s motion to dismiss “based on failure to state a claim and improper venue.” Id. at *3. The Court found that

⁴ The Clerk of Court is respectfully directed to send plaintiff the attached copies of all the unreported cases cited herein.

venue was improper because plaintiff did not show “that GE committed acts of either direct or induced infringement in this venue,” and that plaintiff’s “bare assertions . . . fail to connect his patent to any activities carried out by GE.” Id. However, the Court dismissed plaintiff’s case “without prejudice to allow Plaintiff to file his complaint in an appropriate venue.” Id.

Defendants in the instant case moved to dismiss plaintiff’s complaint. ECF Nos. 54, 58. The same day, General Electric requested a pre-motion conference on its anticipated motion for Rule 11 sanctions against plaintiff. ECF No. 60. On September 30, 2024, Judge DeArcy Hall granted defendants’ motion to dismiss for failure to state a claim, denied plaintiff leave to amend his complaint as futile, and set a briefing schedule for General Electric’s Rule 11 motion. ECF No. 64; ECF Order dated September 30, 2024. Judge DeArcy Hall held that plaintiff’s “allegations do not support a plausible inference that the Accused Engines actually perform any of the processes laid out in the ‘873 Patent.” ECF No. 64 at 7.

General Electric moved for sanctions on November 4, 2024. ECF No. 69. Plaintiff responded to General Electric’s motion on November 18, 2024, after the Court granted him a *nunc pro tunc* extension of time to file. ECF Nos. 71, 76. General Electric filed a reply on November 22, 2024. ECF No. 77. General Electric argues that plaintiff violated Rule 11(b)(3) by failing to adequately investigate the facts alleged in his complaint. ECF No. 70 at 3-4. General Electric states that plaintiff “merely cited the improved fuel efficiency of [General Electric’s] engines and invited the unsupported (and unsupportable) inference that, because [General Electric’s] engines are fuel-efficient, they *must* be practicing Plaintiff’s patented process. But nowhere . . . did Plaintiff even attempt to explain how the [Accused Engines] perform the *actual* steps of that process.” Id. at 4. General Electric further states that if plaintiff had undertaken a proper prefiling investigation, he would have learned that the Accused Engines “simply cannot as a matter of the laws of physics

and chemistry” use plaintiff’s super preheating process. Id. at 5-6. General Electric asks the Court to impose a monetary injunction on plaintiff or “an anti-filing injunction prohibiting Plaintiff from filing, without prior court approval, any further lawsuits against [General Electric] and/or its customers concerning the ‘873 Patent or related subject matter.” Id. at 7.

Plaintiff responds that he acted in good faith and conducted an adequate factual investigation. ECF No. 76. He states that his claim charts were produced by Global IP Partners, “who specializes in patent research and analytics” and “analyse several million a year” (sic). Id. at 1. Plaintiff also states that he is “a State of Michigan licensed first class unlimited combustion stationary engineer college educated and trained in this field.” Id. at 7 (capitalization omitted).⁵ Finally, plaintiff states that he submitted his idea to General Electric in 1998 “with the hope of creating a license agreement” and alleges that General Electric has since used plaintiff’s patented process “literally or equivalently.” Id. at 2, 15.

DISCUSSION

I. Standard of Review

Under Federal Rule of Civil Procedure 11(b), an attorney or *pro se* party who files a pleading or any other paper with the Court “certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,” the legal and factual contentions in the filing are not frivolous or unsupported. For factual allegations, parties certify under Rule 11(b)(3) “that there is (or likely will be) ‘evidentiary support’ for the allegation,” O’Brien v. Alexander, 101 F.3d 1479, 1489 (2d Cir. 1996) (citation omitted), based on the party’s “reasonable belief at the time of filing.” Vinuela v. S.S. Britanis, 647 F. Supp. 1139, 1148

⁵ Plaintiff worked “daily for over 30 years as a Civilian for the Michigan Public Schools Systems, running, operating, maintaining and installing multitudes of combustion equipment . . . to safely serve thousands of people on a daily basis.” ECF No. 76 at 7. Plaintiff further states, “I have since retired and . . . [I am] very proud of all my accomplishments. I was taught to respect all people and would appreciate the same in return.” Id. (some capitalization omitted).

