

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHEET METAL DUCT, INC. : CIVIL ACTION
 :
 v. :
 :
 LINDAB, INC. :
 and MIDSTATES SPIRAL : NO. 99-6299

MEMORANDUM

Dalzell, J.

July 18, 2000

Plaintiff Sheet Metal Duct, Inc. has sued defendants Lindab, Inc. and Midstates Spiral for alleged antitrust violations stemming from their practices regarding the sale and distribution of Lindab's patented "SpiroSafe" ductwork. Lindab and Midstates have moved to dismiss the Amended Complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).

I. Background

A. Sheet Metal's Allegations¹

1. Factual Claims

Sheet Metal manufactures and supplies sheet metal duct and related products, and Lindab manufactures and distributes ductwork products. Midstates manufactures and distributes ductwork products, including those Lindab makes.

Lindab manufactures round ductwork products called "SpiroSafe" which include a patented gasket on the end of each fitting. SpiroSafe ductwork is called for in the specifications

¹These are the facts and claims pleaded in Sheet Metal's Amended Complaint.

that many engineers and architects develop for commercial projects in the Delaware Valley upon which Sheet Metal bids.

Lindab sells SpiroSafe products exclusively to Midstates and refuses to sell to other firms, including Sheet Metal. Therefore, "end users" of SpiroSafe such as Sheet Metal must purchase it from Midstates. Midstates is not only a wholesaler and retailer of ductwork products, but also² bids on the same projects as Sheet Metal.

As a result of this exclusive distributorship arrangement between Lindab and Midstates, Sheet Metal and others similarly situated³ are said to be forced to pay prices for SpiroSafe that are "far in excess of those they would have paid had they been able to purchase [SpiroSafe] directly" from Lindab, Amend. Compl. ¶ 13. Because Sheet Metal and others are required to buy their SpiroSafe from Midstates, a firm with whom they are in competition in bidding for projects, Midstates has an advantage in such bidding contests, and therefore Sheet Metal and others are "precluded" from bidding on certain jobs, Amend. Compl. ¶ 13. Moreover, Lindab and Midstates are also said to

²Sheet Metal describes itself, as noted above, as a manufacturer and supplier of duct products; we note parenthetically that it is therefore unclear to us how Midstates's practice of bidding on the same projects as Sheet Metal falls outside its business of wholesaling and retailing ductwork as Sheet Metal describes it.

³Sheet Metal does not include any further details or specification regarding these others.

have also refused to fill Sheet Metal's orders at the times and quantities requested.

2. Legal Claims

Sheet Metal claims that Lindab and Midstates possess monopoly power over the sale of SpiroSafe in the Delaware Valley, a monopoly they achieved by refusing to sell SpiroSafe directly to other end users, and that they have unlawfully exploited this monopoly. Further, because SpiroSafe is specifically required in various projects, Sheet Metal claims that SpiroSafe itself constitutes the relevant product market, as there are no products that are interchangeable for it.

Specifically, Count I of the Amended Complaint (against Lindab alone) alleges that Lindab's conduct constitutes monopolization in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2. Count II of the Amended Complaint (against both Lindab and Midstates) alleges that the exclusive distributorship agreement was intentionally done as part of a conspiracy to fix, control, raise, and stabilize arbitrarily, unlawfully, unreasonably, and knowingly the price for SpiroSafe and to restrain trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Count III of the Amended Complaint (against both Lindab and Midstates) alleges that the exclusive distributorship agreement was intentionally undertaken to monopolize or attempt to monopolize the marketing and distribution of SpiroSafe in the Delaware Valley, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2. Count IV of the Amended Complaint (against both

Lindab and Midstates) alleges that the defendants' actions directly discriminate in favor of Midstates in violation of 15 U.S.C. § 13(e).

