

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

OPENTV, INC., et al.,
Plaintiffs,
v.
APPLE INC.,
Defendant.

[Case No. 5:15-cv-02008-EJD](#)

**ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS**

Re: Dkt. No. 33

Defendant Apple, Inc. (“Defendant”) moves, under Section 101 of the Patent Act, to dismiss for invalidity two of five asserted patent infringement claims brought by Plaintiffs OpenTV, Inc., Nagravision S.A., and Nagra France S.A.S. (collectively “Plaintiffs” or “OpenTV”). The two patents at issue in the current motion are U.S. Patent Nos. 6,148,081 (the “‘081 patent” or “‘081”) and 7,644,429 (the “‘429 patent” or “‘429”). Dkt. No. 1, Exs. 1 and 2, and Dkt. No. 33. In addition, Defendant filed supplemental information in support of its motion to dismiss, in which it limited the scope of the motion to claims 1-3 and 23-24 of the ‘081 patent and claims 1, 2, and 4-6 of the ‘429 patent. Dkt. No. 71 at 2. The current order addresses the patent eligibility of these claims.

For the reasons stated below, the Court GRANTS Defendant’s Motion to Dismiss as to claims 1-3 and 23-24 of the ‘081 patent and claims 1, 2, and 4-6 of the ‘429 patent.

1 **I. TECHNOLOGICAL BACKGROUND**

2 The technology of the patents at issue relates to the secure transmission of digital content
3 directly to a user's television, personal computer, or mobile device. Id. at 12-13. While
4 technology in the field of interactive television systems gives digital content providers the
5 flexibility to transmit their content directly to a user's device, such flexibility also makes the
6 delivery process unsafe. Id. To better secure the delivery process, these providers use Digital
7 Rights management (DRM) and authentication. Id. The patents at issue (i.e. '081 and '429) relate
8 to the use and implementation of these security measures to secure the delivery process of digital
9 content.

10 **II. PATENT BACKGROUND**

11 **A. The '081 Patent**

12 The '081 patent is directed to a method and system of controlling an interactive television
13 application's¹ right to access other interactive applications. '081 at 9:7-15 and 10:4-12. The
14 embodiment that best illustrates the above concept in practice involves a user's ability to make a
15 purchase online with the use of a credit card transaction application. Id. at 9:10-41 and 10:4-17.
16 A user may browse an online shopping application and choose to purchase an item listed.
17 However, the producer that operates the shopping application can vary from the one that operates
18 the credit card application. Consequently, the user's ability to complete the purchase (i.e. make
19 payment using the credit card application) will depend on the scope of rights granted by the credit
20 card application to the shopping application.² Id. If the access rights granted to the shopping
21 application permit it to use the credit card application, then the user may successfully complete the
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24 ¹ An "interactive television application" is defined as a set of one or more program modules that
25 share common access rights and are "owned by the same producer." '081 at 4:32-37. A "module"
26 comprises application code, raw data or graphical information. Id. at 4:31-33. A "credential" is
27 defined as "a collection of information" that can be used to identify and verify the privileges and
28 limitations of particular modules. Id. at 4:47-49 and 8:61-65.

² The credit card application may not share the same access rights as the shopping application and
may be owned and operated by a different producer. '081 at 9:7-15.

1 purchase. If the credit card application does not grant access rights to the shopping application,
2 the user will be unable to make the purchase using the application. Id. at 10:4-7 & 9:10-41.

3 The '081 patent attempted to capture the above practice in the following three steps recited
4 in claim 1: loading an interactive application with an associated credential in the interactive
5 television system, verifying the credential, and allowing an interactive application to perform one
6 or more functions based on the permission information contained in the credential. System claim
7 23 links the steps recited in method claim 1 above to conventional hardware components such as a
8 control unit (i.e. a general purpose computer) and conventional memory (such as SRAM and
9 DRAM), which are collectively configured to perform these steps. Id. at 6:1-5. The control unit is
10 configured to execute the interactive applications and verify credentials, while the convention
11 memory component is responsible for storing these applications and credentials. Id. at 6:4-16 &
12 claims 23 and 24.

13 Dependent claims 2 and 3 include various process limitations such as “storing” credential
14 information and “verifying whether an expiration date has expired.” Id. at Abstract & 11:9-19; see
15 also Id. at Claims 2 and 3. Dependent claim 24 simply recites a limitation that defines the control
16 unit as a general-purpose computer. Id. at 6:4-16 & claim 24.

