

ALERT

Federal Circuit Patent Bulletin: *Lifetime Indus., Inc. v. Trim-Lok, Inc.*

September 18, 2017

"[T]he plausibility requirement is not akin to a 'probability requirement at the pleading stage; it simply calls for enough fact[s] to raise a reasonable expectation that discovery will reveal' that the defendant is liable for the misconduct alleged."

On September 7, 2017, in *Lifetime Indus., Inc. v. Trim-Lok, Inc.*, the U.S. Court of Appeals for the Federal Circuit (Lourie,* Moore, O'Malley) reversed and remanded the district court's dismissal of Lifetime's suit alleging that Trim-Lok infringed U.S. Patent No. 6,966,590, which related to a two-part seal for use in recreational vehicles with a slide-out room. The Federal Circuit stated:

The court's decision relating to direct infringement turned on the fact that the claims of the '590 patent require both a seal and an RV, but Trim-Lok only manufactures seals. Lifetime argues that it properly pleaded direct infringement because it alleged that a Trim-Lok employee or representative "directly installed" Trim-Lok's two-part seal on "an RV having a slide-out room." . . . We agree with Lifetime that the [(second amended complaint)] SAC adequately alleged that Trim-Lok directly infringed. "One who 'makes' a patented invention without authorization infringes the patent." Commercial manufacture is not the only way that a combination can infringe. Limited internal manufacture and use can also infringe.

The district court dismissed Lifetime's direct infringement count on the basis that Trim-Lok only made one of the two components that comprised the patented invention. Although Lifetime did not allege that Trim-Lok made the RV onto which it installed the seal, Lifetime did allege that Trim-Lok installed the seal onto the RV; that is, Lifetime alleged that Trim-Lok made an infringing seal-RV combination.

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Because Lifetime alleged that an agent of Trim-Lok installed the seal onto the RV, and that the resulting seal-RV combination infringed the '590 patent, it alleged that Trim-Lok directly infringed in a manner consistent with our precedents holding that assembling the components of an invention is an infringing act of making the invention.

Trim-Lok's complaints concerning lack of detail ask for too much. There is no requirement for Lifetime to "prove its case at the pleading stage." Our precedent requires that a complaint place the alleged infringer "on notice of what activity . . . is being accused of infringement." The SAC meets that requirement. . . . "[W]e do not say that these inferences are, in fact, correct or that they are the only fair inferences to be drawn from the facts alleged." Taken together, however, they render Lifetime's pleadings sufficiently plausible to survive a motion to dismiss. . . .

For an allegation of induced infringement to survive a motion to dismiss, a complaint must plead facts plausibly showing that the accused infringer "specifically intended [another party] to infringe [the patent] and knew that the [other party]'s acts constituted infringement." The district court dismissed Lifetime's indirect infringement counts on the basis that they failed to plead "any facts from which intent could be inferred," and instead had only supplied conclusory allegations. The court also noted that Lifetime alleged that Trim-Lok had knowledge of the patent and the alleged infringement in July 2013, when Trim-Lok received a cease-and-desist letter, but that the allegedly infringing acts occurred "well before." . . .

We agree with Lifetime that it has plausibly alleged that Trim-Lok induced infringement of the '590 patent. "[T]he plausibility requirement is not akin to a 'probability requirement at the pleading stage; it simply calls for enough fact[s] to raise a reasonable expectation that discovery will reveal' that the defendant is liable for the misconduct alleged." At the outset, we agree with Lifetime that it adequately pleaded that Trim-Lok had knowledge of the patent before the allegedly infringing act. Lifetime specifically alleged that Busch and Torrey had knowledge of the patent and its scope when they joined Trim-Lok in the months before June 2013. Drawing reasonable inferences in Lifetime's favor, these facts make it plausible that Trim-Lok had knowledge of the '590 patent before June 2013.

We also agree that Lifetime plausibly pleaded that Trim-Lok had the intent to infringe. Trim-Lok's responses again ask too much. Lifetime pleaded that Trim-Lok had knowledge of the '590 patent, its scope, and the products covered thereby. After Trim-Lok gained that knowledge, Lifetime alleged that it then assisted in or directed the installation of exactly the same type of seal as the one described in the patent onto an RV at the Forest River plant. Lifetime alleged, moreover, that Trim-Lok never made or sold these particular seals prior to gaining that knowledge, and that the seals have no noninfringing use. Our precedent does not require Lifetime to do more. . . . Thus, we reverse the district court's dismissal of the induced infringement count.

Finally, Lifetime argues that the district court erred in dismissing its contributory infringement count because contributory infringement only requires knowledge of the patent and of infringement, not the intent to infringe, and that it adequately pleaded the elements of contributory infringement. . . . We agree with Lifetime that it plausibly pleaded contributory infringement. Contributory infringement occurs, *inter alia*, when a party sells "a component of a patented . . . combination . . . constituting a material part of the invention, knowing the same

to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use.” We have held that contributory infringement requires “only proof of a defendant’s knowledge, not intent, that his activity cause infringement.” Thus, the district court erred to the extent that it dismissed the contributory infringement count for failing to plausibly allege that Trim-Lok intended to infringe.