

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

VISUAL INTERACTIVE PHONE CONCEPTS,  
INC., a Nevada Corporation,

Plaintiff,

vs.

GOOGLE INC.,  
a Delaware Corporation,

Defendant.

Hon. Lawrence P. Zatkoff

Mag. Judge Laurie Michelson

Case No. 11-cv-12348

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**GOOGLE'S MOTION TO DISMISS UNDER FRCP 12(b)(6) FOR FAILURE TO STATE  
A CLAIM UPON WHICH RELIEF CAN BE GRANTED OR IN THE ALTERNATIVE,  
FOR A MORE DEFINITE STATEMENT PURSUANT TO RULE 12(e) AND BRIEF IN  
SUPPORT**

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## QUESTION PRESENTED

1. Should Plaintiff's Complaint be dismissed under Federal Rule of Civil Procedure 12(b)(6) where it fails to identify a specific product that allegedly infringes the patents-in-suit and does not contain sufficient factual allegations of either direct or indirect infringement under *Iqbal* and *Twombly*, or, in the alternative, should Plaintiff be required to provide a more definite statement of its claims and identify a specific product that allegedly infringes the patents-in-suit and provide specific factual allegations supporting its direct and indirect infringement claims?

Defendant's Answer: Yes.

## I. INTRODUCTION

On May 27, 2011, Plaintiff Visual Interactive Phone Concepts (“VIPC”) filed a Complaint against Defendant Google Inc. (“Google”) for alleged infringement of U.S. Patent Nos. 5,606,361 and 5,724,092 (the “patents-in-suit”).

Google hereby moves pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff’s Complaint for failure to state a claim upon which relief can be granted, or in the alternative, for a more definite statement pursuant to Rule 12(e).

## II. SUMMARY OF ARGUMENT

Plaintiff’s Complaint fails to satisfy the pleading standards articulated by the Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). As set forth by the Supreme Court, under Rule 8(a) of the Federal Rules of Civil Procedure, a complaint must make “a ‘showing,’ rather than a blanket assertion, of entitlement to relief.” *Twombly*, 550 U.S. at 555 n.3. Such a showing “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 555). This standard applies equally to complaints alleging patent infringement. *See, e.g., Bender v. LG Elecs. U.S.A., Inc.*, No. C-09-02114-JF, 2010 WL 889541, at \*5 (N.D. Cal. Mar. 11, 2010); *Ricoh Co., Ltd. v. ASUSTeK Computer, Inc.*, 481 F. Supp. 2d 954, 959 (W.D. Wis. 2007).

Plaintiff’s Complaint, composed of nothing more than bald assertions alleging direct and indirect infringement of the patents-in-suit, fails to meet the pleading requirements of *Twombly* and *Iqbal* for at least two reasons. First, *Plaintiff never identifies a single product or service that directly infringes the patents-in-suit.* Second, although Plaintiff alleges indirect infringement, *it alleges no facts to support its bare allegations.* The ambiguous, conclusory and

bare-bones allegations of the Complaint not only fail to meet the Supreme Court's pleading requirements, but also give inadequate guidance as to what may be at issue in this case and unfairly prejudice Google's ability to investigate the claims and answer the Complaint.

Accordingly, pursuant to Rule 12(b)(6), this Court should dismiss Plaintiff's Complaint for failure to state a claim upon which relief can be granted. Alternatively, should the Court deny Google's motion to dismiss, it should at the very least require Plaintiff to provide a more definite statement of its claims pursuant to Rule 12(e).

### III. BACKGROUND

According to Plaintiff, the invention of the patents-in-suit is an "interactive mailbox facility system" that "includes the use of a central data center for functions such as processing and dispensing information to and from purchasers and sellers, and allowed for the use of improved security safeguards for network transactions." Compl., Dkt. No. 1, ¶ 16.

Important for purposes of this Motion, each claim in the patents-in-suit recites a system that includes a "user station having a videophone." For example, in pertinent part, Claim 1 of the '361 patent recites:

1. A videophone interactive mailbox facility system including a central data center for processing of information to conduct a transaction, comprising:
  - a) *a user station having a videophone* including a video screen for viewing transaction information and video sent or received to conduct a transaction; an encryption encoder and a decryption decoder for safeguarding said transaction information sent or received; and means for inputting said transaction information into said videophone; . . . .

