

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**SMARTWATCH MOBILECONCEPTS,
LLC,
Plaintiff,**

v.

**T-MOBILE USA, INC.,
Defendant**

Civil Action No. 6:23-cv-00400

JURY TRIAL DEMANDED

**PLAINTIFF’S RESPONSE TO DEFENDANT T-MOBILE USA, INC.’S
RULE 12(b)(6) MOTION TO DISMISS PLAINTIFF’S**

SmartWatch Mobileconcepts LLC (“Plaintiff” or “Smartwatch”) filed an Original Complaint¹ seeking relief from patent infringement of the claims of U.S. Patent No. 10,362,480 (“the ’480 patent”) by T-Mobile USA, Inc. (“Defendant” or “T-Mobile”). On October 9, 2023, T-Mobile filed a Motion to Dismiss Plaintiff’s Original Complaint For Patent Infringement ("Defendant's Motion"),² arguing that Smartwatch’s Complaint³ fails to state a claim for direct patent infringement against Defendant, and that SmartWatch’s allegations of induced, willful, and contributory infringement should be dismissed. Defendant's Motion should be denied.

I. BACKGROUND

In its Complaint, SmartWatch alleges T-Mobile’s FamilyConnect directly and indirectly infringes the claims of the ’480 patent. For example, claim 2 recites:

A method for enabling a wearable device user to access secured electronic systems, said method comprising:

¹ Doc. No. 1.

² Doc. No. 13.

³ Doc. No. 1.

2[a] placing a wearable device in contact with a user, said wearable device including a telecommunications carrier access identification module, a cellular RF communications module, and a short-range RF communications module;

2[b] achieving secured, short-range RF communication between the wearable device and a secured electronic system;

2[c] authenticating the user with at least one of the wearable device, a remote server via cellular communications supported by the telecommunications carrier access identification module and the cellular RF communications module, and the secured electronic system via the secured, short-range RF communication; and

2[d] providing the user with access to or through the secured electronic system once authenticated;

2[e] wherein said wearable device includes a GPS module for determining location of the wearable device user with respect to the secured electronic system, and wherein the step of providing a user access to or through the secured electronic systems is also dependent on the location of the wearable device user.⁴

T-Mobile alleges that Smartwatch has allegedly failed to (1) identify the claimed “secured electronic system” as recited in claim steps 2[b] to 2[e]; (2) sufficiently plead “authenticating the user...” as recited in step 2[c]; (3) sufficiently allege the claimed “access to or through the secured electronic system” as recited in step 2[d]; (4) allege how providing access depends on a GPS-determined location as recited in step 2[e]; and (5) sufficiently plead indirect infringement. Defendant's Motion should be denied.

II. LEGAL STANDARD

A. Failure to State a Claim

Federal Rule of Civil Procedure 12(b)(6) authorizes a court to dismiss a complaint if the complaint “fail[s] to state a claim upon which relief can be granted.” The question resolved on a motion to dismiss for a failure to state a claim is not whether the plaintiff will ultimately prevail, “but whether [the] complaint was sufficient to cross the federal court's threshold.” *Skinner v*

⁴ Doc. No. 1-1, the ‘480 patent at column 7, line 56 to column 8, line 13 (C2:L56 to C8:L13).

Switzer, 562 U.S. 521, 530, 131 S.Ct. 1289, 179 L.Ed.2d 233 (2011). When considering a motion to dismiss under Rule 12(b)(6), a court “accept[s] all well-pleaded facts as true, and view[s] those facts in the light most favorable to the plaintiff.” *Bustos v Martini Club, Inc.*, 599 F.3d 458, 461 (5th Cir. 2010). (See, *Script Security Solutions, LLC v Amazon, Inc.*, 170 F. Supp.3d 928 (E.D. Texas 2016)).

