

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. CV11-09373 RGK (RZx) Date February 21, 2012

Title K TECH TELECOMMUNICATIONS, INC. v. TIME WARNER CABLE, INC.

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Sharon L. Williams

Not Reported

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings: (IN CHAMBERS) Order Re: Defendant's Motion to Dismiss or for a More Definite Statement (DE 4)**

**I. INTRODUCTION**

On November 9, 2011, K Tech Telecommunications, Inc. ("Plaintiff") filed an action for direct patent infringement against Time Warner Cable, Inc. ("Defendant") under 35 U.S.C. § 271(a). On the same day, Plaintiff filed a similar action against DirecTV in which DirecTV subsequently filed a Motion to Dismiss Plaintiff's Complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(6), or in the alternative for a More Definite Statement pursuant to Rule 12(e). On January 5, 2012, Defendant also moved to Dismiss Plaintiff's Complaint for failure to state a claim or in the alternative for a More Definite Statement.

In light of the fact that the grounds for Defendant's Motion are nearly identical to the grounds for DirecTV's Motion in the related case, Plaintiff requested that Defendant consolidate its briefing with DirecTV. Accordingly, Defendant incorporated and adopted the Memorandum of Points and Authorities in Support of DirecTV's Motion to Dismiss or for a More Definite Statement filed on January 5, 2012, in *K Tech Telecommunications, Inc. v. DirecTV*, Case No. CV 11-09370 RGK. For the following reasons, the Court **GRANTS** Defendant's Motion to Dismiss with leave to amend.<sup>1</sup>

**II. FACTUAL BACKGROUND**

The following facts are taken from Plaintiff's Complaint and are construed in the light most favorable to Plaintiff.

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<sup>1</sup>Because the Court grants Defendant's Motion to Dismiss with leave to amend, the Court need not address Defendant's alternative Motion for a More Definite Statement.

Plaintiff owns U.S. Patent Nos. 6,785,903 (“the ‘903 patent”), 7,481,533 (“the ‘533 patent”), 7,761,893 (“the ‘893 patent”), and 7,984,469 (“the ‘469 patent”) (collectively, “Asserted Patents”). The Asserted Patents, entitled “Digital Television Translator with PSIP Update,” describe particular ways of updating certain channel information associated with certain digital television signals.

According to Plaintiff, full-power television stations identify individual television programs carried by a digital television signal transmitted over the air using a major channel number, a minor channel number, and/or a carrier frequency. Plaintiff’s patents explain that when a television translator facility receives a broadcast, translates it to a new frequency, and rebroadcasts it, so-called Program and System Information (“PSIP”) data associated with the transmission, including channel number and carrier frequency, might not be updated. Plaintiff’s patented inventions enable a television translator facility to update the PSIP table with proper channel and carrier frequency information.

### **III. JUDICIAL STANDARD**

Under Federal Rule of Civil Procedure (“Rule”) 12(b)(6), a complaint may be dismissed when the plaintiff’s allegations fail to state a claim upon which relief can be granted. When considering a Rule 12(b)(6) motion, a court must accept all of the factual allegations in the complaint as true. *Barker v. Riverside Cnty. Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009). A pleading must contain sufficient factual matter that, if accepted as true, states a claim that is plausible on its face. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). A claim is facially plausible when there are sufficient factual allegations to draw a “reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “[A] well-pleaded complaint may proceed even if it appears that a recovery is very remote and unlikely.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (internal quotation marks omitted) (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

The standard set forth in *Twombly* “governs the pleading standard in *all civil actions and proceedings* in the United States district courts.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1953 (internal quotations omitted) (emphasis added). Therefore, this Court applies the pleading standard set forth in *Twombly* and *Iqbal* to all civil cases, including those for patent infringement.

A court must grant a Plaintiff leave to amend unless it is clear that the complaint's deficiencies cannot be cured by amendment. *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). When amendment would be futile, dismissal may be ordered with prejudice. *Dumas v. Kipp*, 90 F.3d 386, 393 (9th Cir. 1996).

### **IV. DISCUSSION**

#### **A. Plaintiff Fails to Adequately State Claims for Direct Infringement**

Defendant argues that Plaintiff’s Complaint does not include sufficient factual detail to state a facially plausible claim for relief and therefore does not meet the requirements of Rule 8. The Court agrees.

35 U.S.C. § 271(a) provides that “whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.” In this case, Plaintiff alleges that “[Defendant]. . . is infringing [the Asserted Patents] by making, selling, and offering to sell, in this judicial district, systems and methods for modifying a major channel number, a minor channel number, and/or a carrier frequency to identify a television program . . . .” (Compl. ¶ 1.) To support this contention, Plaintiff alleges that “[i]n order to broadcast programs in a cable or satellite system, television broadcast stations, such as [Defendant], must identify television programs with a channel

number so that users can select the programs.” (Compl. ¶ 7.)

Based solely on this evidence and without any additional factual allegations, Plaintiff seems to suggest that Defendant must operate some product or process in a manner that infringes some of the Asserted Patents, because Defendant is able to achieve the same end-result as that contemplated by the Asserted Patents. Although Plaintiff strongly believes that Defendant “must” be infringing the Asserted Patents, Plaintiff fails to explain the basis of this belief. Plaintiff does not explain why it believes that Defendant is utilizing the methods and products protected by the Asserted Patents to update the digital signals it receives, rather than using other non-infringing methods and products.

Plaintiff may be able to obtain more specific information regarding Defendant’s technology through discovery. However, as the Supreme Court has explained, “Rule 8 . . . does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.” *Iqbal*, 129 S. Ct. at 1950.

In light of the foregoing, the Court finds that Plaintiff states purely conclusory allegations, which are insufficient state a plausible claim for relief. *See Iqbal*, 129 S. Ct. at 1949. Therefore, Plaintiff fails to adequately allege a claim for direct infringement.

**B. The Court is Limited to Basing Its 12(b)(6) Determination on the Facts Alleged in the Complaint**

In its Opposition to Plaintiff’s Motion to Dismiss, Plaintiff offers a declaration by its counsel and some experimentation he conducted to cure the deficiencies of Plaintiff’s Complaint. However, the Court is limited to ruling on Defendant’s 12(b)(6) Motion based on the facts alleged in the Complaint, and thus may not consider declarations and exhibits filed with Plaintiff’s Opposition to Defendant’s Motion to Dismiss. *See Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1141 n.5 (9th Cir. 2003) (“a court must generally refrain from considering extrinsic evidence in deciding a 12(b)(6) motion”).

**V. CONCLUSION**

For the foregoing reasons, the Court **GRANTS** Defendants’ Motions to Dismiss. If Plaintiff intends to file a First Amended Complaint, it must do so by noon on March 1, 2012.

**IT IS SO ORDERED.**

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Preparer slw  
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