IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
DENVER DIVISION

UPSTREAM DATA INC., Plaintiff, v. **CRUSOE ENERGY SYSTEMS LLC,** Defendant.	Civil Action No. 1:23-CV-01252-SKC **JURY TRIAL DEMANDED**

DEFENDANT'S MOTION TO DISMISS THE COMPLAINT
UNDER FED. R. CIV. P. 12(b)(6)

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Crusoe Energy Systems LLC ("Crusoe") respectfully requests that the Court dismiss Plaintiff Upstream Data Inc.'s ("Upstream") complaint for infringement of United States Patent No. 11,574,372 (the '372 Patent") because it is based on a flawed theory of "joint infringement" and does not plead facts to show Upstream has a plausible claim for infringement on any grounds in its pleading.

INTRODUCTION

Upstream alleges that Crusoe's "Digital Flare Mitigation" system ("Accused Product") infringes its '372 patent. ECF 1 at ¶ 1. The complaint is full of accolades for Stephen Barbour, CEO of Upstream and inventor of the '372 patent, lauding him for supposedly inventing the use of waste natural gas to generate cheap electricity for bitcoin mining. But this simple idea was neither innovative or novel: waste gas had been used as cheap fuel by well operators for a long time, and generating electricity to power computers at the well-site was not a novel or non-obvious

use of electricity. To the contrary, Mr. Barbour only received a patent after adding a myriad of components and modifications to components (underlined below) to his "system":

> 1. A system comprising:
> a source of combustible gas produced from [[an oil]] a facility selected from a group consisting of a hydrocarbon production, storage, or processing facility;
> a generator connected to the source of combustible gas to receive a continuous flow of combustible gas to power the generator; and
> [[a]] blockchain mining devices connected to the generator;
> in which
> the blockchain mining devices each have a mining processor and are connected to a network interface;
> the network interface is connected to receive and transmit data through the internet to a network that stores or has access to a blockchain database;
> the mining processors are connected to the network interface and adapted to mine transactions associated with the blockchain database and to communicate with the blockchain database;
> the network is a peer-to-peer network;
> the blockchain database is a distributed database stored on plural nodes in the peer-to-peer network; and
> the blockchain database stores transactional information for a digital currency.

But, because Mr. Barbour added these additional elements to persuade the patent examiner to approve his system claims, he cannot sue Crusoe for infringement of Claims 1 and 2 without showing that all of the element are in the accused Digital Flare Mitigation product. Although Upstream tries to overcome this problem by pleading joint infringement, this judicially created legal theory only applies to method, not system claims. Without direct infringement, there is no indirect or willful infringement, and the complaint must be dismissed.

This is not just a pleading exercise. The real issue here is many of the elements do not appear in Crusoe's Digital Flare Mitigation product or any other Crusoe product. Upstream cannot plead direct infringement of a system claim by Crusoe.

I. Upstream Cannot Meet the Pleading Standard to Overcome Rule 12(b)(6)

Rule 12(b)(6) requires that a complaint contain sufficient factual matter, if accepted as true, to "'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To meet this facial plausibility standard, the plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

"Plaintiff cannot assert a plausible claim for patent infringement by reciting claim elements and merely concluding that the accused product has those elements; there must be some factual allegations that, when taken as true, articulate why it is plausible that the accused product infringes the patent claim." *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1353, 1355 (Fed. Cir. 2021) ("[W]e agree with the district court that Bot M8's allegations are conclusory, merely track the claim language, and do not plausibly allege that gaming information and a mutual authentication program are stored together on the same memory.").[1] Here, there are no specific facts to show every element of Claim 1 is in the Digital Flare Mitigation System charted at Exhibit 3 to the Complaint. ECF 1-3. Furthermore, even as to its legally deficient joint infringement theory, Upstream only pleads the elements of the theory in rote form with no specific facts to support it.[2]

[1] The court further wrote, "[M]ere recitation of claim elements and corresponding conclusions, without supporting factual allegations, is insufficient to satisfy the *Iqbal/Twombly* standard."

