IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ETISON LLC d/b/a CLICKFUNNELS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 24-502 (JCB)
	)	
HIGHLEVEL, INC.	)	
	)	
Defendant.	)	
	)	

PLAINTIFF ETISON LLC D/B/A CLICKFUNNELS'
NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff Etison LLC d/b/a ClickFunnels hereby provides a copy of *Glanta Ltd. v. Soapy Care Ltd.*, No. 24-365-RGA, 2025 WL 219971 (D. Del. Jan. 16, 2025), the decision that ClickFunnels' counsel referred to as "Judge Andrews' decision from last week" (or words to that effect) during the hearing on January 24, 2025.

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January 27, 2025

EXHIBIT 1

2025 WL 219971
Only the Westlaw citation is currently available.
United States District Court, D. Delaware.

GLANTA LIMITED, Plaintiff,
v.
SOAPY CARE LTD., and SOAPY USA INC., Defendants.

Civil Action No. 24-00365-RGA
|
Filed 01/16/2025

Attorneys and Law Firms

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James Harry Stone Levine, TROUTMAN PEPPER LOCKE LLP, Wilmington, DE, Attorney for Defendants.

MEMORANDUM OPINION

ANDREWS, U.S. DISTRICT JUDGE:

***1** Before me is Defendants' motion to dismiss Plaintiff's complaint for failure to state a claim. (D.I. 11). 1 have reviewed the parties' briefing and Plaintiff's notice of supplemental authority. (D.I. 12, 13, 16, 18). For the reasons set forth below, Defendants' motion is GRANTED as to claims 1 and 7 and DENIED without prejudice as all other claims.

I. BACKGROUND

Plaintiff Glanta brought this suit against Defendants Soapy Care and Soapy USA (collectively "Soapy"). Glanta asserts patent infringement of "at least" claims 1 and 7 of U.S. Patent No. 8,090,155 ("the '155 patent"). (D.I. 1 at 3–4). Soapy moves to dismiss Glanta's complaint (*Id.*), arguing the asserted claims of the '155 patent are invalid for lack of patentable subject matter under 35 U.S.C. § 101. (D.I. 12 at 1).

Glanta "develop[s] and market[s] hand washing monitoring technology under the 'SureWash' brand." (D.I. 1 ¶ 1). The USPTO issued the '155 patent in January 2012. (*Id.* ¶ 8; '155 patent). It appears to have a priority date of 2006. (D.I. 13 at 3). The '155 patent, titled "Hand Washing Monitoring System," is directed to a system that provides "hygiene training using cameras to give feedback on hand hygiene technique." (D.I. 1 ¶ 9). Glanta is the assignee of all right, title, and interest in the '155 patent. (*Id.* ¶ 8).

Soapy devotes roughly four pages of its briefing to its representative claim analysis. (D.I. 12 at 6–8; D.I. 16 at 2–3). Soapy asserts that claim 1, the only independent claim, is representative because all thirty-seven claims are "directed to the same basic process" and abstract idea: "analyzing and generating a response to hand washing motion." (D.I. 12 at 6, 7). Soapy

argues that the dependent claims "merely add insignificant limitations," such as "generic components" and "generic image processing." (*Id.* at 7). Glanta denies that claim 1 is representative. (D.I. 13 at 8). Glanta argues the dependent claims add "pioneering improvements" that are not "generic." (*Id.*). Glanta argues that the algorithms and programming of the system, specified in some of the dependent claims, allow it to analyze hand washing movements in a more comprehensive way than existed in the prior art at the time. (*Id.* at 8, 10–11; *see* '155 patent at 2:1–5).

"Courts may treat a claim as representative ... if the patentee does not present any meaningful argument for the distinctive significance of any claim limitations not found in the representative claim[.]" *Mobile Acuity Ltd. v. Blippar Ltd.*, 110 F.4th 1280, 1290 (Fed. Cir. 2024) (quoting *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365 (Fed. Cir. 2018)). "The patent challenger who identifies a claim as representative of a group of claims bears the initial burden to make a prima facie showing that a group of claims are substantially similar and linked to the same ineligible concept." *Id.* (internal citation omitted). "Once this occurs, the burden shifts to the patent owner to present non-frivolous arguments as to why the eligibility of the identified representative claim cannot fairly be treated as decisive of the eligibility of all claims in the group." *Id.*

***2** Certain limitations present in the dependent claims, such as being "battery powered" (claim 5) or being contained within a "soap dispensing unit" (claim 7), do appear merely to add generic components. ('155 patent at 13:66–67, 14:5–6). But Glanta provides a non-frivolous argument as to why claim 1 should not be treated as representative for all claims and I am not convinced that Soapy met its burden to prove otherwise. Therefore, I will limit analysis to the two clearly-asserted claims: claim 1 and claim 7. Claim 1 is clearly representative of claim 7.

