

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

PARALLEL NETWORKS, LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 6:10-CV-491-LED
ADIDAS AMERICA, INC., et al.)	
)	
Defendants.)	
)	

DEFENDANTS EASTMAN KODAK COMPANY’S AND KODAK IMAGING NETWORK, INC.’S MOTION TO DISMISS PARALLEL NETWORKS, LLC’S CLAIMS OF INDUCED, CONTRIBUTORY, AND WILLFUL INFRINGEMENT

In *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), the United States Supreme Court made clear that a plaintiff cannot state a valid claim by merely parroting the legal elements of a cause of action without providing any factual support for its allegations. But this is exactly what plaintiff Parallel Networks, LLC (“Parallel”) does in alleging induced, contributory, and willful infringement against Eastman Kodak Company and Kodak Imaging Network, Inc. (collectively, “Kodak”). Each of Parallel’s claims of induced, contributory, and willful infringement against Kodak simply regurgitates the elements of these causes of action without ***a single specific fact pertaining to Kodak***. In fact, Parallel’s claims against Kodak are copied ***word-for-word*** from the induced, contributory, and willful infringement allegations that Parallel makes against more than fifty other defendants:

- In alleging induced infringement against Kodak, Parallel declares without citation or justification that “[Kodak] is and has been committing the act of inducing infringement by specifically intending to induce infringement” because it “knew or should have known that through its acts it was and is inducing infringement of the ‘111 patent.” (Dkt. No. 1 at ¶¶ 149, 209.)

- In alleging contributory infringement against Kodak, Parallel simply asserts, without explanation, that “[Kodak] is and has been committing the act of contributory infringement... knowing that [the accused system] is a material part of the invention [and] was made and adapted for infringement of the [patent-in-suit]...” (*Id.*)
- And in alleging willful infringement, Parallel lumps Kodak with more than fifty other defendants and, without identifying a single specific action taken by Kodak, asserts that all of the defendants’ alleged infringement “was willful” because defendants “acted...despite an objectively high likelihood that their actions constituted infringement.” (*Id.* at ¶ 305.)

If Parallel’s boilerplate allegations against Kodak were sufficient, every plaintiff in every patent infringement case could state claims of induced, contributory, and willful patent infringement by merely repeating the legal elements of these causes of action. This is not and should not be the law. Parallel’s claims of induced, contributory, and willful infringement against Kodak should be dismissed.

I. FACTUAL BACKGROUND

On September 23, 2010, Parallel filed the complaint in this action, accusing more than fifty defendants of infringing U.S. Patent No. 6,446,111 (the “’111 patent”). (Dkt. No. 1 at ¶¶ 64-305.) Parallel accuses Kodak of: (1) direct infringement; (2) induced infringement; (3) contributory infringement; and (4) willful infringement.

Parallel’s claim of induced infringement against Kodak comprises only two sentences:

On information and belief, since becoming aware of the ‘111 patent, [Kodak] is and has been committing the act of inducing infringement by specifically intending to induce infringement by providing the identified website to its clients and by aiding and abetting its use. On information and belief, [Kodak] knew or should have known that through its acts it was and is inducing infringement of the ‘111 patent.

(*Id.* at ¶¶ 149, 209.) Parallel does not identify a single fact supporting this conclusory allegation.

In fact, Parallel’s inducement claim against Kodak is ***word for word identical to the inducement claim it makes against each of the more than fifty defendants in this case.*** For example,

Parallel states as follows against defendant Andersen Windows:

On information and belief, since becoming aware of the '111 patent, ANDERSON WINDOWS, INC., is and has been committing the act of inducing infringement by specifically intending to induce infringement by providing the identified website to its clients and by aiding and abetting its use. On information and belief, ANDERSEN WINDOWS, INC., knew or should have known that through its acts it was and is inducing infringement of the '111 patent.

(*Id.* at ¶ 93.)

Parallel's claim of contributory infringement against Kodak is also only two conclusory sentences:

On information and belief, [Kodak] is and has been committing the act of contributory infringement by intending to provide the identified website to its clients knowing that it is a material part of the invention, knowing that its use was made and adapted for infringement of the '111 patent, and further knowing that the system is not a staple article or commodity of commerce suitable for substantially noninfringing use.

(*Id.* at ¶ 149, 209.) In asserting contributory infringement against Kodak, Parallel again fails to provide any factual information specific to Kodak. In fact, Parallel's contributory infringement allegation against Kodak is again copied *exactly* from its allegations against the other defendants.

