UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:22-cv-07556-RGK-SHK	Date	May 24, 2023
Title	***GoTV Streaming, LLC v. Netflix, Inc.***		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE	
Joseph Remigio	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:	
Not Present	Not Present	

Proceedings: **(IN CHAMBERS) Order Re: Defendant's Motions for Judgment on the Pleadings [DE 83, 89]**

I. INTRODUCTION

On October 17, 2022, GoTV Streaming, LLC ("Plaintiff") filed a Complaint against Netflix, Inc. ("Defendant") alleging claims for patent infringement. (ECF No. 1.) On November 10, 2022, Plaintiff filed a First Amended Complaint ("FAC"), adding claims for induced patent infringement. (ECF No. 30.) On February 16, 2023, the Court dismissed with leave to amend Plaintiff's induced patent infringement claims. (ECF No. 64.) Plaintiff declined to further amend the FAC. On March 14, 2023, Defendant filed an Answer and Amended Counterclaim, seeking declaratory judgment that each of the asserted patents are invalid and not infringed. (ECF No. 71.) On March 23, 2023, Plaintiff filed its Answer to Defendant's Amended Counterclaim, denying the majority of Defendant's allegations. (ECF No. 73.)

Presently before the Court are Defendant's Motions for Judgment on the Pleadings of: (1) invalidity under 35 U.S.C. § 101; and (2) no pre-suit damages under 35 U.S.C. § 287(a). (ECF Nos. 83, 89.) For the following reasons, the Court **DENIES** both Motions.

II. FACTUAL BACKGROUND

The following facts are alleged in the FAC:

Plaintiff is a "mobile media network and applications developer" that specializes in "delivering media content to mobile users." (FAC ¶ 8.) Plaintiff is currently the sole and exclusive owner of multiple patents directed to rendering content on wireless devices. Three of these patents are United States Patent Nos. 8,103,865 (the "'865 Patent"), 8,478,245 (the "'245 Patent"), and 8,989,715 (the "'715 Patent") (collectively, the "Patents-in-Suit").

Defendant operates a streaming media platform. Defendant's platform allows wireless devices such as smartphones, tablets, and streaming media players to receive content from a server configur properly render on the device.

EXHIBIT 2013

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III. JUDICIAL STANDARD

A motion for judgment on the pleadings under Federal Rule of Civil Procedure ("Rule") 12(c) is "functionally identical" to a motion to dismiss for failure to state a claim under Rule 12(b)(6). *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). The same judicial standard applies to motions brought under either rule. *Cagasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1054 n.4 (9th Cir. 2011). The only significant difference is that a Rule 12(c) motion is brought after an answer has been filed, but early enough not to delay trial, whereas a 12(b)(6) motion must be filed before an answer. Fed. R. Civ. P. 12(b)–(c).

In ruling on a Rule 12(c) motion, courts must assume the allegations in the challenged complaint are true, and must construe the complaint in the light most favorable to the non-moving party. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996); *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). A motion for judgment on the pleadings is "properly granted when, taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law." *Nelson v. City of Irvine*, 143 F.3d 1196, 1200 (9th Cir. 1998). Dismissal "is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008).

Further, it is well-established that a court may address whether a patent is ineligible under 35 U.S.C. § 101 through a motion for judgment on the pleadings. *See, e.g.*, *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014). Likewise, a court may address whether a plaintiff may seek pre-suit damages through a motion for judgment on the pleadings. *See, e.g.*, *DivX, LLC v. Hulu, LLC*, 2021 WL 4459368, at *4 (C.D. Cal. June 11, 2021).

IV. DISCUSSION

Defendant brings two separate Motions for Judgment on the Pleadings: (1) that the Patents-in-Suit are invalid because they are directed to unpatentable subject matter under 35 U.S.C. § 101; and (2) that Plaintiff is barred from seeking pre-suit damages. The Court addresses each Motion in turn.[1]

A. Invalidity Under 35 U.S.C. § 101

Defendant argues that the Patents-in-Suit are invalid because they are directed to unpatentable subject matter under 35 U.S.C. § 101. Under § 101, anyone who "invents or discovers any new and

[1] The Court notes that Plaintiff attaches hundreds of pages of exhibits alongside its Opposition to the Motion for Judgment on the Pleadings of Invalidity, asking that the Court convert the Motion to a motion for summary judgment pursuant to Rule 12(d). The Court finds that this evidence is unnecessary and thereby declines to convert this Motion. *See Gerritsen v. Warner Bros. Ent. Inc.*, 112 F. Supp. 3d 1011, 1021 (C.D. Cal. 2015) ("Courts regularly decline to consider declarations and exhibits submitted in support of or opposition to a motion to dismiss [ ] if they constitute evidence not referenced in the complaint or not a proper subject of judicial notice.").

