

Whitney in Law360: Patentees Still Face Low Bar for Alleging Infringement

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In *Lifetime Industries Inc. v. Trim-Lok Inc.*, No. 2017-1096, 2017 U.S. App. LEXIS 17257 (Fed. Cir. Sept. 7, 2017), the Federal Circuit reviewed a district court's dismissal of a patent infringement suit under Rule 12(b)(6) for failing to adequately plead direct or indirect infringement. Applying the *Iqbal/Twombly* standard to the claims, the Federal Circuit reversed the dismissal, concluding that the allegations — largely based on one assembly of an infringing combination and the defendant's knowledge of the patent — supported claims of both direct and indirect infringement. The decision shows that even without the benefit of form pleading, sufficiently alleging infringement under *Iqbal/Twombly* remains a relatively low hurdle that most patentees will be able to satisfy.

The Plaintiff's Infringement Allegations

Lifetime Industries owns U.S. Patent 6,966,590 ("the '590 patent"), which issued in 2005 and "generally describe[d] a two-part seal for use in a mobile living quarters (also referred to as a 'recreational vehicle' or 'RV') with a slide-out room." ...

According to the complaint (technically the second amended complaint after amendments), two of Lifetime Industries' engineers left the company in the first half of 2013. The engineers both allegedly knew of the '590 patent, as well as of Lifetime Industries' products covered by the '590 patent, and each engineer subsequently began working for Trim-Lok within one month of leaving Lifetime Industries.

Lifetime Industries asserted that "Trim-Lok [started], for the first time, ... offering for sale a two-part seal for an RV with a slide-out room in June 2013, soon after [the two engineers] began working for Trim-Lok." Specifically, Lifetime Industries alleged that its representative "discovered a two-part Trim-Lok seal installed on an RV with a slide-out room at a plant run by" a third-party RV manufacturer.

Based on this discovery, Lifetime Industries sued Trim-Lok in 2013 for both direct and indirect infringement of the '590 patent. The complaint asserted that "[a]t least one representative, agent, or employee of" Trim-Lok visited the third-party manufacturer's RV plant "on behalf of" Trim-Lok and "directly installed" Trim-Lok's two-part seal onto an RV to create an infringing combination. The complaint further alleged that Trim-Lok "influenced" the third-party RV manufacturer to include a two-part seal on RVs "knowing that such combination would fulfill all elements of at least one claim of the '590 patent," and that Trim-Lok's agents "assisted in the installation, [or] directed the installation" of the seals. Lifetime Industries additionally asserted that "the two-part seal sold by Trim-Lok had only one purpose — for use on RVs with slide-out rooms" and that "Trim-Lok assisted in or directed the installation of the seal on an RV."

The district court dismissed these allegations as inadequate to support any patent infringement claim. According to the district court, the allegations failed to state a direct infringement count "because the ['590 patent's] claims require both a two-part seal and an RV, and Trim-Lok only

manufactures seals.” For indirect infringement, the district court concluded that Lifetime Industries had alleged no “facts from which intent [to infringe] could be inferred in this case.” The district court therefore dismissed all of Lifetime Industries’ infringement claims. ...

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