

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

PLECTRUM LLC,

Plaintiff,

v.

ORACLE CORPORATION and
ORACLE AMERICA, INC.,

Defendant.

CASE NO. 4:17-CV-00141

JURY TRIAL DEMANDED

**DEFENDANTS ORACLE CORPORATION AND
ORACLE AMERICA, INC.'S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM**

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
STATEMENT OF ISSUES TO BE DECIDED	1
FACTUAL BACKGROUND RELEVANT TO THE INSTANT MOTION.....	1
A. The Allegations Which Purport To Assert Claims Of Liability Against Oracle Based On The “Use Of The Accused Products By Its Customers.”	3
B. The Willful Infringement Allegations In The Complaint.	4
C. The Indirect Infringement Allegations In The Complaint.	5
DISMISSAL IS APPROPRIATE	5
I. PLECTRUM HAS FAILED TO PLEAD FACTS TO PLAUSIBLY ALLEGE THAT ORACLE CAN BE HELD LIABLE FOR ITS CUSTOMERS’ USE OF THE ACCUSED PRODUCTS.	6
A. The Limited “Direction And Control” Exception Recognized By The Federal Circuit In <i>Akamai</i> Is Inapplicable Here As It Applies Only Where There Is More Than One Actor Involved In Practicing The Steps Of The Accused Method Claims.	7
B. Plaintiff’s Allegations That Oracle “Contracts” With Its Customers And Thereby Puts The Accused Products Into Service Is Insufficient.....	8
C. The Complaint Fails To Plead Facts To Plausibly Show That The Customers’ Receipt Of The Unidentified “Benefit” Is “Conditioned” By Oracle.....	10
D. The Complaint Fails To Allege That Oracle “Establishes The Manner Or Timing” Of The Customers Performance Of The Accused Methods.....	12
E. The Lack Of Plausibility Of Plaintiff’s Assertion Of Liability Against Oracle Under the Limited <i>Akamai</i> Exception Is Further Demonstrated By The Fact That It Has Pled The Exact Same Allegations Against A Multitude Of Differently Situated Defendants In 15 Other Contemporaneously Filed Patent Complaints.....	12

II. PLECTRUM’S CLAIMS FOR WILLFUL INFRINGEMENT SHOULD BE DISMISSED.13

A. Plaintiff Does Not Allege That Oracle Had Pre-Suit Knowledge Of Any Of The Asserted Patents And Post-Suit Knowledge Is Insufficient to Plausibly Allege Willful Infringement.....14

B. Plaintiff’s Conclusory Allegations Of Oracle’s Alleged Conduct Are Insufficient To State A Claim For Willful Infringement.15

III. PLECTRUM HAS FAILED TO PLEAD FACTS TO PLAUSIBLY ALLEGE INDIRECT INFRINGEMENT.16

A. Plectrum’s Claims For Indirect Infringement Prior To The Filing Of Its Complaint Should Be Dismissed.17

B. Plaintiff’s Conclusory Allegations Are Insufficient To State A Claim For Induced Infringement.19

C. Plaintiff’s Conclusory Allegations Are Insufficient To State A Claim For Contributory Infringement.22

D. The Lack Of Plausibility Of Plaintiff’s Indirect Infringement Claims Is Also Reflected In The Fact That It Has Pled The Exact Same Allegations Against A Multitude Of Different Defendants In Other Contemporaneously Filed Patent Complaints.....25

