

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DISPLEIGH, LLC,

Plaintiff,

v.

SAMSUNG ELECTRONICS AMERICA,
INC., *et al.*,

Defendants.

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Civil Action No. 3:11-CV-2977-N

ORDER

This Order addresses Defendant Samsung Electronics America, Inc. and Samsung Telecommunications America, LLC’s (collectively, “Samsung”) motion to dismiss [18]. Samsung primarily complains that Plaintiff Displeigh, LLC does not identify specific Samsung products that allegedly infringe Displeigh’s patent but refers categorically to “devices . . . that operate as picture frames configured to electronically display digital images, including at least Samsung’s touchscreen interface smartphones and tablets.” Complaint ¶ 7. This language falls in a bit of a gray area. The Court agrees with Samsung that in the era of *Twombly*¹ and *Iqbal*,² simply alleging that a defendant makes unspecified products that infringe plaintiff’s patent would be “a formulaic recitation of the elements of a cause of action [that] will not do.” *Twombly*, 550 U.S. at 555. On the other hand, the Court

¹*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

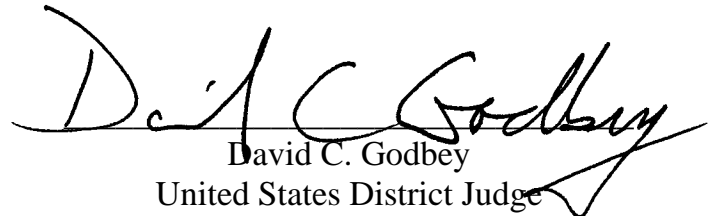
²*Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009).

does not agree with Samsung that a patent plaintiff must identify every claimed infringing product by model number at the inception of litigation. The Court believes that identifying Samsung's touchscreen interface smartphones and tablets gives Samsung sufficient notice of Displeigh's claims. In any event, Displeigh must disclose the specific models it contends infringe in due course under Miscellaneous Order 62 ¶ 3-1(a)(2). Accordingly, the Court denies Samsung's motion to dismiss Displeigh's claim for direct infringement.

The Court notes that the actual language of Displeigh's complaint is broader: "devices . . . , *including at least* Samsung's touchscreen interface smartphones and tablets." Linguistically, this wording leaves open the possibility that Displeigh complains that Samsung products other than smartphone and tablets also infringe its patent. Because this language fails to give Samsung notice of a claim of infringement by any devices other than Samsung's touchscreen interface smartphones and tablets, the Court will construe "including at least" to mean "specifically."

Finally, Samsung moves to dismiss Displeigh's claim for indirect infringement, pointing to language in the Complaint's Prayer for Relief. Displeigh clarifies in its response to the motion that it asserts only a claim for direct infringement. Accordingly, the Court strikes the language "and/or indirectly, by way of inducing and/or contributing to the infringement of" from paragraph 1 of the Prayer for Relief.

Signed May 8, 2012.


David C. Godbey
United States District Judge