

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

**SMARTWATCH MOBILECONCEPTS,
LLC.,
Plaintiff,**

v.

**GOOGLE, LLC,
Defendant**

Civil Action No. 6:23-cv-00398-DC-DTG

JURY TRIAL DEMANDED

**PLAINTIFF’S RESPONSE TO GOOGLE LLC’S RULE 12(B)(6) MOTION TO DISMISS
PLAINTIFF’S COMPLAINT FOR PATENT INFRINGEMENT**

SmartWatch Mobileconcepts LLC (“Plaintiff” or “Smartwatch”) filed an Original Complaint¹ seeking relief from patent infringement of the claims of U.S. Patent No. US 10,362,480 (“the ’480 patent”) (referred to as the “Patent-in-Suit”) by Google LLC (“Defendant” or “Google”). On August 1, 2023, Defendant filed a Rule 12(b)(6) Motion to Dismiss Plaintiff’s Complaint for Patent Infringement (“Defendant’s Motion”).² Defendant’s Motion should be denied in its entirety.

I. INTRODUCTION AND BACKGROUND

SmartWatch has accused Defendant’s Google Pixel Watch (“Accused Device”) of infringing claims of the ’480 Patent. Defendant asserts that SmartWatch has failed to identify that the Accused Device infringes every feature of the claims.

Claim 2 of the ’480 Patent, for example, recites:

¹ Doc. No. 1.

² Doc. No. 12.

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

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;

achieving secured, short-range RF communication between the wearable device and **a secured electronic system;**

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

providing the user with access to or through the secured electronic system once authenticated;

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. ³

Defendant argues that SmartWatch fails to show how the Accused Device: (i) includes the secured electronic system; (ii) includes providing the user with access to or through the secured electronic system once authenticated; and (iii) provides access depending on a GPS-determined location. Defendant's Motion should be denied in its entirety. Defendant's Motion should be denied in its entirety.

II. LEGAL STANDARD

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 Switzer*, 562 U.S. 521, 530, 131 S.Ct. 1289, 179 L.Ed.2d 233 (2011). When

³ Exhibit A – the '480 Patent at Column 7, line 56 to Column 8, Line 12 (emphasis added).

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 Reebok, Inc.*, 170 F. Supp.3d 928 (E.D. Texas 2016).

“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, at *1 (W.D. Tex. Feb 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)).

“The complaint must be liberally construed in favor of the plaintiff, and all facts pleaded in the complaint must be taken as true.” *Morgan Stanley Dean Witter*, 224 F.3d at 498 (quoting *Kaiser Aluminum & Chem. Sales v. Avondale Shipyards*, 677 F.2d 1045, 1050 (5th Cir. 1982)). The “plausibility standard is met when ‘the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’” *Disc Disease Solutions Inc. v. VGH Solutions, Inc.*, 888 F.3d 1256, 1260 (Fed. Cir. 2018) (quoting *Iqbal*, 556 U.S. at 678).

III. ARGUMENT

A. SmartWatch Has Plausibly Alleged Infringement.

1. SmartWatch's Complaint puts Defendant on notice that its Google Pixel Watch infringes the ‘480 Patent.

Defendant incorrectly alleges that SmartWatch's allegations of infringement are insufficient.⁴ SmartWatch provided a claim chart⁵ attached to its Complaint that identifies Defendant's Google Pixel Watch as infringing every feature of claim 2 of the '480 patent. Identifying the accused product (Google Pixel Watch) that purportedly practices the claimed invention, is sufficient to plausibly alleged direct infringement and put the Defendant on notice.⁶ The claim chart attached to the complaint identifies every feature of claim 2 and shows a screen shot identifying how Google Pixel Watch practices of every feature of claim 2. The inclusion of photos is not just conclusory allegations. The photos in the claim chart, mapped to each claim feature, along with the accompanying text show that infringement is plausible. An evaluation of SmartWatch's likelihood of success is not appropriate at this time. It is enough that Defendant has been put on notice that its Google Pixel Watch infringes.

As described in more detail below, SmartWatch has plausibly shown how each claim feature is infringed.

2. Google Pixel Watch includes the "secured electronic system" as claimed.

Defendant asserts that SmartWatch fails to identify what in the accused Google Pixel Watch infringes the claimed "secured electronic system."⁷

The specification of the '480 Patent defines secured electronic system:

Secured electronic system... can include remote servers, physical barriers entries (e.g., doors, gates, garage doors, safes) requiring entry of a passcode for access, vehicle ignitions requiring physical manipulation of a key to initiate starting of an engine, equipment requiring keys, passwords or initiation routines for their access and use, as well as other protected systems physical manipulation or several steps for access/use.⁸

⁴ Doc. No. 12 at 4.

