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CLIENT ALERT

Facts Contradicting Infringement Make Claim Implausible under Iqbal/Twombly

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Bot M8 LLC v. Sony Corp. of Am., No. 2020-2218 (Fed. Cir. July 13, 2021)

The Federal Circuit clarified the plausibility standard under *Iqbal/Twombly* for patent infringement, providing examples of both plausible and implausible allegations. The District Court had dismissed infringement for four patents under Rule 12(b)(6), which the patentee appealed.

The relevant inquiry is whether the factual allegations in the complaint show that the plaintiff has a plausible claim for relief. A plaintiff is not required to plead infringement on an element-by-element basis, but conclusory allegations "reciting the claim elements and merely concluding that the accused product has those elements" are not enough. Factual allegations that are "inconsistent with and contradict infringement" cannot plausibly support a claim. The level of detail required in any given case will vary depending upon various factors, such as technological complexity.

The Federal Circuit found infringement of the first patent implausible. The patent claim required storing a video game and authentication program together in a memory separate from the motherboard. The patentee alleged that the motherboard's flash memory stored the authentication program. This allegation was inconsistent with the claim and made infringement "not even possible, much less plausible."

The Federal Circuit found infringement of the second patent implausible. The patent claim required storing "gaming information including a mutual authentication program" *together* in a memory. The patentee alleged presence of multiple authentication programs and multiple storage media such as Blu-ray discs, servers, or flash memory. However, this failed to plausibly allege that gaming information and a mutual authentication program were stored *together* in the same memory.

For the remaining two patents, the Federal Circuit found the infringement allegations plausible and reversed the dismissals. The patents claimed a fault inspection program that completes before a video game starts. The patentee pled that the fault inspection program concluded before a video game starts based on fault inspection error codes that appear before the video game starts. The accused infringer argued that the error codes only supported execution, but not completion, of the fault inspection program. The panel credited the patentee's identification of error messages that indicate a game cannot be started as plausibly supporting an inference of infringement.

Read the full decision here.

2 Min Read

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