CONCLUSION.....27

TABLE OF AUTHORITIES

FEDERAL CASES	<u>Page</u>
<i>Affinity Labs of Texas, LLC v. Toyota Motor N. Am.</i> , No. 6:13-cv-365, 2014 WL 2892285 (W.D. Tex. May 12, 2014).....	17, 19, 21
<i>Akamai Techs., Inc. v. Limelight Networks, Inc.</i> , 797 F.3d 1020 (Fed. Cir. 2015).....	passim
<i>Apeldyn Corp. v. AU Optronics</i> , 831 F. Supp. 2d 817 (D. Del. 2011).....	18
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662, 129 S. Ct. 1937 (2009).....	1, 5, 6, 16
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	passim
<i>BMC Res., Inc. v. Paymentech</i> , 498 F. 3d 1373 (Fed. Cir. 2007).....	6
<i>Bowlby v. City of Aberdeen</i> , 681 F.3d 215 (5th Cir. 2012)	5
<i>Bush Seismic Techs., LLC v. Global Geophysical Servs., Inc.</i> , Case No. 2:15-cv-01809-JRG (Apr. 13, 2016).....	passim
<i>Commil USA, LLC v. Cisco Sys., Inc.</i> , _ U.S. _, 135 S. Ct. 1920 (2015).....	19, 29
<i>Core Wireless Licensing S.A.R.L. v. Apple Inc.</i> , No. 6:14-cv-752-JRG-JDL, 2015 WL 4910427 (E.D. Tex. Aug. 14, 2015)	passim
<i>DSU Med. Corp. v. JMS Co., Ltd.</i> , 471 F.3d 1293 (Fed Cir. 2006).....	17
<i>Federal Circuit in Akamai Techs., Inc. v. Limelight Networks, Inc.</i> , 797 F.3d 1020 (Fed. Cir. 2015).....	passim
<i>Fujitsu Ltd. v. Netgear Inc.</i> , 620 F.3d 1321 (Fed Cir. 2010).....	17
<i>Global-Tech Appliances, Inc. v. SEB S.A.</i> , 131 S. Ct. 2060 (2011).....	passim
<i>Halo Elecs., Inc. v. Pulse Elecs., Inc.</i> , _ U.S. _, 136 S. Ct. 1923 (2016).....	15
<i>In Re Bill of Lading Transmission and Processing System Patent Litig.</i> , 681 F.3d 1325 (Fed. Cir. 2012).....	23, 25

Lyda v. CBS Corp.,
838 F.3d. 1331 (Fed Cir. 2016)..... 8, 11, 14, 22

Nonend Inventions, N.V. v. Apple Inc.,
No. 2:15-cv-JRG-RSP, 2016 WL 1253740 (E.D. Tex. Mar. 11, 2016) 18

Opticurrent, LLC v. Power Integrations, Inc. et al.,
Case No. 2:16-cv-00325-JRG (E.D. Tex. Oct. 12, 2016)..... 14, 15

PerDiemCo, LLC v. Industrack LLC,
No. 2:15-cv-00727-JRG-RSP, 2016 WL 8135379 (E.D. Tex. Nov. 8, 2016)..... 9, 10, 11

Plectrum LLC v. Arista Networks, Inc.,
Case No. 4:17-cv-00076-ALM (E.D. Tex.)..... 3, 13, 25

Plectrum LLC v. Brocade Communications Systems, Inc.,
Case No. 4:17-cv-00077-ALM (E.D. Tex.)..... 3, 13, 25

Plectrum LLC v. Cisco Systems, Inc.,
Case No. 4:17-cv-00078-ALM (E.D. Tex.)..... 3, 13, 25

Plectrum LLC v. Extreme Networks, Inc.,
Case No. 4:17-cv-00079-ALM (E.D. Tex.)..... 3, 13, 25

Plectrum LLC v. Facebook, Inc.,
Case No. 4:17-cv-00081-ALM (E.D. Tex.)..... 3, 13, 25

Plectrum LLC v. Fortinet, Inc.,
Case No. 4:17-cv-00082-ALM (E.D. Tex.)..... 3, 13, 25

Plectrum LLC v. Huawei Technologies USA, Inc.,
Case No. 4:17-cv-00083-ALM (E.D. Tex.)..... 3, 13, 25

Plectrum LLC v. Juniper Networks, Inc.,
Case No. 4:17-cv-00084-ALM (E.D. Tex.)..... 3, 13, 25

Plectrum LLC v. AT&T Inc., et al.,
Case No. 4:17-cv-00120-ALM (E.D. Tex.)..... 3, 13

Plectrum LLC v. Broadcom Corporation, et al.,
Case No. 4:17-cv-00121-ALM (E.D. Tex.)..... 3, 13, 25

Plectrum LLC v. Comcast Corporation, et al.,
Case No. 4:17-cv-00123-ALM (E.D. Tex.)..... 3, 13

Plectrum LLC v. F5 Networks, Inc.,
Case No. 4:17-cv-00124-ALM (E.D. Tex.)..... 3, 13, 26

Plectrum LLC v. NEC Corporation Of America, et al.,
Case No. 4:17-cv-00125-ALM (E.D. Tex.)..... 3, 13, 26

Plectrum LLC v. Verizon Communications, Inc., et al.,
Case No. 4:17-cv-00126-ALM (E.D. Tex.)..... 3, 13

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.