

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DATAWIDGET, LLC,

Plaintiff,

vs.

THE ROCKET SCIENCE GROUP,
LLC, d/b/a MAILCHIMP,

Defendant.

Case No. 1:20-CV-02961

Honorable Steven D. Grimberg

**PLAINTIFF DATAWIDGET LLC’S RESPONSE
TO DEFENDANT’S MOTION TO DISMISS**

I. INTRODUCTION

The Court should deny Defendant, The Rocket Science Group, LLC’s d/b/a Mailchimp (“Mailchimp”) Motion to Dismiss because Plaintiff DataWidget, LLC has standing to pursue the patent infringement claim asserted in its complaint and because DataWidget’s complaint provides Mailchimp with fair notice of its infringing conduct.

First, DataWidget has standing to maintain its claims. As the complaint states “Joel Brown assigned his rights to the ‘557 Patent to DataWidget.” Complaint, ¶12. Prior to July 2020, DataWidget possessed a limited license under U.S. Patent No. 10,102,557 (“the ‘557 Patent”). On July 9, 2020, the sole named inventor of the ‘557 Patent, Joel Brown, executed an assignment of his rights under the ‘557 Patent to

DataWidget. Accordingly, DataWidget possesses the necessary standing to maintain its claims.¹

Second, DataWidget's complaint contains sufficient allegations to state a patent infringement case against Mailchimp. The system described by the '557 Patent is not so complex that page upon page of detailed factual allegations are necessary to put Mailchimp on notice of its infringing conduct. The complaint, at paragraphs 11-22 describes the '557 Patent. Paragraphs 35-40 describe Mailchimp's infringing conduct based on Plaintiff's understanding of Mailchimp's operations. No more is necessary to survive a motion to dismiss under Rule 12(b)(6).

I. RELEVANT ALLEGATIONS

A. Allegations Addressing Standing

Two paragraphs in the complaint resolve any questions of standing:

Paragraph 11 of the complaint alleges: "The '557 Patent, entitled SYSTEM AND METHOD FOR SELLING CUSTOMER-SPECIFIC DATA SUBSETS ON A THIRD-PARTY WEBSITE USING A WEB WIDGET, was duly and legally issued on October 16, 2018, and names Joel Brown as the inventor."

Paragraph 12 of the complaint alleges: "Joel Brown assigned his rights to the '557 Patent to DataWidget, a company that employs his father, Graham Brown."

¹ The Court should deny Mailchimp's motion to dismiss; but in the alternative, DataWidget requests leave to amend its complaint to clarify allegations concerning DataWidget's rights to the '557 Patent.

To the extent that the Court believes that more detail is necessary, DataWidget includes as an exhibit the Declaration of Graham Brown and the July 9, 2020 Patent Assignment Agreement in which Joel Brown “irrevocably conveys, transfers, and assigns to Assignee [DataWidget], and Assignee hereby accepts, all of Assignor’s [Joel Brown] right, title, and interest in and to the” ’557 Patent.² Exhibit 1 to Declaration of Graham Brown, July 9, 2020 Patent Assignment Agreement. The Declaration of Graham Brown is attached to this Response as Exhibit A.

B. Allegations Sufficient to State a Claim for Patent Infringement

The ’557 Patent describes a system that allows customers to have a streamlined process for purchasing both data, like mailing addresses, and products, like postcards and postage, in a single transaction. Complaint ¶16. One of the primary commercial uses of the ’557 Patent is facilitating direct mail campaigns for advertising purposes. Complaint ¶16. Like any system, ’557 Patent contains several components. First, the system involves an entity that stores data on a server and sells access to that data. Complaint ¶17. Second, the system involves an entity that provides printing services to customers through an e-commerce website. Complaint ¶17. Third, the system involves a “widget” or software application that allows customers to view, extract, and cause data to be downloaded from the data seller and

² The Patent Assignment Agreement refers to Elford, LLC which was DataWidget’s prior name.

that allows the customers to purchase printing services from through an e-commerce vendor and that allows the customer to purchase the printing services and a data subset in a single transaction. Complaint ¶17. A system that embodies the '557 Patent will not necessarily reveal to customers that the customer is querying a third-party's database. Instead, the system streamlines the process for customers by allowing them to view, search, and purchase data using the same interface, and the same website, that it uses to build and purchase products for direct mail campaigns (and other purposes). Complaint ¶¶18-20. A customer using an e-commerce website like Mailchimp's does not necessarily know who is providing the data, who is storing the data, or what particular software is being used to facilitate the exchange of information among the customer, data seller, and e-commerce vendor. The customer only has access to the interface; it cannot access the "back end" that reveals the e-commerce vendor's code or its business relationships. One of the major benefits of the '557 Patent is that the acquisition of data via a third party is transparent to the customer.

