

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

PRAGMATUS AV, LLC,

Plaintiff,

v.

FACEBOOK, INC., YOUTUBE, LLC,
LINKEDIN CORPORATION, and
PHOTOBUCKET.COM, INC.,

Defendants.

Civil Action No. 1:10-cv-1288 (LMB/JFA)

**MEMORANDUM IN SUPPORT OF DEFENDANT LINKEDIN CORPORATION'S
RULE 12(b)(6) MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR A MORE
DEFINITE STATEMENT**

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Dated: January 6, 2011

On November 15, 2010, Plaintiff Pragmatius AV, LLC (“Pragmatius”) brought this action against Defendant LinkedIn Corporation (“LinkedIn”) and others for alleged infringement of several patents. Pragmatius has asserted U.S. Patent Nos. 7,822,813 (“the ’813 patent”), and 7,831,663 (“the ’663 patent”) against LinkedIn and has asserted those patents plus U.S. Patent 7,730,132 (“the ’132 patent”) against three other defendants. On December 22, 2010, Facebook, Inc. (“Facebook”) filed a motion to dismiss this action pursuant to Federal Rule of Civil Procedure 12(b)(6), or in the alternative, for a more definite statement pursuant to Federal Rule of Civil Procedure 12(e). (Docket Nos. 15 and 16.) Earlier today, YouTube, LLC (“YouTube”) filed a similar motion. This is LinkedIn’s parallel motion to dismiss or for a more definite statement under Federal Rules of Civil Procedure 12(b)(6) and (e).

I. ARGUMENT

As set forth in both Facebook’s and YouTube’s motions, Pragmatius’ Complaint fails to satisfy the pleading standards under Federal Rule of Civil Procedure 8(a), as articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009).

Pragmatius’ Complaint does not meet the federal pleading standard as to LinkedIn for the same reasons it fails as to Facebook and YouTube. For both of the patents asserted against LinkedIn (the ’813 and ’663 patents), Pragmatius’ direct and indirect infringement allegations are virtually identical to the allegations made against Facebook and YouTube. (*Compare* Compl. at ¶¶ 20, 21, 24, 25 (allegations against Facebook) and ¶¶ 32, 33, 36, 37 (allegations against YouTube) with ¶¶ 40, 41, 44, 45 (allegations against LinkedIn).)¹ Pragmatius’ allegations against LinkedIn are, therefore, deficient for the same reasons set forth in Facebook’s and YouTube’s

¹ The allegations against LinkedIn lack any reference to an accused “video ... record ... feature” and to a feature to “comment on videos.” *Id.* Those differences are immaterial, however, because neither the presence nor the absence of those allegations shed any light on what product, service or instrumentality Pragmatius intends to accuse.

motions to dismiss and supporting memoranda – which motions and arguments are incorporated by reference herein.

LinkedIn has no idea, for example, what Pragmatus might be talking about when it says that LinkedIn directly and indirectly infringes the ‘663 and ‘813 patents by “providing social network services that include video upload and linking features.” (Compl. ¶¶ 40, 41, 44 and 45.) It is unclear whether this allegation refers to some service allegedly offered by LinkedIn or by one of the many third parties whose applications can be reached through LinkedIn’s site.² Pragmatus provides no answers and instead leaves LinkedIn simply to guess at what product, service or feature is accused to infringe and how LinkedIn is alleged to be responsible for that infringement. That is not sufficient under 12(b)(6). *See Bay Indus., Inc. v. Tru-Arx Mfg. LLC*, Case No. 06-C-1010, 2006 U.S. Dist. LEXIS 86757, at *5 (E.D. Wis. Nov. 29, 2006) (“Defendant should not have to guess which of its products infringe nor guess how its products might fall within plaintiff’s interpretation of the claims of the patent.”).

Even if the Court concludes that Pragmatus has satisfied the requirements of Form 18 of the FRCP for the purpose of alleging direct infringement, the Complaint is nevertheless deficient with respect to the allegations of indirect infringement. Pragmatus does not specify which indirect theory it is pursuing nor provide *any* facts to show that LinkedIn could be held liable for the (unidentified) third-party conduct it intends to accuse. As explained further in Facebook’s and YouTube’s motions, these problems are fatal to the adequacy of the Complaint.

² It is not clear, for example, whether the “linking ... feature” refers to the ability of users to add generic hypertext links, to some third-party functionality that can be accessed through LinkedIn’s site, or to something else entirely.

II. CONCLUSION

For the foregoing reasons, LinkedIn respectfully requests that the Court dismiss Pragmatus' Complaint pursuant to Rule 12(b)(6), or in the alternative, require Pragmatus to provide a more definite statement pursuant to Rule 12(e).

Dated: January 6, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 6th day of January 2011, I will electronically file the foregoing MEMORANDUM IN SUPPORT OF DEFENDANT LINKEDIN CORPORATION'S RULE 12(B)(6) MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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