

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 20-1422 JVS (KESx) Date November 20, 2020

Title Intellectual Pixels Ltd. v. Sony Interactive Entertainment LLC

Present: The **James V. Selna, U.S. District Court Judge**
Honorable

Lisa Bredahl

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: [IN CHAMBERS] Order Regarding Motion to Dismiss

Before the Court is Defendant Sony Interactive Entertainment LLC's ("Sony") motion to dismiss the amended complaint of Plaintiff Intellectual Pixels Limited ("Intellectual Pixels"). Mot., ECF No. 39. Intellectual Pixels filed an opposition. Opp'n, ECF No. 40. Sony filed a response. Reply, ECF No. 41.

For the following reasons, the Court **GRANTS** the motion.

I. BACKGROUND

This case involves the alleged infringement of U.S. Patent No. 10,681,109 (the "'109 Patent"). Amended Complaint, ECF No. 33, ¶ 13. The '109 Patent describes an invention that allows for many client devices to connect to a single, remote graphics processing unit that performs the graphics rendering that would otherwise occur separately on each client device. Id. ¶ 28.

Intellectual Pixels alleges that Sony has infringed on the '109 Patent "by making, using, selling, offering to sell or importing" three services: PlayStation Now, Remote Play, and SharePlay. Id. ¶ 64. PlayStation Now is an application that allows users to play video games on centralized servers that perform the needed graphics processing. Id. ¶¶ 37, 39. "Remote Play and Share Play are features included with the PlayStation PS4 console and PlayStation video games that allows Sony PlayStation PS4 consoles to transmit their video output to" certain client devices. Id. ¶ 64.

On July 25, 2019, Intellectual Pixels sued Sony for infringement of patents that are related to the '109 Patent. Id. ¶ 81. Intellectual Pixels then filed the initial complaint in

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this lawsuit on July 31, 2020. Id. ¶ 77. In the amended complaint, Intellectual Pixels asserts claims of willful infringement and pre-suit inducement. Id. ¶¶ 74, 81-86. As relevant to the instant motion to dismiss, Intellectual Pixels alleges that Sony had knowledge of the '109 Patent because Sony “produced a document to [Intellectual Pixels] listing the '109 application” and subsequently “monitor[ed] the prosecution of the '109 application.” Id. ¶¶ 78, 80.

II. LEGAL STANDARD

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state “enough facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has “facial plausibility” if the plaintiff pleads facts that “allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

In resolving a 12(b)(6) motion under Twombly, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678. Nor must the Court “accept as true a legal conclusion couched as a factual allegation.” Id. at 678-80 (quoting Twombly, 550 U.S. at 555). Second, assuming the veracity of well-pleaded factual allegations, the Court must “determine whether they plausibly give rise to an entitlement to relief.” Id. at 679. This determination is context-specific, requiring the Court to draw on its experience and common sense, but there is no plausibility “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.” Id.

III. DISCUSSION

A. Motion to Dismiss

Sony first argues that Intellectual Pixels has not pled the knowledge necessary to state claims for induced infringement or willful infringement. Mot. at 4-5. Specifically, Sony first contends that Intellectual Pixels has only alleged that Sony had knowledge of the '109 application—not the patent itself. Id. The amended complaint must allege

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knowledge to state a claim for induced infringement. See Commil USA, LLC v. Cisco Systems, Inc., 135 S. Ct. 1920, 1926 (2015) (“liability for inducing infringement attaches only if the defendant knew of the patent”). To state a claim for willful infringement, the amended complaint must allege that Sony knew or should have known of the ’109 Patent. Arctic Cat Inc. v. Bombardier Recreational Products Inc., 876 F.3d 1350, 1371 (Fed. Cir. 2017) (concluding that willful infringement requires a “risk of infringement that was either known or so obvious that it should have been known to the accused infringer” (quoting Halo Electronics, Inc. v. Pulse Electronics, Inc., 136 S. Ct. 1923, 1930 (2016))).

The amended complaint presents the following theory for why Sony knew of the ’109 Patent. First, during prior litigation, Sony “produced a document to [Intellectual Pixels] listing the ’109 application,” which demonstrates that Sony was aware of the application. Amended Complaint ¶ 80. Second, “[a]s part of that earlier litigation, Sony monitored [Intellectual Pixels’] related patent filings, including the application that issued as the ’109 Patent.” Id. ¶ 78. Thus, Sony “knew that the Patent Office issued the ’109 Patent on June 9, 2020.” Id. Intellectual Pixels includes other allegations relating to when the application was published, when the United States Patent and Trademark Office (“USPTO”) allowed the claims of the ’109 Patent, and when the USPTO notified the public that the ’109 Patent would issue soon. But each of these allegations is derivative from the central theory that Sony knew of the ’109 Patent because it knew of the ’109 application and monitored it. Id.

