

Federal Circuit Patent Bulletin: *Lyda v. CBS Corp.*

October 3, 2016

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On September 30, 2016, in *Lyda v. CBS Corp.*, the U.S. Court of Appeals for the Federal Circuit (Reyna, Hughes, Stoll*) affirmed the district court's dismissal under Federal Rule of Civil Procedure 12(b)(6) of Lyda's complaint that CBS' show Big Brother infringed U.S. Patents No. 7,434,243 and No. 7,730,506, which related to methods and systems for obtaining real time responses to remote programming by allowing persons viewing or listening to a broadcast to respond to the broadcast in real time without requiring a personal computer. The Federal Circuit stated:

For claims of direct patent infringement, this court has determined that the pleading requirements of Form 18 suffice to survive a motion to dismiss. Form 18, in the Appendix to the Federal Rules of Civil Procedure, is titled "Complaint for Patent Infringement" and provides a sample allegation of direct infringement. We have stated that when used properly, Form 18 "effectively immunizes a claimant from attack regarding the sufficiency of the pleading." Form 18 has the following minimal requirements: (1) an allegation of jurisdiction; (2) a statement that the plaintiff owns the patent; (3) a statement that defendant has been infringing the patent "by making, selling, and using [the device] embodying the patent"; (4) a statement that the plaintiff has given the defendant notice of its infringement; and (5) a demand for an injunction and damages. . . . Federal Rule of Civil Procedure 84 provides that "the forms in the Appendix suffice under these rules and illustrate the simplicity and brevity that these rules contemplate." Rule 84 and its accompanying Advisory Committee Notes indicate that the forms satisfy the rules as to the sufficiency of pleading direct infringement. Therefore, whether a complaint adequately pleads direct infringement is "to be measured by the specificity required by Form 18." Moreover, "to the extent any conflict exists between *Twombly* (and its progeny) and the Forms regarding pleadings requirements, the Forms control."

We have also held that allegations of induced or contributory infringement, which have additional elements not found in direct infringement claims, are not governed by Form 18. "Rather, the pleading requirements set forth in [*Twombly* and *Iqbal*] apply" to claims of induced and contributory infringement. We have not,

however, expressly considered whether claims of joint infringement should be measured by the sparse requirements of Form 18.

“Direct infringement under § 271(a) occurs where all steps of a claimed method are performed by or attributable to a single entity.” While a typical claim of direct infringement requires proof that a defendant performs each step of the claimed method, joint infringement requires more. To prove joint infringement, where multiple actors are involved in practicing the claim steps, the patent owner must show that the acts of one party are attributable to the other such that a single entity is responsible for the infringement. This court has held that an entity will be responsible for others’ performance of method steps in two circumstances: “(1) where that entity directs or controls others’ performance, and (2) where the actors form a joint enterprise.” Therefore, like claims of induced or contributory infringement, allegations of joint infringement require elements beyond those for the more typical act of direct infringement to which Form 18 is directed.

We agree with the district courts that have addressed this issue and concluded that the pleading requirements for joint infringement are not satisfied by Form 18. Because joint infringement requires additional elements not addressed by Form 18, we hold that allegations of joint infringement must be measured by the *Iqbal* and *Twombly* standard without reference to Form 18. A claim of joint infringement thus requires pleading facts sufficient to allow a reasonable inference that all steps of the claimed method are performed and either (1) one party exercises the requisite “direction or control” over the others’ performance or (2) the actors form a joint enterprise such that performance of every step is attributable to the controlling party.

Mr. Lyda’s complaint does not explicitly indicate whether CBS infringes the asserted patents under a single or joint theory of direct infringement. The Amended Complaint, however, alleges that “Defendant CBS, as owner of the Defendant CBS Interactive, controls the operations of the Defendant CBS Interactive,” and therefore that the purported steps taken by CBS Interactive are attributed to CBS. . . . [W]e conclude that each count of the Amended Complaint implicates joint infringement.

We note that Mr. Lyda does not attempt to argue that the Amended Complaint satisfies the *Twombly/Iqbal* pleading standard outside of relying on Form 18. Because we hold that Form 18 does not apply to claims of joint infringement, and because Mr. Lyda has not plausibly pled a claim of joint infringement in satisfaction of the *Iqbal/Twombly* pleading standard, we affirm the district court’s dismissal under Rule 12(b)(6).