The four major sections of DataWidget's complaint: 1) describe the '557 Patent; 2) describe the conduct of certain 3rd parties that in some circumstances facilitate infringement of the '557 Patent; and 3) describe Mailchimp's infringing conduct; and 4) describe notice that Mailchimp received of its infringing conduct.

First, paragraphs 11-22 describe the '557 Patent, which is attached as an exhibit to the complaint. Mailchimp does not challenge DataWidget's description of the '557 Patent.

Second, paragraphs 23-34 describe the way in which third parties, such as USAData, Compact, Accudata, and Mailers Haven aid direct infringers, like Mailchimp, in their infringement of the '557 Patent. These third parties: 1) sell data to customers through e-commerce vendors in a manner that infringes upon the '557 Patent; and/or 2) give e-commerce vendors access to the software widget that facilitates the system of information exchange described in and protected by the '557 Patent. Complaint ¶¶23-24, 27-28, 30-34.

Third, paragraphs 35-40 contain allegations describing Mailchimp's infringing conduct. DataWidget alleges that Mailchimp operates an e-commerce site that offers printing and direct-mail services. Complaint ¶35. DataWidget alleges that Mailchimp partners with data sellers to provide data for customers to view, query and purchase. Complaint ¶36. DataWidget alleges that Mailchimp either built or integrated a software widget into its website that allows customers to view, extract, and cause data to be downloaded from the data seller and that allows the customers to purchase printing services from through an e-commerce vendor and that allows the customer to purchase the printing services and a data subset in a single transaction. Complaint ¶37-39. DataWidget further alleges that Mailchimp's use of,

and sale of access to, a system that replicates the protected features of the '557 Patent constitutes direct infringement of the '557 Patent.

Fourth, paragraphs 41-43 allege that Mailchimp was provided notice of the '557 Patent, was requested to participate in DataWidget's investigation of potential infringement by Mailchimp, and declined to cooperate in DataWidget's pre-suit investigation.

II. LEGAL STANDARD

A. Standard for Dismissal for Lack of Standing under Rule 12(b)(1)

The burden on a plaintiff to demonstrate standing depends on the stage of litigation when standing has been challenged and thus the burden is at its lowest on a motion to dismiss for lack of standing. *Fair Fight Action, Inc. v. Raffensperger*, 413 F. Supp. 3d 1251, 1264 (N.D. Ga. 2019) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). When presented with a motion to dismiss for an alleged lack of standing, courts look to see if the plaintiff has pled “sufficient...general factual allegations.” *Taylor v. Polhill*, 964 F.3d 975, 980 (11th Cir. 2020) (quoting *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 975 (11th Cir. 2005)) (internal quotation marks omitted). General allegations are presumed to “embrace those specific facts that are necessary to support the claim” at issue. *Wilding v. DNC Servs. Corp.*, 941 F.3d 1116, 1124 (11th Cir. 2019) (quoting *Bennett v. Spear*, 520 U.S. 154, 168 (1997)). Furthermore, a court must take as true all facts pled. *Corbett v.*

Transportation Sec. Admin., 930 F.3d 1225, 1228 (11th Cir. 2019) (citations omitted). In sum, courts are to take a holistic approach to evaluating standing and even consider “‘facts beyond the four corners’ of the pleading that are relevant to the question of standing.” *Id.* (quoting *Cone Corp. v. Fla. Dep’t of Transp.*, 921 F.2d 1190, 1206 n.50 (11th Cir. 1991)).

B. Standard for Dismissal of Patent Infringement Claims under Rule 12(b)(6)

To satisfy Rule 8(a)(2), a complaint must include only a “short and plain statement of the claim showing that the pleader is entitled to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). This same standard applies in cases of direct patent infringement. *WhereverTV, Inc. v. Comcast Cable Commc’ns, LLC*, No. 2:18-CV-529-FTM-99CM, 2019 WL 718576, at *2 (M.D. Fla. Feb. 20, 2019) (citing *Nalco v. Chem-Mod, LLC*, 883 F.3d 1337, 1347-48 (Fed Cir. 2018)).

When evaluating the sufficiency of a complaint on a motion to dismiss, all facts pled in the complaint are assumed to be true, and all allegations are to be viewed in the light most favorable to the plaintiff. *Express Franchise Servs., L.P. v. Impact Outsourcing Sols., Inc.*, 244 F. Supp. 3d 1368, 1374 (N.D. Ga. 2017) (citing *Powell v. Thomas*, 643 F.3d 1300, 1302 (11th Cir. 2011)); *see also Dell, Inc. v. This Old Store, Inc.*, No. CIV.A. H-07-0561, 2007 WL 2903845, at *2 (S.D. Tex. Oct. 3, 2007) (citing *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)) (“The complaint must be liberally construed in favor of the plaintiff and all well-pleaded facts taken as true.”).

