



## EDVA Dismisses Patent Infringement Complaint and Counterclaim Sua Sponte for failure to comply with Twombly/Iqbal

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This week, Judge Payne of the Eastern District of Virginia, Richmond Division, dismissed a patent complaint, and counterclaims, *sua sponte*, for both parties' failure to meet the requirements of Twombly and Iqbal. Pro se Plaintiffs Saied and Bijan Tadayon filed suit against Execubus, Inc., asserting infringement of US Patent No. 7,031,657. The complaint identifies the following accused products: "systems that come within the scope of multiple claims, including (but not limited to) claims 1, 2, 3, 4, 9, 11, 16, 17, 19, 24, and 25 of the '657 Patent," and "Upon information and belief, such systems include, but may not be limited to, the Vamoose's Wi-Fi services/systems which provide Wi-Fi (wireless zone) within its buses, while providing data transmission." The counterclaims state (1) for noninfringement simply that Exeubus has not infringed, and (2) for invalidity that "[t]he '657 Patent fails to meet the requirements for patentability set forth in 35 U.S.C. § 101, 102, 103, and 112."

After the counterclaims were filed, but without any motion to dismiss from either party, the Court *sua sponte* dismissed both the complaint and the counterclaims, with leave to refile a "proper Complaint and a proper Counterclaim that satisfy the pleading requirements set forth in Twombly and Iqbal" as follows:

[T]he Amended Complaint shall set forth, without using terms such as "including (but not limited to)" or "include, but may not be limited to," all aspects of each claim that is alleged to be infringed, claim by claim, and identifying the infringing product (by product by product [sic], by claim) and describe how the infringing product is alleged to offend; and shall not use conclusory language.

If a counterclaim is filed, it shall not use conclusory language and shall comply with the

requirements of Twombly and Iqbal with respect to its assertions.

The decision, albeit without much in the way of detailed analysis, is noteworthy for at least three reasons. First, it was issued without a motion to dismiss by either party. Second, it prevents the plaintiff from using catchall language such as "including but not limited to" in its identification of the accused products. And third, and perhaps most importantly, it requires the plaintiff to provide a fair amount of detail in its amended complaint. I am unaware of any prior decision in this district requiring *in the Complaint* an identification of each claim asserted, all aspects of each claim alleged to be infringed, and a description of how the infringing product is alleged to infringe, by product, for each claim.

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