



Close, But No Cigar: Despite Hong Kong Defendant's Default, Florida Judge Dismisses Plaintiff's Patent Case After Three Years

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Despite the clerk's entry of default against Hong Kong-based defendant iAqua Limited for its failure to formally respond to the patentees' February 1, 2022 Complaint, federal district court Judge Smith in the Southern District of Florida twice denied patentees' motions for default judgment and, on January 31, 2025, dismissed the patent infringement lawsuit.

The plaintiffs Cayago Tec, GmbH and Cayago Americas, Inc. (collectively "Cayago") had filed an earlier lawsuit in the same district in 2019 against defendant's Florida-based affiliate, iAqua Distribution LLC, asserting the apparatus claims of two of Cayago's patents on electric motor-driven watercraft vehicles. But that case, assigned to Judge Williams, was quickly settled by the parties in a stipulated dismissal before any Answer was filed.

In Cayago's subsequent 2022 lawsuit, it added a third watercraft-related patent and directed many of its infringement allegations towards a new set of accused instrumentalities, "the SeaDart line of products," but without identifying any specific model number or attaching to the Complaint any exemplary claim charts mapping any product to the patent claim(s). Early in the case, Judge Smith granted Cayago's motion for alternative service (as judges in the Southern District of Florida frequently do against defendants in certain jurisdictions), thereby permitting Cayago to successfully serve its Complaint on iAqua in Hong Kong by email. Subsequently, iAqua attempted informal communications with the court, but did not otherwise file an Answer or move to dismiss the case before the response deadline. With iAqua having defaulted, Cayago next moved the court for a default judgment order and injunctive relief.

However, Judge Smith denied Cayago's first motion on administrative grounds (failure to include a certificate of service) and its second motion on substantive grounds and further dismissed Cayago's case altogether. In denying Cayago of its win, Judge Smith found the Complaint defective on its face due to its overuse of allegations made "upon information and belief" (rather than by factual support) and the legal claims grouped in the manner of an improper "shotgun pleading" (failing to separate direct, induced, and contributory infringement theories into individually distinct Counts), all of which warranted dismissal.

Although the controlling *Iqbal-Twombly* pleading standard does not require detailed factual allegations at the pleading stage (see 556 U.S. 662, 678 (2009) and 550 U.S. 544, 555 (2007)), here, Judge Smith noted the lack of

specific facts alleged in Cayago’s complaint regarding iAqua’s purported infringement and, problematically, the “bulk” of the allegations therein were either made “upon information and belief” or merely legal conclusions.

TAKEAWAYS

While allegations that heavily rely “upon information and belief” are commonplace—with the expectation that more details will be uncovered through fact and expert discovery—plaintiffs must nevertheless ensure their Complaint adequately places the alleged infringer(s) on notice of how and by whom the purported infringement is carried out and by which accused product(s). To meet this standard, plaintiffs should thoroughly investigate their claims and collect evidence on how specific product models operate; explain how the observed operations practice the claim elements of the patent claims; and present the discrete theories of who is infringing and how it occurs in separately numbered Counts in the Complaint. The facts proffered to plausibly support one’s infringement allegations should be robust enough to survive a potential motion to dismiss, even if the defendant never files such a motion or never enters a notice of appearance in the case.

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