*Id.*, Ex. 1, '361 Ex Parte Reexamination Certificate at 1:21-30 (emphasis added).

Although essential to every claim in the patents-in-suit, Plaintiff does not identify a single, specific Google or third-party product that plausibly meets the “user station having a videophone” limitation. Instead, Plaintiff’s Complaint contains only vague, ambiguous, bare-bone allegations that some unidentified Google operating system, products and services, and/or application service infringe the patents-in-suit:

Google designs, manufactures and sells an *operating system* for mobile communication devices that are videophones. Google also provides to users *products and services associated with and to be used with the mobile communication devices* that contain means for inputting information into the videophone for purposes of accessing and ordering applications and means for viewing and receiving video and data from Google and other vendors.

Google uses, makes and sells, without license, certain technological products, processes, and systems covered by the claims of the patents-in-suit. By way of example and not limitation, Google provides an *application service* for users to view, download, and use applications, music and books on their videophones (the “Market”). This system includes a central data center that processes information, and facilitates and supports the purchase and delivery of applications and other products.

*Id.* ¶¶ 26-27 (emphasis added). In other words, specifically with respect to Google, Plaintiff’s Complaint vaguely references only:

- (1) “an *operating system*,”
- (2) “*products and services* associated with and to be used with the mobile communication devices,” and
- (3) “an *application service*.”

*See id.* (emphasis added).

The unidentified “operating system,” “products and services,” and “application service” cannot plausibly be the claimed “user station having a videophone.” Despite this, Plaintiff still alleges that Google *directly* infringes the patents-in-suit:



VIPC is informed and believes, and thereon alleges, that Google, through its agents, employees and servants, has knowingly, intentionally and willfully infringed the patents-in-suit by making, using, offering for sale, selling and/or importing products and/or services within this Judicial District covered by one or more claims of the '361 Patent and the '092 patent.

*See id.* ¶ 28. (emphasis added). As explained above, however, Plaintiff's direct infringement claim is unsupported by any factual allegation that Google makes, uses, offers for sale, sells, or imports, a product that includes a "user station having a videophone." As a result, Plaintiff's direct infringement claim does not meet the requisite standards for pleading under *Iqbal* and *Twombly*.

Plaintiff's indirect infringement claims are similarly legally deficient. With respect to indirect infringement, Plaintiff alleges that Google "through its agents, employees and servants has induced infringement and/or engaged in acts of contributory infringement" *Id.* ¶ 29. This blanket assertion is nothing more than a statutory recital and naked conclusion. As with Plaintiff's allegations of direct infringement, they too do not pass muster under the requisite standards for pleading set forth in *Iqbal* and *Twombly*.

#### **IV. THIS ACTION SHOULD BE DISMISSED UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

##### **A. Legal Principles**

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). However, Rule 8 "does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Iqbal*, 129 S. Ct. at 1950. "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* at 1949 (citing *Twombly*, 550 U.S. at 555). If a plaintiff has not pleaded "enough facts to state a claim to relief that is plausible on its face," and thereby "nudged [his] claims . . . across the line from conceivable to plausible," the complaint

“must be dismissed.” *Twombly*, 550 U.S. at 570 (dismissing a complaint pursuant to Fed. R. Civ. P. 12(b)(6)).

When reviewing a motion to dismiss under Rule 12(b)(6), a court must assume all factual allegations in a complaint as true and view them in the light most favorable to the plaintiff. *Christopher v. Harbury*, 536 U.S. 403, 406 (2002). However, pleadings containing “no more than conclusions[] are not entitled to the assumption of truth.” *Iqbal*, 129 S. Ct. at 1950. Only when there are “well-pleaded factual allegations” should a court “assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Id.* A claim has facial plausibility “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 1949 (citing *Twombly*, 550 U.S. at 556). The “sheer possibility that a defendant has acted unlawfully” is not enough. *Id.* Such a complaint “has alleged – but has not ‘show[n]’ – ‘that the pleader is entitled to relief.’” *Id.* at 1950 (quoting Fed. R. Civ. P. 8(a)(2)).

The Sixth Circuit recently affirmed that under *Iqbal*, a plaintiff may not use the discovery process to obtain facts sufficient to support its allegations after filing suit. *See New Albany Tractor, Inc., v. Louisville Tractor, Inc.*, 2011 U.S. App. LEXIS 12457 at \*5-6 (6th Cir. June 21, 2011) (dismissing the plaintiff’s price discrimination claim for failing to plead facts sufficient to raise the right to relief above the speculative). Rather, “[b]y foreclosing discovery . . . , the combined effect of *Twombly* and *Iqbal* require plaintiff to have greater knowledge now of factual details in order to draft a ‘plausible complaint.’” *Id.* at \*5. This holds true even when the information needed to establish a claim is solely within the purview of the defendant or a third party. *See id.* Simply put by the Sixth Circuit, “[t]he language of *Iqbal*, ‘not entitled to discovery,’ is binding on the lower federal courts.” *Id.* \*6.

**B. Plaintiff Does Not Plead Sufficient Facts to Present a Facially Plausible Claim that Google’s Products or Services Directly Infringe the Patents-in-Suit**

Following *Iqbal*, a complaint must “at a minimum, [include] a brief description of what the patent at issue does, and an allegation that *certain named and specifically identified* products or product components also do what the patent does, thereby raising a plausible claim that the named products are infringing.” *LG Elecs.*, 2010 WL 889541 at \*6 (emphasis added). Applying *Twombly* and *Iqbal*, the court in *LG Electronics* reasoned that only with a brief description of the patent and an allegation of specifically identified products that fits the description of what the patent does, does a pleading “provide enough specificity for the defendant to formulate a response,” and “permit the Court to ‘draw the reasonable inference that the defendant is liable for the misconduct alleged.’” *Id.* (citing *Iqbal*, 129 S. Ct. at 1949).

**1. Plaintiff does not identify any directly infringing products.**

Plaintiff does not identify any specific Google product or service that allegedly infringes the patents-in-suit. As explained above, each claim in the patents-in-suit recites a system that includes a “user station having a videophone.” Plaintiff, however, does not identify a single, specific Google product that even arguably meets this limitation. On the contrary, Plaintiff references only general categories of products, namely an “operating system for mobile communication devices that are videophones” and “products and services associated with and to be used with the mobile communication devices” and an “application service for users to view, download, and use applications, music and books on their videophones (the “Market”).” None of the alleged Google products referenced in the Complaint plausibly meet the “user station having a videophone” limitation, which notably recites more than just a “phone.” And even the

bare bone allegations that are made are made solely upon Plaintiff's *information and belief*. See Compl., Dkt. No. 1, ¶ 28.

Numerous courts have properly dismissed patent infringement claims where plaintiffs have not identified specific products or services. See, e.g., *Gen-Probe, Inc. v. Amoco Corp.*, 926 F. Supp. 948, 962 (S.D. Cal. 1996) (granting Rule 12(b)(6) dismissal because “pointing vaguely to ‘products and/or kits’ . . . does not provide adequate notice as required by the Rules, and does not reflect the reasonable inquiry required by the Rules”); *LG Elecs.*, 2010 WL 889541 at \*4 (requiring plaintiff to specifically identify allegedly infringing products and finding list of allegedly infringing product types to be insufficient); *Hewlett-Packard Co. v. Intergraph Corp.*, No. C 03-2517 MJJ, 2003 U.S. Dist. LEXIS 26092, at \*6 (N.D. Cal. Sept. 6, 2003) (dismissing plaintiff's complaint that defendant's “software and hardware products” infringed the patent because the allegations did not provide defendant with “fair notice” as to what claims to defend); *Realtime Data, LLC v. Morgan Stanley*, No. 6:09CV326, 2010 WL 2403779, at \*5 (E.D. Tex. June 10, 2010) (granting Rule 12(b)(6) dismissal because plaintiff's allegations did not “specifically identify any accused products or services” and finding the identification of “data compression products and/or services” too vague).