To rule on a 12(b)(6) motion, courts conduct a two-step review. The first step is for the court to “(1) eliminate any allegations in the pleading that are merely legal conclusions, and (2) where there are well-pleaded factual allegations, ‘assume their veracity and ... determine whether they plausibly give rise to an entitlement to relief.’” *Express Franchise Servs., L.P.*, 244 F. Supp. 3d at 1374 (quoting *Iqbal*, 556 U.S. at 679, 129 S. Ct. at 1950). For a plaintiff to successfully plead a claim for direct infringement, its “complaint must include five factual assertions: (1) ownership of the patent; (2) name of each defendant; (3) cite the patent allegedly infringed; (4) state how the defendant allegedly infringes; and (5) point to the sections of the patent law invoked.” *Advanced Screenworks, LLC v. Mosher*, No. 219CV758FTM29MRM, 2020 WL 1188468, at *3 (M.D. Fla. Mar. 12, 2020) (citing *WhereverTV, Inc.*, 2019 WL 718576 at *3).

III. ARGUMENT

A. DataWidget has standing to maintain its claim against Mailchimp.

As Mailchimp recognizes, “where the patent owner transfers all substantial rights in a patent to an assignee,” the assignee has standing to maintain a patent infringement case. Mailchimp Br. at p. 5 (citing *Go Med. Indus. Pty., Ltd. v. C.R. Bard, Inc.*, No. 1:93-cv-1538-HTW, 1995 U.S. Dist. LEXIS 22200, at *11 (N.D. Ga. Aug. 28, 1995)). Paragraph 12 of DataWidget’s complaint alleges that “Joel Brown assigned his rights to the ‘557 Patent to DataWidget.” Given the liberal pleading

standards of Rule 8 and the strict standard for dismissal under Rule 12, this allegation alone requires denial of Mailchimp's motion.

However, to avoid any doubt, DataWidget includes as an exhibit to its response, the July 9, 2020 Patent Assignment Agreement that spells out exactly what rights Mr. Joel Brown transferred to DataWidget. Ex. 1 to Declaration of Graham Brown. That agreement states that Joel Brown "irrevocably conveys, transfers, and assigns to Assignee [DataWidget], and Assignee hereby accepts, all of Assignor's [Joel Brown] right, title, and interest in and to the" '557 Patent. DataWidget possesses "all substantial rights" to the '557 Patent and it has standing to pursue and maintain this action. *See* Mailchimp Br. at p. 5-6 (quoting *Alfred E. Mann Found. for Sci. Research v. Cochlear Corp.*, 604 F.3d 1354, 1359–60 (Fed. Cir. 2010)).

B. DataWidget's Complaint Sufficiently Alleges Mailchimp's Infringing Conduct.

DataWidget's complaint alleges sufficient facts to state a claim for direct patent infringement. At a minimum, Mailchimp's conduct through the direct mail/printing services offered through its website infringes on the first claim of the '557 Patent.

A complaint for direct patent infringement needs only to allege: (1) ownership of the patent; (2) name of each defendant; (3) cite the patent allegedly infringed; (4)

state how the defendant allegedly infringes; and (5) point to the sections of the patent law invoked.” Mosher, No. 219CV758FTM29MRM, 2020 WL 1188468, at *3.

DataWidget alleges rights consistent with ownership due to Joel Brown’s assignment to DataWidget. Complaint ¶12. DataWidget names Mailchimp. Complaint ¶3. DataWidget cites the ’557 Patent. Complaint ¶2. DataWidget describes its understanding of the system Mailchimp uses to provide web-to-print services to customers in a manner that infringes the ’557 Patent. Complaint ¶¶ 35-40. DataWidget cites the relevant sections of the patent law invoked. Complaint ¶¶ 1, 53, “WHEREFORE” clauses.

Mailchimp’s only serious challenge is to the fourth element stated above, whether DataWidget states how Mailchimp infringes. *See* Mailchimp Br. at pp. 10-19. Mailchimp boasts that it refused to participate in DataWidget’s pre-suit investigation and then erroneously focuses on DataWidget’s lack of knowledge concerning the specific software widget and data vendor(s) that Mailchimp uses. *See* Mailchimp Br. at p. 13. But neither of these facts are relevant to the Court’s analysis. DataWidget is not required to allege specific software Mailchimp uses – nor could DataWidget do so since it cannot access Mailchimp’s servers without Mailchimp’s permission or a court order. Mailchimp does not seem to understand that the software widget is only a component of the system that ’557 Patent embodies. DataWidget is not required to include a copy of the relevant software code with its complaint; it is

sufficient for DataWidget to allege that the software performs the same functions as the data extraction widget described in the independent claim of the '557 Patent. DataWidget does so in Paragraph 38.

