IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Arnouse Digital Devices Corp. Plaintiff, v. Motorola Mobility, Inc. Defendant.	Civil Action No.: 5:11-cv-155-cr

DEFENDANT MOTOROLA MOBILITY INC.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND SUPPORTING MEMORANDUM OF LAW

MOTION TO DISMISS

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Motorola Mobility, Inc. ("Motorola Mobility") moves the Court to dismiss all of the claims in Arnouse Digital Devices Corp.'s ("Arnouse") First Amended Complaint.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

STATEMENT OF FACTS

On June 16, 2011, Arnouse filed a Complaint against Motorola Mobility alleging infringement of U.S. Patent No. 7,516,484 ("the '484 patent"), attached as Ex. A to the Complaint. The Complaint alleged that Motorola Mobility infringed the '484 patent by making, selling, and offering for sale the Motorola Atrix smartphone and the Motorola Lapdock used with the Atrix smartphone. Compl., D.E. 1, at ¶ 11-12. On October 5, 2011, Arnouse filed its First Amended Complaint, which alleges that Motorola Mobility infringes by making, selling, and offering for sale one or more versions of the Motorola Atrix, Atrix II, and Droid 4G smartphones (hereafter the "smartphones") that are used in combination with one or more

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versions of the Motorola Lapdock (hereafter the "lapdock"). First Amended Compl., D.E. 4 at ¶ 6.

The '484 patent is entitled "Reader Adapted for a Portable Computer." *Id.* at Ex. A. In general, it describes a "reader," or docking station, that may be used with a certain type of portable computer to allow a user to interact with the portable computer.1 The '484 patent recites, at the end of the patent, 20 claims that purport to define Arnouse's intellectual property rights. *See Markman v. Westview Instruments, Inc.*, 517 US 370, 373 (1996) ("The claim 'define[s] the scope of a patent grant.'") (quoting 3 E. Lipscomb, Walker on Patents § 11:1, pp. 280 (3d ed. 1985)). Three of the claims of the '484 patent, claims 1, 8, and 15, are known as "independent claims" because they recite claimed intellectual property rights without reference to any other claim. *Teledyne McCormick Selph v. United States*, 558 F.2d 1000, 1004 (Ct. Cl. 1977) (citing *Dresser Indus., Inc. v. United States*, 432 F.2d 787 (Ct. Cl. 1970)). As noted below, if an independent claim is not infringed, then none of its dependent claims can be infringed as a matter of law.

Each of the independent claims of the '484 patent requires a "portable computer" that lacks input and output means. This is so, the patent explains, because the computer is plugged into the reader, or docking station, and the user accesses the contents of the computer through the input and output means of the docking station. '484 patent at Col. 6, ll. 4-21. Specifically, independent claim 1 recites, in part, "a portable computer without input and output means for interacting directly therewith . . . ." '484 patent, col. 13, ll. 8-10. Independent claim 8 similarly recites, in part, "a fully functional general purpose computer . . . excluding means for a user to

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1 It is appropriate for the Court to consider the '484 patent because it is attached to the complaint and because the complaint incorporates the '484 patent by reference. *See Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007) (In considering a motion under 12(b)(6), "[d]ocuments that are attached to the complaint or incorporated in it by reference are deemed part of the pleading and may be considered"); *see also Pani v. Empire Blue Cross Blue Shield*, 152 F.3d 67, 71 (2d Cir. 1998); *Amusement Industry, Inc. v. Stern*, 693 F. Supp. 2d 327, 337 (S.D. N.Y. 2010).

interact with the computer." *Id*. at col. 13, ll. 47-49. Independent claim 15 likewise recites a computing system comprised of a reader and a computer, where the computer "excludes means for a user to interact directly with the portable computer." *Id*. at col. 14, ll. 31-32.

ARGUMENT

As noted above, each of the independent claims of the '484 patent requires a portable computer that lacks input and output means. It is impossible to dispute – and Arnouse fails to allege otherwise – that each of the accused smartphones (which Arnouse alleges to be the "portable computer" of the claims) include both input and output means. Each smartphone (as well as any mobile phone generally) must have a keyboard, microphone, and speakers so that a user can interact with the phone. Thus, it is not possible for Arnouse to allege a claim of patent infringement that is plausible on its face, and the Court should dismiss Arnouse's complaint with prejudice.