By failing to identify a specific product or service, Plaintiff has not put Google on fair notice as to what products are subject to the infringement claim. Plaintiff's allegations against Google are as vague as the allegations at issue in *Gen-Probe*, *LG Electronics*, *Hewlett-Packard* and *Realtime Data*. As the Supreme Court has cautioned, “a district court must retain the power to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed.” *Associated Gen. Contractors of Cal., Inc. v. Carpenters*, 459 U.S. 519, 528 n.17 (1983).

Moreover, courts have held that even mere identification of a product - something that Plaintiff has failed to do - is not sufficient under *Iqbal*. In *Elan Microelectronics Corp. v. Apple, Inc.*, the court addressed allegations that baldly asserted that the accused infringer “has been and is currently, directly and/or indirectly infringing . . . through its design, marketing, manufacture and/or sale of touch sensitive input devices or touchpads, *including but not limited to the Smart-Pad.*” No. C 09-1531 RS, 2009 U.S. Dist. LEXIS 83715 (N.D. Cal. Sept. 14, 2009) at \*4-5 (emphasis added). Even though a product was identified, because these allegations “plainly [fell] within the [*Iqbal*] prohibition against ‘threadbare recitals of the elements of the cause of action, supported by mere conclusory statements,’” the *Elan* court dismissed Apple’s infringement counterclaims.<sup>1</sup> *Id.* at \*5 (citing *Iqbal*, 129 S. Ct. at 1949).

As in *Elan*, dismissal of Plaintiff’s Complaint is warranted here because Plaintiff does not identify a specific Google product that allegedly infringes the patents-in-suit.

**2. Even if the product identification was sufficiently specific, the Complaint does not present a facially plausible claim for relief.**

Even if the Court determines that Plaintiff has sufficiently specified infringing products, Plaintiff does not plead sufficient facts to show that its claim for relief for direct patent infringement is plausible on its face. Because “literal infringement requires that each and every limitation set forth in a claim appear in an accused product,” *Franks Casing Crew & Rental Tools, Inc. v. Weatherford Int’l, Inc.*, 389 F.3d 1370, 1378 (Fed. Cir. 2004) (internal citation

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<sup>1</sup> The same holds true in this case with respect to the “central data center” limitation present in each of the claims. *See* Compl., Dkt. No. 1, Ex. 1, Ex Parte Reexamination Certificate at 1:21-23 (“A videophone interactive mailbox facility system including *a central data center* for processing . . .”) (emphasis added). The only allegation in Plaintiff’s Complaint with respect to the “central data center” limitation is a single reference in paragraph 27 that “[t]his system includes a central data center,” without any further identification or explanation of the specific system.

omitted), a description of the patents-in-suit should contain some reference to the limitations of the claims, thereby allowing the Court to evaluate the facial plausibility of the allegations. As stated above, Plaintiff only identifies three categories of allegedly infringing products: (1) an operating system; (2) “products and services” associated with and to be used with mobile communication devices; and (3) an application service. Plaintiff fails to present any facts to support that any of these “products” plausibly include a “user station having a videophone” - a limitation appearing in every claim of the patents-in-suit. Because Plaintiff’s allegations do not plead sufficient facts to support a plausible claim of direct infringement, the Court should dismiss the Complaint for failure to state a claim upon which relief may be granted.

**C. Plaintiff’s Allegations of Indirect Infringement Should be Dismissed Because They Do Not Plead Facts Sufficient To State a Claim**

There are two types of indirect infringement: active inducement under 35 U.S.C. § 271(b) and contributory infringement under 35 U.S.C. § 271(c). Yet, threadbare recitals of the elements of a cause of action are all that Plaintiff alleges in its Complaint. Plaintiff pleads no factual content that would allow a court to draw a reasonable inference that Google is liable for either active inducement or contributory infringement. Accordingly, Plaintiff’s allegations “do not suffice,” and its Complaint should be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted.