B. Procedural History

After the Complaint was filed, both Lindab and Midstates filed motions to dismiss. In lieu of a response to these motions, Sheet Metal filed its Amended Complaint, which included added allegations evidently intended to meet arguments that the defendants had made in their motions. Subsequently, Lindab and Midstates filed the instant motions, to which Sheet Metal has responded.

II. Analysis

A. Legal Standards

When considering a motion to dismiss a complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6), we must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved," Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990), see also H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989).

When addressing antitrust claims, the standard for dismissal is somewhat higher, since "[s]ummary procedures should be used sparingly in complex antitrust litigation where motive

and intent play leading roles, the proof is largely in the hands of the alleged conspirators, and hostile witnesses thicken the plot," Poller v. Columbia Broad. Sys., 368 U.S. 464, 473, 82 S. Ct. 486, 491 (1962), see also Mitel Corp. v. A & A Connections, Inc., No. 97-4205, 1998 WL 136529 at *2 (E.D. Pa. Mar. 20, 1998), Rolite, Inc. v. Wheelabrator Env'tl. Sys., Inc., 958 F. Supp. 992, 995 (E.D. Pa. 1997). On the other hand, in an antitrust context the plaintiff must still allege facts sufficient to overcome a motion under Rule 12(b)(6), see Commonwealth of Pa. v. Pepsico, Inc., 836 F.2d 173, 179 (3d Cir. 1988), and we need not accept as true "unsupported conclusions and unwarranted inferences," Schuylkill Energy Resources, Inc. v. Pennsylvania Power & Light, 113 F.3d 405, 417 (3d Cir. 1997).

B. Patent and Antitrust

As an initial matter, we must take note of the crucial fact that SpiroSafe, which is the sole product and market with respect to which antitrust claims are made here, is patented, see Amend. Compl. ¶ 6.⁴ Significantly, the Amended Complaint contains no allegations that the patent is invalid or that it was acquired improperly and, instead, Sheet Metal here challenges Lindab's and Midstates's behavior with respect to that valid patent.

⁴To be precise, Lindab allegedly manufactures SpiroSafe under a patent.

The presence of a patent informs our entire analysis here, because patent laws and antitrust laws exist in tension, as the patent laws protect monopoly power while antitrust laws seek to restrain it, see, e.g., E. Bement & Sons v. National Harrow Co., 186 U.S. 70, 91, 22 S. Ct. 747, 755 (1902), Discovision Assocs. v. Disc. Mfg., Inc., Nos. 95-21-SLR, 95-345-SLR, 1997 WL 309499 at *7 (D. Del. Apr. 3, 1997). Thus, any allegation of antitrust resulting from a patent must extend beyond the rights granted in the patent, see, e.g., Discovision, 1997 WL 309499 at *7, and conduct permissible under the patent laws cannot trigger antitrust liability, see SCM Corp. v. Xerox Corp., 645 F.2d 1195, 1206 (2d Cir. 1981).

On the other hand, a patent holder may be liable under antitrust laws if it seeks to expand the monopoly the patent grants, see, e.g., Discovision, 1997 WL 309499 at *8 (citing United States v. Westinghouse Elec. Corp., 648 F.2d 642, 647 (9th Cir. 1981)). Similarly, a patent cannot be used to restrain competition with a patentee's sale of an unpatented product, see Morton Salt Co. v. G. S. Suppiger Co., 314 U.S. 488, 493, 62 S. Ct. 402, 404 (1942), patent owners cannot use court action to recover emoluments resulting from misuse of the patent, see United States Gypsum Co. v. National Gypsum Co., 352 U.S. 457, 465, 77 S. Ct. 490, 494 (1957), and a patentee using the patent in violation of the antitrust laws cannot maintain an

action against alleged infringers, see Hartford-Empire Co. v. United States, 323 U.S. 386, 415, 65 S. Ct. 373, 388 (1945)⁵.

With this general background, we now examine the motions to dismiss.