(S.D.N.Y. 1986).⁶ The Court “may impose an appropriate sanction” for violations of Rule 11(b). Fed. R. Civ. P. 11(c)(1). Rule 11 also applies to *pro se* litigants, but “the court may consider the special circumstances of litigants who are untutored in the law,” Maduakolam v. Columbia Univ., 866 F.2d 53, 56 (2d Cir. 1989), including “whether the litigant has been warned of the possible imposition of sanctions.” Murawski v. Pataki, 514 F. Supp. 2d 577, 590 (S.D.N.Y. 2007) (citation omitted).

Procedurally, Rule 11 requires that a motion for sanctions be made “separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b).” Fed. R. Civ. P. 11(c)(2). The movant must serve the motion under Rule 5 and then not file the motion with the court if the “challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets.” Id. The purpose of this provision, colloquially called the “safe harbor” provision, is to give the nonmoving party “the opportunity to withdraw the potentially offending statements before the sanctions motion is officially filed.” Storey v. Cello Holdings, L.L.C., 347 F.3d 370, 389 (2d Cir. 2003).

When evaluating a Rule 11 motion, “the court does not judge the merits of an action,” but rather a “collateral issue: whether the [party] has abused the judicial process.” Safe-Strap Co., Inc. v. Koala Corp., 270 F. Supp. 2d 407, 417 (S.D.N.Y. 2003) (citation omitted). The Second Circuit instructs that “Rule 11 targets situations where it is patently clear that a claim has absolutely no chance of success.” Healey v. Chelsea Res., Ltd., 947 F.2d 611, 626 (2d Cir. 1991) (internal quotation marks and citations omitted).⁷ Accordingly, “sanctions may not be imposed unless a

⁶ “Patent infringement is a question of fact. An attorney’s allegation of infringement is therefore subject to the requirement of Rule 11(b)(3)” Antonious v. Spalding & Evenflo Companies, Inc., 275 F.3d 1066, 1074 (Fed. Cir. 2002) (citation omitted).

⁷ The Federal Circuit has exclusive jurisdiction over appeals of decisions in patent infringement actions, including appeals of orders granting Rule 11 sanctions in such actions. View Eng’g, Inc. v. Robotic Vision Sys., Inc., 115 F.3d 962, 964 (Fed. Cir. 1997); 28 U.S.C. § 1295(a)(1). However, the Federal Circuit applies “the law of the regional circuit in which the district court sits” when reviewing a district court’s decision on a Rule 11 motion. Q-Pharma,

particular allegation is utterly lacking in support,” O’Brien, 101 F.3d at 1489, and “[c]ourts generally look for ‘direct falsehood’ in a filing.” Sichel v. UNUM Provident Corp., 230 F. Supp. 2d 325, 332 (S.D.N.Y. 2002) (citation omitted). On a Rule 11 motion, the Court “resolve[s] all doubts in favor of the signer.” Oliveri v. Thompson, 803 F.2d 1265, 1275 (2d Cir. 1986).

“In the context of patent infringement actions,” the Federal Circuit interprets Rule 11 “to require, at a minimum, that [plaintiff] interpret the asserted patent claims and compare the accused device with those claims before filing a claim alleging infringement.” Q-Pharma, Inc. v. Andrew Jergens Co., 360 F.3d 1295, 1300-01 (Fed. Cir. 2004) (applying Ninth Circuit law).⁸ An adequate infringement analysis requires that the party “perform an objective evaluation” of the patent’s terms, Eon-Net LP v. Flagstar Bancorp., 653 F.3d 1314, 1329 (Fed. Cir. 2011), and then make “a good faith, informed comparison of the claims of a patent against the accused subject matter.” Q-Pharma, Inc., 360 F.3d at 1302.⁹ The Court evaluates Rule 11 compliance using an objective reasonableness standard. Weinraub v. Glen Rauch Sec., Inc., 419 F. Supp. 2d 507, 512 (S.D.N.Y. 2005). In the context of patent infringement, this means asking whether a reasonable person would believe, based on “evidence uncovered during the prefiling investigation, that each claim limitation reads on the accused device either literally or under the doctrine of equivalents.” Antonious v. Spalding & Evenflo Companies, Inc., 275 F.3d 1066, 1074 (Fed. Cir. 2002).