“A motion to dismiss under rule 12(b)(6) ‘is viewed with disfavor and is rarely granted.’” *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000) (quoting *Kaiser Aluminum & Chem. Sales v. Avondale Shipyards*, 677 F.2d 1045, 1050 (5th Cir. 1982)). “The court’s task is to determine whether the plaintiff has stated a legally cognizable claim that is plausible, not to evaluate the plaintiff’s likelihood of success.” *Panasonic Corp. v. Magna Int’l, Inc.*, 6:21-cv-00319-ADA, 2022 WL 174513 (W.D. Tex. Jan 20, 2022) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations omitted)). Plaintiff is not required to provide evidence of infringement at the pleading stage beyond “stat[ing] a claim to relief that is plausible on its face.” *Id.* “Courts will not dismiss a claim unless the plaintiff ‘would not be entitled to relief under any set of facts or any possible theory that it could prove consistent with the allegations in the complaint.’” *Id.* (quoting *Slyce Acquisition, Inc. v. Syte – Visual Conception, Ltd.*, 422 F. Supp. 3d 1191, 1198 (W.D. Tex. 2019)). Based upon the assumption that all the allegations in the complaint are true, the factual allegations must be enough to raise a right to relief above the speculative level. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). When the nonmovant pleads factual content that allows the court to reasonably infer that the movant is liable for the alleged misconduct, then the claim is plausible on its face. *Iqbal*, 556 U.S. at 678.

The plausibility standard “does not give district courts license to look behind [a complaint’s] allegations and independently assess the likelihood that the plaintiff will be able to

prove them at trial.” *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 803 n. 44 (5th Cir.2011)). Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, a plaintiff is generally required to provide “only a plausible ‘short and plain’ statement of the plaintiff’s claim, not an exposition of [the plaintiff’s] legal argument.” *Skinner*, 562 U.S. at 530, 131 S.Ct. 1289. The “short and plain” statement does “not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted.” *Johnson v. City of Shelby, Miss.*, 135 S.Ct. 346, 346, 190 L.Ed.2d 309 (2014) (citing 5 C. Wright & A. Miller, § 1215, p. 172 (3d ed. 2002)) (Rule 8(a)(2)) “indicates that a basic objective of the rules is to avoid civil cases turning on technicalities”). *Script Sec. Sols.*, 170 F. Supp. 3d 928, 936.

III. ARGUMENT

A. SmartWatch has Adequately and Sufficiently Stated Claim of Direct Patent Infringement Against Defendant.

A complaint for direct patent infringement “must explicitly plead facts to plausibly support the assertion that a defendant ‘without authority, makes, uses, offers to sell, or sells any patented invention during the term of the patent.’” *Uniloc USA, Inc. v. Avaya Inc.*, No. 6:15-CV-01168JRG, 2016 WL 7042236, at *2 (E.D. Tex. May 13, 2016). While courts have not announced “a floor for the direct infringement standard,” the pleading requirement is where the plaintiff: (1) identifies the allegedly infringing products; (2) describes the patent; and (3) describes the corresponding accused technology. See *Baker Hughes Oilfield Operations, Inc. v. Prod. Tool Sol., Inc.*, No. 1-17-CV-291-LY, Dkt. No. 37, at 3 (W.D. Tex. Mar. 14, 2018); see also *Dynocom Indus. v. Mainline Automotive Equip. Pty. Ltd.*, No. 2:16-cv-00553, Dkt. No. 45, at 4 (E.D. Tex. Feb. 14, 2017) (pleading requirement met where the plaintiff (1) alleges that a specific product infringes a specific claim, (2) alleges that the product meets all the elements of a specific claim, and (3) incorporates by reference a website illustrating the accused product). See also *Disc Disease*, 888 F.3d at 1260

(complaint sufficient when it “specifically identif[ies] the [] accused products—by name and by attaching photos of the product packaging as exhibits—and allege[s] that the accused products meet ‘each and every element of at least one claim of the [Asserted Patent].”).

(1) Smartwatch has identified the claimed “secured electronic system” in T-Mobile’s FamilyConnect

The invention of the ‘480 patent is directed to systems, methods, and apparatuses that enable wearable devices (e.g., smartwatch) users to access secured electronic systems. The electronic system itself is not a feature of the invention. Rather, the invention is to a wearable device that allows a user access a secured electronic system.⁵ The secured electronic system can include:

secured entry barriers (e.g., doors, gates, safes), vehicle (e.g., to compartment access and start ignition), equipment (e.g., industrial, medical, laboratory, etc.), automatic teller machines, payment mechanisms (e.g., vending machines, parking meters), point-of-sale (POS), and secured databases (e.g. remote servers containing health care/patient information).⁶

T-Mobile argues that SmartWatch has failed to properly identify anything in the accused FamilyConnect watch as a secured electronic system.⁷ However, to infringe, the FamilyConnect watch need not include a secured electronic system. It need only include the ability to access a secured electronic system. The claim chart⁸ attached to the Complaint clearly identifies a mobile phone accessible by the FamilyConnect watch. As shown in the claim chart attached to the Complaint, the mobile phone includes a database, such as a task list, “My Account,” etc.⁹ The claim charts also show that the accused watch is paired with the mobile phone.¹⁰ Thus,

⁵ *Id.* at the Abstract.

