

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BROADSIGN INTERNATIONAL, LLC,

Plaintiff,

v.

T-REX PROPERTY, AB,

Defendant.

Civil Action No.: 1:16-cv-04586 (LTS-HBP)

**T-REX'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION
TO DISMISS BROADSIGN'S SECOND AMENDED COMPLAINT
FOR FAILURE TO STATE A CLAIM**

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I. INTRODUCTION

In its Motion to Dismiss the Second Amended Complaint (D.I. 55, “SAC”) of Plaintiff BroadSign International, LLC (“BroadSign”) for failure to state a claim, Defendant T-Rex Property, AB (“T-Rex”) showed that the SAC failed to plead sufficient facts to make BroadSign’s invalidity, non-infringement, and equitable intervening rights claims plausible as required by *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

Significantly, in its opposition brief, BroadSign does not dispute that:

- It did not plead any facts regarding the content of the prior art references or regarding the motivation to combine the references;
- It did not plead any facts showing that the claims are directed to an abstract idea;
- It did not plead any facts showing that the claims are indefinite or contain improper means-plus-function limitations;
- It did not plead any facts regarding the design or operation of its products to show that they do not infringe;
- It did not plead any facts regarding any of the factors identified by the Federal Circuit as relevant to a determination of equitable intervening rights.

Instead, BroadSign argues that it is not required to provide any such facts. However, the cases BroadSign relies upon were all decided prior to the December 1, 2015 abrogation of Federal Rule of Civil Procedure 84 and the Appendix of Forms. The case law since the abrogation of these forms confirms that BroadSign’s pleadings are insufficient and should be dismissed.

II. ARGUMENT

A. BroadSign’s Arguments Rely On Overruled Case Law

In its Legal Standards section, BroadSign erroneously relies upon a 2001 Federal Circuit case for the proposition that “[t]he dismissal of a claim is only proper, if, ‘after drawing all reasonable inferences in [plaintiff’s] favor, it is clear that the [plaintiff] can prove no set of facts consistent with [plaintiff’s] claims that would entitle [plaintiff] to relief.’” D.I. 65 at 9 (quoting

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