As the analysis from another court in this circuit demonstrates, allegations of direct patent infringement need not be voluminous or pled in excruciating detail:

The following five elements are sufficient to state a claim for direct infringement, consistent with Form 18's example of a patent complaint: (1) ownership of the patent, (2) the infringer's name, (3) a citation to the infringed patent, (4) the infringing activity, and (5) citations to federal patent law. *See Phonometrics, Inc. v. Hospitality Franchise Sys., Inc.*, 203 F.3d 790, 794 (Fed. Cir. 2000). The Complaint alleges that Plaintiff is the owner of the Hawk Patent, which is identified by its full U.S. Patent Number. The Complaint further identifies each defendant and alleges that they intentionally infringed by marketing the patented technology and offering it for sale, and by soliciting investments in the Defendant Companies to promote the technology. Finally, the Complaint cites federal patent law. These allegations are sufficient.³

Spanakos v. Aronson, No. 17-80965-CV, 2018 WL 2392011, at *3 (S.D. Fla. Apr. 3, 2018)

As Mailchimp recognizes, DataWidget's obligation is only to "put defendants on notice of what the defendants have done to infringe the patent in question." Mailchimp Br. at p. 14 (quoting *Ware v. Circuit City Stores, Inc.*, No. CIV 4:05-CV-0156-RL, 2010 WL 767094, at *2 (N.D. Ga. Jan. 5, 2010)). DataWidget alleges

³ While Form 18 is no longer in use, the pleading standard laid out in that form is still applied frequently.

that Mailchimp operates a website that “allows customers to use its website to search a data seller’s database using their existing customers to formulate a model of preferred geographic and demographic characteristics, purchase data, and order printing services and charges customers for those products and services.” Complaint ¶39. This allegation plainly puts Mailchimp on notice as to what conduct infringes the ’557 Patent. DataWidget also alleges its understanding of the system that Mailchimp uses to offer these services to its customers in Paragraphs 35-38. Yes, DataWidget alleges those paragraphs “upon information and belief;” but these allegations are not speculative. They are based on Plaintiff’s deep experience in the data and web-to-print industries and its belief of what happens “behind the scenes” in order for Mailchimp to offer the services it does in the manner that it does. DataWidget had no access to Mailchimp’s technical documents, software code, or server logs prior to filing its complaint, so it makes sense that some allegations would be made upon information and belief. The same is true for allegations concerning what entity sells data to Mailchimp. *See* Complaint ¶37. While DataWidget does not know who is the data seller, the identity of the data seller is not relevant to potential patent infringement.

Mailchimp’s misapprehension of the ’557 Patent is best demonstrated by this sentence found near the end of its brief “In short, Mailchimp is unaware of what software is actually at issue in this case, or what vendors may have supplied that

software.” Mailchimp Br. at p. 18. Neither the identity of the software nor the identity of the vendor that supplied the software are relevant to whether Mailchimp infringes the ’557 Patent. It is enough that Mailchimp has a relationship with any third-party data seller provided that the exchange of information among the data seller, Mailchimp, and customer is configured in a manner that infringes upon the ’557 Patent. Because DataWidget alleges these facts, Mailchimp’s motion must be denied.

IV. CONCLUSION

For these reasons DataWidget, LLC respectfully requests that the Court deny The Rocket Science Group, LLC’s Motion to Dismiss.

This the 13th day of October 2020.

Respectfully submitted,

HUFF, POWELL & BAILEY, LLC

/s/ Max M. Wallace II

DANIEL J. HUFF
Ga. Bar No. 374860
Max M. Wallace II
Ga. Bar No. 808564

Counsel for Data Widget, LLC

999 Peachtree Street, NE
Suite 950
Atlanta, Georgia 30309
(404) 892-4022
(404) 892-4033 (Fax)
dhuff@huffpowellbailey.com
mwallace@huffpowellbailey.com

Admitted Pro Hac Vice

Koley Jessen P.C., L.L.O.

Gregory C. Scaglione, # 19368

Andrew S. Tugan, # 26917

One Pacific Place, Suite 800
1125 South 103rd Street
Omaha, NE 68124-1079
(402) 390-9500
(402) 390-9005 (facsimile)
Greg.scaglione@koleyjessen.com
Andrew.tugan@koleyjessen.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing COMPLAINT FOR PATENT INFRINGEMENT with the Clerk of Court using the CM/EMF system in Times New Roman 14-point font.

This the 13th day of October 2020.

HUFF, POWELL & BAILEY, LLC

/s/ Max M. Wallace II

Daniel J. Huff

Ga. Bar No. 374860

Max M. Wallace II

Ga. Bar No. 808564

Counsel for DataWidget, LLC

999 Peachtree Street, NE
Suite 950
Atlanta, Georgia 30309
(404) 892-4022
(404) 892-4033 (Fax)