For example, Parallel states as follows against defendant Adidas America, Inc:

On information and belief, ADIDAS AMERICA, INC. is and has been committing the act of contributory infringement by intending to provide the identified website to its clients knowing that it is a material part of the invention, knowing that its use was made and adapted for infringement of the '111 patent, and further knowing that the system is not a staple article or commodity of commerce suitable for substantially noninfringing use.

(*Id.* at ¶ 69.)

Parallel's willful infringement allegation is even more generic. Indeed, Parallel does not make any allegation of willful infringement against Kodak specifically. Instead, it attempts to accuse each of the more than fifty defendants in this case of willful infringement in the same single paragraph *without providing any factual support*:

On information and belief, prior to the filing of the complaint, Defendants' infringement was willful and continues to be willful. On information and belief, prior to the filing of this Complaint, Defendants were aware of the '111 patent and knew or should have known that Defendants were infringing at least claim 1 of the '111 patent. On information and belief, Defendants in their infringing activities acted as they did despite an objectively high likelihood that their actions constituted infringement of a valid patent. The Defendants' infringing activities were intentional and willful in that the risk of infringement was known to Defendants or was so obvious that it should have been known to Defendants.

(*Id.* at ¶ 305.)

II. ARGUMENT

It is settled law that a plaintiff does not state a claim by making unsupported conclusions or simply restating the legal elements of a cause of action. According to the United States Supreme Court, “[a] pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do ... Nor does a complaint suffice if it tenders naked assertion[s] devoid of further factual enhancement.” *Iqbal*, 129 S.Ct. at 1949 (internal quotations and citation omitted); *see also Norris v. Hearst Trust*, 500 F.3d 454, 464 (5th Cir. 2007) (“a formulaic recitation of the elements of a cause of action will not do”) (internal quotation and citation omitted).

Instead, a plaintiff must provide specific *factual support* for each element of the allegations in its complaint. *See Iqbal*, 129 S. Ct. at 1949 (“To survive a motion to dismiss, a Complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face’”) (internal citation omitted). As the Supreme Court stated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), a plaintiff must include a “statement of circumstances, occurrences, and events in support of the claim presented.” 550 U.S. at 556 n.3 (internal citation and quotation omitted).

If the plaintiff does not meet this standard, its claims must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. *See Twombly*, 550 U.S. at 570 (claim must be dismissed where plaintiff does not provide any support for elements of claim); *Iqbal*, 129 S. Ct. at 1949 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”) (internal citation omitted). In particular, where a plaintiff simply repeats the elements of its cause of action without any factual support, the claims must be dismissed. *See PSKS, Inc. v. Leegin Creative Leather Products, Inc.*, 615 F.3d 412, 417 (5th Cir. 2010) (pleadings must go beyond conclusory statements that are “‘merely consistent with’ a defendant’s liability”) (quoting *Iqbal*, 129 S.Ct. at 1949).

A. Parallel’s Induced Infringement Claim Against Kodak Should Be Dismissed.

To state a claim of induced infringement, a plaintiff must allege and provide factual support showing three elements: (1) the defendant knew about the patent at issue before the suit was filed; (2) the defendant knowingly induced a third party to infringe the patent; and (3) the defendant possessed specific intent to encourage the third party’s infringement. *See Vita-Mix Corp. v. Basic Holding, Inc.*, 581 F.3d 1317, 1328 (Fed. Cir. 2009) (induced infringement requires that “the alleged inducer knew of the patent, knowingly induced the infringing acts, and possessed a specific intent to encourage another’s infringement of the patent”).

Parallel does not (and can not) allege any such facts in accusing Kodak of induced infringement. Instead, it robotically recites the elements of inducement without a single fact specific to Kodak. In one conclusory paragraph—*identical to the charge it makes against more than fifty other defendants*—Parallel asserts that Kodak “is and has been committing the act of inducing infringement by specifically intending to induce infringement by providing the identified website to its clients and by aiding and abetting its use.” (Dkt. No. 1 at ¶¶ 149; 209.) Parallel never states in its inducement allegation that Kodak knew of the ‘111 patent before suit