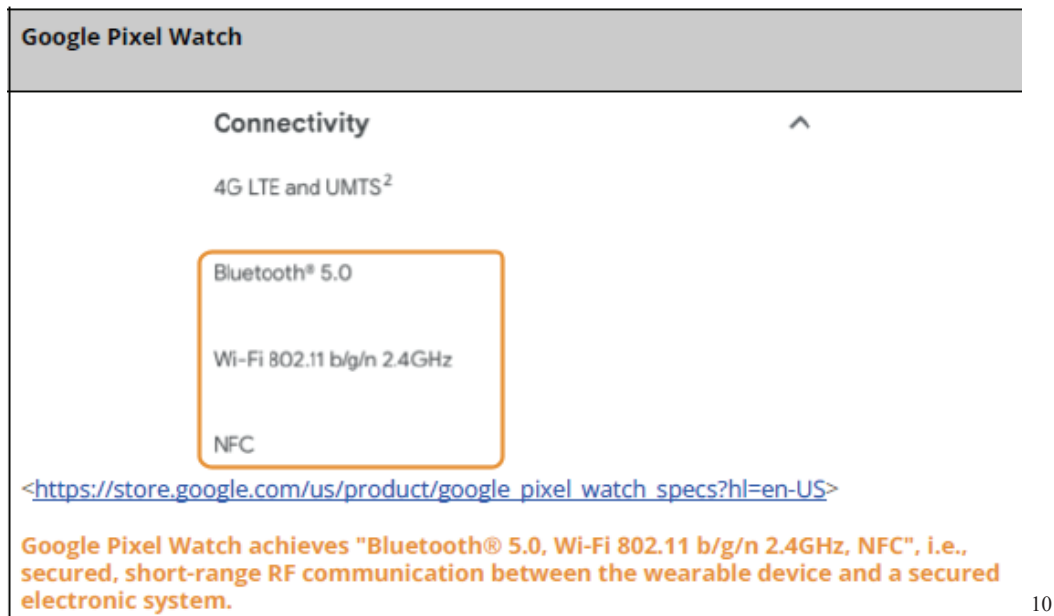
⁵ Doc. No. 1-2.

⁶ See *Plano Encryption Techs., LLC v. Alkami Tech., Inc.*, No. 2:16-CV-1032-JRG, 2017 WL 8727249, at *3-4 (E.D. Tex. Sept. 22, 2017).

⁷ Doc. No. 12 at 7.

⁸ Exhibit A – the '480 Patent at Column 1, Lines 28-36.

Thus, for example, a secured electronic system includes a mobile phone that uses a password (equipment requiring a password). As shown in the claim chart⁹ attached to the Complaint, Google Pixel Watch can connect via Bluetooth® 5.0, Wi-Fi, NFC, Cellular, etc.



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It is clear that Google Pixel Watch can connect to another device. Additionally, Google Support provides instructions for pairing the Google Pixel Watch with, for example, a phone located next to the Google Pixel Watch by connecting via Bluetooth.¹¹ Accordingly, Google Pixel Watch achieves secured, short-range RF communication between the wearable device (e.g., Google Pixel Watch) and a secured electronic system (e.g., phone), as claimed.

According to Google Support, the phone must be within 0.5 m (1.6 ft) of the Google

⁹ Doc. No. 1-2 at 6.

¹⁰ *Id.*

¹¹ <https://support.google.com/googlepixelwatch/answer/13579999?hl=en>

Pixel Watch for Fast Pair to work.¹² Accordingly, Google Pixel Watch provides user access to or through the secured electronic system dependent on the location of the wearable device user, as claimed.¹³

Defendant's argument that SmartWatch has failed to identify an essential element, the secured electronic system, is just wrong.

1. Google Pixel Watch includes "providing the user with access to or through the secured electronic system once authenticated" as claimed.