C. Relevant Product Market

We begin with defendants' argument that Sheet Metal has failed to plead a relevant product market upon which antitrust claims can be predicated. The allegation of a relevant market is necessary for claims under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 & 2, see Queen City Pizza, Inc. v. Domino's Pizza,

⁵We have cited these three Supreme Court cases in particular because Sheet Metal cites them in support of its claim that SpiroSafe's status as a patented product does not give absolute immunity to Lindab and Midstates from all claims under the antitrust statutes. While this point is well taken, we note that none of those Supreme Court cases address factual circumstances similar to those alleged here.

It is also well here to note the nature and content of Sheet Metal's responses to the motions to dismiss. While Lindab's memorandum in support of its motion to dismiss, in which Midstates largely joins, is twenty-five pages long and cites over thirty cases, Sheet Metal responds in eight pages and cites four cases, three of which are discussed in the text above. Sheet Metal's main arguments in response to Lindab's motion are that Lindab's mere possession of a patent does not confer antitrust immunity and that the Amended Complaint's claims meet the liberal federal pleading rules for stating a claim under the various statutes. Thus, for example, Sheet Metal cites to no cases analogous to the facts here, where a valid patent holder is subject to antitrust liability for its distribution practices for its patented product. As this is a Rule 12(b)(6) motion, the burden is of course on the defendants to show that a claim has not been stated, and the relative brevity of, and relative absence of legal authority cited in, plaintiff's response does not in any way shift that burden from Midstates and Lindab. Nonetheless, plaintiff's sparse response is surprising in view of the grave issues raised.

Inc., 124 F.3d 430, 437 (3d Cir. 1997) (noting that a Section 2 claim rests on an adequate allegation of possession or attempted possession of monopoly in the "relevant market"), id. at 442 (noting that a Section 1 claim rests on an adequate allegation of anti-competitive effects within the relevant product market), as well as under the Robinson-Patman Act, see, e.g., J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531-32 (3d Cir. 1990), McGahee v. Northern Propane Gas Co., 858 F.2d 1487, 1493 (11th Cir. 1988). Thus, we consider the pleading of the relevant product market as a threshold issue, since if Sheet Metal has failed to plead a relevant product market, then all its claims in Counts I through IV fail.

Plaintiffs have the burden of establishing the relevant market, and although the determination of such a market is fact-intensive, failure to plead a relevant market may still be the basis of a dismissal under Rule 12(b)(6). See, e.g., Queen City Pizza, 124 F.3d at 436. "The outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it." Brown Shoe Co. v. United States, 370 U.S. 294, 325, 82 S. Ct. 1502, 1523-24 (1962). As the Queen City Pizza panel noted,

Where the plaintiff fails to define its proposed relevant market with reference to the rule of reasonable interchangeability and cross-elasticity of demand, or alleges a proposed relevant market that clearly does not encompass all interchangeable substitute products even when all factual inferences are

granted in plaintiff's favor, the relevant market is legally insufficient and a motion to dismiss may be granted.

Queen City Pizza, 124 F.3d at 436.⁶

Here, Sheet Metal's claims regarding the alleged relevant product market are unambiguous. Sheet Metal claims that SpiroSafe, Lindab's patented ductwork product, is a relevant product market unto itself because certain projects specifically require SpiroSafe and that there are therefore no products with which it is interchangeable for those jobs, see Amend. Compl. ¶ 8. Sheet Metal adds that because SpiroSafe is specified, "there is no demand for other similar Products" with respect to these jobs. Amend. Compl. ¶ 8. This allegation simply does not constitute a sufficient relevant product market.