was filed, does not provide any facts suggesting that Kodak had such knowledge, and does not provide any facts showing that Kodak had specific intent to encourage infringement. As a result, its claim of induced infringement should be dismissed. See *Realtime Data LLC v. Stanley*, No. 6:09-cv-326, 2010 WL 2403779 at *6 (E.D. Tex, June 10, 2010) (dismissing indirect infringement claims for failing to identify facts that establish a plausible claim for relief); *Bender v. Motorola, Inc.*, No. C 09-1245, 2010 WL 726739, at *4 (N.D. Cal. Feb. 26, 2010) (dismissing induced infringement claim because the plaintiff's "conclusory, fact-barren allegation fails to state a claim for inducement to infringe ..."); *XPoint Techs., Inc. v. Microsoft Corp.*, Civ. No. 09-628-SLR, 2010 WL 3187025 (D. Del. August 12, 2010), at *6-7 (dismissing inducement claim where plaintiff does not "allege sufficient facts that would allow the court to infer that [defendants] had any knowledge" of the patent-in-suit).

Since the Supreme Court's decision in *Iqbal*, Federal Courts have routinely dismissed inducement claims that, like Parallel's claim against Kodak, simply repeat the elements of inducement without any facts specific to the defendant's actions. In *Enlink Geoenergy Services, Inc. v. Jackson & Sons Drilling & Pump, Inc.*, for example, the plaintiff, like Parallel, "merely restate[d] the elements of the infringement causes of action." No. C 09-03524, 2010 WL 1221861, *1-2 (N.D. Cal. Mar. 24, 2010). The Court found that under *Iqbal* and *Twombly*, without any specific factual support, the plaintiff's inducement claim must be dismissed:

Plaintiff's claims for indirect infringement ... are equally conclusory and uninformative. To prevail on an inducement claim, the patentee must establish first that there has been direct infringement, and second that the alleged infringer knowingly induced infringement and possessed specific intent to encourage another's infringement. ***Here, Plaintiff fails to allege any facts to support its inducement causes of action against [Defendant]. Plaintiff's complaint merely repeats the exact language from the statute without adding any factual allegations. Mere conclusory recitations of a statute are not sufficient under Rule 8 to plead a cause of action.*** Therefore, the Court dismisses the inducement claims against [Defendant].

2010 WL 1221861, *2 (internal citations omitted) (emphasis added). The same result is required here.

B. Parallel's Contributory Infringement Claim Against Kodak Should Be Dismissed.

To state a claim for contributory infringement, the plaintiff must allege and provide factual support for three elements: (1) that a third party directly infringed the patent-in-suit using a component supplied by the defendant; (2) that the defendant knew of the patent; and (3) that the component the defendant supplied was “especially designed” for the infringing use. *See Lucent Techs. v. Gateway, Inc.*, 580 F.3d 1301, 1320 (Fed Cir. 2009).

Parallel again utterly fails to meet this standard. Its entire contributory infringement allegation against Kodak is a cut-and-paste of the *exact same conclusory allegations it makes against the more than fifty other defendants in this case*. Parallel merely asserts that Kodak “is and has been committing the act of contributory infringement” by operating a website “knowing that its use was made and adapted for infringement of the ‘111 patent, and further knowing that the system is not a staple article or commodity of commerce suitable for substantially noninfringing use.” (Dkt. No. 1 at ¶¶ 149; 209.) Parallel does not (and can not) make any allegation in its contributory infringement claim that that Kodak knew of the ‘111 patent before this suit was filed, does not state any facts showing that Kodak had this knowledge, and does not provide a single fact suggesting that Kodak specifically designed any product to infringe the ‘111 patent. As a result, Parallel’s claim for contributory infringement should also be dismissed. *See Iqbal*, 127 S.Ct at 1949-50 (“[Courts] are not bound to accept as true a legal conclusion couched as a factual allegation”) (internal quotation and citation omitted); *Clear With Computers LLC v. Bergdorf Goodman, Inc.*, No. 6:09-cv-481, 2010 WL 3155888, at *4 (E.D. Tex. March 29, 2010) (dismissing indirect infringement claims that fail to meet pleading requirements); *In re Bill of*

Lading Transmission and Processing, 695 F.Supp.2d 680, 688-89 (S.D. Ohio 2010) (dismissing contributory infringement claim where plaintiff failed to plead requisite knowledge).