[2] Complaint, paragraph 30, "30. To the extent specific components of the Infringing Crusoe Products are provided and/or operated by Crusoe's customers, vendors or agents, Crusoe infringes at least claims 1-2 of the '372 Patent jointly with its customers, vendors, or agents. On information and belief, Crusoe directs and controls such infringing act(s) of one or more of these third parties by establishing the manner and timing of the one or more third parties' infringing act(s) and conditioning the participation of an activity or receipt of a benefit upon completion of the infringing act(s). Thus, Crusoe and the one or more third-parties jointly infringe the '372 Patent."

II. DIRECT INFRINGEMENT REQUIRES OWNERSHIP OR CONTROL OF THE ENTIRE SYSTEM

The asserted claims here are system claims. *SiRF Tech., Inc. v. Int'l Trade Comm'n*, 601 F.3d 1319, 1332 (Fed. Cir. 2010) ("We have defined a machine as a concrete thing, consisting of parts, or of certain devices and combination of devices." (citation and internal quotation marks omitted))." *In re Nuijten*, 500 F.3d 1346, 1355 (Fed. Cir. 2007)(A machine claim—often referred to as an "apparatus" or "system" claim—covers "a concrete thing, consisting of parts, or of certain devices and combination of devices."). Direct infringement occurs when a person or entity, "without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent." 35 U.S.C. § 271(a).

In a system claim, "[t]he infringement analysis is a two-step inquiry. 'First, the court determines the scope and meaning of the patent claims asserted, and then the properly construed claims are compared to the allegedly infringing device.' " *Cordis Corp. v. Boston Scientific Corp*., 658 F.3d 1347, 1354 (Fed.Cir.2011) (*citing Cybor Corp. v. FAS Techs., Inc.,* 138 F.3d 1448, 1454 (Fed.Cir.1998) (en banc))." In order to directly infringe a system claim, every item listed must be owned or controlled by a single entity. *Centillion Data Sys., LLC v. Qwest Commc'ns Int'l, Inc.*, 631 F.3d 1279, 1284 (Fed. Cir. 2011)

Here, Crusoe does not infringe the asserted system claims, and it is doubtful they can be directly infringed by *anyone* because the premise of a blockchain database is the lack of central control. A blockchain database is a reliable record of transactions because they are recorded by many unrelated, parallel users, and downloaded frequently to every user. It is the lack of common

ownership or control of the blockchain database that makes its ledger of transactions immutable.[3] Further, there are other elements of the system claims that Crusoe does not own or control.

III. JOINT INFRINGEMENT ONLY APPLIES TO METHOD CLAIMS

Upstream knows that Crusoe does not own or control the laundry list of elements in the claimed systems, so it attempts to plead joint infringement among Crusoe, its vendors, and customers. Joint infringement is a judicial doctrine that applies to method claims. In *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 797 F.3d 1020, 1023 (Fed. Cir. 2015), the Federal Circuit on remand from the Supreme Court stated that direct infringement under § 271(a) can be found "when an alleged infringer conditions participation in an activity on receipt of a benefit upon performance of ***a step or steps of a patented method and establishes the manner or timing of that performance.***" (emphasis added). In *Eli Lilly & Co.*, the court said: "The performance of ***method steps*** is attributable to a single entity in two types of circumstances: when that entity directs or controls others' performance, or when the actors form a joint enterprise." 845 F.3d at 1364 (emphasis added) (internal quotation marks omitted). *See also Lyda v. CBS Corp.*, 838 F.3d 1331, 1339-41 (Fed. Cir. 2016).

Infringement of a system claim, on the other hand, requires all elements be found in the accused system. *Centillion Data Systems, LLC*, 631 F.3d at 1286 ("Supplying the software for the customer to use is not the same as using the system."). Recently, in *Boston Scientific Corp. v. Cook Group Incorporated*, 2023 WL 1452172, *26 (S.D. Ind. 2013), the district court specifically considered an attempt to extend the *Akamai* line of cases on joint infringement from method to

[3] https://www.ibm.com/topics/blockchain
https://www.sciencedirect.com/science/article/pii/S2772485922000606

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