UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:22-cv-07556-RGK-SHK	Date	May 24, 2023
Title	***GoTV Streaming, LLC v. Netflix, Inc.***		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE	
Joseph Remigio	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:	
Not Present	Not Present	

Proceedings: **(IN CHAMBERS) Order Re: Defendant's Motions for Judgment on the Pleadings [DE 83, 89]**

I. INTRODUCTION

On October 17, 2022, GoTV Streaming, LLC ("Plaintiff") filed a Complaint against Netflix, Inc. ("Defendant") alleging claims for patent infringement. (ECF No. 1.) On November 10, 2022, Plaintiff filed a First Amended Complaint ("FAC"), adding claims for induced patent infringement. (ECF No. 30.) On February 16, 2023, the Court dismissed with leave to amend Plaintiff's induced patent infringement claims. (ECF No. 64.) Plaintiff declined to further amend the FAC. On March 14, 2023, Defendant filed an Answer and Amended Counterclaim, seeking declaratory judgment that each of the asserted patents are invalid and not infringed. (ECF No. 71.) On March 23, 2023, Plaintiff filed its Answer to Defendant's Amended Counterclaim, denying the majority of Defendant's allegations. (ECF No. 73.)

Presently before the Court are Defendant's Motions for Judgment on the Pleadings of: (1) invalidity under 35 U.S.C. § 101; and (2) no pre-suit damages under 35 U.S.C. § 287(a). (ECF Nos. 83, 89.) For the following reasons, the Court **DENIES** both Motions.

II. FACTUAL BACKGROUND

The following facts are alleged in the FAC:

Plaintiff is a "mobile media network and applications developer" that specializes in "delivering media content to mobile users." (FAC ¶ 8.) Plaintiff is currently the sole and exclusive owner of multiple patents directed to rendering content on wireless devices. Three of these patents are United States Patent Nos. 8,103,865 (the "'865 Patent"), 8,478,245 (the "'245 Patent"), and 8,989,715 (the "'715 Patent") (collectively, the "Patents-in-Suit").

Defendant operates a streaming media platform. Defendant's platform allows wireless devices such as smartphones, tablets, and streaming media players to receive content from a server configured to

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III. JUDICIAL STANDARD

A motion for judgment on the pleadings under Federal Rule of Civil Procedure ("Rule") 12(c) is "functionally identical" to a motion to dismiss for failure to state a claim under Rule 12(b)(6). *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). The same judicial standard applies to motions brought under either rule. *Cagasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1054 n.4 (9th Cir. 2011). The only significant difference is that a Rule 12(c) motion is brought after an answer has been filed, but early enough not to delay trial, whereas a 12(b)(6) motion must be filed before an answer. Fed. R. Civ. P. 12(b)–(c).

In ruling on a Rule 12(c) motion, courts must assume the allegations in the challenged complaint are true, and must construe the complaint in the light most favorable to the non-moving party. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996); *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). A motion for judgment on the pleadings is "properly granted when, taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law." *Nelson v. City of Irvine*, 143 F.3d 1196, 1200 (9th Cir. 1998). Dismissal "is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008).

Further, it is well-established that a court may address whether a patent is ineligible under 35 U.S.C. § 101 through a motion for judgment on the pleadings. *See, e.g.*, *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014). Likewise, a court may address whether a plaintiff may seek pre-suit damages through a motion for judgment on the pleadings. *See, e.g.*, *DivX, LLC v. Hulu, LLC*, 2021 WL 4459368, at *4 (C.D. Cal. June 11, 2021).

IV. DISCUSSION

Defendant brings two separate Motions for Judgment on the Pleadings: (1) that the Patents-in-Suit are invalid because they are directed to unpatentable subject matter under 35 U.S.C. § 101; and (2) that Plaintiff is barred from seeking pre-suit damages. The Court addresses each Motion in turn.[1]

A. Invalidity Under 35 U.S.C. § 101

Defendant argues that the Patents-in-Suit are invalid because they are directed to unpatentable subject matter under 35 U.S.C. § 101. Under § 101, anyone who "invents or discovers any new and

