

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

CELLULAR COMMUNICATIONS
EQUIPMENT LLC,

Plaintiff,

v.

LG ELECTRONICS, INC., ET AL.,

Defendants.

Civil Action No. 6:14-cv-982-KNM

**LG ELECTRONICS' OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS
BREACH OF CONTRACT COUNTERCLAIMS BY CERTAIN MANUFACTURER
DEFENDANTS**

TABLE OF CONTENTS

	<u>Page</u>
LEGAL STANDARD.....	1
STATEMENT OF FACTS	2
ARGUMENT	4
I. LGE’S BREACH OF CONTRACT COUNTERCLAIM IS ADEQUATELY PLEADED ON ITS FACE	4
A. Licensing Declarations Made by CCE’s Predecessors-in-Interest Constitute Express or Implied Contracts Between CCE and LGE	4
B. CCE is Bound by the Licensing Declarations of Its Predecessors.....	7
C. Performance or Tendered Performance Has Been Adequately Pleaded.....	7
II. THE DOCUMENTS REFERENCED IN THE COMPLAINT PROVIDE ADDITIONAL FACTUAL SUPPORT FOR THE BREACH OF CONTRACT COUNTERCLAIM.....	9
CONCLUSION.....	10

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Apple, Inc. v. Motorola, Inc.</i> , 869 F. Supp. 2d 901 (N.D. Ill. 2012).....	8, 9
<i>Apple, Inc. v. Motorola Mobility, Inc.</i> , Case No. 11-CV-178, 2011 U.S. Dist. LEXIS 72745 (W.D. Wis. June 7, 2011)	6
<i>Apple Inc. v. Samsung Elecs. Co.</i> , Case No. 11-CV-01846, 2012 U.S. Dist. LEXIS 67102 (N.D. Cal. May 14, 2012)	6, 8
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	<i>passim</i>
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 554 (2007).....	1
<i>BMC Software, Inc. v. ServiceNow, Inc.</i> , Case No. 2:14-CV-903, 2015 U.S. Dist. LEXIS 64366 (E.D. Tex. May 18, 2015).....	4, 7, 9, 10
<i>Bowlby v. City of Aberdeen</i> , 681 F.3d 215 (5th Cir. 2012).....	1
<i>Castillo v. Ocwen Loan Servicing, L.L.C.</i> , 539 F. App'x 621 (5th Cir. 2013).....	6
<i>Datatreasury Corp. v. Wells Fargo & Co.</i> , 522 F.3d 1368 (Fed. Cir. 2008).....	7
<i>Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC</i> , 594 F.3d 383 (5th Cir. 2010)	2, 9
<i>Microsoft Corp. v. Motorola, Inc.</i> , 864 F. Supp. 2d 1023 (W.D. Wash. 2012), <i>aff'd</i> , 795 F.3d 1024 (9th Cir. 2015)	6, 9
<i>O'Shea v. Parkey</i> , No. 4:12CV265, 2014 WL 494905 (E.D. Tex. Feb. 4, 2014)	2
<i>Realtek Semiconductor Corp. v. LSI Corp.</i> , 946 F. Supp. 2d 998 (N.D. Cal. 2013)	6, 8, 9
<i>TQP Dev., LLC v. Callidus Software Inc.</i> , No. 2:12-CV-799-JRG-RSP, 2013 WL 4826011 (E.D. Tex. Sept. 9, 2013).....	1
<i>United States v. Bollinger Shipyards, Inc.</i> , 775 F.3d 255 (5th Cir. 2014)	7
OTHER AUTHORITIES	
Fed. R. Civ. P. 8(a)(2).....	1
Fed. R. Civ. P. 12(b)(6).....	1, 2, 4
United States Department of Justice and United States Patent & Trademark Office, "Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments" (January 8, 2013).....	6

Plaintiff Cellular Communications Equipment LLC (“CCE”), after serving two amended complaints that barely survived multiple motions to dismiss, now argues in its three-page motion to dismiss that the detailed breach of contract counterclaim of Defendants—LG Electronics, Inc., LG Electronics U.S.A., Inc. (collectively “LGE”)—is somehow deficient. LGE’s counterclaim is grounded in the express commitment of CCE and/or its predecessors-in-interest to license certain of the patents-in-suit on FRAND terms with respect to the very same standards that CCE relies on for its allegations of infringement. LGE’s counterclaim details the factual and legal bases for the contractual commitment as well as the bases for LGE’s allegations of breach; it is well-pleaded, and passes muster under the local rules of this Court, relevant case law, and the *Twombly* pleading standard. CCE’s Motion to Dismiss Breach of Contract Counterclaims by Certain Manufacturer Defendants (Dkt. No. 169 (hereafter, “Motion to Dismiss”)) should therefore be denied.

Legal Standard

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a pleading “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007)). A court “must assume that all well-pleaded facts are true, and view those facts in the light most favorable to the plaintiff.” *TQP Dev., LLC v. Callidus Software Inc.*, No. 2:12-CV-799-JRG-RSP, 2013 WL 4826011, at *1 (E.D. Tex. Sept. 9, 2013) (citing *Bowlby v. City of Aberdeen*, 681 F.3d 215, 218 (5th Cir. 2012)). A party does not need to present “detailed factual allegations,” though mere “labels and conclusions” or “a formulaic recitation of the elements of a cause of action” are insufficient to meet the pleading standard. *Iqbal*, 556 U.S. at 678. A party

“meets this standard when it ‘pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’” *O’Shea v. Parkey*, No. 4:12CV265, 2014 WL 494905, at *2 (E.D. Tex. Feb. 4, 2014) (quoting *Iqbal*, 556 U.S. at 678).

In determining whether a party satisfies the pleading standard, the Court should consider “the complaint, any documents attached to the complaint, and any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint.” *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010). In reviewing these documents in response to a Rule 12(b)(6) motion to dismiss, “[t]he court’s task is to determine whether the plaintiff has stated a legally cognizable claim that is plausible, not to evaluate the plaintiff’s likelihood of success.” *Id.*

Statement of Facts

On June 25, 2013, CCE filed its Initial Complaint for Patent Infringement in Case No. 6:13-cv-00508. In that Complaint, CCE alleged infringement of U.S. Patent Nos. 6,377,804 (“the ’804 patent”), 6,819,923 (“the ’9923 patent”), 7,215,962 (“the ’962 patent”), 7,941,174 (“the ’174 patent”), 8,055,820 (“the ’820 patent”), and 7,218,923 (“the ’8923 patent”). *See* Case No. 6:13-cv-00508, Dkt. No. 1. On April 10, 2015, CCE filed a Second Amended Complaint in Case No. 6:13-cv-00508, now alleging infringement of only the ’9923 patent, the ’174 patent, the ’820 patent, the ’8923 patent, and the ’019 patent. *See* Case No. 6:13-cv-00508, Dkt. No. 79.

Separately, on December 19, 2014, CCE filed a Complaint alleging infringement of U.S. Patent Nos. 8,385,966 (“the ’966 Patent”), 8,848,556 (“the ’556 Patent”), and 8,868,060 (“the ’060 Patent”) in the above-captioned case. *See* Case No. 6:14-cv-00982, Dkt. No. 1. On April 16, 2015, CCE filed a First Amended Complaint maintaining its allegations of infringement with respect to the ’966, ’556, and ’060 Patents. *See* Case No. 6:14-cv-00982, Dkt. No. 147. On

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.