Intellectual Pixels cites several cases to support its argument that the amended complaint’s theory sufficiently alleges pre-suit knowledge. Opp’n at 6-7. These cases are unavailing. Intellectual Pixels relies most heavily on WCM Industries, Inc. v. IPS Corp., 721 Fed. App’x 959, 970–71 (Fed. Cir. 2018), to argue that there was no “per se rule” that “pre-suit knowledge of a patent application alone can never constitute pre-suit knowledge of the subsequently issuing patent.” Opp’n at 6. But this ignores footnote 4 of that case. There, “[t]he Federal Circuit noted its prior precedent that ‘knowledge of a pending patent application cannot support a finding of willfulness,’ and questioned, without deciding, whether those holdings remain valid now that applications and realtime prosecution activity are published.” SiOnyx, LLC v. Hamamatsu Photonics K.K., 330 F. Supp. 3d 574, 610 (D. Mass. 2018) (quoting WCM Industries, 721 Fed. App’x at 970 n.4) (emphasis added). As such, WCM and the cases that rely on it do not dictate that the amended complaint’s allegations are sufficient.

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Moreover, the other cases that Intellectual Pixels cites are distinguishable. See Simpson Perf. Prods., Inc. v. NecksGen Inc., 2019 WL 4187463, at *2–3 (S.D. Cal. Mar. 25, 2019) (defendant was aware of the patent at question from a prior lawsuit); Simo Holdings, Inc. v. H.K. uCloudlink Network Tech. Ltd., 396 F. Supp. 3d 323, 334 (S.D.N.Y. 2019) (defendant had similar internal documents and employee took relevant documents from plaintiff company to defendant company); Dentsply Sirona, Inc. v. Edge Endo, LLC, 2019 WL 1517584, at *3–4 (D.N.M. Apr. 8, 2019) (“Court reache[d] no conclusions as to whether any [mentioned] evidence would in fact demonstrate willful infringement”).

By contrast, Sony relies on Vasudevan Software, Inc. v. TIBCO Software, 2012 WL 1831543, at *3 (N.D. Cal. May 18, 2012) and several other cases that cite to Vasudevan. Mot. at 4-5. In Vasudevan, the court held that “awareness of the [patent] application does not imply the requisite knowledge of the existence of the later-issued patent.” Intellectual Pixels distinguishes Vasudevan by noting how the amended complaint also alleges that Sony learned of the final patent subsequently by monitoring the ’109 application. Opp’n at 8. But this allegation alone is conclusory and insufficient to make Intellectual Pixels’ claim plausible. See Iqbal, 556 U.S. at 678 (“Where a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.”) (internal quotations omitted).

As such, this case is very similar to Masimo Corp. v. Sotera Wireless, 2020 WL 2306587 (S.D. Cal. May 8, 2020). There, the court found conclusory the plaintiff’s allegation that the defendant “monitored [plaintiff’s] patents . . . by hiring [plaintiff’s former] employees and after previous trade secret misappropriation litigation asserted against [the defendant] by [the plaintiff].” Id. at *2, 9. While Intellectual Pixels argues that here, unlike in Masimo, the amended complaint “pleads specific facts about the context in which Sony monitored IPL’s ’109 Patent,” Opp’n at 10, the amended complaint does not plead any additional facts showing that Sony did in fact monitor the ’109 application. Therefore, the allegation that Sony monitored the ’109 application remains conclusory.

As such, the Court concludes that the amended complaint does not sufficiently plead that Sony knew of the ’109 Patent. Nor does the Court conclude that the amended complaint plausibly alleges that Sony should have known of the ’109 Patent. The Court

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therefore **DISMISSES** Intellectual Pixels' claims for induced infringement and willful infringement. Having dismissed these claims, the Court does not address Sony's arguments regarding egregious misconduct. See Mot. at 6-7.

B. Leave to Amend

Intellectual Pixels seeks leave to amend the allegations of its amended complaint. Opp'n at 14. "A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1). In all other cases, a party may amend its pleading only with written consent from the opposing party or the court's leave, which should be "freely give[n] . . . when justice so requires." Fed. R. Civ. P. 15(a)(2); see Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990) (requiring that policy favoring amendment be applied with "extreme liberality").

In the absence of an "apparent or declared reason," such as undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by prior amendments, prejudice to the opposing party, or futility of amendment, it is an abuse of discretion for a district court to refuse to grant leave to amend a complaint. Foman v. Davis, 371 U.S. 178, 182 (1962); Moore v. Kayport Package Express, Inc., 885 F.2d 531, 538 (9th Cir. 1989). The consideration of prejudice to the opposing party "carries the greatest weight." Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003). "Although there is a general rule that parties are allowed to amend their pleadings, it does not extend to cases in which any amendment would be an exercise in futility, or where the amended complaint would also be subject to dismissal." Steckman v. Hart Brewing, 143 F.3d 1293, 1298 (9th Cir. 1998) (internal citations omitted).

Here, the Court does not find that there was undue delay given that Intellectual Pixels' complaint has only once been amended. The Court is not convinced that the action was filed in bad faith. Finally, the Court is not convinced that any amendment would be futile or that Sony will be unduly prejudiced. Therefore, the Court **GRANTS** Intellectual Pixels 30 days leave to amend its claims.

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IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the motion. The Court finds that oral argument would not be helpful in this matter. Fed. R. Civ. P. 78; L.R. 7-15. Hearing set for November 23, 2020, is ordered **VACATED**.

IT IS SO ORDERED.

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