

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IRONBURG INVENTIONS LTD.

Plaintiff,

v.

COLLECTIVE MINDS GAMING
CO. LTD.

Defendant.

Civil Action No. 1:16-cv-04110-TWT

**DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S DIRECT
INFRINGEMENT CLAIMS, AND MEMORANDUM OF LAW IN SUPPORT**

Defendant Collective Minds Gaming Co. Ltd. (“Collective Minds”) moves to dismiss Plaintiff Ironburg Invention Ltd.’s (“Ironburg”) claims for direct infringement of U.S. Patent Nos. 8,461,525; 9,089,770; 9,289,688; 9,352,229; and 9,308,450 (collectively the “Patents-in-Suit”) pursuant to Federal Rule of Civil Procedure 12(b)(6). The Complaint alleges that the Patents-in-Suit are infringed when one of two Collective Minds products is combined with a third party video game controller to form a “Modified Controller” and further alleges that Collective Minds directly infringes by making and advertising the “Modified Controller.” Because direct infringement pursuant to 35 U.S.C. § 271(a) requires the infringer make, use, offer to sell or sell a product that embodies the entirety of the patented invention and the Complaint acknowledges that Collective Minds is responsible for only a component of the allegedly infringing “Modified Controller,” the Complaint fails to state a claim for direct infringement.

MEMORANDUM OF LAW

I. BACKGROUND

Plaintiff admits that “each and every claim” of the Patents-in-suit “is directed to a gaming controller.” Dkt. No. 1, *Complaint* at ¶¶ 18, 26, 34, 42, 50. Plaintiff further admits that the accused Collective Minds products are not gaming controllers, but are instead modules intended to modify third party gaming

controllers. *Id.* at ¶¶ 17, 25, 33, 41, 49 (noting Defendant’s products are “intended to modify Xbox One gaming controllers”—products sold by third party, Microsoft). Plaintiff refers to the combination of the Collective Minds module and third party Microsoft’s gaming controller as a “Modified Controller.” *Id.* Despite acknowledging that Collective Minds does not make or sell any “Modified Controller,” Counts I-V of the Complaint allege that “Defendant directly infringes” the Patents-in-Suit “by making the [] Modified Controller and advertising it to customers in the United States.”¹ *Id.* at ¶¶ 19, 27, 35, 43, 51.

II. LEGAL STANDARD

Under Fed. R. Civ. P. 8(a)(2), a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief. *Iqbal*, 556 U.S. at 677-678. To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* at 678 (citing *Twombly*, 550 U.S. at 555). To state a claim for direct infringement, the Complaint must plausibly allege that Collective Minds “makes, uses, offers to sell, or sells” a product that infringes the

¹ Separately, and not challenged in the instant motion, Counts I-V further allege that Collective Minds is indirectly liable for inducing its customers to create and use the “Modified Controller.” *Id.* at 21, 29, 37, 45, 53.

claimed inventions of the Patents-in-Suit. 35 U.S.C. § 271(a); *see also Aro Mfg. Co. v. Convertible Top Replacement Co.*, 365 U.S. 336, 340 (1961) (holding “the manufacture and sale” of a component that does not by itself practice the patent claims “is not a direct infringement under 35 U.S.C. 271(a)”). As *Iqbal/Twombly* make clear, implausible claims must be eliminated at the earliest possible stage of litigation. *Twombly*, 550 U.S. at 558 (“[W]hen the allegations in a complaint, however true, could not raise a claim of entitlement to relief, ‘this basic deficiency should . . . be exposed at the point of minimum expenditure of time and money by the parties and the court.’”).

III. ARGUMENT

Plaintiff’s Complaint confuses the standards for direct and indirect infringement. Namely, the Complaint alleges that Collective Minds induces its customers to modify third party gaming controllers using its modules, which results in a “Modified Controller” that allegedly practices the claims of the Patents-in-Suit. Dkt. No. 1, Complaint at ¶¶ 21, 29, 37, 45, 53. Thus, Ironburg adequately pleads indirect infringement pursuant to 35 U.S.C. § 271(b). However, Ironburg’s allegation that Collective Minds can further be held liable for direct infringement related to the “Modified Controller” is wholly inconsistent with the law and must be

dismissed. Collective Minds' modules cannot, on their own, practice the claims of the Patents-in-Suit.

The Complaint is unambiguous that Collective Minds' products must be combined with a third party product in order to infringe the Patents-in-Suit. Namely, the Complaint alleges that Collective Minds sells two modules that are intended to modify a third party gaming controller—Strike Pack and Trigger Grips. When those modules are combined with a third party gaming controller, the result is what the Complaint refers to as a “Modified Controller.” *Id.* at ¶¶ 17, 25, 33, 41, 49 (noting Defendant's products are “intended to modify Xbox One gaming controllers”—products sold by third party, Microsoft). Allegations of infringement in the Complaint do not capture to Collective Minds' products on their own, but are instead directed to the “Modified Controller,” i.e., the combination of Collective Minds' products and a third party's gaming controller. *Id.* at ¶¶ 19-21, 27-29, 35-37, 43-45, 51-53.

To be held liable for direct infringement, the accused infringer must make, use, sell or offer to sell a product that meets all limitations of a patent claim. *Aro*, 365 U.S. at 340; *see also Cimiotti Unhairing Co. v. American Fur Refining Co.*, 198 U.S. 399, 410 (1905) (“[N]o one is an infringer of a combination claim unless he uses all the elements thereof.”). Because the Complaint does not allege that

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