Defendant asserts that SmartWatch fails to identify what in the accused Google Pixel Watch infringes the claimed "providing the user with access to or through the secured electronic system once authenticated."¹⁴ However, Google's own instructions provide that the Google Pixel Watch (wearable device) and the "compatible" phone (secured electronic system) must be near each other with Bluetooth on. According to Google, the codes on the phone and wearable device must match.¹⁵

¹² *Id.*

¹³ *Id.*

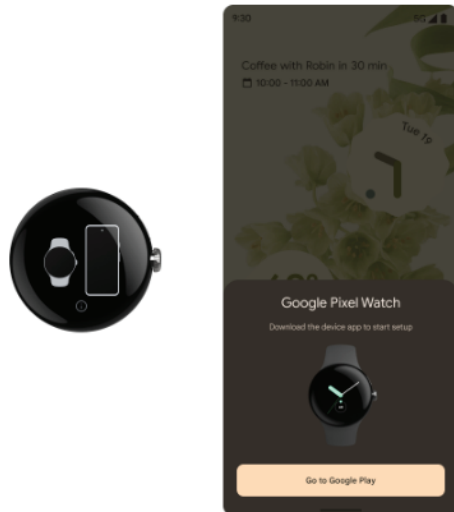
¹⁴ Doc. No. 12 at 10.

¹⁵ Doc. No. 1-2 at 8; see also

https://support.google.com/googlepixelwatch/answer/12651780?hl=en&ref_topic=12652071&sjid=14094714720767406034-NA#zippy=%2Cpair-your-watch-and-phone

3. Pair your watch and phone

Place your watch near a compatible Android 8.0+ phone with Bluetooth on. The screen should indicate that pairing can begin.



Follow the on-screen instructions in the app and select **Google Pixel Watch** to begin pairing.

A matching pairing code will be displayed on both the app and watch.

- **If the codes match:** On your phone, tap **Pair**. The pairing process will now begin and can take a few minutes to complete.
- **If the codes do not match:** [Restart your watch](#) and try again. If the codes still don't match, [Fix Pixel Watch setup and phone pairing issues](#).

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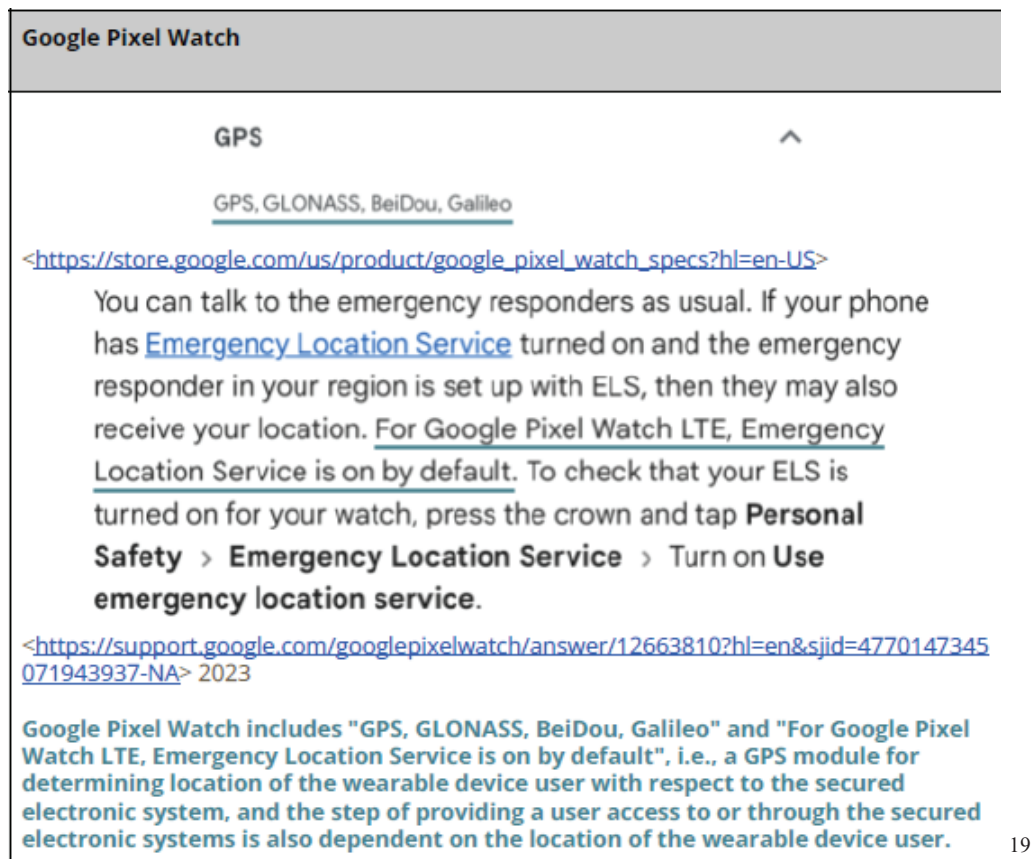
The user (person wearing the wearable device) has access to the secured electronic system (phone) once codes on each device match (authentication). The pairing process between Google Pixel Watch and the phone will not begin if the codes do not match (if there is no authentication). Thus, as shown in the claim chart, Google Pixel Watch includes "providing the user with access to or through the secured electronic system once authenticated."