Inc. v. Andrew Jergens Co., 360 F.3d 1295, 1299 (Fed. Cir. 2004). As such, Second Circuit precedent interpreting Rule 11 is binding in this case. Federal Circuit cases applying other circuits’ Rule 11 standards are applicable insofar as such standards are analogous to those of the Second Circuit.

⁸ Similarly to the Second Circuit, “[t]he Ninth Circuit defines a frivolous claim or pleading for Rule 11 purposes as one that is legally or factually ‘baseless’ from an objective perspective . . . [and made without] a reasonable and competent inquiry.” Q-Pharma, Inc. v. Andrew Jergens Co., 360 F.3d 1295, 1299 (Fed. Cir. 2004) (internal quotation marks and citation omitted).

⁹ Where, as here, a complaint accuses several devices of patent infringement, “the evidence uncovered by the patent holder’s investigation must be sufficient to permit a reasonable inference that all the accused products infringe.” Antonious v. Spalding & Evenflo Companies, Inc., 275 F.3d 1066, 1075 (Fed. Cir. 2002).

Upon finding that a party has violated Rule 11, the Court then determines whether to exercise its discretion to impose sanctions. Bernhardt v. Tradition N. Am., 676 F. Supp. 2d 301, 306 (S.D.N.Y. 2009); Ipcon Collections LLC v. Costco Wholesale Corp., 698 F.3d 58, 63 (2d Cir. 2012) (“[S]anctions under Rule 11 are discretionary, not mandatory.”).¹⁰ A decision to impose sanctions should be “made with restraint.” Schlaifer Nance & Co., Inc. v. Estate of Warhol, 194 F.3d 323, 334 (2d Cir. 1999). Courts have “broad discretion in tailoring appropriate and reasonable sanctions under rule 11,” O’Malley v. New York City Transit Auth., 896 F.2d 704, 709 (2d Cir. 1990), but sanctions “must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated.” Fed. R. Civ. P. 11(c)(4).

II. The Timeliness of General Electric’s Motion

In its premotion letter seeking leave to file the instant Rule 11 motion, General Electric states that in compliance with Rule 11(c)(2)’s “safe harbor” provision, it served its anticipated sanctions motion on plaintiff on September 7, 2023. ECF No. 60 at 1 n.1. However, General Electric does not provide proof of such service and does not address this issue in its motion for sanctions.¹¹ This alone may justify denial of General Electric’s motion. See Regis-Dumeus v. Great Lakes Kraut Co., LLC, 462 F. Supp. 3d 292, 300 (W.D.N.Y. 2020) (“[D]efendants have not brought their motion separately or filed proof of prior service of such a motion on plaintiffs, and as such, their request for sanctions under [Rule 11] is denied for failure to comply with the

¹⁰ General Electric cites Judin v. United States, 110 F.3d 780, 783-84 (Fed. Cir. 1997), stating that the Federal Circuit “conclud[ed] the district court abused its discretion by *not* awarding Rule 11 sanctions.” ECF No. 70 at 4. However, Judin was decided under Rule 11, Rules of the Court of Federal Claims, which at the time was patterned after the 1983 version of Fed. R. Civ. P. 11 and provided for mandatory, not discretionary, sanctions. Judin, 110 F.3d at 783 n.1, 784.