**1. Plaintiff has failed to state a claim for active inducement.**

The elements of active inducement of infringement include:

1. A third party directly infringed the patent;
2. Defendant undertook an affirmative act during the enforceable term of the patent, and not merely a failure to act, that induced the third party’s act that directly infringed the patent (the “inducing act”);

3. Defendant had actual or constructive knowledge of the asserted patent at the time it committed the inducing act;
4. Defendant knew or should have known that the acts of the third party it induced would result in direct infringement; and
5. Defendant had a specific and actual intent to cause direct infringement.<sup>2</sup>

To state a claim for active inducement, Plaintiff must allege facts sufficient to establish each of these elements. *Iqbal*, 129 S. Ct. at 1950; *Twombly*, 550 U.S. at 555. Merely reciting each element of the cause of action without also alleging facts that establish those elements is insufficient because, in the words of the Supreme Court, “a formulaic recitation of [the] cause of action will not do.” *Twombly*, 550 U.S. at 555.

Plaintiff’s allegations of active inducement comprise nothing more than a bare assertion that “VIPC is informed and believes” that Google “has induced infringement.” Compl., Dkt. No. 1, ¶ 29. Plaintiff’s allegations fail to name any third party who has allegedly directly infringed the patents-in-suit as a result of Google’s actions, a prerequisite for an inducement claim. An allegation that a defendant has induced some unnamed others to infringe is insufficient to state a claim for inducement. *Anticancer Inc. v. Xenogen Corp.*, 248 F.R.D 278, 282 (S.D. Cal. 2007) (dismissing complaint that alleged defendants had “indirectly infringed the [asserted] Patent by contributing to or inducing directed infringements of the [asserted] Patent by others”); *Bender v. Motorola, Inc.*, No. C 09-1245, 2010 WL 726739, at \*4 (N.D. Cal. Feb. 26, 2010) (dismissing complaint that defendant had “performed acts . . . that infringe and induce others to infringe”). Plaintiff also has not alleged how any third parties directly infringe the patents-in-suit, let alone identified any facts to support such an allegation.

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<sup>2</sup> See, e.g., 35 U.S.C. § 271(b); *Vita-Mix Corp. v. Basic Holding, Inc.*, 581 F.3d 1317, 1328 (Fed. Cir. 2009); *DSU Medical Corp. v. JMS Co.*, 471 F.3d 1293, 1304–06 (Fed. Cir. 2006) (*en banc*); *Acco Brands, Inc. v. ABA Locks Manufacturer Co.*, 501 F.3d 1307, 1312 (Fed. Cir. 2007); *Dynacore Holdings Corp. v. U.S. Philips Corp.*, 363 F.3d 1263, 1277–78 (Fed. Cir. 2004).

In addition, Plaintiff fails to recite facts sufficient to allow the Court to infer that Google knew of the asserted patent at the time of the alleged inducement, or to allege any facts that would support such an allegation. The failure to allege facts sufficient to allow the Court to infer Google's knowledge of the asserted patent means that Plaintiff has failed to state a cause of action for inducement. *Vita-Mix*, 581 F.3d at 1328; *Xpoint Techs., Inc. v. Microsoft Corp.*, No. 09-628, 2010 WL 3187025, at \*5 (D. Del. Aug 12, 2010) (“[A] complaint stating a claim for inducement must allege the requisite knowledge and intent. . .”).

Thus, for any one of the foregoing reasons, Plaintiff has failed to state a claim for active inducement against Google.

**2. Plaintiff has failed to state a claim for contributory infringement.**

The elements of contributory infringement include:

1. Defendant sold or supplied in the United States a component of a system or service during the time the patent was in force;
2. a third party used that component to directly infringe the patent;
3. the only substantial use for the component is in a service or system that is directly covered by the claim; that is, the service or system has no substantial, non-infringing use other than the alleged infringing use;
4. Defendant knew of the patent; and
5. Defendant knew that the systems or services for which the component is intended has no other substantial use other than one covered by a claim of the patent.<sup>3</sup>

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<sup>3</sup> See, e.g., 35 U.S.C. § 271(c); *Cross Medical Products, Inc. v. Medtronic Sofamor Danek*, 424 F.3d 1293, 1312 (Fed. Cir. 2005); *DSU Medical*, 471 F.3d at 1303; *Hodosh v. Block Drug Co.*, 833 F.2d 1575, 1578 (Fed. Cir. 1987); *Acco Brands*, 363 F.3d 1263, 1314 (Fed. Cir. 2007); *Dynacore*, 363 F.3d at 1277–78 (Fed. Cir. 2004); *Hoffman-La Roche, Inc. v. Promega Corp.*, 33 U.S.P.Q.2d 1641, 1648–49 (N.D. Cal. 1994).