We note initially that courts are generally unwilling to find that a patented product constitutes a relevant product market, see, e.g., CCPI Inc. v. American Premier, Inc., 967 F. Supp. 813, 817-18 (D. Del. 1997) (holding that cases in which a patented product constitutes a relevant market "will at best be a rarity"), B.V. Optische Industrie de Oude Delft v. Hologic, Inc., 909 F. Supp. 162, 171-72 (S.D.N.Y. 1995) (noting that the uniqueness of a product is not sufficient to plead a relevant market). In line with this hesitancy, plaintiffs are required to

⁶Similarly, the alleged product market must be plausible, and courts may reject proposed relevant market allegations that make no economic or theoretical sense, see E. & G. Gabriel v. Gabriel Bros., Inc., No. 93 CIV. 0894, 1994 WL 369147 at *2 (S.D.N.Y. July 13, 1994).

refer to reasonably interchangeable alternatives, see CCPI, 967 F. Supp. at 818, E. & G. Gabriel v. Gabriel Bros., Inc., No. 93 CIV. 0894, 1994 WL 369147 at *2-3 (S.D.N.Y. July 13, 1994).

As noted above, Sheet Metal's Amended Complaint claims that there are no products interchangeable with SpiroSafe because various projects call out SpiroSafe by name. It is clear, however, that such circularity cannot be enough to delineate a relevant market for antitrust claims. According to the Amended Complaint, Lindab, the patent holder, and Midstates, the exclusive distributor, are committing antitrust violations in the market for Lindab's patented product, violations occasioned by the very fact that consumers request that particular patented product. That is, a crucial element of Sheet Metal's allegations is that architects and engineers specify SpiroSafe, yet there are no allegations in the Complaint about the universe of interchangeable products available to the architects and engineers who write the specifications. Hence, the allegations in the Complaint concern the circumstances that arise after the architects and engineers have chosen to incorporate SpiroSafe into their designs and have chosen to write their specifications in such a way that no alternative products are accepted for bidding.

Consequently, in order to find that Sheet Metal has alleged a relevant market, we would have to infer from the allegations that the architects and engineers themselves have no

substitutes for the use of SpiroSafe in their designs⁷. No such inference would be reasonable for such a mundane product as a gasket.

We do recognize that

[i]n certain limited situations a product market may consist of only a single brand. For example, in Eastman Kodak, [504 U.S. 451, 112 S. Ct. 2072 (1992)] the Supreme Court held that the market for repair parts and services for Kodak photocopiers was a valid relevant market because repair parts and services for Kodak machines were not interchangeable with the service and parts used to fix [other] copiers. Thus, in circumstances where the product or service is unique and therefore not interchangeable with other products or services, the single brand can constitute the relevant market.

Mitel Corp., 1998 WL 136529 at *4 (citations omitted). The allegations here do not fall into the "limited situations" discussed in this passage. There is no allegation here that SpiroSafe is not interchangeable with other products and services, but rather only that once a consumer requests SpiroSafe, no other product can be supplied to that customer.

A comparison to the Eastman Kodak example referred to in Mitel makes this distinction clear. Once a consumer purchases a Kodak copier, he is compelled to use Kodak parts and service because no other parts and service types can be used with the Kodak copiers. See Kodak, 504 U.S. at 482, 112 S. Ct. at 2090.

⁷"To constitute a relevant market, a patented product must dominate a real market and be able to drive all or most substitutes from the market." FMC Corp. v. Manitowoc Co., 654 F. Supp. 915, 936 (N.D. Ill. 1987) (citing Brunswick Corp. v. Riegel Textile Corp., 752 F.2d 261, 265 (7th Cir. 1984)).

Here, there are no allegations alleging the presence or absence of interchangeable "choices available", id., that consumers - architects and engineers -- have to SpiroSafe gaskets when they draw up their specifications.

Plaintiff having pleaded no cognizable relevant market, we will dismiss each of the counts of the Amended Complaint. For completeness, however, we will go on to examine some other grounds for dismissal the defendants present.