¹¹ General Electric provides an affidavit of service of its motion on October 14, 2024. ECF No. 69 at 2. While this was exactly 21 days before General Electric filed its motion, this service occurred after the Court dismissed plaintiff’s complaint on September 30, 2024. Therefore, plaintiff could no longer have withdrawn his complaint when the motion was served. If this was the only service of General Electric’s motion for sanctions, it would be untimely. See Diamonds.net LLC v. Idex Online, Ltd., 254 F.R.D. 475, 477 (S.D.N.Y. 2008) (“Awarding sanctions in these circumstances would defeat the goal, apparent from the text of Rule 11(c)(2), of streamlining litigation by allowing the party in the wrong the first opportunity to withdraw an offending paper.”)

procedural requirements.”) However, there is no reason to doubt General Electric’s signed statement that it served plaintiff on September 7, 2023, and plaintiff does not contest this. Furthermore, the Court need not decide whether General Electric complied with Rule 11(c)(2) because General Electric’s motion should be denied for other reasons.

III. Plaintiff Has Not Demonstrated an Adequate Prefiling Investigation

As discussed above, Rule 11 requires plaintiffs to conduct an adequate investigation of their claims before filing a patent infringement lawsuit. In the instant case, this means that plaintiff must have (1) reasonably interpreted what his ‘873 Patent covers and (2) taken steps to obtain enough information about the Accused Engines to reasonably believe that they infringe his patent. See Q-Pharma, Inc. v. Andrew Jergens Co., 360 F.3d 1295, 1302 (Fed. Cir. 2004). To oppose General Electric’s Rule 11 motion, plaintiff must articulate “why [he] believed before filing the claim that [he] had a reasonable chance of proving infringement.” View Eng’g, Inc. v. Robotic Vision Sys., Inc., 208 F.3d 981, 985-86 (Fed. Cir. 2000) (upholding sanctions where the filer, when asked why it believed that View Engineering infringed each element of its patent, stated that it “could not do so in that sort of detail until [it] learned what View actually did”).

Plaintiff’s opposition to General Electric’s motion contains little detail about his prefiling investigation. He states that “[b]ecause of the tremendously complex nature” of the ‘873 Patent, his case should go to trial so that the parties “can tell a detailed explanation to the jurors.”¹² ECF No. 76 at 1. He also states that he had claim charts produced by Global IP Partners. Id. at 1-2.¹³

¹² This statement demonstrates plaintiff’s unfamiliarity with how rare civil jury trials are in our federal court system. Although plaintiff may not be represented by counsel, he should know very few cases go to a jury trial. Most are resolved by motion or settlement. See Jeffrey Q. Smith & Grant R. MacQueen, *Going, Going, But Not Quite Gone: Trials Continue to Decline in Federal and State Courts. Does it Matter?*, 101 JUDICATURE, no. 4, 2017, at 26, 28 (“[A]pproximately 1 percent of all civil cases filed in federal court are resolved by trial.”). Defendants’ motions to dismiss this case do not violate plaintiff’s Seventh Amendment right to a jury trial, “as these motions merely address whether trial is necessary at all.” In re Healthcentral.com, 504 F.3d 775, 787 (9th Cir. 2007).

¹³ Plaintiff further states that he created a “test bench turbine type burner” to “successfully test his invention method process” with “Kerosene based Jet Fuel.” ECF No. 76 at 8. While this may reflect that it is *possible* to use plaintiff’s

The claim charts and other exhibits in plaintiff's complaint shed some light on plaintiff's interpretation of his '873 Patent. As Judge DeArcy Hall stated, plaintiff's claim charts "compare each of the seven claims of the '873 Patent with language from articles and press releases about the GE9X and GENx engines, touting the fuel-efficiency of the engines and describing some of the engines' general features." ECF No. 64 at 3.¹⁴ Plaintiff also attaches "similar articles and press releases" regarding the other five Accused Engines. *Id.* at 4. Plaintiff appears to have underlined certain portions of these articles that relate to the engines' increased efficiency. *E.g.*, ECF No. 1-2 at 72 ("The other half [of the engine's increased fuel efficiency] comes from thermal efficiency – operating at higher temperatures and pressure ratios.").