Like Plaintiff's allegations of active inducement, its allegations of contributory infringement fail to state a claim because they comprise nothing more than a bare assertion that "VIPC is informed and believes" that Google has "engaged in acts of contributory infringement." Dkt. No. 1 ¶ 29. Plaintiff's contributory infringement allegations fall far short of the pleading requirements.

Successfully pleading contributory infringement requires Plaintiff to name the allegedly infringing products and services and the alleged third party direct infringers, and properly allege facts sufficient to allow the Court to infer that the defendant knew of the asserted patent at the time of the alleged contributory infringement. Thus, for the same reasons that Plaintiff failed to properly allege these elements in connection with inducement, it also failed to properly allege them in connection with contributory infringement.

Plaintiff likewise failed to properly allege the other elements of contributory infringement, including that Google's accused services were material components of the patented invention and that they have no substantial non-infringing uses. *Cross Medical Products, Inc. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1312 (Fed. Cir. 2005). Once again, Plaintiff has not alleged any specific facts showing Google's accused products and services were material components of the patented invention or lacked substantial non-infringing use. Plaintiff has thus failed to state an actionable claim for contributory infringement against Google.

**D. At a Minimum, the Court Should Require a More Definite Statement under Rule 12(e)**

Because the Complaint has many naked assertions, at a minimum, Plaintiff should be required to provide a more definite statement. Federal Rule of Civil Procedure 12(e) provides that "[a] party may move for a more definite statement of a pleading" where the pleading "is so vague or ambiguous that the party cannot reasonably prepare a response." Here, Plaintiff failed

to allege the most basic fact underlying its Complaint—a single product alleged to directly infringe the patents-in-suit. Specifically, Plaintiff has not identified a single product that includes a “user station having a videophone.” At a minimum, Plaintiff should be required to identify a directly infringing product that could plausibly include this limitation.

Courts have granted motions under Rule 12(e) in patent cases for this very reason. *See, e.g., Bay Indus., Inc. v. Tru-Arx Mfg., LLC*, 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.”); *eSoft, Inc. v. Astaro Corp.*, No. 06-cv-00441-REB-MEH, 2006 U.S. Dist. LEXIS 52336, at \*4 (D. Colo. July 31, 2006) (granting a motion for a more definite statement where the complaint failed to identify any particular product that infringed the plaintiff’s patent); *Agilent Techs., Inc. v. Micromuse, Inc.*, No. 04 Civ. 3090 (RWS), 2004 U.S. Dist. LEXIS 20723, at \*15-16 (S.D.N.Y. Oct. 19, 2004) (granting a motion for a more definite statement where the complaint did not specify which products infringed the plaintiff’s patents). By failing to identify an allegedly infringing product or method in its Complaint, Plaintiff has impermissibly attempted to “foist the burden of discerning what products it believes infringes the patent onto defense counsel.” *eSoft*, 2006 U.S. Dist. LEXIS 52336, at \*4. Indeed, Plaintiff’s Complaint leaves Google to guess what products or services allegedly infringe the patents-in-suit. As a result, Google cannot realistically frame a responsive pleading, let alone begin defending themselves in this action. At a minimum, a more definite statement is warranted.

## V. CONCLUSION

Plaintiff’s Complaint is so vague and devoid of facts that it fails to state a claim upon which relief can be granted. Therefore, Google respectfully requests that Plaintiff’s Complaint be

dismissed. In the alternative, Google requests that the Court require Plaintiff to provide a more definite statement pursuant to Rule 12(e).

Respectfully submitted,

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Date : July 14, 2011

I hereby certify that on July 14, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to counsel of record.

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