

ALERT

Federal Circuit Patent Bulletin: *ABB Turbo Sys. AG v. TurboUSA, Inc.*

December 17, 2014

"[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of the facts alleged is improbable."

On December 17, 2014, in *ABB Turbo Sys. AG v. TurboUSA, Inc.*, the U.S. Court of Appeals for the Federal Circuit (Prost, Newman, Taranto*) reversed and remanded the district court's dismissal of ABB's trade secret misappropriation claims in a case involving U.S. Patents No. 6,012,901 and No. 6,024,495, which related to turbocharger components. The Federal Circuit stated:

Federal Rules of Civil Procedure 8(a)(2) and 12(b)(6) together establish a notice-pleading standard that is applied, in a context-specific manner, with the recognition that the imposition of litigation costs must be justified at the threshold by the presence of factual allegations making relief under the governing law plausible, not merely speculative. Thus, Rule 8(a)(2) requires that a plaintiff provide a "short and plain statement of the claim showing that the pleader is entitled to relief," which requires that the complaint " 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" To avoid dismissal under Rule 12(b)(6), the complaint must contain sufficient factual allegations "to raise a right to relief above the speculative level." Rule 8's pleading standard "does not require 'detailed factual allegations.'" But it requires more than "barren recitals of the statutory elements, shorn of factual specificity," and more than the mere possibility of liability or mere consistency with liability. What is needed is "facial plausibility" of the claim, which exists "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Rule 8 "simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence" of the alleged violation. . . .

The district court's first ground for dismissal concerns the timeliness of the complaint. . . . Dismissal at the pleading stage on statute-of-limitations grounds ordinarily is improper unless it is "apparent from the face of the complaint that the claim is time-barred." Here, to approve dismissal on timeliness grounds, we would have to conclude that ABB's complaint alleges facts making it apparent that ABB discovered, or "by the exercise of

reasonable diligence should have . . . discovered,” the alleged misappropriations at least three years before it sued in June 2012. We cannot so conclude.

The amended complaint says nothing to identify an actual or constructive discovery before June 2009. It does not allege when or how ABB discovered the misappropriations. ABB’s only factual allegations regarding when it learned of the alleged misappropriations appear in its motion to amend its original complaint, which state that it did not know of the misconduct until after filing its initial complaint in 2012. Even if those allegations were considered, they would not support the district court’s conclusion: they controvert rather than indicate actual or constructive discovery before June 2009.

The district court rested its untimeliness conclusion on the amended complaint’s allegations that misconduct occurred over a long period and through geographically dispersed meetings. The court reasoned that ABB “should have at least had an inkling that something was amiss.” We need not explore the relationship between that formulation and the governing “should have discovered” standard to conclude that the district court’s rationale is inadequate to support dismissal. The court’s rationale exceeds the limits on factual assessments appropriate when ruling on a motion to dismiss. The amended complaint alleges distinct acts of misappropriation of distinct trade secrets through clandestine communications and cash payments, with further concealment efforts undertaken after acquisition of the secrets; and nothing in the amended complaint makes clear that the trade secrets were the kind that would readily reveal themselves in the marketplace conduct of the users of the information. This seems enough to go beyond the “conclusory” and “factually neutral” to make affirmatively plausible the lack of actual or constructive discovery, but ABB did not need to meet even that standard in order to avoid a timeliness dismissal. It is enough that ABB’s amended complaint certainly does not state facts making apparent that ABB actually or constructively discovered the alleged misappropriations by June 2009. . . .

The district court’s second, alternative ground for dismissal is also insufficient to support the judgment. The district court held that ABB did not sufficiently allege facts showing that it reasonably protected its trade-secret information. The court’s analysis was too demanding of specificity and too intrusive in making factual assessments. ABB has alleged “enough facts to state a claim to relief that is plausible on its face”; it has “nudged [its] claims across the line from conceivable to plausible.”

ABB alleged that its secrecy-maintenance efforts “includ[ed] imposing confidentiality and nondisclosure obligations on ABB employees that have access to ABB’s Turbocharger Trade Secrets, marking documents constituting ABB’s Turbocharger Trade Secrets with confidentiality designations and/or other indicia prohibiting

the reproduction or dissemination of such documents or information to third parties, [and] restricting physical and electronic access by third parties to ABB's Turbocharger Trade Secrets." The district court cited no authority suggesting that such measures are not reasonable precautions to protect trade secret under the governing law, and other courts have held allegations of similar protective measures sufficient at the pleading stage. We follow those authorities, noting that Florida law requires only "reasonable" protections and that the complaint stage is not well-suited to determining what precautions are reasonable in a given context.

We see no basis in this case to deem ABB's direct factual allegations insufficient to nudge the claim into the realm of a plausible inference that ABB adequately protected its trade secrets. The district court reasoned that the scope of the alleged misappropriations, perhaps together with the lack of detection by ABB, made it "highly unlikely" that ABB was "actually restricting physical and electronic access to the information and taking other protective measures." But it is simply not implausible that adequate protections were in place and yet a series of misappropriations occurred without ABB's detection. . . . ABB's specific factual allegations of protective measures are enough to survive a motion to dismiss. To be sure, *Twombly* and *Iqbal* indicate that, in separating conclusions from facts and deciding whether the alleged facts make affirmatively plausible the asserted basis of liability, courts deciding a motion to dismiss for insufficient pleading may consider the strength of alternative explanations of the alleged facts. But such consideration is limited, because the court's role is only to determine if the factual allegations go beyond being "merely consistent with" liability to "plausibly suggest[ing]" liability. Making that distinction requires a "context-specific" assessment of the particular complaint, made with the recognition that "a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of the facts alleged is improbable." In this case, for the reasons given, the factual allegations meet the pleading standard regarding protection of the alleged trade secrets.