

Judge Albright Denies Defendants' Rule 12 Motions and a Motion To Dismiss Based on *Forum Non Conveniens*

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On January 5, 2023, in *International Business Machines Corporation v. LzLabs GmbH et al.*, Judge Albright denied Motions to Strike and Motions to Dismiss from defendants LzLabs GmbH ("LzLabs") and Texas Wormhole, LLC ("Wormhole").

On March 21, 2022, International Business Machines Corporation ("IBM") sued LzLabs and Wormhole in the Western District of Texas for alleged patent infringement, trade secret misappropriation, and false advertising. LzLabs has licensed technology from IBM, and Wormhole is an arm of LzLabs that develops certain software. IBM also licensed technology to a previous company controlled by LzLabs' founders, Neon. IBM had previously sued Neon, with the case ultimately settling with a permanent injunction against Neon.

Motions to Strike

On June 9, 2022, both LzLabs and Wormhole filed Motions to Strike under Rule 12(f) seeking to strike IBM's statements in its complaint about the history of the owners and operators of Neon, LzLabs and Wormhole, alleging they were irrelevant.

Judge Albright denied the Motions to Strike, reasoning the Court would grant a motion to strike only when the pleading had "no possible relation to the controversy." Here, Judge Albright noted that the statements regarding Neon carried a plausible relation to at least IBM's request for exemplary or punitive damages by demonstrating that the owners and operators of both defendants knew at least of IBM's IP portfolio touching the area in which the two conducted business.

Judge Albright further declined to follow the lead of an English court presiding over a related case for breach of contract and inducement of the same. Judge Albright noted that English procedural law provides courts with broader discretion for striking pleadings, and that the substantive issues underlying the complaint in that case were different.

Motion to Dismiss Claims of Indirect and Willful Infringement

Wormhole also moved to dismiss IBM's claims of indirect and willful infringement under Rule 12(b)(6) for failure to state a claim. The Court was not persuaded by IBM's assertion that the owners and operators created an "elaborate operation" to acquire IBM's products. The Court, however, did find IBM's allegations of willful blindness credible based on the companies' history and LzLabs's communications with a Tennessee-based IBM customer.

Judge Albright further declined to dismiss IBM's claims for post-suit willful infringement, noting that "[s]erving a complaint will, in most circumstances, notify the defendant of the asserted patent(s) and the accused conduct" so long as the complaint alleges a continuation of allegedly infringing conduct by the defendant.

Motion to Dismiss based on *forum non conveniens*

On September 29, 2022, both defendants moved to dismiss the suit based on forum non conveniens. In 2013, a British subsidiary of LzLabs (Winsopia) entered into an IBM Customer Agreement ("ICA") with IBM-UK. The ICA included a forum selection clause requiring the parties to submit all disputes relating to the Agreement to English Courts.

However, Judge Albright denied the motion because a forum selection clause can generally only be enforced against a party to the agreement containing the clause. In addition, IBM did not satisfy any of the exceptions addressed in the defendants' briefing. Judge Albright further found that the English courts would not be an adequate forum because IBM's claims arise under the laws of the United States.

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