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useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" may obtain a patent. 35 U.S.C. § 101. However, § 101 "contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice Corp. Pty. Ltd. v. CLS Bank Intern.* ("*Alice*"), 573 U.S. 208, 216 (2014) (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

In *Alice*, the Supreme Court articulated a two-step test to determine whether a claim is patent eligible under § 101 ("the *Alice* test"). *Id.* at 218. Under the *Alice* test, "a claim falls outside § 101 if (1) it is directed to a patent-ineligible concept like an abstract idea, and (2) it lacks elements sufficient to transform the claim into a patent-eligible application." *Hawk Tech. Sys., LLC v. Castle Retail, LLC*, 60 F.4th 1349, 1356 (Fed. Cir. 2023) (citing *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1166–67 (Fed. Cir. 2018)).

Under *Alice* step one, the court must first determine whether the claim is directed to an abstract idea. At this step, the court examines "what the patent asserts to be the focus of the claimed advance over the prior art," by "focus[ing] on the language of the asserted claims, considered in the light of the specification." *Id.* (citing *Solutran, Inc. v. Elavon, Inc.*, 931 F.3d 1161, 1168 (Fed. Cir. 2019); *Yu v. Apple*, 1 F.4th 1040, 1043 (Fed. Cir. 2021)). For claims directed at computer-related technology, the court must ask "whether the focus of the claims is on the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an 'abstract idea' for which computers are invoked merely as a tool." *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016). If the claims are not directed to a patent-ineligible concept, the claims are patent-eligible and the inquiry ends. *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1262 (Fed. Cir. 2017).

If the claims are directed to a patent-ineligible concept, the court proceeds to *Alice* step two and determines whether the claim's elements, considered both individually and as an ordered combination, contain an "inventive concept" that transforms the nature of the claim into a patent-eligible application. *Alice*, 573 U.S. at 225. A claim contains an inventive concept if the claim limitations "involve more than performance of 'well-understood, routine, [and] conventional activities previously known to the industry.'" *Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (quoting *Alice*, 573 U.S. at 225).

1. *Application of the Alice Test to a 12(c) Motion*

Defendant brings this Motion under Rule 12(c) after having filed its Amended Answer and Counterclaim. As part of the Counterclaim, Defendant alleges that the Patents-in-Suit fail both steps of the *Alice* test because they "are directed to an abstract idea without any inventive concept . . . [and] recite well-known, routine, and conventional steps using generic computing resources." (Amended Counterclaim ¶¶ 35, 68, 101.) Plaintiff denies these allegations. (Answer to Counterclaim, ¶¶ 35, 68, 101.)

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Plaintiff argues that the Court must, as a matter of procedure, treat Defendant's allegations with respect to the *Alice* test as false and therefore deny the instant Motion because on a Rule 12(c) motion, "the allegations of the non-moving party must be accepted as true, while the allegations of the moving party which are denied are assumed to be false." *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1989). In essence, Plaintiff seems to argue that Defendant cannot bring a Rule 12(c) motion on any issue alleged in its counterclaim.

This argument, clever as it may be, is untenable. Each of the allegations that Plaintiff challenges speaks to the contents of the Patents-in-Suit. There is no question that the Court may consider the Patents-in-Suit on a Rule 12(c) motion, as they are "documents incorporated by reference in the [FAC]." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). To make assumptions about the contents of the Patents-in-Suit based on the parties' allegations would be improper, as courts "are not required to accept as true allegations that contradict exhibits attached to the Complaint or matters properly subject to judicial notice." *Seven Arts Filmed Ent. Ltd. v. Content Media Corp. PLC*, 733 F.3d 1251, 1254 (9th Cir. 2013); *see also Cox v. Reliance Standard Life Ins. Co.*, 2014 WL 896985, at *4 (E.D. Cal. Mar. 6, 2014) (declining to accept as true plaintiffs' allegations that contradicted a life insurance policy attached as an exhibit to the complaint) (citing *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010)).

