

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

WAG ACQUISTION, LLC,

Plaintiff,

v.

MULTI-MEDIA, LLC, et al.,

Defendants.

Civil Action No. 14-2340 (ES) (JAD)

OPINION & ORDER

WAG ACQUISTION, LLC,

Plaintiff,

v.

SOBONITO INVESTMENTS, LTD., et al.,

Defendants.

Civil Action No. 14-1661 (ES) (JAD)

OPINION & ORDER

WAG ACQUISTION, LLC,

Plaintiff,

v.

DATA CONVERSIONS, INC., et al.,

Defendants.

Civil Action No. 14-2345 (ES) (JAD)

OPINION & ORDER

WAG ACQUISTION, LLC,

Plaintiff,

v.

FLYING CROCODILE, INC., et al.,

Defendants.

Civil Action No. 14-2674 (ES) (JAD)

OPINION & ORDER

WAG ACQUISTION, LLC,

Plaintiff,

v.

GATTYÁN GROUP S.a r.l., et al.,

Defendants.

Civil Action No. 14-2832 (ES) (JAD)

OPINION & ORDER

WAG ACQUISTION, LLC,

Plaintiff,

v.

FRIENDFINDER NETWORKS, INC., et al.,

Defendants.

Civil Action No. 14-3456 (ES) (JAD)

OPINION & ORDER

WAG ACQUISTION, LLC,

Plaintiff,

v.

VUBEOLOGY, INC., et al.,

Defendants.

Civil Action No. 14-4531 (ES) (JAD)

OPINION & ORDER

WAG ACQUISTION, LLC,

Plaintiff,

v.

WEBPOWER, INC., et al.,

Defendants.

Civil Action No. 15-3581 (ES) (JAD)

OPINION & ORDER

SALAS, DISTRICT JUDGE

Before the Court are motions to dismiss in eight patent infringement actions filed by Plaintiff WAG Acquisition, LLC (“WAG”). Seven of these cases were consolidated into Civil Action No. 14-2340 for purposes of discovery on October 6, 2014.¹ (D.E. No. 45, Consolidation Order).² In addition to the consolidated cases, WAG filed a Complaint involving the patents-in-suit against WebPower, Inc. (“WebPower”) on May 27, 2015. (Civil Action No. 15-3581, D.E. No. 1, WebPower Complaint).

Defendants in the seven consolidated cases have jointly moved to dismiss Plaintiff’s Complaints. (D.E. No. 48). WebPower moved separately to dismiss in its action, (Civil Action No. 15-3581, D.E. No. 9), and the parties have requested that the Court consider WebPower’s

¹ *WAG Acquisition, LLC v. Sobonito Investments, Ltd., et al.*, Civil Action No. 14-1661 (“*Sobonito*”); *WAG Acquisition, LLC v. Multi Media LLC, et al.*, Civil Action No. 14-2340 (“*Multi Media*”); *WAG Acquisition, LLC v. Data Conversions, Inc. et al.*, Civil Action No. 14-2345 (“*Data Conversions*”); *WAG Acquisition, LLC v. Flying Crocodile, Inc., et al.*, Civil Action No. 14-2674 (“*Flying Crocodile*”); *WAG Acquisition, LLC v. Gattyan Group S.a.r.l., et al.*, Civil Action No. 14-2832 (“*Gattyan*”); *WAG Acquisition LLC v. FriendFinder Networks Inc., et al.*, Civil Action No. 14-3456 (“*FriendFinder*”); and *WAG Acquisition, LLC v. Vubeology, Inc., et al.*, Civil Action No. 14-4531 (“*Vubeology*”). There was originally an eighth consolidated case, *WAG Acquisition, LLC v. MFCXY, Inc., et al.* (“*MFCXY*”), but it was voluntarily dismissed on May 8, 2015. (See Civil Action No. 14-3196, D.E. No. 48).

² Unless otherwise specified, docket entry numbers refer to the consolidated action, Civil Action No. 14-2340.

motion to dismiss in conjunction with the consolidated motion. (Civil Action No. 15-3581, D.E. No. 13, June 29, 2015 Letter).

Defendants argue that the Court should dismiss WAG's Complaints because the claims of the patents-in-suit are invalid and/or unenforceable and because WAG has failed to sufficiently allege direct infringement, induced infringement, contributory infringement, and willful infringement. Defendant Coolvision in the *Sobonito* matter also moves to dismiss for lack of personal jurisdiction. The Court has considered the parties submissions in connection with their motions, as well as the oral arguments presented to the Court on July 29, 2015. For the reasons below, the Court denies Defendants' motions to dismiss and orders limited discovery regarding the Court's personal jurisdiction over Defendant Coolvision.

I. FACTUAL BACKGROUND

WAG is a "New Jersey business that provides Internet streaming services to proprietors of traditional radio stations—retransmitting ("streaming") the radio station's live programming over the Internet." (D.E. No. 49, Plaintiff's Brief in Opposition to Defendants' Joint Motion to Dismiss ("Pl. Opp. Br.") at 2). Defendants "primarily operate paid live 'web cam' sites on the Internet." (*Id.* at 3).

WAG contends that, during the course of its business, it developed patents to improve the experience of streaming over the Internet. (*Id.* at 2). WAG has asserted four of these patents in this litigation: U.S. Patent No. 8,122,141 ("the '141 patent"), U.S. Patent No. 8,327,011 ("the '011 patent"), U.S. Patent No. 8,185,611 ("the '611 patent"), and U.S. Patent No. 8,364,839 ("the '839 patent").³ WAG currently practices the '611 and '839 patents. (*Id.* at 3).

³ WAG has asserted the '141 and '011 patents against all Defendants. It has asserted the '611 patent and '839 patent only in the *Sobonito*, *Flying Crocodile*, *Gattyman*, *FriendFinder*, and *WebPower* cases.

According to WAG, its patents “provide two separate and distinct types of solutions to the problem of reliable and timely Internet media transport.” (*Id.* at 5). The ‘839 and ‘611 patents are directed to a “buffering” solution, which employs a user buffer and server buffer, and in which the control of data flow for streaming is mediated by the server. (*Id.*). The ‘141 and ‘011 patents provide a “pull implementation” solution “in which the server regulates the flow of data based on receiving requests from the client.” (*Id.*). WAG argues that the technology that “Defendants use to stream their video is WAG’s technology, covered by the patents-in-suit.” (*Id.* at 4).

II. LEGAL STANDARD

For a complaint to survive dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6), it “must contain sufficient factual matter, 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)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).

In evaluating the sufficiency of a complaint, a court must “accept all well-pleaded allegations in the complaint as true and . . . draw all reasonable inferences in favor of the non-moving party.” See *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008). However, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions,” and “[a] pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.