

Del. IP Ruling May Mark Limitation-By-Limitation Analysis Shift

By **Ted Mathias and Ian Swan** (May 16, 2024)

A Delaware federal judge has held that a patentee can adequately plead infringement of a patent covering complex technology without alleging any facts indicating that an accused product meets a limitation found in all claims of an asserted patent.

In *Lindis Biotech GMBH v. Amgen* in March, the U.S. District Court for the District of Delaware held it was sufficient that the patentee "dr[ew] significant parallels between" and "connect[ed] elements from" the asserted claims and the accused product.[1]

The decision likely will be frequently cited by patentees opposing motions to dismiss under Rule 12(b)(6) and spark debate in the courts as to whether the holding is consistent with the U.S. Supreme Court's 2009 *Ashcroft v. Iqbal* pleading requirements.[2]

In *Lindis*, the independent claims of U.S. Patent No. 8,709,421 "require[d] administration of a trifunctional, bispecific immunostimulating antibody." *Lindis* made no specific allegation — let alone provided any supporting facts — in its complaint that the accused product, Amgen's Blicynto, was "trifunctional." Amgen moved to dismiss the count directed to the '421 patent based on this omission.

U.S. District Judge Gregory Williams began his analysis by explaining the U.S. Court of Appeals for the Federal Circuit's distinct pleading standards for "simple" and "complex" technologies.

A party asserting a patent directed to simple technology can provide less detail, such as identifying the accused products and "provid[ing] information 'akin to including photos' of the products," along with allegations that the products meet each limitation of an asserted claim.[3]

But patents involving complex technologies such as those asserted in *Lindis* require more. Per the court in *Lindis*, "the plaintiff 'must show how the defendant plausibly infringes by alleging some facts connecting the allegedly infringing product to the claim elements.'"[4]

Where the court appeared to deviate from other District of Delaware decisions is on the issue of whether there must be facts directed to each of the claim elements or, as deemed sufficient in *Lindis*, connecting "the claim elements" to the accused product in some more general sense.

The court quoted with approval *DIFF Scale Operation Research LLC v. MaxLinear Inc.* for the proposition that a patentee must do more than "merely cop[y] the language of a claim limitation, and then flatly stat[e] — without more — that Defendant['s] accused products have or perform such a limitation." [5]

The Delaware court in *DIFF Scale* added, however, that "if after reading a complaint, the Court cannot conclude that it is plausible that the accused infringer's product reads on a



Ted Mathias



Ian Swan

limitation of an asserted claim of a patent-in-suit, then it cannot be plausible that the accused infringer actually infringes that patent claim." [6]

That decision thus made clear that failure to plead facts establishing plausibility as to even a single limitation is fatal under *Twombly v. Iqbal*.

The focus on specific limitations is consistent with other Delaware decisions such as another case cited in *Lindis*, *ID Image Sensing LLC v. OmniVision Technologies Inc.* in 2020, where the court granted a motion to dismiss for failure to plead facts directed to a single limitation. [7]

With perhaps a nod to the tension between its holding and this other case law, the court in *Lindis* stated that "[w]hile *Lindis* does not allege that *Blinicyto* is trifunctional, *Amgen* concedes that *Lindis* is not required to establish every element of Claim 1 to survive dismissal." [8] But that is a strained reading of *Amgen's* position.

In its brief, *Amgen* didn't concede that *Lindis* was not required to provide facts that could plausibly support an infringement finding on the trifunctional limitation. In the passage cited by the court, *Amgen* merely stated black-letter pleading law that, at the pleading stage, a patentee need not "establish that each element of an asserted claim is met." [9]

In other words, *Lindis* didn't need to prove its case in the complaint. Alleging facts giving rise to a plausible claim that the accused device meets each limitation is sufficient.

To be sure, courts outside of Delaware have not uniformly required the limitation-by-limitation analysis that *DIFF Scale* and *ID Image* would mandate.

In *Greenthread LLC v. Omnivision Technologies* in the U.S. District Court for the Eastern District of Texas last year, U.S. District Judge Rodney Gilstrap denied a defendant's motion to dismiss where *Greenthread's* pleadings failed to identify the location of three key elements of a claim within the alleged infringing products. [10]

Noting that "[r]equiring *Greenthread* to provide element-by-element infringement contentions" before discovery "would be too onerous a burden," Judge Gilstrap found that he would have to engage in premature claim construction to assess *Omnivision's* argument that specific claim elements were absent from the products at issue. [11]

Similarly, in *Blitzsafe Texas v. Volkswagen Group of America Inc.* in the Eastern District of Texas in 2016, U.S. Magistrate Judge Roy Payne held that a complaint need "not allege [that] elements such as ... 'particular combinations of subsystems, microcontrollers, program code, interfaces, data, and control commands'" were present in the accused products.