D. Sherman Act Section 1 Claims

In Count II of the Amended Complaint, Sheet Metal alleges that Lindab and Midstates's actions with respect to SpiroSafe constitute a conspiracy to restrain trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. To establish a Section 1 violation for unreasonable restraint of trade, a plaintiff must show "(1) concerted action by the defendants; (2) that produced anti-competitive effects within the relevant product and geographic markets; (3) that the concerted action was illegal; and (4) that the plaintiff was injured as a proximate result of the concerted action," Queen City Pizza, 124 F.3d at 442. Here, defendants argue that their alleged behavior cannot meet these elements because, even assuming that they engaged in concerted behavior, the objects of such actions with respect to SpiroSafe could not be illegal because Lindab is the patentee. As noted above, Sheet Metal's specific allegations against the defendants are that Lindab has entered into an exclusive

distributorship arrangement with Midstates, which has the effect of raising the price that Sheet Metal pays for SpiroSafe and of limiting Sheet Metal's access to it.

A patent contains "a grant to the patentee, his heirs or assigns, [the] right to exclude others from making, using, offering for sale, or selling the invention," 35 U.S.C. § 154, and consequently a patentee has a legal monopoly over the invention, see, e.g., Hoffman-La Roche, Inc. v. Genpharm, Inc., 50 F. Supp.2d 367, 378 (D.N.J. 1999). It is not misuse of patent rights for a patentee to deal only with those with whom it pleases, see W.L. Gore & Assocs. v. Carlisle Corp., 529 F.2d 614, 624 (3d Cir. 1976), and a patent holder is allowed to maintain its monopoly over the patented product by refusing to license, see SCM Corp., 645 F.2d at 1204. Similarly, a patentee may even suppress an invention and deny its use to all others, see United States v. Studiengesellschaft Kohle, m.b.H., 670 F.2d 1122, 1127 (D.C. Cir. 1981).

It is thus apparent that the actions defendants allegedly did here are exactly of the type allowed to a patent holder and, therefore, the object of the conduct that Lindab and Midstates allegedly engaged in cannot be illegal. Lindab has the right as a patentee to sell its product exclusively to Midstates at whatever price it chooses. Sheet Metal's claim that the price it pays to purchase SpiroSafe from Midstates is unreasonably

higher than that it would pay if it bought from Lindab⁸ directly cannot sound in antitrust against Lindab given the fundamental legitimacy of the exclusive distributorship arrangement for the patented product.⁹ In turn, Midstates's alleged illegal behavior is purely derivative of the legal patent monopoly and legal exclusive distributorship, and therefore there can be no claim against Midstates under Section 1 resulting from this agreement.¹⁰

E. Sherman Act Section 2 Claims

In Count I of the Amended Complaint, Sheet Metal alleges that Lindab's behavior here constitutes monopolization under Section 2 of the Sherman Act, 15 U.S.C. § 2. To state a claim for monopolization, a plaintiff must allege "(1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historical accident," Crossroads

⁸Naturally, this claim is completely speculative, since Lindab has no obligation to sell SpiroSafe to Sheet Metal or anyone else.

⁹Sheet Metal's bare claim under Section 1 is that the exclusive distributorship arrangement itself constitutes the conspiracy to restrain trade; since that distributorship is clearly valid under patent law, however, it is difficult to see how the very fact of using an exclusive distributor can lead to antitrust liability for Lindab.

¹⁰A violation of Section 1 must involve more than one party. To the extent that Lindab's behavior is sanctioned by patent law, there can in any event be no liability under Section 1 for Midstates acting alone.

Cogeneration Corp. v. Orange & Rockland Utils., Inc., 159 F.3d 129, 141 (3d Cir. 1998). As Sheet Metal alleges that the relevant market here is comprised of SpiroSafe, Lindab indeed has a monopoly in that market, because this monopoly is granted to it by the patent statutes¹¹. As discussed at length above, the very purpose of a patent is precisely to give a monopoly to the inventor for a finite time, and there can be no liability under the antitrust laws for the existence or maintenance of this statutory monopoly.¹²

Count III of the Amended Complaint alleges that the exclusive distributorship agreement between Lindab and Midstates constitutes monopolization, conspiracy to monopolize, and attempted monopolization by both defendants. To prevail on a claim of attempted monopolization, the plaintiff must show that the defendants "(1) engaged in predatory or anticompetitive conduct with (2) specific intent to monopolize and with (3) a dangerous probability of achieving monopoly power," Queen City Pizza, 124 F.3d at 442. Similarly, a conspiracy to monopolize is

¹¹As noted above, the Amended Complaint alleges the Lindab holds a valid and enforceable patent. Sheet Metal makes no allegations that the SpiroSafe patent is invalid or that it was procured by fraud.