Based on this, plaintiff's interpretation of the '873 Patent appears very broad. The Federal Circuit counsels that "[c]laim interpretation is not always an exact science," and on a Rule 11 motion, the Court need not "determine whether [the] pre-filing interpretation of the asserted claims was correct, but only whether it was frivolous." Q-Pharma, Inc. v. Andrew Jergens Co., 360 F.3d 1295, 1301 (Fed. Cir. 2004).¹⁵ Courts also assume that a patent holder "ought to have a clear idea of what the patent covers," even "without the formality of a claim chart." *Id.* at 1301. However, plaintiff's theory seems to be that General Electric's improvements in jet engine efficiency using a high-pressure combustion system reflect an infringement of his patent. *See, e.g.*, ECF No. 1-2 at 38. Granted, Patent '873 similarly describes "selectively increasing the pressure of [the] temperature-elevated fuel" prior to combustion to achieve greater fuel efficiency. ECF No. 1-2 at 18. However, plaintiff has not shown that a reasonable person would believe that *any* high-pressure

process with jet fuel, it does not reflect that General Electric *actually uses* plaintiff's process. The latter is the key question in a pre-filing investigation.

¹⁴ Without explanation, plaintiff appears to have redacted the entirety of a column labeled "Supporting Detailed Description US'873." ECF No. 1-2 at 29.

¹⁵ Accordingly, the Court's holding that plaintiff's exhibits "do not support a plausible inference" of infringement, ECF No. 64 at 7, does not necessarily lead to the conclusion that plaintiff violated Rule 11.

combustion system likely infringes his patent. See Weinraub v. Glen Rauch Sec., Inc., 419 F. Supp. 2d 507, 512 (S.D.N.Y. 2005).

There is also little indication that plaintiff adequately investigated how the Accused Engines work. Plaintiffs must take reasonable steps to obtain information about the devices they accuse of patent infringement. See Judin v. United States, 110 F.3d 780, 782-83 (Fed. Cir. 1997) (finding that because plaintiff did not attempt to obtain a device to examine or a technical description of it, plaintiff “could have been much better informed” before filing his complaint).¹⁶ Relying solely on publicly available information may or may not constitute an adequate prefiling investigation. Compare Q-Pharma, Inc., 360 F.3d at 1301-02 (finding that plaintiff’s infringement analysis, which relied only on defendant’s advertising statements, “was supported by a sufficient evidentiary basis”) with View Eng’g, Inc., Inc., 208 F.3d at 985 (upholding sanctions on party who stated that its infringement analysis was “based on what we could learn about View’s machines from publicly available information, and View’s literature”). Ultimately, some “comparison of the asserted claims with the accused product” is critical. Q-Pharma, Inc., 360 F.3d at 1302.

An exchange during the oral argument on General Electric’s motion to dismiss plaintiff’s House I complaint provides some detail about plaintiff’s investigation. The Honorable Gershwin A. Drain asked plaintiff why he believed General Electric infringed his patent. Plaintiff responded that after he submitted his idea to General Electric in 1998,

[Y]ears went by and I never heard from them and finally I said . . . you know, all of a sudden they’re making leaps and bounds with these jet engines, something’s up, and it took me a few years, because they were pretty good at hiding it, to try to find this information, and doing so, I did, I was able to finally get to it, to the information that I needed, and it appears to me that they’re, yes, using my invention process. . . . [T]hey had put out blogs, and they had put on the GE aviation sites, they were kind of touting their abilities of what they had done, and I was able to get

¹⁶ In Judin, plaintiff alleged that an optical scanner used by the United States Postal Service infringed his patent. Of course, it would not be reasonable to expect Mr. House to obtain a General Electric jet engine for inspection, but he could have based his infringement analysis on more detailed technical information about defendants’ engines.

some mechanical drawings. I was able to get the process that they were using, and then I started comparing notes, your Honor, to the things I had created, and it was, bingo.

