

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

AMIT AGARWAL,

Plaintiff,

v.

Case No. 8:16-cv-2641-T-33JSS

TOPGOLF INTERNATIONAL, INC.,

Defendant.

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ORDER

This matter comes before the Court pursuant to Defendant Topgolf International, Inc.'s Motion to Dismiss, filed on November 7, 2016. (Doc. # 27). Plaintiff Amit Agarwal filed a response in opposition on November 11, 2016. (Doc. # 28). For the reasons that follow, the Motion is denied.

I. Background

Agarwal is an investor located in Wimauma, Florida, and the current owner of U.S. Patent 5,370,389 (the '389 patent), for a "Golf Range Method and Apparatus," which infuses golf ranges with technology. (Doc. # 1 at ¶¶ 2, 5; Doc. # 1-1 at 1). Specifically, golf balls are marked with identifying features that indicate from which of a plurality of golfing tees they are hit. (Doc. # 1 at ¶ 2). There are a plurality

of target greens located on each fairway toward which players aim. (Id.). When the player strikes a golf ball at the target greens on the fairway, the golf ball hits the sloped rear portion of the target green and slides down into a receptacle hole. (Id.). A sensor in each receptacle hole identifies the player who hit the golf ball and assigns him points. (Id.). The sensors provide a different score value for different target greens. (Id.; Doc. # 1-1 at 1). In short, “[t]he ‘389 patent covers the end-to-end process relating to playing point-scoring games at high-tech golf courses.” (Doc. # 1 at ¶ 2).

Topgolf “operates several high-tech golf driving ranges throughout the country.” (Id. at ¶ 6). Agarwal alleges that Topgolf’s driving ranges in Dallas, Texas, Allen, Texas, and Alexandria, Virginia infringed on his patent from September 14, 2010, until September 25, 2012, when the patent expired. (Id. at 1). According to Agarwal, Topgolf infringed by providing point-scoring games using golf balls with radio-frequency identification (RFID) chips. (Id. at ¶ 3). Players hit these golf balls toward a plurality of target greens, where the golf balls slide down a sloped surface to be captured in receptacle holes with RFID sensors, which track the players’ scores. (Id. at ¶¶ 24-32, 60-62). Agarwal

identifies the target trench at each of the three driving ranges as the “plurality of target greens,” that allegedly infringes the ‘389 patent. (Id. at ¶¶ 24-26). The single target trench at each driving range is comprised of separate compartments, with each compartment having its own receptacle hole. (Id. at ¶¶ 24-26, 30-32). Agarwal claims that Topgolf knowingly infringed his ‘389 patent and that approximately half of Topgolf’s own patents for high-tech golf games cite the ‘389 patent. (Id. at ¶ 10).

Agarwal filed the present action in this Court on September 14, 2016, alleging willful and direct infringement of claims 1 and 6 of the ‘389 patent in violation of 35 U.S.C. § 271(a). (Doc. # 1). On November 7, 2016, before any claim construction proceedings, Topgolf filed its Motion to Dismiss. (Doc. # 27). Agarwal responded on November 11, 2016. (Doc. # 28). The Motion is ripe for review.

II. Legal Standard

On a motion to dismiss, this Court accepts as true all the allegations in the complaint and construes them in the light most favorable to the plaintiff. Jackson v. Bellsouth Telecomms., 372 F.3d 1250, 1262 (11th Cir. 2004). Further, this Court favors the plaintiff with all reasonable inferences from the allegations in the complaint. Stephens v.

Dep't of Health & Human Servs., 901 F.2d 1571, 1573 (11th Cir. 1990) ("On a motion to dismiss, the facts stated in [the] complaint and all reasonable inferences therefrom are taken as true."). However,

[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level.

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal citations omitted). Courts are not "bound to accept as true a legal conclusion couched as a factual allegation." Papasan v. Allain, 478 U.S. 265, 286 (1986).

Furthermore, "[t]he scope of review must be limited to the four corners of the complaint." St. George v. Pinellas Cty., 285 F.3d 1334, 1337 (11th Cir. 2002). But a "court may consider a document attached to a motion to dismiss without converting the motion into one for summary judgment if the attached document is (1) central to the plaintiff's claim and (2) undisputed." Day v. Taylor, 400 F.3d 1272, 1276 (11th Cir. 2005) (internal citation omitted).

III. Analysis

In patent infringement cases,

the Federal Circuit has held that a party claiming patent infringement only needs to: (1) allege ownership of the asserted patent; (2) name each individual defendant; (3) cite the patent that is allegedly infringed; (4) describe the means by which the defendants allegedly infringe; and (5) point to the specific sections of the patent law invoked.

Mesh Comm, LLC v. EKA Sys., Inc., No. 8:09-cv-1064-T-33TGW, 2010 WL 750337, at *2 (M.D. Fla. Mar. 4, 2010) (citing Phonometrics, Inc. v. Hosp. Franchise Sys., 203 F.3d 790, 794 (Fed. Cir. 2000)). In pleading these elements, a plaintiff must demonstrate a plausible claim for relief as required by Federal Rule of Civil Procedure 8. See Nexxon Ltd. v. Eaglepicher Techs., LLC, No. 1:15-CV-955-RGA, 2016 WL 6093471, at *1 (D. Del. Oct. 18, 2016) (noting that "patent infringement allegations are evaluated under the plausibility standard of [Twombly]").

The parties do not dispute that Agarwal has alleged ownership of and cited the '389 patent, named Topgolf as the sole defendant, and pointed to the section of the patent law that was allegedly violated. Nevertheless, Topgolf argues that Agarwal's claim for patent infringement is implausible on its face and should be dismissed without proceeding to claim construction. (Doc. # 27 at 1). According to Topgolf, Agarwal has not plausibly alleged that Topgolf maintained any

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