17 **B. The '429 Patent**

18 The '429 patent is directed to a system that reduces the time it takes for a user to access
19 pay per view (“PPV”) programming. '429 at 1:28-32 & 2:26-33. Traditionally, users would
20 expend a significant amount of time on the phone with human operators to access PPV content.
21 Id. at 1:39-47. These operators would request product specific information from and grant the
22 users access to a product (a PPV, for example) after checking the user’s financial status (i.e.
23 whether the users paid product subscription fees for example). Id. at 1:40-52. To reduce the
24 delays associated with such phone conversations, human operators were replaced with automatic
25 voice servers, and the automatic servers were replaced with interactive screen based systems. Id.
26 Despite these improvements, however, users were required to continue manually inputting
27

1 information to access content. Id. at 2:5-9. The ‘429 patent attempts to solve this problem by
 2 granting the user faster product access and automatically renewing access rights to digital content
 3 after the user initially inputs the necessary information into a database.³ It purports to achieve this
 4 by providing users with the ability to communicate directly with the entity (Subscriber
 5 Authorization System or “SAS”) responsible for generating the access right (thereby bypassing the
 6 human operators). Id. at 8:54-63 & 15:26-41.

7 System claim 1 recites the components that carry out the processes of automatic renewal
 8 and faster product access. These components include: a subscriber management system (“SMS”)
 9 for storing user subscription information, a SAS for generating an Entitlement Management
 10 Message (“EMM”)⁴ and renewing a user’s access rights, a communications server for transmitting
 11 the EMM to the user, and a direct link through which the EMM is transmitted to the user’s
 12 receiver to enable the user to access content (i.e. PPV programming). The SMS is simply a
 13 database that contains user files and pay per view details. ‘429 at 7:44-49. The SAS is a
 14 mainframe computer connected to a keyboard and monitor. ‘429 at 8:42-47. The communications
 15 server and the receiver are conventional components well known in the industry. Finally, the
 16 dependent claims of the ‘429 patent include system limitations that describe the routine operation
 17 of well-known electronic components.

18 C. Procedural History

19 Plaintiff commenced the instant action on May 5, 2015 in the Northern District of
 20 California. Dkt. No. 1. Defendant filed the instant Motion to Dismiss on June 26, 2015. Dkt. No.
 21 33. Plaintiff filed an opposition brief on July 17, 2015, to which Defendant filed a reply on July
 22 29, 2015. Dkt. Nos. 47 and 51. A hearing was held regarding this matter on October 1, 2015.

23
 24 ³ While the user was previously required to input information manually on an interface or provide
 25 this information to a human operator, he could input the necessary user information by inserting a
 smartcard directly into his Set-Top-Box. See ‘429 at 15:27-32.

26 ⁴ EMM gives the user access to the product. ‘429 at 2:13-16. It is a mechanism by which the
 27 encrypted data representative of a product is decrypted for a particular user to grant him product
 access (pay per view programming for example). ‘429 at 2:13-19.

1 **III. LEGAL STANDARD**

2 **A. Motion to Dismiss**

3 A motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure
4 12(b)(6) tests the legal sufficiency of a complaint. Navarro v. Block, 250 F. 3d 729, 732 (9th Cir.
5 2001). Under Rule 12(b)(6), a complaint may be dismissed for failure to state a claim upon which
6 relief may be granted. For purposes of evaluating a motion to dismiss, the court “must presume all
7 factual allegations of the complaint to be true and draw all reasonable inferences in favor of the
8 nonmoving party.” Usher v. City of Los Angeles, 828 F. 2d 556, 561 (9th Cir. 1987). To survive
9 a Rule 12(b)(6) motion, the plaintiff must allege facts sufficient to state a claim to relief that is
10 “plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

11 This “facial plausibility” standard requires the plaintiff to allege facts that add up to “more
12 than a sheer possibility that a defendant has acted unlawfully.” Ashcroft v. Iqbal, 556 U.S. 662,
13 678 (2009). While a complaint does not need detailed factual allegations, the pleading must offer
14 more than mere “labels and conclusions” or a “formulaic recitation of the elements of a cause of
15 action.” Twombly, 550 U.S. at 545 (2007); see Papsan v. Allain, 478 U.S. 265, 286 (1985)
16 (holding that federal courts “are not bound to accept as true a legal conclusion couched as a factual
17 allegation”).

18 In order to state a claim for patent infringement, “a patentee need only plead facts
19 sufficient to place the alleged infringer on notice. This requirement ensures that the accused
20 infringer has sufficient knowledge of the facts alleged to enable it to answer the complaint and
21 defend itself.” Internet Patents Corp. v. Gen. Auto. Ins. Servs., 29 F. Supp. 3d 1264, 1267 (N.D.
22 Cal. 2013) (quoting Phonometrics, Inc. v. Hospitality Franchise Sys., Inc., 203 F.3d 790, 794 (Fed.
23 Cir. 2000)).

24 **B. Burden of Proof**

25 There is a dearth of direct authority addressing the appropriate burden of proof to be
26 applied to determine patent eligibility at the pleading stage. Neither the Supreme Court nor the
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