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

JOHN GAMMINO,	:	
Plaintiff,	:	**NO. 04-4303**
v.	:	
	:	
CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS	:	
VERIZON COMMUNICATIONS, INC. VODAPHONE	:	
GROUP PLC, and AT&T CORPORATION,	:	
Defendants.	:	

GREEN, S.J. **September , 2005**

MEMORANDUM

Presently pending are Defendant Verizon Communications, Inc. ("VCI") Motion to Dismiss, and Defendant Vodaphone Group PLC's ("Vodaphone") Motion to Dismiss. Defendants Cellco Partnership ("Cellco" will be referred to as "Verizon Wireless"), Davel Communications, Inc., Sprint Communications, and AT&T have each filed an Answer to Plaintiff's Complaint. For the reasons set forth below, Defendant VCI's motion will be denied. Defendant Vodaphone's motion will be dismissed without prejudice pending the completion of jurisdictional discovery.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed a Complaint against Defendants alleging that Defendants have in the past, and continue to, directly infringe upon and/or actively induce the infringement of two patents Plaintiff registered and owns. The patents purportedly cover techniques for blocking fraudulent international telephone calls thereby resulting in substantial savings for Defendants.

VCI argues that Plaintiff's Complaint should be dismissed against it because VCI is not a partner of Verizon Wireless. VCI also maintains that Plaintiff failed to state a claim that VCI directly infringed upon the patent or induced Verizon Wireless to infringe the patent. VCI claims that it is a holding company which only holds the stock of other companies, and that it does not conduct any other business. Secondly, VCI argues that it should be dismissed from this action because Plaintiff has already sued VCI

for infringement of the same patents in a related matter in this court, Gammino, v. Verizon Communications, et al. , Civ. Ac. No. 03-5579. In reply, Plaintiff responds that VCI is a general partner of Verizon Wireless as is demonstrated by many public filings. Plaintiff further responds that the instant suit against VCI is not duplicative litigation because the claims alleged against VCI herein derive from VCI's alleged infringement of the patents for wireless services only. Plaintiff states that the related case does not contain any claims for violation of the patents relating to wireless services. Therefore, Plaintiff concludes that the claims made in this action do not duplicate claims made in Gammino, v. Verizon Communications, et al. , Civ. Ac. No. 03-5579.

DISCUSSION

A court may dismiss a complaint for failure to state a cause of action only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Swierkiewicz v. Sorema N.A., 534 U.S. 506, 122 S.Ct 992, 998 (2002) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S.Ct. 2229 (1984)). The court "must take all the well pleaded allegations as true and construe the complaint in the light most favorable to the plaintiff." Colburn v. Upper Darby Twp., 838 F.2d 663, 665-66 (3d Cir. 1988). In Swierkiewicz, the United States Supreme Court addressed the liberal pleading standards set forth in Fed.R.Civ.P. 8(a)(2), noting that Fed.R.Civ.P. 8(a)(2) only requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Swierkiewicz 122 S.Ct. 998-999. The Supreme Court further noted that the statement of facts must simply "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id. at 998. (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S.Ct. 99(1957). Notice pleading is all that is required even when it may appear on the face of the pleadings that a recovery is very remote and unlikely. See Swierkiewicz at 997-998. "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Id. at 997 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683)). The Supreme Court further expounded upon the simplified notice

pleading standard stating that the standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims. Id. at 998. The pleading standard is a liberal one and was adopted to focus litigation on the merits of a claim. Id. at 999. Therefore, Fed.R.Civ.Pro. 8(a) establishes a pleading standard without regard to whether a claim will succeed on the merits. .

A. VCI's Motion to Dismiss

VCI argues that dismissal is warranted because it is only a holding company, and not a partner of Verizon Wireless. VCI also argues that the instant litigation is duplicative, a waste of judicial resources, and unduly burdensome. Upon review of the Complaint the court notes that Plaintiff has alleged that VCI is a general partner of Verizon Wireless. (See Compl. at ¶¶ 35, 38,73, and 85). Plaintiff's has sufficiently alleged that VCI is Verizon Wireless' partner. Swierkiewicz, discussed *supra* makes it clear that pleading with particularity is not required and also that Plaintiff is not required to provide proof that his allegations are correct at the time of pleading. The pleading standard is a liberal one and was adopted to focus litigation on the merits of a claim. Id. at 999. Whether VCI actually is a partner of Verizon Wireless is a matter to be determined after the completion of discovery and upon summary judgment, if appropriate. Furthermore, Plaintiff has also alleged, albeit quite generally, that VCI has actively infringed upon, and induced Verizon Wireless to infringe upon, Plaintiff's patents. VCI asserts that Plaintiff must specify the manner in which the alleged infringement occurred and cites to Phonometrics, Inc. v. Hospitality Franchise Sys. Inc., 203 F.3d 790 (Fed. Cir 2000) in support of this position. (VCI Mot. Dismiss at 6). However, VCI has misconstrued the court's holding in that case. In Phonometrics ,the court merely stated that "a patentee need only plead facts sufficient to place the alleged infringer on notice. This requirement ensures that an accused infringer has sufficient knowledge of the facts alleged to enable it to answer the complaint and defend itself." Phonometrics, 203 F.3d. at 794. Notably the court specifically held that:

> [Pleading] requirements do not require a patentee to amend its claims to include specific allegations about each limitation once a court has construed the claims of the patent. To

> impose such requirements would contravene the notice pleading standard, and would add needless steps to the already complex process of patent litigation. Instead. . . [the] complaint alleges ownership of the asserted patent, names each individual defendant, cites the patent that is allegedly infringed, describes the means by which the defendants allegedly infringe, and points to the specific sections of the patent law invoked.

Id. Therefore, Plaintiff is only required to provide Defendants with notice of his claims. By alleging that Defendants have actively infringed upon, and induced others to infringe upon, his patents by using them, Plaintiff has satisfied the pleading requirements of Fed.R.Civ.P. 8(a)(2). VCI's motion to dismiss largely relies on its assertions that Plaintiff cannot prove that VCI is Verizon Wireless' partner. VCI's motion for dismissal also asserts that VCI cannot and has not infringed upon any patents because it is only a holding company. Again, these arguments are appropriately advanced after discovery has been completed and upon summary judgment. Defendant VCI's motion to dismiss for failure to state a claim will be dismissed

VCI's final argument favoring dismissal is that the instant matter duplicates litigation. Plaintiff has filed a complaint against VCI in a related matter. See, Gammino v Verizon Communications, Inc., et al., Civ. Ac. No. 03-5579. However, as Plaintiff correctly notes, none of Plaintiff's claims against any of the Defendants in that matter involve allegations of patent infringement relating to wireless telephone services. The claims against all Defendants herein involve wireless service. The court recognizes that VCI will be required to simultaneously litigate two cases involving the same patent. However, the court will attempt to minimize this burden by coordinating scheduling and other deadlines in the related case. Accordingly, Defendant VCI's motion to dismiss Plaintiff's Complaint will be denied.

B. Vodaphone's Motion to Dismiss

Vodaphone moves for dismissal pursuant to Fed.R.Civ.P. 12(b)(2) asserting that this court does not have jurisdiction over Vodaphone, a UK-based company. Vodaphone asserts that it has no Pennsylvania contacts and that in Pennsylvania it: does not do any business; has never sold any goods or services; does not own any property; does not pay any tax, or employ any personnel. As Vodaphone correctly points out, Plaintiff bears the burden of establishing that Vodaphone has sufficient contacts with

Pennsylvania to warrant this court's exercise of either general or specific personal jurisdiction over Vodaphone. See, Inamed Corp. V. Kuzmak, 249 F.3d 1356, 1360 (Fed. Cir. 2001); Akro Corp. v. Luker, 45 F.3d, 1541, 1545 (Fed. Cir. 1995). However, on the present record, the court is unable to determine whether it may lawfully exercise personal jurisdiction over Vodaphone. An opportunity for jurisdictional discovery must be granted in order to permit Plaintiff to demonstrate to this court that jurisdiction over Vodaphone is warranted.[1]

An appropriate order follows.

[1]Vodaphone also moves for dismissal pursuant to Fed.R.Civ.P. 12(b)(6) maintaining that it is not a partner of Verizon Wireless and cannot be liable for any alleged infringing conduct committed by Verizon Wireless. Vodaphone further argues that Plaintiff has failed to state a claim for patent infringement because the complaint failed to allege sufficient facts to support a claim of either direct or indirect patent infringement. (See Vodaphone Mot. Dismiss at 14-15, 17-19). The court will not determine whether dismissal pursuant to Fed.R.Civ.P. 12(b)(6) is appropriate until after the court decides whether it may properly exercise jurisdiction over Vodaphone.

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VERIZON COMMUNICATIONS, INC. VODAPHONE	:	
GROUP PLC, and AT&T CORPORATION,	:	
Defendants.	:	

ORDER

AND NOW this day of September 2005 , **IT IS HEREBY ORDERED** that:

1. Defendant VCI's Motion to Dismiss is **DENIED**. Defendant VCI shall file an Answer to Plaintiff's Complaint within 10 days of the date of this Order;

2. Decision on Defendant Vodaphone's Motion to Dismiss is **DEFERRED** pending the completion of discovery limited to the issues raised pursuant to Fed. R. Civ. P 12(b)(2);

3. Discovery on the jurisdictional issue shall be completed on or before November 30, 2005;

4. Defendant Vodaphone may move within ten (10) days of the completion of discovery to reinstate the motion including legal memorandum;

5. Plaintiff shall have ten (10) days from the date of Defendant's letter request to reinstate his reply.

BY THE COURT:

S/_____

Clifford Scott Green, S.J.