

**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

**JURY TRIAL DEMANDED
(Consolidated Lead Case)**

**CELLULAR COMMUNICATIONS
EQUIPMENT LLC,**
Plaintiff,

v.

**SONY MOBILE COMMUNICATIONS
INC., et al.,**
Defendants.

Civil Action No. 6:14-cv-983

JURY TRIAL DEMANDED

**CELLULAR COMMUNICATIONS
EQUIPMENT LLC,**
Plaintiff,

v.

KYOCERA CORPORATION, et al.,
Defendants.

Civil Action No. 6:15-cv-049

JURY TRIAL DEMANDED

**PLAINTIFF CELLULAR COMMUNICATIONS EQUIPMENT LLC'S
RESPONSE IN OPPOSITION TO DEFENDANTS' JOINT MOTION TO DISMISS
PLAINTIFF'S CONTRIBUTORY INFRINGEMENT CLAIMS**

I. INTRODUCTION

The Amended Complaints¹ filed in these actions meet the pleading requirements articulated in *Twombly* and *Iqbal*. Consistent with the Court's March 27, 2015 Order issued in related CCE matters,² the Amended Complaints plead combinations of specifically-identified hardware components with distinct software functionality. Each combination is: (1) a material part of the subject invention; and (2) not capable of any substantial non-infringing use. CCE has met its burden in properly pleading claims for contributory infringement, and Defendants' motion should be denied.

II. FACTUAL BACKGROUND

By Order of March 27, 2015 entered in the Related Cases (*see* Dkt. No. 373), the Court sided with CCE in holding that its prior complaints were sufficient with respect to direct infringement, induced infringement, and willfulness. With respect to contributory infringement, however, the Court noted that CCE's "complaints [did] not identify any components of the accused devices that are a material part of the invention." *See* Order at 10. For this reason, the Court found that CCE's allegations "do not support a plausible inference that the accused devices or components thereof cannot be used for any other purpose than infringement" and ordered CCE to amend. *Id.*

In view of the Order in the Related Cases, CCE chose to amend its complaints here to clarify that the accused products "include proprietary hardware components and software

¹ The relevant complaints are Dkt. Nos. 28 and 29 in Case No. 6:14-cv-982 and Dkt. No. 44 in Case No. 6:15-cv-049. They are hereinafter referred to collectively as the "Amended Complaints."

² CCE and several of the Defendants here (*i.e.*, LG, AT&T, Sprint, T-Mobile, and Verizon) are involved in related litigation that includes a nearly identical issue. *See CCE v. HTC Corp., et al.*, Case No. 6:13-cv-507 (consolidated lead case) (hereinafter the "Related Cases"); *see also* Case No. 6:13-cv-507, Dkt. Nos. 373 (Court Order regarding motion to dismiss), 396 (Defendants' Motion to Dismiss Contributory Infringement Claims), and 410 (CCE's Response in Opposition to Defendants' Motion to Dismiss).

instructions that work in concert to perform specific, intended functions.” *See, e.g.*, LG Amended Complaint (Dkt. No. 28) at ¶ 27.³ CCE alleges accordingly that the “specific, intended functions, carried out by these hardware and software combinations, are a material part of the inventions of the [asserted] patent and are not staple articles of commerce suitable for substantial non-infringing use.” *See id.* The Amended Complaints further identify the particularly relevant hardware component(s) in the accused devices and make clear that those hardware components are configured and/or programmed to perform the functionality of the asserted claims:

Specifically each of the [accused devices] contain at least [1] a baseband processor, memory, and a transmitter which [2] contain[] functionality that is specifically programmed and/or configured to at least initialize a first power control adjustment state for an uplink control channel and a second power control adjustment state for an uplink shared channel, compute an initial trans[m]it power for the uplink shared channel using full path loss compensation, and send a message on the uplink shared channel at the initial transmit power, as recited in claims 1-7 and 10-17 of the '966 patent.

See, e.g., id. at ¶ 28 (emphasis added).