I. APPLICABLE LAW

In considering a Rule 12(b)(6) motion to dismiss, the Court must determine whether the plaintiff has alleged sufficient facts to state a claim for relief which is "plausible on its face." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Supreme Court has held that "a plaintiff's obligation [under Rule 8(a)] to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. In *Iqbal*, the Court reiterated this holding, stating both that the rule set forth in *Twombly* applies to all civil actions and that Rule 8(a) requires "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 129 S. Ct. at 1949. Other courts have held that the rule set forth in *Twombly* is particularly applicable to complex litigation

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such as patent cases, where discovery typically is costly and extensive. *See, e.g., Filipek v. Krass*, 576 F. Supp. 2d 918, 922-23 (N.D. Ill. 2008); *Wistron Corp. v. Phillip M. Adams & Associates, LLC*, No. C-10-4458, 2011 WL 4079231, at *4 (N.D. Cal. Sept. 12, 2011); *Fifth Market, Inc. v. CME Group, Inc.*, Civ. No. 08-520-GMS, 2009 WL 5966836 (D. Del. May 14, 2009).

I. THE ACCUSED SMARTPHONES CANNOT INFRINGE THE CLAIMS OF THE '484 PATENT

A. Independent Claims 1, 8, and 15 Each Requires a Portable Computer that Lacks Input or Output Means.

The independent claims of the '484 patent make it clear that the "portable computer" that interacts with the docking station (reader) claimed in the '484 patent cannot be used independently of the docking station, because the computer has no input or output devices (such as a keyboard or screen) for a user to use. For instance, independent claim 1 recites, in part, "a portable computer without input and output means for interacting directly therewith . . . ." '484 patent, col. 13, ll. 8-10. Independent claim 8 recites, in part, "a fully functional general purpose computer . . . excluding means for a user to interact with the computer." *Id*. at col. 13, ll. 47-49. Independent claim 15 recites a computing system comprised of a reader and a computer, where the computer "excludes means for a user to interact directly with the portable computer." *Id*. at col. 14, ll. 31-32. Further, the '484 patent states that "the portable computer reader provides [the] only means for a user to interact with or use the portable computer." *Id*. at col. 6, ll. 8-9. The '484 patent refers to the "means for interacting with the computer" as an "input and output device" such as "a keyboard, display, mouse, speakers, etc." *Id*. at col. 6, ll. 4-7.

B. Each of the Smartphones Includes an Input and Output Means.

Arnouse contends that Motorola Mobility infringes the '484 patent because the smartphones are the "portable computer" that is attached to and interacts with the lapdock, which

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is the "reader." *See* Amended Complaint, ¶ 6 (alleging that the smartphones are the "portable computer" and the lapdock is the "reader"). It is common knowledge that smartphones (and other mobile telephones) must have a keypad (whether a hardware or touch screen keypad), as well as a display screen, a speaker, and a microphone to enable the user to make telephone calls, send emails or text messages, etc. These are facts that cannot be rationally disputed, and indeed, Arnouse does not allege otherwise.

This Court should take judicial notice of the fact that the smartphones at issue here have input and output means such as a screen, keyboard, speaker, and microphone. The Court may consider in context of this motion to dismiss "matters of which judicial notice may be taken." *Leonard T. v. Israel Discount Bank of N.Y.*, 199 F.3d 99, 107 (2d Cir. 1999) (citing *Allen v. WestPoint-Pepperill, Inc.*, 945 F.2d 40, 44 (2d Cir. 1991)). A court may take judicial notice of a fact that is "(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." FED. R. EVID. 201(b). For instance, courts can take judicial notice of well known facts that are available in works found in every library. *See Eden Toys, Inc. v. Marshall Field & Co.*, 675 F.2d 498, 500, n.1 (Fed. Cir. 1982) (finding that "[t]he traditional features of a snowman are known generally and thus appropriate for judicial notice."); *see also Werk v. Parker*, 249 U.S. 130, 132-33 (1919). Accordingly, Motorola Mobility requests that the Court take judicial notice that the smartphones include input and output means, such as a screen, keyboard (touchscreen or otherwise), a speaker, and a microphone.

C. Motorola Mobility Cannot Infringe Any Claim of the '484 Patent.

Because there can be no rational or plausible allegation that the smartphones lack input and output means, the smartphones cannot infringe any of independent claims 1, 8, or 15. *ACCO Brands, Inc. v. Micro Sec. Devices, Inc.*, 346 F.3d 1075, 1080 (Fed. Cir. 2003) (citation omitted)

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