⁶ *Id.* at C1:L28-36.

⁷ Doc. No. 13 at page 7 of 19.

⁸ Doc. No. 1-1 at page 8 of 9.

⁹ *Id.* at 7 and 8 of 9.

¹⁰ *Id.* at 6 of 9.

SmartWatch has plausibly plead a secured electronic system that is accessible by the accused watch. For the avoidance of doubt, the mobile phone is a secured electronic system accessible by the accused watch.

(2) Smartwatch has sufficiently plead “authenticating the user...” ” in T-Mobile’s FamilyConnect

Whether contact information and passwords are sufficient for authenticating a user is a question of fact and requires claim construction. The claim chart shows that T-Mobile’s FamilyConnect requires, for example, a password. This is evident by the Account Setup feature requiring Name, Phone Number, Email Address and Password. The specification of the ‘480 patent states that the secured electronic system of the present invention requires ...passwords... for ...their access and use. For example, the ‘480 specification states:

The smartwatch then authenticates the user, as shown in block 320. The smartwatch then establishes communication with a secured electronic system, as shown in block 330. As shown by arrow labeled 325, block 330 can precede block 320 (communication established before authentication). Authentication can depend on whether it requires remote resources provided by the carrier, or if authentication only needs occur in the smartwatch. **Authentication can be accomplished by password entry on the user interface (e.g., touch screen) of the smartwatch....**

¹¹ (Emphasis added).

For example, in order to edit information in the “Account Setup” or to create or edit the “Task list,” identifying information such as name, phone number, email address and password are required. On information and belief, the password is required at least when pairing the accused watch with the mobile phone for the accused watch to access the mobile phone.

¹¹ Id. at C6:L46-59.

Furthermore, as shown in the claim charts,¹² the accused watch has Bluetooth functions, i.e., secured, short-range RF communication that may be accessed while pairing the accused device with the mobile phone. Thus, SmartWatch has plausibly plead “authenticating the user with at least one of the wearable device... and the secured electronic system via the secured, short-range RF communication.”

(3) Smartwatch has sufficiently allege the claimed “access to or through the secured electronic system” ” in T-Mobile’s FamilyConnect

As discussed above, authentication is accomplished by using a password at least when pairing the accused watch with the mobile phone. Once the accused watch is paired with the mobile phone (secured electronic system), the accused device has access to the mobile phone. T-Mobile appears to argue that the “My Account” feature of the mobile phone is the “secured electronic system” which is allegedly different than the secured electronic system of feature 2[d]. T-Mobile confuses the meaning of “the secured electronic system.” As noted above, the secured electronic system is the mobile phone. Access to or through the secured electronic system occurs during pairing of the accused watch to the mobile phone. After such pairing, the mobile watch continues to access the mobile phone to access, for example, My Account, Task List, and many other features of the mobile phone.

(4) Smartwatch has allege how providing access depends on a GPS-determined location as recited in step 2[e] ” in T-Mobile’s FamilyConnect

T-Mobile argues that SmartWatch has failed to show a GPS-module for determining the location of the wearable device user. However, the claim charts clearly point to a manual at <http://assets.timex.com.manual/02Y096001.pdf> that indicates that the T-Mobile’s Family Connect

¹² Doc. No. 1-2 at page 6 of 9.

capability of locating a child may not be precise when the GPS reception is compromised.¹³ This specifically indicates that there is a GPS module for determining location of the wearable device, as claimed.

(5) Smartwatch has Plausibly Plead all claim features

The claim chart provided by SmartWatch clearly shows how T-Mobile's Family Connect watch infringes at least claim 2 of the '480 patent. This is more than sufficient. See, e.g., *Kajeet, Inc. v. Trend Micro, Inc.*, 6:21-cv-389-ADA, Dkt. 45 at *6 (W.D. Tex. Jan. 14, 2022) (holding Complaint sufficient where it alleged facts for each element of claim).

