

Applying the *Bot M8* Standard, Judge Pitman Grants Motion To Dismiss When Plaintiff's Complaint Failed to Plausibly Assert Infringement

MARCH 15, 2023

On February 27, 2023, Judge Pitman granted Defendants Amazon.Com, Inc.'s, Amazon Web Services, Inc.'s, and Amazon.Com Services, Inc.'s (collectively, "Amazon") Motion to Dismiss.

On March 25, 2022, Plaintiff LS Cloud Storage Technologies, LLC ("LS Cloud") filed its complaint for patent infringement against Amazon in the Waco Division of the Western District of Texas. Plaintiff accused multiple Amazon products, such as AWS and Amazon EBS, of infringing patents generally relating to data storage and remote storage systems. On June 16, 2022, Amazon moved to dismiss LS Cloud's claims. While the Motion was pending, Judge Albright granted the parties' joint motion to transfer to the Austin Division.

Amazon argued multiple grounds for dismissal, but Judge Pitman decided the Motion on the first basis: that LS Cloud's infringement claims failed to identify specific devices and software and were thus too general to put Amazon on notice of infringement.

Judge Pitman applied the Federal Circuit standard set forth in *Bot M8 LLC v. Sony Corporation of America*. While *Bot M8* does not require "an element-by-element pleading of fact for each asserted patent claim," it does require "some factual allegations that, when taken as true, articulate why it is plausible that the accused product infringes the patent claim." Judge Pitman noted that LS Cloud's allegations failed to show infringement of the *entire* claim at issue. At most, LS Cloud's allegations showed how Amazon's technologies "related to the asserted patents generally."

Judge Pitman also addressed an important caveat in the *Bot M8* standard: "The detail required to plead direct infringement adequately depends on 'the complexity of the technology, the materiality of any given element to practicing the asserted claim(s), and the nature of the allegedly infringing device.'" Judge Pitman, comparing the technologies here and in *Bot M8*, found that the technology here was no more complex than that in *Bot M8* such that Plaintiff should have been able to show that infringement "was a reasonable inference to draw."

LS Cloud's opposition to the Motion included updated infringement charts purporting to remedy the asserted defect in pleading. Judge Pitman disregarded the updated charts because they were not part of the original complaint. In addressing LS Cloud's request for leave to amend, Judge Pitman allowed LS Cloud 14 days to file a motion for leave to amend, at which point the Court would consider whether to dismiss with prejudice.

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