2. Google Pixel Watch 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" as claimed.

¹⁶ See Doc. 1-2 at 8 and

https://support.google.com/googlepixelwatch/answer/12651780?hl=en&ref_topic=12652071&sjid=14094714720767406034-NA#zippy=%2Cpair-your-watch-and-phone

Defendant asserts that SmartWatch fails to identify "any circumstance under which Pixel Watch uses a GPS-determined location to provide access to.. the 'secured electronic system.'"¹⁷ As shown in the claim chart, the Google Pixel Watch includes GPS for determining the location of the user of the watch with respect to the phone.¹⁸



Thus, as shown in the claim chart, Google Pixel Watch includes a GPS module for determining the location of the wearable device user with respect to the secured electronic system, as claimed.

SmartWatch has plausibly shown that every feature of at least claim 2 of the '480 patent is infringed. The "plausibility standard is met when 'the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct

¹⁷ *Id.* at 12.

¹⁸ Doc. No. 1-2 at 9.

¹⁹ *Id.*

alleged.”” *Disc Disease Solutions Inc. v. VGH Solutions, Inc.*, 888 F.3d 1256, 1260 (Fed. Cir. 2018) (quoting *Iqbal*, 556 U.S. at 678). SmartWatch submits that it has met this threshold.

B. The Steps in the Claims of the '480 Patent Are Not Required to be Performed in Order.

Defendant alleges that the claim limitations must be performed in order because claim 2 recites the step of "authenticating the user" and then recites "providing the user with access... once authenticated."²⁰ Defendant then speciously argues that the step of selecting your language occurs immediately after turning on the watch for the first time, and before anything else can happen on or with the watch.²¹ However, as discussed above, the user (person wearing the wearable device) has access to the secured electronic system (phone) once codes on each device match (authentication). The pairing process between Google Pixel Watch and the phone will not begin if the codes do not match (if there is no authentication). Thus, as shown in the claim chart, Google Pixel Watch includes "providing the user with access to or through the secured electronic system once authenticated." Thus, the user is authenticated and then is provided access. This is just one example of how the claimed steps of "authenticating the user" and then "providing the user with access... once authenticated" is met by the Accused Device.

Nonetheless, even if the claims are construed such that a user must be authenticated before being provided access, this does not mean that the entire claim requires that each step be performed in a specific order.

C. Defendant's Allegation of Deficient Complaints is Incorrect, Irrelevant, and Appears to be an attempt to influence the Court.

Defendant appears to attempt to use other non-related cases to somehow support that the Complaint in this case is insufficiently plead. The cases cited to by Defendant are not related

²⁰ Doc. No. 12 at 7.

²¹ Doc. No. 12 at 8.

and are irrelevant. What is relevant is that all of the steps of at least claim 2 of the '480 patent are shown to be performed by Defendant's accused device.

IV. REQUEST TO FILE AMENDED COMPLAINT

SmartWatch believes that it has sufficiently plead direct patent infringement. However, should the Court be inclined to grant any portion of Defendant's Motion, SmartWatch respectfully requests an opportunity to file an amended complaint to correct any identified pleading issues. More specifically, in the event that this Court believes any of the claim features identified by Defendant as allegedly not being sufficient plead, SmartWatch respectfully requests leave to amend to even more specifically show that the recited claim features are infringed.

V. CONCLUSION

For the foregoing reasons, SmartWatch respectfully requests that the Court deny Defendant's Motion to Dismiss.

Dated: August 15, 2023,

Respectfully submitted,

Ramey LLP

/s/ William P. Ramey, III

William P. Ramey, III

Texas Bar No. 24027643

wramey@rameyfirm.com

5020 Montrose Blvd., Suite 800

Houston, Texas 77006

(713) 426-3923 (telephone)

(832) 900-4941 (fax)

Attorneys for SmartWatch Mobileconcepts LLC

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that all counsel of record who have appeared in this case are being served on this day of August 15, 2023, with a copy of the foregoing via ECF.

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