House I, ECF No. 31 at 19:20-20:13. This reflects that plaintiff conducted some pre-filing investigation. Indeed, had plaintiff submitted mechanical drawings of the Accused Engines and a more detailed description of how he “compar[ed] notes” with his patent, this might have demonstrated an adequate pre-filing investigation. See Cap. Bridge Co. v. IVL Techs. Ltd., No. 04-CV-4002 (KMK), 2007 WL 3168327, at *6-*7, *10 (S.D.N.Y. Oct. 26, 2007) (holding that plaintiff undertook “a minimally reasonable pre-filing infringement inquiry” even though the Court viewed plaintiff’s claim construction as “absurd”). However, unlike the plaintiff’s counsel in Capital Bridge Co., plaintiff did not “recount in substantial detail his pre-filing inquiry.” Id. at *6.

General Electric’s separate argument about exculpatory information does not establish that plaintiff violated Rule 11. General Electric claims that “readily available public information” establishes that the Accused Engines do not use plaintiff’s patented process “because they simply cannot as a matter of the laws of physics and chemistry.” ECF No. 70 at 5-6. Plaintiff does not respond to this. However, General Electric’s motion does not clearly support its conclusion. General Electric explains that “aircraft engines use *liquid* fuel that must be ‘atomized’ (*i.e.*, broken up into a fine spray) before it can burn.” Id. at 5.¹⁷ General Electric then claims, without citing authority,¹⁸ “[i]t is also widely known that for jet fuel to remain liquid (as it must in order to be

¹⁷ General Electric attaches a 45-page paper by A.H. Lefebvre titled “The Role of Fuel Preparation in Low Emissions Combustion,” published by the American Society of Mechanical Engineers in 1995. ECF No. 70-2. The paper focuses primarily on ways to reduce the NO_x emissions of aircraft engines. Id. at 3. While Lefebvre’s paper is not, for the most part, focused on ways to increase engines’ fuel efficiency – the goal of plaintiff’s patent – Lefebvre remarks that “the need to burn less fuel and thereby generate less CO₂ is in direct conflict with the equally important need to reduce NO_x.” Id. at 40.

¹⁸ General Electric cites the Petroleum Quality Information System’s 2013 Annual Report, a “report on fuel quality data,” for the proposition that jet fuel’s initial boiling point is approximately 324 degrees Fahrenheit at a pressure of 1 atm. ECF No. 70 at 6, 6 n.1.

converted into atomized spray), the temperature *needs to be below* its initial boiling point.” *Id.* at 6. General Electric concludes that plaintiff’s patented process, which relies on super preheating fuel prior to combustion, “is physically incompatible with aircraft engines.” *Id.* at 5. However, at oral argument in House I, General Electric’s counsel stated that “super preheating is kind of a specific term. It means increasing the temperature of a liquid past its boiling point without actually causing it to boil.” House I, ECF No. 31 at 11:1-3. Likewise, plaintiff’s patent instructs that liquid fuels should be heated “as high as safely possible . . . above their boiling point while under pressure.” ECF No. 1-2 at 4.¹⁹

In sum, General Electric asks the Court to conclude that plaintiff should have known that it is impossible to super preheat fuel for use in jet engines. This might be true. Plaintiff’s process may well be incompatible with engines that use atomized fuel. However, this is far from clear from General Electric’s motion, and on a Rule 11 motion for sanctions, the Court must resolve all doubts in favor of the nonmovant. Oliveri v. Thompson, 803 F.2d 1265, 1275 (2d Cir. 1986). Nevertheless, plaintiff’s statements do not establish that he conducted an adequate prefiling investigation.

