IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

P&RO SOLUTIONS, GROUP, INC., Plaintiff, v. **CIM MAINTENANCE INC.,** Defendant.	Civil Action No. 6:16-cv-95

DEFENDANT CIM MAINTENANCE INC.'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(6) AND 35 U.S.C. § 101

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I. INTRODUCTION

In this patent infringement action, Plaintiff P&RO ("P&RO") asserts claims 1-20 of U.S. Pat. No. 8,209,205 (the "'205 Patent") in its Complaint against Defendant CiM Maintenance Inc. ("CiM"). The '205 Patent purports to disclose an invention involving "Planning and Scheduling Tool Assistant." Claim 1 is the only independent claim of this patent. A plain reading of these claims in light of the specification illustrates that they are directed to applying conventional practices in scheduling and planning using generic computer limitations. The invention outlined in the '205 Patent does not purport to create or improve any aspect of computers or software; rather, it simply recites the simple concept of scheduling work orders on a week-to-week basis and managing those work orders using conventional scheduling practices. Patent law precludes the enforcement of a patent that seeks to monopolize such a basic idea.

Patent claims that cover abstract ideas without any inventive concept are not eligible for patenting under 35 U.S.C. § 101. As discussed in more detail below, the claims of the '205 Patent are patent-ineligible for covering the abstract idea of scheduling and managing work orders using generic computer technology. Because the claims of the '205 Patent are directed toward patent-ineligible abstract concepts, the patent is invalid and cannot be infringed. Therefore, CiM moves to dismiss P&RO's complaint.

II. LEGAL BACKGROUND

A. Fed. R. Civ. P. 12(b)(6)

A court should dismiss a plaintiff's complaint where the complaint fails to "provide . . . factual allegations that when assumed to be true 'raise a right to relief above the speculative level.'" *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007) (quoting

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). The determination of whether the pleadings have facial plausibility is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. at 678.

"[O]nly valid patents can be infringed." *Commil USA, LLC v. Cisco Systems, Inc.*, 575 U.S. __, 135 S.Ct. 1920, 1929 (2015) (Scalia, J., dissenting in part). As a matter of law, patent claims covering abstract ideas are invalid as ineligible under 35 U.S.C. § 101. *Alice Corp. Pty Ltd. v. CLS Bank Intern.*, 573 U.S. __, 134 S.Ct. 2347, 2352 (2014). Therefore, "[w]hen patent claims on their face are plainly directed to an abstract idea, it is proper to make a determination of patent validity under § 101 at the pleading stage." *Landmark Technology, LLC v. Assurant, Inc.*, No. 6:15-CV-76-RWS-JDL, 2015 WL 4388311 at *2) (E.D. Tex. Jul. 14, 2015) (citing Federal Circuit precedent sanctioning dismissals of patent claims at the pleading stage); *see also Affinity Labs of Texas, LLC v. Amazon.com, Inc.*, No. 6:15–CV–0029–WSS–JCM, 2015 WL 3757497 at *4 (E.D. Tex. June 12, 2015) (same). If, as in the case at bar, asserted claims are patent-ineligible, then the pleadings cannot support a claim upon which relief can be granted, and the case must be dismissed under Fed. R. Civ. P. 12(b)(6).

B. Patentable Subject Matter

Under 35 U.S.C. § 101, "any new and useful process, machine, manufacture, or composition of matter" may be eligible for patenting. Although the scope of patentable subject matter is broad, this provision "contains an implicit exception for laws of nature,

natural phenomena, and **abstract ideas**." *Alice Corp. Pty. v. CLS Bank International*, 573 U.S. __, 134 S. Ct. 2347 (2014), (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. __, 133 S.Ct. 2107, 2116, (2013)) (internal quotations and brackets omitted) (emphasis added). This important exception prevents preemption of the future use of the "building blocks of human ingenuity" and reserves the generous privilege of monopoly to those inventions that "integrate the building blocks into something more." *Id*. Whether a patented claim is patent-eligible under 35 U.S.C. § 101 is a question of law that may turn on subsidiary factual considerations in some cases. *In re Comiskey*, 554 F.3d 967, 975 (Fed. Cir. 2009).

The Supreme Court has outlined a two-part test for determining whether a patent is invalid for covering patent-ineligible subject matter: (1) determine whether the claim is directed to a law of nature, natural phenomena, or an abstract idea; and (2) if so, determine whether the claim possesses "an element or combination of elements that is 'sufficient to ensure that the [claim] in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Alice*, 134 S. Ct. at 2355 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. __, 132 S. Ct. 1289, 1294)) (some brackets in original).

To determine whether a claim is directed to an "abstract idea," a court must examine the claim to determine whether it recites "an idea, having no particular concrete or tangible form." *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014); *see also Alice*, 134 S. Ct. at 2355 ("The 'abstract ideas' category embodies the longstanding rule that [a]n idea of itself is not patentable.") (internal citations and quotations omitted). Patent-ineligible abstract ideas include mathematical equations and

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