Instead, their presence could be inferred by the complaint's allegations regarding the accused electronic devices that normally incorporate recited elements like codes, data, microcontrollers and interfaces. [12] The plaintiff was thus not required to allege the presence of specific elements of asserted claims.

In *Insidesales.com Inc. v. Salsoft* in 2017, the U.S. District Court for the District of Utah found a complaint sufficient despite the absence of any factual allegations regarding specific claim elements because the complaint identified the accused products and explained that they performed the same function as the patentee's own system. It flatly rejected the defendant's argument that "courts uniformly require complaints to allege infringement of

particular claim limitations." [13]

But the case is distinguishable from *Lindis* in that the court in *Insidesales.com* made no findings as to the complexity of the relevant technology.

Lindis thus is significant as a case plainly involving complex technology where the complaint contained neither facts nor even a specific allegation directed to a claim limitation.

The decision might spark a shift away from requiring a limitation-by-limitation analysis in such cases, or it could end up as an outlier if courts elect to follow the approach in other Delaware cases.

Ted Mathias is a partner and Ian Swan is an associate at Axinn Veltrop & Harkrider LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] *Lindis Biotech v. Amgen Inc.*, 2024 WL 1299930, at *2 (D. Del. Mar. 27, 2024).

[2] See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007).

[3] *Disc Disease Sols. Inc. v. VGH Sols. Inc.*, 888 F.3d 1256, 1260 (Fed. Cir. 2018).

[4] *Lindis*, 2024 WL 1299930, at *3 (quoting *Bos. Sci. Corp. v. Nevro Corp.*, 415 F. Supp. 3d 482, 489 (D. Del. 2019)).

[5] *Id.* (quoting *DIFF Scale Operation Rsch. LLC v. MaxLinear Inc.*, No. CV 19-2109-LPS-CJB, 2020 WL 2220031, at *1 (D. Del. May 7, 2020) report and recommendation adopted, 2020 WL 6867103 (D. Del. Nov. 23, 2020)).

[6] *DIFF Scale*, 2020 WL 2220031, at *1.

[7] No. CV 20-136-RGA, 2020 WL 6888270, at *6 (D. Del. Nov. 24, 2020), report and recommendation adopted, No. CV 20-136-RGA, 20~1 WL 602438 (D. Del. Feb. 16, 2021); see also *Ancora Techs., Inc. v. Lenovo Grp. Ltd.*, Civil Action No. 1:19-cv-01712-CFC, 2020 WL 4530718, at *1 (D. Del. Aug. 6, 2020) (granting motion to dismiss where complaint did not "match" claim limitations to "components and functions of the Accused Products"); *Uniloc 2017 LLC v. ZenPayroll Inc.*, Civil Action No. 19-1075-CFC-SRF, 2020 WL 4260616, at *3 (recommending grant of motion to dismiss where plaintiff did not plead facts connecting features of allegedly infringing product to asserted claim).

[8] *Lindis*, 2024 WL 1299930, at *3.

[9] Def's Reply Br. in Supp. of Mot. to Dismiss in Part Under Fed. R. Civ. P. 12(b)(6) at 3, ECF No. 25 (quoting *ID Image Sensing*, 2020 WL 6888270, at *6).

[10] *Greenthread, LLC v. OmniVision Technologies Inc.*, 2023 WL 8653155, *2-*3 (E.D. Tex. 2023).

[11] Id. at *3.

[12] Blitzsafe Texas LLC v. Volkswagen Group of America Inc., 2016 WL 4778699, *2-*4 (E.D. Tex. 2016).

[13] INSIDESALES.COM INC., v. SALESLOFT INC., 2017 WL 2559932, *4-*5 (D. Utah 2017) (citing InCom Corp. v. Walt Disney Co., 2016 U.S. Dist. LEXIS 71319 at *8; Telebrands Corp. v. Ragner Tech Corp, 2016 U.S. Dist. LEXIS 114436 at *10 (D.N.J. Aug. 25, 2016)).