IV. The Court Should Not Impose Sanctions

When a court finds that the “high bar for establishing a Rule 11 violation” has been met, the court must exercise discretion in determining whether to impose sanctions. Now-Casting Econ., Ltd. v. Econ. Alchemy LLC, 628 F. Supp. 3d 501, 521 (S.D.N.Y. 2022) (citation omitted); see also Ipcon Collections LLC v. Costco Wholesale Corp., 698 F.3d 58, 63 (2d Cir. 2012). Courts may be guided by several factors:

¹⁹ General Electric claims that “[p]laintiff’s patent envisions processing liquid fuels in its containment device at ‘unlimited temperatures,’” and notes that plaintiff’s patent “list[s] processing temperatures ranging from 4220 °F to 5678 °F.” ECF No. 70 at 6. However, plaintiff’s patent does not appear to require such high temperatures; the table to which General Electric cites lists “approximate temperatures and pressures of some fuels” and states that “these temp[eratures] and press[ures] can increase [or] decrease for application needed.” ECF No. 1-2 at 8.

(1) “Whether the improper conduct was willful, or negligent;” (2) “whether it was part of a pattern or activity, or an isolated event;” (3) “whether it infected the entire pleading, or only one particular count or defense;” (4) “whether the person has engaged in similar conduct in other litigation;” (5) “whether it was intended to injure;” (6) “what effect it had on the litigation process in time or expense;” (7) “whether the responsible person is trained in the law;” (7) “what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case;” and (8) “what amount is needed to deter similar activity by other litigants.”

Now-Casting Econ., Ltd., 628 F. Supp. 3d at 521 (S.D.N.Y. 2022) (quoting Fed. R. Civ. P. 11 Advisory Committee’s Note to 1993 Amendment) (alteration omitted). Attorneys fees as sanctions “should only rarely be awarded against plaintiffs proceeding *pro se*,” but this may be appropriate if plaintiff’s “claim was frivolous, unreasonable, or groundless, or [where] the plaintiff continued to litigate after it clearly became so.” Bauer v. Yellen, 375 F. App’x 154, 156 (2d Cir. 2010) (summary order) (citation omitted). To determine whether an anti-filing injunction is appropriate, the Court “must consider the record as a whole and the likelihood that the litigant will continue to abuse the judicial process.” Eliahu v. Jewish Agency for Israel, 919 F.3d 709, 714 (2d Cir. 2019).²⁰

General Electric describes plaintiff as the kind of serial litigant who should be sanctioned: “Plaintiff has abused the Federal Court system” by suing General Electric for a second time despite being warned, in House I, “of his obligation to conduct a proper pre-filing investigation.” ECF No. 70 at 3. However, General Electric mischaracterizes House I in two ways. First, while General Electric correctly states that the House I was dismissed for failure to state a claim, General Electric ignores that House I was “dismissed without prejudice to allow Plaintiff to file his complaint in an appropriate venue.” House I, No. 19-CV-10586, 2019 WL 12070341, *3 (E.D. Mich. Dec. 11,

²⁰ In this inquiry, courts consider the five factors set forth in Safir v. U.S. Lines, Inc., 792 F.2d 19, 25 (2d Cir. 1986): (1) [T]he litigant’s history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant’s motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.

2019). Second, Judge Drain’s only warning to plaintiff was a general statement that *pro se* litigants must “conduct enough investigation to draft pleadings that meet the requirements of the federal rules.” *Id.* at *2 (quoting Burnett v. Grattan, 468 U.S. 42, 50 (1984)). Nowhere in House I’s opinion or oral argument did the Court or General Electric suggest that plaintiff’s conduct was sanctionable. See Horton v. Trans World Airlines Corp., 169 F.R.D. 11, 16 (E.D.N.Y. 1996) (“[C]ourts that have imposed sanctions against *pro se* litigants frequently have attached importance to the fact that the litigant previously had been placed on notice that he or she was on the verge of violating Rule 11.”)²¹

Even if the Court were to find that plaintiff violated Rule 11, the Court should nonetheless decline to impose sanctions. It would be unfair to an earnest *pro se* plaintiff like Mr. House for one court to dismiss his case with the instruction to re-file in “an appropriate venue,” and then for the second jurisdiction to sanction him for filing his case. Plaintiff states that he “has acted in good faith,” ECF No. 76 at 1, and nothing in the record suggests otherwise.²² While working for the “Michigan Public Schools Systems,” plaintiff “spent many years of blood sweat and tears experimenting and testing” his idea for the ‘873 Patent, with the goal of “improving our environment for all people.” *Id.* at 7 (capitalization omitted). He followed General Electric’s procedure for submitting his idea in 1998. *Id.* at 14-17. Finally, he followed the Eastern District of Michigan’s direction to file his complaint in an appropriate venue. House I, 2019 WL 12070341