Not only did SmartWatch identify the accused product by name and attach photos, but in the chart attached to the Complaint,¹⁴ SmartWatch also identified the accused features in the accused product and described the specific manner in which the accused product infringes the '389 patent. The Complaint exceeded its pleading burden by identifying (1) "the asserted patent and claim" (2) "the technology covered by the patent"; (3) "the infringing activity"; (4) "the accused product"; and (5) "how the accused produce infringes." See *Opticurrent*, 2016 WL 9275395 at *4.

B. SmartWatch plausibly alleged a claim for induced infringement

The Court should deny T-Mobile's motion to dismiss SmartWatch's indirect infringement claims. Indirect infringement is a fact-based inquiry, generally resolved "at the summary judgment stage or at trial." *Parity Networks, LLC v. Cisco Sys., Inc.*, No. 6:19-cv-209-ADA, Dkt. 21, at *2 (W.D. Tex. July 26, 2019) (denying motion to dismiss indirect infringement claims). Microsoft's attempt to dismiss these claims before discovery is premature and not supported by caselaw.

¹³ Doc. No. 1-2 at page 9 of 9.

¹⁴ Doc. No. 1-2.

Induced infringement requires (1) “direct infringement” and (2) “that the alleged infringer possessed the requisite intent to induce infringement, which . . . requires that the alleged infringer knew or should have known his actions would induce actual infringements.”

Barry v. Medtronic, Inc., 914 F.3d 1310, 1334 (Fed. Cir. 2019) (citations omitted).

“[I]nducement can be found where there is [e]vidence of active steps taken to encourage direct infringement, which can in turn be found in advertising an infringing use or instructing how to engage in an infringing use.” *Id.*

Instruction and advertising is more than suffice to plausibly allege T-Mobile’s specific intent at this stage. “It is reasonable to infer, at the motion to dismiss stage, that by selling infringing products and showing customers how to use those products, [Defendant] intended those customers to infringe on [Plaintiff’s] patents.” *See Trading Techs. Int’l v. BCG Partners, Inc.*, No. 10 C 715, 2011 WL 1706136, at *4 (N.D. Ill. May 5, 2011); see also *Canon, Inc. v. TCL Elecs. Holdings, Ltd.*, No. 2:18-cv-00546, 2020 WL 1478356, at *5 (E.D. Tex. Mar. 25, 2020) (denying motion to dismiss induced infringement claims where plaintiff alleged defendants induced infringement through marketing materials and product usage instructions).

C. SmartWatch plausibly alleged a claim for willful and contributory infringement

A complaint satisfies the elements of contributory infringement by alleging that: (1) defendant had knowledge of the patent; (2) defendant sold products especially made for infringing use; (3) defendant had knowledge of the infringing use; (4) the products had no substantial noninfringing use; and (5) there exists an underlying act of direct infringement.

Netgear, Inc. v. Ruckus Wireless, Inc., 852 F. Supp. 2d 470, 476-77 (D. Del. 2012).

“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.’ ” *Lifetime Indus., Inc. v. Trim-Lok, Inc.*, 869 F.3d 1372, 1379 (Fed. Cir. 2017). (citing 35 U.S.C. § 271(c)).

Similarly, willful infringement has been plausibly plead.

IV. DISMISSAL WITH PREJUDICE IS NOT WARRANTED

SmartWatch has plausibly pled claims of infringement. But even if the Court concludes that it has not done so, it has been the court’s long-standing practice in similar situations to allow plaintiffs to replead in response to a Rule 12(b)(6) motion. If the court does grant dismissal, leave to amend is thus respectfully requested.

V. CONCLUSION

For the reasons set forth above, T-Mobile’s Motion should be denied in its entirety.

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Respectfully submitted,
Ramey LLP

/s/ William P. Ramey, III
William P. Ramey, III
Texas Bar No. 24027643
5020 Montrose Blvd., Suite 800
Houston, Texas 77006
(713) 426-3923 (telephone)
(832) 900-4941 (fax)
wramey@rameyfirm.com

Attorneys for SmartWatch MobileConcepts, LLC

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and LR5, I hereby certify that all counsel of record who have appeared in this case are being served on this day of October 23, 2023, with a copy of the foregoing via CM/ECF filing.

/s/ William P. Ramey, III
William P. Ramey, III