



Federal Circuit Affirms Dismissal of Joint Infringement Allegations under *Iqbal*/Twombly Pleading Standard

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By: Brock F. Wilson, Rubén H. Muñoz

The plaintiff alleged that the defendants, CBS Corp. (CBS) and CBS Interactive, Inc. (“CBS Interactive”), directly infringed the claims of two patents—directed to obtaining real-time responses from audience members viewing a broadcast program—by operating the television show *Big Brother*, which allowed audience members to vote via text messaging. The complaint alleged that CBS and CBS Interactive directly infringed the patents by directing and controlling an independent contractor to conduct testing of *Big Brother*’s voting operations, and the contractor, in turn, under such direction and control directed and controlled unnamed third parties to test the text messaging on cellphones. The defendants moved to dismiss the complaint under Rule 12(b)(6). The district court granted the motion, reasoning that the complaints failed to “demonstrate any connection between the allegedly infringing activity and [the] patent claims” and, thus, was “simply too vague to conform even with the generous pleading standard set forth under Form 18.” The plaintiff appealed.

On appeal, the Federal Circuit first ruled that because the complaint was filed before the effective date of repeal of Form 18 as the baseline pleading standard for allegations of direct infringement, such a repeal “did not apply to this case.” The court ruled that Form 18 does not apply to allegations of direct infringement based on a theory of joint infringement because “joint infringement requires additional elements not addressed by Form 18.” Instead, the court ruled that the *Iqbal*/Twombly pleading standard applies. According to the court, under the *Iqbal*/Twombly standard, “[a] claim of joint infringement [] requires pleading facts sufficient to allow a reasonable inference that all steps of the claimed method are performed and either (1) one party exercises the requisite ‘direction or control’ over the other’s performance

or (2) the actors form a joint enterprise such that performance of every step is attributable to the controlling party.” The court found that the plaintiff’s complaint implicated a theory of direction and control, not a theory of joint enterprise. Thus, the court required the plaintiff’s complaint to “plausibly allege that Defendants exercise the requisite ‘direction or control’ over the performance of the claim steps, such that performance of every step is attributable to Defendants.”

The court, however, found that the plaintiff’s complaint failed to meet this standard. Specifically, the court found:

[The complaint] does not set forth any factual allegations in support of [the] assertion that CBS Interactive directed or controlled the independent contractors. Nor does the [c]omplaint contain factual allegations relating to how the independent contractors directed or controlled the unnamed third parties. Most importantly, the [c]omplaint does not allege any relationship between the Defendants and the unnamed third parties, who own or borrow cell phones, in a way that the actions of these unnamed third parties should be attributed to Defendants. Rather, the [c]omplaint alleges conclusively and without factual support that CBS directed or controlled the independent contractors who then directed or controlled the unnamed third parties.

Thus, the court held that “[the c]omplaint fails to plausibly plead sufficient facts to ground a joint infringement claim [] and does not satisfy the *Iqbal/Twombly* pleading standard,” and affirmed dismissal.

Lyda v. CBS Corp., et al., No. 2015-1923 (Fed. Cir. September 30, 2016).

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