Other courts presented with § 101 arguments on Rule 12(c) motions are in accord. Courts routinely engage in the § 101 analysis despite the plaintiff having denied allegations on the same § 101 issues. *See Modern Telecom Sys. v. Juno Online Servs., Inc.*, 2015 WL 1239992 (C.D. Cal. Mar. 17, 2015) (applying the *Alice* test); Counterclaims ¶ 17, *Modern Telecom Sys. v. Juno Online Servs., Inc.*, 8:14-cv-00348-DOC-AN (C.D. Cal. Aug. 21, 2014), ECF No. 24 (alleging that "[e]ach of the claims of the Patents-in-Suit are invalid for failure to comply with one or more of the requirements [of] 35 U.S.C. §§ 101, 102, 103, and/or 112."); *see also, e.g.*, *Whitepages, Inc. v. Isaacs*, 196 F. Supp. 3d 1128 (N.D. Cal. 2016); *Loyalty Conversion Sys. Corp. v. Am. Airlines*, 66 F. Supp. 3d 829 (E.D. Tex. 2014).

Accordingly, the Court declines to assume Defendant's allegations regarding the eligibility of the Patents-in-Suit are false, and instead, disregards the allegations as outside the challenged pleading.

2. <u>*Representative Claims*</u>

Plaintiff alleges that Defendant violates multiple claims in each of the Patents-in-Suit. (FAC ¶¶ 20–22, 43–45, 68–70.) In the instant Motion, Defendant argues that each claim of each patent is invalid, analyzing just the first claims of each patent, which Defendant asserts are representative of the remaining claims. Indeed, "[c]ourts may treat a claim as representative in certain situations, such as if the patentee does not present any meaningful argument for the distinctive significance of any claim limitations not found in the representative claim or if the parties agree to treat a claim as representative." *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365 (Fed. Cir. 2018) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1352 (Fed. Cir. 2016); *Intell. Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1316, 1316 n.9 (Fed. Cir. 2016)).

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Here, the Court finds it appropriate to treat the first claims as representative. Defendant adequately explains that the claims of each patent are "substantially similar and linked" to the first claims. (Def.'s Mot. J. Pleadings Patent Invalidity at 6–7, 11–12, 16–17, ECF No. 83-1.) Moreover, Plaintiff admits in the FAC that the first claims are representative. (FAC ¶¶ 23, 46, 71.) While Plaintiff now half-heartedly disputes its earlier characterization in its Opposition, pointing out that the latter claims include various different limitations, Plaintiff fails to argue how these limitations confer any distinctive significance for the invalidity analysis. (Pl.'s Opp'n Mot. J. Pleadings Patent Invalidity at 9–10 n.4, ECF No. 88.) Thus, the Court proceeds to analyze the representative first claims of each patent.

3. *Claim 1 of the '865 Patent*

The '865 Patent is directed to a sever-implemented method for processing data for a wireless device. (FAC ¶ 15.) Claim 1 reads:

> 1. A server implemented method for processing data for a wireless device, comprising:
>
> receiving from the wireless device a request for an application program, said request including an indication of a type of the wireless device;
>
> executing, in response to receiving said request, said application program to generate a wireless device generic template including a plurality of content items;
>
> sending a custom configuration to the wireless device, said custom configuration being specific to said application program;
>
> generating a page description based on said wireless device, said page description having at least one discrete low level rendering command that is within said rendering capability of said wireless device but that is of a syntax that is wireless device generic; and
>
> sending said page description to the wireless device such that the wireless device is capable of presenting at least one content item from said plurality of content items using both said page description and said custom configuration.

('865 Patent at 20:42–63.)

Defendant argues that claim 1 of the '865 Patent is "directed to the abstract idea of formatting data on a server for presentation on a wireless device based on information about that device." (Def.'s Mot. J. Pleadings Patent Invalidity at 7 (citing *Device Enhancement LLC v. Amazon.com Inc.*, 189 F. Supp. 3d 392, 404 (D. Del. 2016).) Plaintiff disagrees, arguing that claim 1 is directed to a specific improvement in computer capabilities, namely the use of a server-side application that "relieve[s] developers of needing to develop separate applications for each type of supported wireless device." (Pl.'s Opp'n Mot. J. Pleadings Patent Invalidity at 10–11 (citing '865 Patent at 20:14–18).)

