IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ZIRCORE, LLC, *Plaintiff*, v. STRAUMANN MANUFACTURING, INC., STRAUMANN USA, STRAUMANN HOLDING AG, DENTAL WINGS, INSTITUT STRAUMANN AG, ETKON GMBH, *Defendants*.	§ § § § § § § § § § § § §	Case No. 2:15-CV-01557-JRG-RSP

REPORT AND RECOMMENDATION

This is a patent infringement action in which Zircore alleges that Defendants are infringing U.S. Patent Nos. 7,690,920, 8,751,031, and 7,967,606. Dkt. 63 (Amended Complaint) ¶ 1. Defendants move to dismiss Zircore's allegations with respect to the '606 patent for failure to state a claim, contending that the '606 patent claims are not patent-eligible under 35 U.S.C. § 101 (Dkt. No. 77). Defendants' motion should be denied.

DISCUSSION

A complaint should be dismissed if it "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). When considering a motion to dismiss under Rule 12(b)(6), a court "accept[s] all well-pleaded facts as true, and view [s] those facts in the light most favorable to the plaintiff." *Bustos v. Martini Club, Inc.*, 599 F.3d 458, 461 (5th Cir. 2010). The court must then decide whether those facts state a plausible claim for relief. *Bowlby v. City of Aberdeen, Miss.*, 681 F.3d 215, 217 (5th Cir. 2012). "A claim is plausible if 'the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the

misconduct alleged. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *United States v. Bollinger Shipyards, Inc.*, 775 F.3d 255, 260 (5th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Instead, the standard "simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of [the claim]." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007). "The factual allegations in the complaint need only 'be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).'" *Wooten v. McDonald Transit Assocs., Inc.*, 788 F.3d 490, 498 (5th Cir. 2015) (quoting *Twombly*, 550 U.S. at 555)).

The plausibility standard "does not give district courts license to look behind [a complaint's] allegations and independently assess the likelihood that the plaintiff will be able to prove them at trial." *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 803 n.44 (5th Cir. 2011)). Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, a plaintiff is generally required to provide "only a plausible 'short and plain' statement of the plaintiff's claim, not an exposition of [the plaintiff's] legal argument." *Skinner*, 562 U.S. at 530. The "short and plain" statement does not "countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted." *Johnson v. City of Shelby, Miss.*, 135 S. Ct. 346, 346 (2014).

A. Patent Eligibility

A patent may be obtained for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." 35 U.S.C. § 101. The exception is that "[l]aws of nature, natural phenomena, and abstract ideas are not patentable." *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S.Ct. 2107, 2116 (2013) (quoting

Mayo Collaborative Servs. v. Prometheus Labs., Inc., 132 S.Ct. 1289, 1293 (2012)). In assessing subject-matter eligibility, a court must "first determine whether the claims at issue are directed to a patent-ineligible concept." *Alice Corp. Pty Ltd. v. CLS Bank Int'l*, 134 S.Ct. 2347, 2355 (2014). If the claims are directed to an ineligible concept, the court must then "consider the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." *Id.* (quoting *Mayo*, 132 S.Ct. at 1298, 1297).

B. Zircore's '606 Patent is Not Directed to an Abstract Idea

Defendants contend that the portion of Zircore's Complaint alleging infringement of the '606 patent must be dismissed for failure to state a claim because the '606 patent claims are not eligible for patenting under § 101.[1] Under the first step in the *Alice* inquiry, Defendants characterize the claims as being directed to "the abstract idea of designing two components at the same time." Dkt. No. 77 at 9-12. The Court does not agree.

"[D]escribing the claims at . . . a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule." *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). Defendants isolate two steps from the '606 patent claims, the combination of which is allegedly the point of novelty, and ignore the remainder of the claims. Contrary to Defendants assertion, the '606 patent claims are directed to a method of manufacturing *physical* crown copings for prosthodontics. *See, e.g.*, '606 patent at 7:8-20, 8:18-31.[2]

[1] Although not disputed by the parties, "[a]uthorities indicate that [a Rule 12(b)(6)] motion [directed to the failure to state a claim upon which relief can be granted] may be used to challenge the sufficiency of part of a pleading such as a single count or claim for relief." *See Drewett v. Aetna Cas. & Sur. Co.*, 405 F. Supp. 877, 878 (W.D. La. 1975) (citation omitted).

[2] The Court assumes without deciding that referring to matters beyond the pleadings, such as the '606 patent or the exhibits submitted by Defendants does not convert the motion to dismiss to a motion for summary judgment. *See*

If the claims themselves left any doubt, the ’606 patent describes a physical process for collecting information about a patient’s mouth, preparing a three-dimensional model of the mouth, scanning the model, and on the basis of data collected from this process, manufacturing the custom crown coping. ’606 patent at 4:65-5:21. The context of the patent as a whole suggests that the invention is rooted in the physical world. *See, e.g.*, *id.* at 1:53-67, 4:65-5:21 (describing physical prior art processes). It is true as Defendants suggest that the claims, at least on their face, appear to include certain steps that could be construed as computerized steps, and thus steps that could arguably be carried out mentally. But Defendants cite no authority for the proposition that a claim reciting a method of manufacturing becomes abstract simply because it includes modeling or involves the use of computerized data.

To be sure, existing precedent does not establish a definitive rule to determine what constitutes an “abstract idea” within the meaning of *Alice*. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). It is “sufficient to compare claims at issue to those claims already found to be directed to an abstract idea in previous cases.” *Id.* The ’606 patent claims look nothing like the claims found to be abstract in previous cases, including claims within the two major abstract categories—those directed solely to collecting and analyzing information, *see, e.g., FairWarning IP, LLC v. Iatric Systems, Inc.*, 839 F.3d 1089, 1093 (Fed. Cir. 2016), and those involving “fundamental economic and conventional business practices,” *see, e.g., OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362-63 (Fed. Cir. 2015). Accordingly, because the ’606 patent claims are not directed to an abstract idea, Zircore has plausibly stated a claim for patent infringement.

Fed. R. Civ. P. 12(d); *see also Bascom Global Internet Servs. V. AT&T Mobility*, 827 F.3d 1341 (Fed. Cir. 2016). Zircore does not move to exclude matters outside the pleadings.

CONCLUSION

It is **RECOMMENDED** that Defendants' motion to dismiss (Dkt. No. 77) be denied. A party's failure to file written objections to the findings, conclusions, and recommendations contained in this report within fourteen days after being served with a copy shall bar that party from de novo review by the district judge of those findings, conclusions, and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Fed. R. Civ. P. 72(b)(2); *see Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

SIGNED this 20th day of January, 2017.

ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE