

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Intellitech Corporation,  
Plaintiff

v.

Case No. 16-cv-9-SM  
Opinion No. 2017 DNH 034

The Institute of Electrical and  
Electronics Engineers,  
Defendant

**O R D E R**

This is an action for copyright infringement. Plaintiff, Intellitech Corporation, alleges that defendant, The Institute of Electrical and Electronics Engineers ("IEEE"), infringed its registered work, entitled "Clause for a Pipeline v. 20." By prior order, the court dismissed its claims against the individually named defendants. Defendant, IEEE, has also moved to dismiss the suit, pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief can be granted. Defendant's motion to dismiss is necessarily denied, as explained below.

**Standard of Review**

When ruling on a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the court must "accept as true all well-pleaded facts set out in the complaint and indulge all reasonable inferences

in favor of the pleader.” SEC v. Tambone, 597 F.3d 436, 441 (1st Cir. 2010). Although the complaint need only contain “a short and plain statement of the claim showing that the pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(2), it must allege each of the essential elements of a viable cause of action and “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation and internal punctuation omitted).

“Under Rule 12(b)(6), the district court may properly consider only facts and documents that are part of or incorporated into the complaint; if matters outside the pleadings are considered, the motion must be decided under the more stringent standards applicable to a Rule 56 motion for summary judgment.” Trans-Spec Truck Serv., Inc. v. Caterpillar Inc., 524 F.3d 315, 321 (1st Cir. 2008) (citing Garita Hotel Ltd. Partnership v. Ponce Fed. Bank, F.S.B., 958 F.2d 15, 18 (1st Cir. 1992)). “When ... a complaint's factual allegations are expressly linked to – and admittedly dependent upon – a document (the authenticity of which is not challenged), that document effectively merges into the pleadings and the trial court can review it in deciding a motion to dismiss under Rule 12(b)(6).” Id. (quoting Beddall v. State St. Bank & Trust Co.,

137 F.3d 12, 16-17 (1st Cir.1998) (additional citations omitted).

To survive a motion to dismiss, "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citation omitted). Instead, the facts alleged in the complaint must, if credited as true, be sufficient to "nudge[] [plaintiff's] claims across the line from conceivable to plausible." Id. at 570. If, however, the "factual allegations in the complaint are too meager, vague, or conclusory to remove the possibility of relief from the realm of mere conjecture, the complaint is open to dismissal." Tambone, 597 F.3d at 442.

### **Background**

The relevant facts, as set forth in plaintiff's amended complaint and construed in the light most favorable to Intellitech, are as follows. Intellitech is a New Hampshire corporation that possesses a portfolio of intellectual property assets, including the copyright relevant to this suit. That copyright, for the work entitled, "Clause for a Pipeline v. 20," was registered with the United States Copyright Office on

October 24, 2014 (the "Work"). IEEE is a not-for-profit corporation, which promulgates standards regarding certain technical issues related to electrical and electronic endeavors. IEEE's standards are developed collaboratively by working groups comprised of expert volunteers in the field.

The complaint alleges that IEEE caused derivatives of the work to be published without Intellitech's permission or license. Intellitech alleges that, at some point, a derivative of the work was published and disseminated to members of an IEEE working group, specifically the "P1838 working group." In October 2014, in response to Intellitech's assertion of copyright ownership in the Work, IEEE reported that all copies of the Work would be removed from its servers. However, in December 2015, members of the P1838 working group again "published more than one derivative of the work while . . . indicating that no private entity owned a copyright in the material." Compl. ¶ 26. Based on the above, Intellitech asserts a copyright infringement claim against IEEE.

### Discussion

In support of its motion to dismiss, IEEE makes two arguments. First, it says that, because plaintiff has only alleged a "limited publication" of the Work to IEEE working group members, Intellitech has not stated a viable claim for

copyright infringement. Second, IEEE argues that, even if Intellitech has sufficiently stated a claim for infringement, its claims for statutory damages and attorneys' fees should be dismissed because Intellitech has failed to allege sufficient facts to support either claim.

**(1) Consideration of Materials Outside the Pleadings**

Before reaching the merits of defendant's arguments, the court must first address defendant's reliance on documents outside the pleadings. IEEE cites to declarations and exhibits filed by Intellitech, as well as to declarations and exhibits filed on its behalf. For purposes of this motion, the exhibits fall within two broad categories. The first category includes those documents related to the IEEE website, which, IEEE argues, is a private website that is password protected and accessible only by IEEE working group members. The second category includes documents consisting of IEEE working group meeting minutes and emails, which relate to the timing of the purported infringement.

IEEE argues that the court may consider these materials because they are referred to in plaintiff's amended complaint, and because neither party disputes their authenticity. It points out that documents relating to the IEEE website were

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