Claim 1 states:

> 1. A hand washing monitoring system comprising a camera, a processor, the processor being adapted to receive from the camera images of hand washing activity, characterized in that, the processor is adapted to:
>
> analyse mutual motion of hands to determine if the hands mutually move in desired poses, and if so, the durations of the patterns; and
>
> generate a hand washing quality indication according to the analysis.

('155 patent at 13:48–56).

Claim 7 states:

> 7. A soap dispensing unit comprising a monitoring system as claimed in claim 1. ('155 patent at 14:5–6).

II. LEGAL STANDARD

A. Motion to Dismiss

The Federal Rules require a complainant to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The Rules allow the accused party to bring a motion to dismiss the claim for failing to meet this standard. Fed. R. Civ. P 12(b)(6). A Rule 12(b)(6) motion may be granted only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the complainant, a court concludes that those allegations "could not raise a claim of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

"Though 'detailed factual allegations' are not required, a complaint must do more than simply provide 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action.' " *Davis v. Abington Mem'l Hosp.*, 765 F.3d 236, 241 (3d Cir. 2014) (quoting *Twombly*, 550 U.S. at 555). I am "not required to credit bald assertions or legal conclusions improperly alleged in the complaint." *In re Rockefeller Ctr. Props., Inc. Sec. Litig.*, 311 F.3d 198, 216 (3d Cir. 2002). A complaint may not be dismissed, however, "for imperfect statement of the legal theory supporting the claim asserted." *Johnson v. City of Shelby*, 574 U.S. 10, 11 (2014).

A complainant must plead facts sufficient to show that a claim has "substantive plausibility." *Id.* at 12. That plausibility must be found on the face of the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Deciding whether a claim is plausible is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679.

B. Patent-Eligible Subject Matter

***3** Patentability under 35 U.S.C. § 101 is a threshold legal issue. *Bilski v. Kappos*, 561 U.S. 593, 602 (2010). Accordingly, the § 101 inquiry is properly raised at the pleading stage if it is apparent from the face of the patent that the asserted claims are not directed to eligible subject matter. *See Cleveland Clinic Found. v. True Health Diagnostics LLC*, 859 F.3d 1352, 1360 (Fed. Cir. 2017). "[P]atent eligibility can be determined at the 12(b)(6) stage without the aid of expert testimony." *Yu v. Apple Inc.*, 1 F.4th 1040, 1046 (Fed. Cir. 2021). The inquiry is appropriate at this stage "only when there are no factual allegations that, taken as true, prevent resolving the eligibility question as a matter of law." *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1125 (Fed. Cir. 2018).

Section 101 of the Patent Act defines patent-eligible subject matter. It provides: "Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." 35 U.S.C. § 101. The Supreme Court recognizes three categories of subject matter that are not eligible for patents—laws of nature, natural phenomena, and abstract ideas. *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014). The purpose of these exceptions is to protect the "basic tools of scientific and technological work." *Mayo Collaborative Servs. v. Prometheus Lab'ys, Inc.*, 566 U.S. 66, 71 (2012) (internal citation omitted). "Method[s] of organizing human activity," "analyzing information by steps people go through in their minds," and mathematical algorithms have been recognized as categories of abstract ideas. *Alice*, 573 U.S. at 220, 222; *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016).

In *Alice*, the Supreme Court reaffirmed the framework laid out in *Mayo* "for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice*, 573 U.S. at 217. The framework is a two-step process. *Id.*

At step one, I must decide whether the claims are drawn to a patent-ineligible concept. *Id.* I determine whether the "focus" of the claims is "a specific means or method that improves the relevant technology" or rather is "directed to a result or effect that itself is the abstract idea." *Contour IP Holding LLC v. GoPro, Inc.*, 113 F.4th 1373, 1379 (Fed. Cir. 2024) (internal citation omitted) (citing *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016)); *see Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016). At this step, "the claims are considered in their entirety to ascertain whether their character as a whole is directed to excluded subject matter." *McRO*, 837 F.3d at 1312 (quoting *Internet Pats. Corp. v. Active Network Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). If the claims are not directed to, or focused on, a patent-ineligible concept, then the inquiry ends, and the claims are not ineligible under § 101. *Id.* If the claims are directed to a patent-ineligible concept, I proceed to step two. *Id.*

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