Parallel's attempt to accuse Kodak of contributory infringement is similar to the claim the Court dismissed in *XPoint Techs., Inc. v. Microsoft Corp.* The plaintiff in *XPoint*, like Parallel, merely repeated the elements of contributory infringement without identifying any factual support for its allegations. Applying *Iqbal* and *Twombly*, the Court found that some facts specific to the defendant's actions are required to state a valid claim of contributory infringement:

Plaintiff proffers virtually no specific allegations of indirect infringement against [three defendants] ... [P]laintiff at bar fails to allege sufficient facts that would allow the court to infer that [defendants] had any knowledge of the [patent] at the time they were committing the allegedly infringing activities. ***Instead, it resorts to a mere recitation of the elements for indirect infringement, which is insufficient ... Accordingly, [defendants'] motions to dismiss the indirect infringement claims shall be granted.***

XPoint Techs., Inc., 2010 WL 3187025 at *6 (internal citation omitted) (emphasis added).

Parallel's contributory infringement allegation against Kodak must be dismissed for the same reasons.

C. Parallel's Willful Infringement Claim Against Kodak Should Be Dismissed.

To state a claim of willful infringement, a plaintiff must allege and set forth fact showing that: (1) the defendant was aware of the asserted patent; (2) the defendant acted despite an objectively high likelihood that its actions constituted infringement of the patent; and (3) the defendant knew or should have known of this objective risk. *See i4i Partnership v. Microsoft Corp.*, 598 F.3d 831, 860 (Fed. Cir. 2010) (willful infringement requires evidence that the accused infringer "was aware of the asserted patent, but nonetheless 'acted despite an objectively high likelihood that its actions constituted infringement of a valid patent.'" (quoting *In re*

Seagate Tech. LLC, 497 F.3d 1360, 1371 (Fed. Cir. 2007)). The Federal Circuit has made clear that a plaintiff needs a factual basis for each of these elements before accusing a specific defendant of willful infringement. *See Seagate*, 497 F.3d at 1374 (“When a complaint is filed, a patentee must have a good faith basis for alleging willful infringement”) (citing Fed. R. Civ. Pro. 8, 11(b)); *Realtime Data*, 2010 WL 2403779, at *7 (“In discussing the good faith basis for a willfulness claim, the Federal Circuit specifically requires that a patentee meet the requirements of Federal Rules 8(a) and 11(b) at the time the original complaint is filed”) (citing *Seagate*). Parallel does not come close to meeting this standard.

The entirety of Parallel’s willfulness allegation is a single paragraph parroting the elements of willful infringement and concluding that more than *fifty* defendants—grouped together—willfully infringed. (Dkt. No. 1 at ¶ 305). Parallel does not set forth a single allegation or fact specific to Kodak. It never states that Kodak in particular knew of the ‘111 patent before this suit was filed, never identifies a factual basis to find that Kodak had any such knowledge, never states that Kodak in particular acted despite an objectively high likelihood of infringement, and never provides any facts that would support such a conclusion. Parallel’s blanket allegation against more than *fifty* companies does not state a valid claim of willful infringement against Kodak. *See Twombly*, 550 U.S. at 556 n.3 (“Rule 8(a)(2) still requires a ‘showing,’ rather than a blanket assertion, of entitlement to relief”); *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007) (To survive a Rule 12(b)(6) motion to dismiss, a complaint “must provide the plaintiff’s grounds for entitlement to relief-including factual allegations that when assumed to be true ‘raise a right to relief above the speculative level.’”) (footnote omitted) (quoting *Twombly*, 550 U.S. at 555); *Bell Helicopter Textron Inc. v. American Eurocopter, LLC*, No. 4:09-CV-377-A, 2010 WL 1946336, *8 (N.D.Tex., May 12, 2010) (dismissing willfulness

allegation that included no supporting facts); *Clear With Computers*, 2010 WL 3155888, at *4 (this Court “expects that a [plaintiff] already has sufficient knowledge of facts that it can include in its complaint that would give Defendants sufficient notice of the claims alleged against them”).

III. CONCLUSION

Parallel cannot state claims of induced, contributory, and willful infringement against Kodak by merely repeating the elements of these causes of action. Because Parallel fails to identify a single fact to support its claims of induced, contributory, and willful infringement against Kodak, these claims should be dismissed.

Dated: November 22, 2010

Respectfully submitted,

/s/ David J. Beck

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CERTIFICATE OF SERVICE

I, Michael E. Richardson, hereby certify that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) and served on all counsel who have consented to electronic service pursuant to Local Rule CV-5(a)(3)(A) through the Court's CM/ECF system. Any other counsel of record will be served by first class mail on this date.

Dated: November 22, 2010

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