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On balance, the Court agrees with Plaintiff. The Federal Circuit's decision in *Visual Memory* is instructive. In *Visual Memory*, the asserted claim recited a computer memory system that was more compatible with different processors through use of "programmable operational characteristics" configurable based on the type of processor. *Visual Memory*, 867 F.3d at 1256–57. The Federal Circuit found that the claim was patent-eligible, explaining that the claim focused on a specific improvement in computer capabilities—the use of programmable operational characteristics—rather than the mere computer implementation of the abstract idea of categorical data storage. *Id.* at 1259 (citing *Enfish*, 822 F.3d at 1336), *cf. Content Extraction & Transmission LLC v. Wells Fargo Bank*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (finding that a claim was ineligible as directed to an abstract idea because it simply recited using a computer to scan, recognize, and store data). The Federal Circuit further noted that the use of this memory system had a clear benefit, as it "obviate[d] the need to design a separate memory system for each type of processor, which proved to be costly and inefficient." *Visual Memory*, 867 F.3d at 1259. Here, claim 1 similarly recites a more compatible data processing system that allows data to be tailored to devices through an "application program" using "device generic templates" and "custom configurations." ('865 Patent at 20:46–53.) The claim is focused on specific improvements in computer capabilities, namely, the use of these application programs, device generic templates, and custom configurations, rather than the abstract idea of formatting data on a server based on information about a wireless device. Further, the claimed data processing system has stated benefits, as it "relieve[s] developers of needing to develop separate applications for each type of supported wireless device." (Pl.'s Opp'n Mot. J. Pleadings Patent Invalidity at 11 (citing '865 Patent at 20:14–18).)

Defendant argues that *Visual Memory* is inapplicable because the '865 Patent does not explain its purported specific improvement in as much detail as *Visual Memory*. The Court disagrees. The '865 Patent provides ample specificity. (*See, e.g.*, '865 Patent at 7:58–11:8 (describing the format and use of custom configuration data); *id.* at 16:40–17:60 (describing how the application program handles requests, converts data using generic templates with the use of a "template engine" and a "layout solver" based on the client profile).) While *Visual Memory* went a step further by including a "microfiche appendix having a combined total of 263 frames of computer code," there is no indication that such code was necessary to the Federal Circuit's finding of eligibility. *Visual Memory*, 867 F.3d at 1261. The Court finds the '865 Patent's lack of code of little consequence.

Thus, the Court finds that claim 1 of the '865 Patent is directed to specific improvements in computer capabilities rather than an abstract idea, thereby satisfying the first step of the *Alice* test. Because the Court finds that the claim satisfies the first step of the *Alice* test, the Court need not consider the second step. *Visual Memory*, 867 F.3d at 1262 ("Because we conclude that the claims . . . are not directed to an abstract idea, we need not proceed to step two of the *Alice* test."). Accordingly, the Court **DENIES** Defendant's Motion with respect to the claims of the '865 Patent.

4. *Claim 1 of the '245 and '715 Patents*

The '245 and '715 Patents are both directed to methods for rendering content on a wireless device. (FAC ¶¶ 16–17.) The exact language of the claims are of little importance, as here, the parties

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agree that the patents use the same specification as the '865 Patent and describe the same data processing system but from the perspective of the wireless device rather than the remote server.

Defendant similarly argues that claim 1 of the '245 Patent and the '715 Patent are "directed to the abstract idea of formatting data on a server for presentation on a wireless device based on information about that device." (Def.'s Mot. J. Pleadings Patent Invalidity at 12, 17.) Because the claims describe the same data processing system and share the same specification, however, the Court finds that claim 1 of the '245 Patent and '715 Patent are both directed to specific improvements in computer capabilities much like the '865 Patent. Accordingly, the Court **DENIES** Defendant's Motion with respect to the claims of the '245 Patent and '715 Patent.

Having found that each of the Patents-in-Suit survive the *Alice* test, the Court **DENIES** Defendant's Motion for Judgment on the Pleadings of Invalidity under 35 U.S.C. § 101.