¹²Similarly, Sheet Metal alleges that its problems, and those of others similarly situated, stem from the fact that architects and engineers specify SpiroSafe in their projects. It would thus seem on the terms of the Amended Complaint that Lindab's success is the result of SpiroSafe's superiority as a product or Lindab's business acumen, since Sheet Metal makes no claim that the architects or engineers are involved in the antitrust violations.

shown by "(1) an agreement or understanding between two or more economic entities, (2) a specific intent to monopolize the relevant market, (3) the commission of an overt act in furtherance of the alleged conspiracy, and (4) that there was a dangerous probability of success," Farr v. Healtheast Co., No. 91-6960, 1993 WL 220680 at *11 (E.D. Pa. June 9, 1993).

In considering defendants' challenge to these allegations, we again immediately come up against the fact that, as a patentee, Lindab has a legal monopoly on SpiroSafe and that the exclusive distributorship agreement between Lindab and Midstates is perfectly permissible for a patented product. As discussed above, those actions that are permissible under the patent laws cannot give rise to antitrust liability. Thus, to allege that Lindab and Midstates have together monopolized, or conspired to monopolize, or attempted to monopolize the "market" for a patented product like SpiroSafe duct fixtures cannot by itself¹³ be a claim under Section 2 of the Sherman Act.

F. Robinson-Patman Act Section 2(e) Claims

Count IV of the Amended Complaint alleges that Lindab and Midstates's actions directly discriminate in favor of Midstates by providing SpiroSafe to Midstates at terms

¹³Again, Sheet Metal alleges that the monopoly Lindab and Midstates developed is in the "market" for SpiroSafe. There is no allegation, for example, that the defendants' behavior with respect to SpiroSafe has been used to create a monopoly in another market.

unavailable to other purchasers in violation of 15 U.S.C.

13(e).¹⁴ 15 U.S.C. § 13(e) states that:

It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionately equal terms.

We first observe that the language of the statute requires that the discrimination prohibited by this subsection must be accomplished by furnishing (or contracting for or contributing to furnishing) of "any services and facilities connected with the processing, handling, sale, or offering for sale" of the commodity in question. The Amended Complaint is bereft of any reference to any services and facilities connected with SpiroSafe. Instead, the allegations Sheet Metal makes surround only the sale of SpiroSafe itself, and therefore do not come within the language of 15 U.S.C. § 13(e) and cannot state a claim thereunder.¹⁵

¹⁴Section 13 of Title 15 of the United States Code is also referred to as Section 2 of the Robinson-Patman Act, see, e.g., Yeager's Fuel, Inc. v. Pennsylvania Power & Light Co., 22 F.3d 1260, 1263 (3d Cir. 1994). In fact, this was originally Section 2 of the Clayton Act, and was subsequently amended by the Robinson-Patman Act in 1936.

¹⁵Generally, claims under 15 U.S.C. § 13(e) concern topics such as advertising or promotional services, see, e.g., Hinkleman v. Shell Oil Co., 962 F.2d 372, 379 (4th Cir. 1992). Sheet Metal has not cited, nor have we been able to locate, any
(continued...)

¹⁵(...continued)
authority to suggest that the application of 15 U.S.C. § 13(e)
has been extended to allegations regarding discrimination in
pricing of the commodity itself, rather than in the provision of
services or facilities.