[1] The Court notes that Plaintiff attaches hundreds of pages of exhibits alongside its Opposition to the Motion for Judgment on the Pleadings of Invalidity, asking that the Court convert the Motion to a motion for summary judgment pursuant to Rule 12(d). The Court finds that this evidence is unnecessary and thereby declines to convert this Motion. *See Gerritsen v. Warner Bros. Ent. Inc.*, 112 F. Supp. 3d 1011, 1021 (C.D. Cal. 2015) ("Courts regularly decline to consider declarations and exhibits

useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" may obtain a patent. 35 U.S.C. § 101. However, § 101 "contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice Corp. Pty. Ltd. v. CLS Bank Intern.* ("*Alice*"), 573 U.S. 208, 216 (2014) (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

In *Alice*, the Supreme Court articulated a two-step test to determine whether a claim is patent eligible under § 101 ("the *Alice* test"). *Id.* at 218. Under the *Alice* test, "a claim falls outside § 101 if (1) it is directed to a patent-ineligible concept like an abstract idea, and (2) it lacks elements sufficient to transform the claim into a patent-eligible application." *Hawk Tech. Sys., LLC v. Castle Retail, LLC*, 60 F.4th 1349, 1356 (Fed. Cir. 2023) (citing *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1166–67 (Fed. Cir. 2018)).

Under *Alice* step one, the court must first determine whether the claim is directed to an abstract idea. At this step, the court examines "what the patent asserts to be the focus of the claimed advance over the prior art," by "focus[ing] on the language of the asserted claims, considered in the light of the specification." *Id.* (citing *Solutran, Inc. v. Elavon, Inc.*, 931 F.3d 1161, 1168 (Fed. Cir. 2019); *Yu v. Apple*, 1 F.4th 1040, 1043 (Fed. Cir. 2021)). For claims directed at computer-related technology, the court must ask "whether the focus of the claims is on the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an 'abstract idea' for which computers are invoked merely as a tool." *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016). If the claims are not directed to a patent-ineligible concept, the claims are patent-eligible and the inquiry ends. *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1262 (Fed. Cir. 2017).

If the claims are directed to a patent-ineligible concept, the court proceeds to *Alice* step two and determines whether the claim's elements, considered both individually and as an ordered combination, contain an "inventive concept" that transforms the nature of the claim into a patent-eligible application. *Alice*, 573 U.S. at 225. A claim contains an inventive concept if the claim limitations "involve more than performance of 'well-understood, routine, [and] conventional activities previously known to the industry.'" *Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (quoting *Alice*, 573 U.S. at 225).

1. *Application of the Alice Test to a 12(c) Motion*

Defendant brings this Motion under Rule 12(c) after having filed its Amended Answer and Counterclaim. As part of the Counterclaim, Defendant alleges that the Patents-in-Suit fail both steps of the *Alice* test because they "are directed to an abstract idea without any inventive concept . . . [and] recite well-known, routine, and conventional steps using generic computing resources." (Amended Counterclaim ¶¶ 35, 68, 101.) Plaintiff denies these allegations. (Answer to Counterclaim, ¶¶ 35, 68, 101.)

Plaintiff argues that the Court must, as a matter of procedure, treat Defendant's allegations with respect to the *Alice* test as false and therefore deny the instant Motion because on a Rule 12(c) motion, "the allegations of the non-moving party must be accepted as true, while the allegations of the moving party which are denied are assumed to be false." *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1989). In essence, Plaintiff seems to argue that Defendant cannot bring a Rule 12(c) motion on any issue alleged in its counterclaim.

This argument, clever as it may be, is untenable. Each of the allegations that Plaintiff challenges speaks to the contents of the Patents-in-Suit. There is no question that the Court may consider the Patents-in-Suit on a Rule 12(c) motion, as they are "documents incorporated by reference in the [FAC]." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). To make assumptions about the contents of the Patents-in-Suit based on the parties' allegations would be improper, as courts "are not required to accept as true allegations that contradict exhibits attached to the Complaint or matters properly subject to judicial notice." *Seven Arts Filmed Ent. Ltd. v. Content Media Corp. PLC*, 733 F.3d 1251, 1254 (9th Cir. 2013); *see also Cox v. Reliance Standard Life Ins. Co.*, 2014 WL 896985, at *4 (E.D. Cal. Mar. 6, 2014) (declining to accept as true plaintiffs' allegations that contradicted a life insurance policy attached as an exhibit to the complaint) (citing *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010)).

