

BOT M8 LLC v. SONY CORPORATION OF AMERICA, Appeal No. 2020-2218 (Fed. Cir. July 13, 2021). Before Dyk, Linn and O'Malley. Appealed from N.D. Cal. (Judge Alsup).

Background:

Bot M8 sued Sony for infringing the claims of six patents directed to gaming machines. The claims of the patents recite various features, including an authentication mechanism and a fault inspection program. Bot M8 contended that Sony's PlayStation 4 console and the general PlayStation network infringe the asserted claims. Only five of the six patents remained at issue after the case was transferred to the Northern District of California. During a case management conference, the district court directed Bot M8 to file a first amended complaint explaining "every element of every claim" alleged to be infringed. After Bot M8 filed the first amended complaint, Sony moved to dismiss for failure to state a claim. The district court granted Sony's motion to dismiss with respect to four of the five patents, and granted Sony's alternate motion for summary judgment based on the fifth patent being invalid under the §101 *Alice* analysis.

The district court then granted Bot M8 the opportunity to file a second amended complaint so that Bot M8 could cite to Sony's source code, which the district court said Bot M8 should have included in the first amended complaint. Bot M8 raised the concern that "jailbreaking" Sony's software to find the source code might be illegal. The district court dismissed this concern but nevertheless directed Sony to give Bot M8 permission to reverse engineer its software. Bot M8 proceeded to reverse engineer Sony's software and then filed its second amended complaint within the authorized time frame. The district court nonetheless denied Bot M8's motion for leave to file the second amended complaint as untimely, finding Bot M8 failed to practice diligence in including source code evidence in the first amended complaint.

Issue/Holding:

Did the district court err in granting Sony's motion to dismiss for failure to sufficiently state a claim of infringement? Yes, affirmed in part, reversed in part, and remanded.

Discussion:

On appeal, the Federal Circuit affirmed the district court's dismissal for failure to state a claim with respect to two of the four patents because Bot M8's allegations with respect to those patents were conclusory and contradictory. In particular, the first amended complaint described the PlayStation 4 console in a way that did not meet the limitations of the asserted claims and, for one of the patents, even negated the possibility of infringement.

However, with respect to the two patents whose claims recite a fault inspection program, the Federal Circuit found the district court's pleading requirements were improperly excessive. Confirming that a plaintiff need not prove its case at the pleading stage, the Federal Circuit stated that a complaint merely needs to plead factual allegations sufficient to show a plausible claim for relief. The district court had found Bot M8 failed to show that PlayStation 4 completes the fault inspection program before the game is started, as required by the claims, because Bot M8's allegations "too closely tracked the claim language to be deemed plausible." But the Federal Circuit disagreed, finding that Bot M8's evidence of PlayStation 4 error codes prior to start of the game was sufficient to plausibly allege infringement at the pleading stage. The Federal Circuit thus reversed the district court's dismissal with respect to these two patents.