G. Antitrust Injury

Lastly, defendants argue that Sheet Metal has failed to allege an antitrust injury. In order to bring a private cause of action for antitrust pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15, plaintiffs must plead and prove an "antitrust injury," which is to say an injury that the antitrust laws were intended to prevent, see, e.g., Schuylkill Energy, 113 F.3d at 413. "An antitrust plaintiff must prove that challenged conduct affected the prices, quantity or quality of goods or services, not just his own welfare", Mitel Corp., 1998 WL 136529 at *3 (citing and quoting Tunis Bros. Co. v. Ford Motor Co., 952 F.2d 715, 728 (3d Cir. 1991)) (internal quotation marks omitted). "The injury should reflect the anticompetitive effect either of the violation or of anticompetitive acts made possible by the violation," Brunswick Corp. v. Pueblo Bowl-o-Mat, Inc., 429 U.S. 477, 489, 97 S. Ct. 690, 697 (1977). In sum, since the antitrust laws seek to protect competition, and not competitors, it is injury to competition that must be alleged, see Mathews v. Lancaster Gen. Hosp., 87 F.3d 624, 641 (3d Cir. 1996).

Sheet Metal alleges that it, together with others similarly situated, has been injured by Lindab and Midstates's pricing and distribution practices for SpiroSafe. However, "when a market itself is by law not competitive, a plaintiff cannot claim antitrust injury by asserting that the defendant's practices . . . restrained competition," Bar Techs., Inc. v. Conemaugh & Black Lick R.R., 73 F. Supp.2d 512, 519 (W.D. Pa.

1999),¹⁶ see also City of Pittsburgh v. West Penn Power Co., 147 F.3d 256, 268 (3d Cir. 1998) (holding that antitrust injury could not arise from actions in a regulated industry because the market was non-competitive), Schuylkill Energy, 113 F.3d at 418 (holding that because law and contract made a market non-competitive, no antitrust injury could result from actions in the market because such actions could not be said to harm competition).¹⁷ As we have discussed above, because SpiroSafe is a patented product, the market for it is subject to the statutory monopoly decreed by the patent laws, and is thus by definition non-competitive. In turn, Lindab and Midstates's actions within this non-competitive market cannot have an anticompetitive effect, since the grant of the patent ruled out competition in SpiroSafe for the duration of the patent. Sheet Metal's injuries, such as they may be, are not antitrust injuries and Sheet Metal therefore has no standing to bring this private action under the Clayton Act.

¹⁶In stating the quoted passage, the Bar Technologies court was outlining the defendant's position, but the court went on to conclude that it "agree[d] with [this] reasoning," Bar Techs., 73 F. Supp.2d at 520.

¹⁷West Penn Power and Schuylkill Energy concerned the electrical power industry and Bar Technologies the railroad industry. We recognize that these markets are both larger than the single-product "market" at issue here and are also subject to an involved regulatory scheme, which the "market" for SpiroSafe is not. Nonetheless, patent laws grant to the patentee a clear monopoly in the patented product, and, as we have noted several times above, Sheet Metal only alleges wrongdoing in this very limited market. We thus find that these cases are apposite to the situation presented by the Amended Complaint.

III. Conclusion

As none of the claims regarding this patented product is viable under the antitrust laws, we will grant defendants' motions.

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ORDER

AND NOW, this 18th day of July, 2000, upon consideration of the motions to dismiss the Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6) of defendant Lindab, Inc. (docket number 15) and of defendant Midstates Spiral (docket number 16), and plaintiff's responses thereto, and Lindab's reply thereto, and for the reasons stated in the accompanying Memorandum, it is hereby ORDERED that:

1. Defendant Lindab, Inc.'s motion is GRANTED;
2. Defendant Midstates Spiral's motion is GRANTED;
3. The Amended Complaint is DISMISSED; and
4. The Clerk shall CLOSE this case statistically.

BY THE COURT:

Stewart Dalzell, J.