B. <u>Pre-Suit Damages</u>

Defendant argues that Plaintiff is not entitled to pre-suit damages because Plaintiff failed to plead compliance with the patent marking requirements set forth under 35 U.S.C. § 287(a). Section 287(a) limits a patentee's ability to recover damages for infringement, stating, in pertinent part:

> Patentees, and persons making, offering for sale, or selling within the United States any patented article for or under them, or importing any patented article into the United States, may give notice to the public that the same is patented . . . by fixing thereon the word "patent" . . . . In the event of failure so to mark, no damages shall be recovered by the patentee in any action for infringement, except on proof that the infringer was notified of the infringement and continued to infringe thereafter, in which event damages may be recovered only for infringement occurring after such notice. Filing of an action for infringement shall constitute such notice.

35 U.S.C. § 287(a).

"The patentee bears the burden of pleading and proving he complied with § 287(a)'s marking requirement." *Arctic Cat Inc. v. Bombardier Recreational Prods. Inc.*, 876 F.3d 1350, 1366 (Fed. Cir. 2017) (hereinafter "*Arctic Cat I*"). However, "[t]he notice provisions of § 287(a) do not apply to patents directed to processes or methods. Nor do they apply when a patentee never makes or sells a patented article." *Arctic Cat Inc. v. Bombardier Recreational Prods. Inc.*, 950 F.3d 860, 865 (Fed. Cir. 2020) (hereinafter "*Arctic Cat II*") (citing *Wine Ry. Appliance Co. v. Enter. Ry. Equip. Co.*, 297 U.S. 387, 395 (1936)).

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The FAC is silent as to whether Plaintiff complied with § 287(a), as it does not indicate whether Plaintiff marked any patented products. Plaintiff argues in its Opposition that this is because Plaintiff never made or sold any patented products, and thus it did not need to plead compliance with § 287(a). Defendant counters, arguing that regardless of § 287(a)'s ultimately applicability, Plaintiff still "bears the burden of pleading and proving" compliance. *See Arctic Cat I*, 876 F. 3d at 1366. The Court disagrees.

As the Court has previously observed, the requirement to plead and prove compliance with § 287(a) "only makes sense if § 287(a) applies." *In re Katz Interactive Call Processing Patent Litig.*, 2009 WL 8635995, at *4 (C.D. Cal. Aug. 3, 2009). Defendant argues that the Court's finding in *In re Katz* is no longer good law, however, as it predates the Federal Circuit's decision in *Arctic Cat I*. However, the Court sees no conflict between the two cases. While *Arctic Cat I* requires that a patentee plead compliance with § 287(a), *Arctic Cat II* clarifies that § 287(a) is inapplicable when a patentee asserts only process or method claims, or never sells a patented product. *Arctic Cat I*, 876 F.3d at 1366; *Arctic Cat II*, 950 F.3d at 865. Except for a single case from Delaware, Defendant does not identify any authority suggesting that a patentee must affirmatively plead compliance with § 287(a) when it is inapplicable. *See Express Mobile, Inc. v. Liquid Web, LLC*, 2019 WL 1496999, at *2 (D. Del. Apr. 15, 2019) (holding that a patentee must plead compliance with § 287(a) "even when compliance is achieved, factually, by doing nothing at all"). Indeed, in a more recent case in this district, a court rejected this exact argument, ultimately declining to dismiss pre-suit damages as to method claims despite the complaint's silence as to § 287(a). *DivX, LLC v. Hulu, LLC*, 2021 WL 4459368, at *4 (C.D. Cal. June 11, 2021).[2] For these reasons, the Court rejects Defendant's argument and finds that Plaintiff did not need to plead compliance with § 287(a) because § 287(a) is inapplicable to Plaintiff's claims.

Accordingly, the Court **DENIES** Defendant's Motion for Judgment on the Pleadings of No Pre-Suit Damages.

V. CONCLUSION

For the foregoing reasons, the Court **DENIES** Defendant's Motion for Judgment on the Pleadings of Invalidity under 35 U.S.C. § 101, and Defendant's Motion for Judgment on the Pleadings of No Pre-Suit Damages under 35 U.S.C. § 287(a).

IT IS SO ORDERED.

JRE/sf

[2] Defendant argues in its Reply that *DivX* supports its position because it "join[ed] other courts in holding that a patentee must plead compliance with 35 U.S.C. § 287(a) to properly plead pre-suit patent infringement damages flowing from non-method claims." *DivX*, 2021 WL 4459368, at *4. However, this quote shows that the court recognized that no pleading is necessary when § 287(a) is inapplicable, specifically when asserting only method claims. While it does not specify that the same applies when a patentee does not make or sell a patented product, Defendant provides no explanation for why such a patentee should be held to a different standard.