III. LEGAL STANDARDS

Motions to dismiss are procedural vehicles reviewed under regional circuit law. *CoreBrace LLC v. Star Seismic LLC*, 566 F.3d 1069, 1072 (Fed. Cir. 2009). “In the Fifth Circuit, motions to dismiss under Rule 12(b)(6) are viewed with disfavor and rarely granted.” *Inmotion Imagery Techs. v. Brain Damage Films*, No. 2:11-cv-414, 2012 U.S. Dist. LEXIS 112630, at *3 (E.D. Tex., Aug. 10, 2012) (citing, among others, *Lormand v. U.S. Unwired, Inc.*, 565 F.3d 228, 232 (5th Cir. 2009)). “When considering a motion to dismiss under Rule 12(b)(6), a court must assume that all well-pleaded facts are true, and view those facts in the light most

³ In this Response, CCE cites to the live complaint in Case No. 6:14-cv-982, Dkt. No. 28. Each of the subject complaints contains allegations that are substantively the same.

favorable to the plaintiff.” *Achates Reference Publishing, Inc. v. Symantec Corp.*, No. 2:11-cv-294, 2013 U.S. Dist. LEXIS 27143, at *5-6 (E.D. Tex. Jan 10, 2013).

While Fed. R. Civ. P. 8(a)(2) requires only that a complaint contain a short and plain statement of the claim showing that the pleader is entitled to relief, the Supreme Court clarified in its *Twombly* and *Iqbal* opinions that providing the “grounds of [the pleader’s] entitlement to relief requires more than labels and conclusions.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To this end, this Court has explained:

[A] complaint must allege sufficient factual matter, accepted as true, to state a claim that is plausible on its face. 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.

Patent Harbor, LLC v. Dreamworks Animation SKG, Inc., No. 6:11-cv-229, 2012 U.S. Dist. LEXIS 114199, at *7 (E.D. Tex. Jul. 27, 2012) (citations to *Twombly* and *Iqbal* omitted).

The *Twombly* / *Iqbal* pleadings standard applies to allegations of indirect infringement. See *Patent Harbor*, 2012 U.S. Dist. LEXIS 114199, at *9. However, allegations of indirect and willful infringement are not viewed in a vacuum. Analysis of pleaded content 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) (emphasis added). Moreover, the *Twombly* / *Iqbal* pleadings standard does not mean that a plaintiff “must prove itself at the pleading stage.” *Patent Harbor*, 2012 U.S. Dist. LEXIS 114199, at *16.

To show contributory infringement, a complaint must establish (1) direct infringement; (2) knowledge of the patent by the accused infringer; (3) that the accused component has no substantial noninfringing uses; and (4) that the component is a material part of the invention. *Fujitsu Ltd. v. Netgear Inc.*, 620 F.3d 1321, 1326 (Fed. Cir. 2010).

IV. ARGUMENT

Defendants challenge only whether CCE has adequately alleged that the accused components are a material part of the invention that are not capable of any substantial non-infringing use. CCE's Amended Complaints meet the pleadings requirements for those elements under *Twombly* and *Iqbal*.

A. CCE's allegations identify components and software of the accused devices that are a material part of the invention.

CCE's Amended Complaints identify particularly the hardware components and software functionality that are material to the subject inventions. With respect to the '966 patent, for instance, CCE notes — as a threshold matter — that the accused products include “proprietary hardware components and software instructions that work in concert to perform specific, intended functions” and that “[s]uch specific, intended functions, carried out by these hardware and software combinations are a material part of the inventions of the '966 patent....” *See, e.g.*, LG Amended Complaint (Dkt. No. 28) at ¶ 27. The Amended Complaints also detail the hardware components (*e.g.*, “at least a baseband processor, memory, and a transmitter”) and specifically characterize the software involved (*e.g.*, “functionality that is specifically programmed and/or configured to initialize..., compute ..., and send ... as claimed in [the asserted claims] of the '966 patent.”) *Id.* at ¶ 28. In so doing, CCE has met its burden.

Yet Defendants complain that these allegations are “conclusory.” This position ignores the plainly pleaded facts and purports to require more than the law requires. To require CCE to identify, for instance, specific names of software modules or source code files at the complaint stage turns discovery on its head, requiring CCE to prove its case at the outset. CCE cannot possibly identify particular modules or files without discovery, which has yet to occur. CCE has,

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