Other courts presented with § 101 arguments on Rule 12(c) motions are in accord. Courts routinely engage in the § 101 analysis despite the plaintiff having denied allegations on the same § 101 issues. *See Modern Telecom Sys. v. Juno Online Servs., Inc.*, 2015 WL 1239992 (C.D. Cal. Mar. 17, 2015) (applying the *Alice* test); Counterclaims ¶ 17, *Modern Telecom Sys. v. Juno Online Servs., Inc.*, 8:14-cv-00348-DOC-AN (C.D. Cal. Aug. 21, 2014), ECF No. 24 (alleging that "[e]ach of the claims of the Patents-in-Suit are invalid for failure to comply with one or more of the requirements [of] 35 U.S.C. §§ 101, 102, 103, and/or 112."); *see also, e.g.*, *Whitepages, Inc. v. Isaacs*, 196 F. Supp. 3d 1128 (N.D. Cal. 2016); *Loyalty Conversion Sys. Corp. v. Am. Airlines*, 66 F. Supp. 3d 829 (E.D. Tex. 2014).

Accordingly, the Court declines to assume Defendant's allegations regarding the eligibility of the Patents-in-Suit are false, and instead, disregards the allegations as outside the challenged pleading.

2. *Representative Claims*

Plaintiff alleges that Defendant violates multiple claims in each of the Patents-in-Suit. (FAC ¶¶ 20–22, 43–45, 68–70.) In the instant Motion, Defendant argues that each claim of each patent is invalid, analyzing just the first claims of each patent, which Defendant asserts are representative of the remaining claims. Indeed, "[c]ourts may treat a claim as representative in certain situations, such as if the patentee does not present any meaningful argument for the distinctive significance of any claim limitations not found in the representative claim or if the parties agree to treat a claim as representative." *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365 (Fed. Cir. 2018) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1352 (Fed. Cir. 2016); *Intell. Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1316, 1316 n.9 (Fed. Cir. 2016)).

Here, the Court finds it appropriate to treat the first claims as representative. Defendant adequately explains that the claims of each patent are "substantially similar and linked" to the first claims. (Def.'s Mot. J. Pleadings Patent Invalidity at 6–7, 11–12, 16–17, ECF No. 83-1.) Moreover, Plaintiff admits in the FAC that the first claims are representative. (FAC ¶¶ 23, 46, 71.) While Plaintiff now half-heartedly disputes its earlier characterization in its Opposition, pointing out that the latter claims include various different limitations, Plaintiff fails to argue how these limitations confer any distinctive significance for the invalidity analysis. (Pl.'s Opp'n Mot. J. Pleadings Patent Invalidity at 9–10 n.4, ECF No. 88.) Thus, the Court proceeds to analyze the representative first claims of each patent.

3. *Claim 1 of the '865 Patent*

The '865 Patent is directed to a sever-implemented method for processing data for a wireless device. (FAC ¶ 15.) Claim 1 reads:

> 1. A server implemented method for processing data for a wireless device, comprising:
> receiving from the wireless device a request for an application program, said request including an indication of a type of the wireless device;
> executing, in response to receiving said request, said application program to generate a wireless device generic template including a plurality of content items;
> sending a custom configuration to the wireless device, said custom configuration being specific to said application program;
> generating a page description based on said wireless device, said page description having at least one discrete low level rendering command that is within said rendering capability of said wireless device but that is of a syntax that is wireless device generic; and
> sending said page description to the wireless device such that the wireless device is capable of presenting at least one content item from said plurality of content items using both said page description and said custom configuration.

('865 Patent at 20:42–63.)

Defendant argues that claim 1 of the '865 Patent is "directed to the abstract idea of formatting data on a server for presentation on a wireless device based on information about that device." (Def.'s Mot. J. Pleadings Patent Invalidity at 7 (citing *Device Enhancement LLC v. Amazon.com Inc.*, 189 F. Supp. 3d 392, 404 (D. Del. 2016).) Plaintiff disagrees, arguing that claim 1 is directed to a specific improvement in computer capabilities, namely the use of a server-side application that "relieve[s] developers of needing to develop separate applications for each type of supported wireless device." (Pl.'s Opp'n Mot. J. Pleadings Patent Invalidity at 10–11 (citing '865 Patent at 20:14–18).)

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