²¹ Granted, if plaintiff conducted an adequate prefiling investigation, he may not have filed this suit at all. However, there is no indication that plaintiff “rel[ied] on a direct falsehood.” New V & J Produce Corp. v. NYCCaterers Inc., No. 13-CV-4861 (ER), 2014 WL 5026157, at *7 (S.D.N.Y. Sept. 29, 2014).

²² General Electric claims that “Plaintiff’s decision to multiply the scale of his frivolous lawsuit by adding half-a-dozen of [General Electric’s] airline customers as defendants has only aggravated his offense.” ECF No. 70 at 3. While General Electric frames this as an abusive litigation tactic, this may simply reflect plaintiff’s understanding of the House I opinion. The House I Court, finding that venue was improper, noted that “any ‘acts’ of infringement [in the Eastern District of Michigan] would not be carried out by the Defendant, a supplier, but by the third parties operating the aircraft.” House I, 2019 WL 12070341 at *2. As such, plaintiff may have believed that naming the Airline Defendants was called for.

at *3. Plaintiff is obviously a smart man, and the Court notes it is a great accomplishment to secure a scientific patent. That being said, intellectual property law is complicated and may not be conducive to the “bingo” analysis that plaintiff recounted before Judge Drain. House I, ECF No. 31 at 19:20-20:13.

General Electric contends that plaintiff must be sanctioned to deter him from continuing to file harassing lawsuits. However, plaintiff has now received a ruling on the merits of his claim. Plaintiff has appealed that ruling, which is within his rights to pursue. ECF No. 74. There is no reason to believe that once the case runs its course, plaintiff will abuse the Court system by continuing to file claims against General Electric’s engines.

CONCLUSION

For the reasons discussed above, it is respectfully recommended that General Electric’s motion for sanctions should be denied. In an abundance of caution which hopefully is unnecessary, plaintiff is warned that if he files another lawsuit against General Electric raising the claims litigated in this case, he may be subject to monetary sanctions or an anti-filing injunction. If plaintiff chooses to file patent lawsuits against any defendant in the future, he must conduct a more thorough prefiling investigation and he must be prepared to demonstrate that he has reasonably interpreted the scope of what his patent covers.

FILING OF OBJECTIONS TO REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report and Recommendation to file written objections. See also Fed. R. Civ. P. 6. Such objections shall be filed with the Clerk of the Court. Any request for an extension of time to file objections must be made within the fourteen-day period. Failure to file a timely objection to this Report generally waives any further judicial

review. Marcella v. Capital Dist. Physicians' Health Plan, Inc., 293 F.3d 42, 46 (2d Cir. 2002); Small v. Sec'y of Health & Hum. Servs., 892 F.2d 15 (2d Cir. 1989); see Thomas v. Arn, 474 U.S. 140 (1985).

SO ORDERED.

_____/S/
LOIS BLOOM
United States Magistrate Judge

Dated: April 4, 2025
Brooklyn, New York

General Information

Case Name	House v. General Electric Company et al
Court	U.S. District Court for the Eastern District of New York
Date Filed	Tue Jan 03 00:00:00 EST 2023
Judge(s)	LaShann Moutique DeArcy Hall
Federal Nature of Suit	Property Rights: Patent [830]
Docket Number	1:23-cv-00071
Status	Closed
Parties	Michael J. House; General Electric Company; GE Aerospace; American Airlines Group Incorporated; Eastern Airlines LLC; United Airlines Holding Inc.; CFM International; Southwest Airlines Co.; JetBlue Airways Incorporated; Delta Air Lines Inc.; Spirit Airlines Inc.; GE Aviation