

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

HBCU MESSAGING US LP,

Plaintiff,

v.

APPLE, INC., and GREEN DOT  
CORPORATION,

Defendants.



CIVIL NO. 1:24-CV-1199-ADA

**ORDER GRANTING DEFENDANT GREEN DOT CORPORATION'S  
MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT**

Before the Court is Defendant Green Dot Corporation's Motion to Dismiss Plaintiff HBCY Messaging US LP's ("HBCU") First Amended Complaint ("Complaint") (ECF No. 32) pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 35. After careful consideration of the Motion, the Parties' briefing, Parties' arguments at the May 1, 2025, hearing, and the applicable law, the Court **GRANTS** Defendant's Motion to Dismiss with prejudice.

**I. BACKGROUND**

HBCU filed suit against Defendants Green Dot and Apple Inc. for infringement of U.S. Patent No. 11,012,827 (" '827 Patent") on October 10, 2027 (ECF No. 1), then filed its First Amended Complaint ("FAC") on January 24, 2025 (ECF No. 32). The '827 Patent claims a "mobile device" and requires that the mobile device "transmit[] message content intended for a third party provider[] to a server associated with the service." ('827 Patent, cl. 1). HBCU alleged that Green Dot is a payment platform whose technology is used in Apple Cash, among other applications. ECF No. 32 ("FAC") at ¶ 19. HBCU listed six

Accused Instrumentalities in its FAC, all of which refer to Defendant Apple. *Id.* at ¶ 89. HBCU sought various forms of relief, including an adjudication that Apple and Green Dot jointly infringed the '827 Patent. *Id.* at 40. HBCU alleged Green Dot directly infringed the '827 Patent, that it induced and contributed to infringement of the '827 Patent, and that Green Dot's alleged infringement was willful, based on its connection to Apple, Inc., and a letter from HBCU's attorneys dated September 2024. *Id.* at ¶¶ 129, 131, 132, 134.

Green Dot filed this Rule 12(b)(6) Motion to Dismiss HBCU's amended complaint on February 7, 2025. ECF No. 35 ("Motion"). Green Dot argued in its Motion that it is a bank holding company, and is being identified by HBCU as a "third party provider" for the '827 Patent claim while alleging direct, indirect, and willful infringement on that basis. Motion at 3. Green Dot argued that the claims do not require a third party provider to undertake any action after receiving a message, only that it be the "intended" message recipient. Motion at 2.

HBCU filed its response in opposition on March 14, 2025 (ECF No. 41), and Green Dot filed its reply on April 11, 2025 (ECF No. 51). The Court heard the motion during a hearing on May 1, 2025.

## II. LEGAL STANDARDS

In determining a Rule 12(b)(6) motion, a "court accepts 'all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.'" *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (citation omitted). While a complaint does not need detailed factual allegations, it must contain sufficient factual matter that, when assumed to be true, states a claim that has facial plausibility. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable

for the misconduct alleged.” *Id.* “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* On infringement, in particular, a complaint must allege sufficient facts to “place the alleged infringer on notice of what activity is being accused of infringement.” *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1352 (Fed. Cir. 2021).

### III. DISCUSSION

#### A. Direct Infringement

To state a claim for direct infringement, a plaintiff must explicitly plead facts to plausibly support the assertion that a defendant “without authority makes, uses, offers to sell, or sells any patented invention during the term of the patent.” *Ruby Sands LLC v. Am. Nat’l Bank of Texas*, No. 2:15-CV-1955-JRG, 2016 WL 3542430 at \*2 (E.D. Tex. June 28, 2016) (citing 35 U.S.C. § 271(a); Fed. R. Civ. P. 8(a); *Bowlby v. City of Aberdeen, Miss.*, 681 F.3d 215, 217 (5th Cir. 2012)).

HBCU alleges direct infringement of claims 1 and 9 of the ’827 Patent, stating that Green Dot and Apple jointly offer and contribute to functionality of the Apple Case, an Accused Instrumentality. FAC ¶ 128. HBCU also argued that it added an additional allegation in its amended complaint, that Apple receives messages intended for Green Dot, Apple forwards the message to Green Dot, and Green Dot receives the message. ECF No. 41 (“Response”) at 3.

Green Dot points out that it is a third party provider, and the asserted claims of the ’827 Patent do not require that the third party provider “do anything.” Motion at 6. Green Dot correctly argued that HBCU did not set forth an allegation that, even if taken as true, could support that Green Dot makes, sells, offers to sell, or imports the accused functionality or the “mobile wireless device” claimed by the ’827 Patent. HBCU’s pleading

and supporting exhibits identify Green Dot as a “third party provider,” but do not plausibly allege direct infringement by Green Dot.

## **B. Indirect and Willful Infringement**

### **1. Inducement**

To state a claim for induced infringement, a plaintiff must allege facts to plausibly support the assertion that the defendant specifically intended a third party to directly infringe the plaintiff's patent and knew that the third party's acts constituted infringement. *Id.* at \*3 (citing 35 U.S.C. § 271(b); *In re Bill of Lading Transmission & Processing Sys. Patent Litig.*, 681 F.3d 1323, 1339 (Fed. Cir. 2012)).

HBCU relied on a claim chart attached at an exhibit to the FAC to oppose Green Dot's Motion. Response at 5, *see* ECF No. 32-4 (FAC) at 44, 46. HBCU argued that the claim chart showed Green Dot's role in alleged inducement. Response at 5. However, that exhibit only shows Green Dot to be a passive recipient of Apple's messages. ECF No. 32-4 (FAC) at 44, 46. The exhibit HBCU relied on demonstrated that Green Dot was transmitted or forwarded messages from Apple, but nothing more. *See id.* HBCU failed to allege sufficient facts to support that Green Dot specifically intended a third party to infringe the '827 Patent or knew that the third party's acts constituted infringement.

### **2. Contributory Infringement**

To state a claim for contributory infringement, a plaintiff must allege facts to plausibly support the assertion that there was (1) an act of direct infringement; (2) that the defendant knew that the combination for which its components were especially made was both patented and infringed; and (3) the components have no substantial non-infringing use. *Id.* (citing 35 U.S.C. §

271(c); *Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1312 (Fed. Cir. 2005)).

HBCU's FAC fails to allege facts supporting its claim for contributory infringement. HBCU points to portions of the FAC that allege non-infringing uses for Accused Instrumentalities, the Apple Messaging App, Apple Cash and Apple servers, and infrastructures implementing those instrumentalities. Response at 6. However, Green Dot correctly pointed out in its Motion that those were mere conclusory allegations and were only threadbare recitals of an element of the contributory infringement claim. Motion at 5. Further, because HBCU did not plausibly allege acts of direct infringement against Green Dot as a third party merely receiving communications, it did not plausibly allege its claim for contributory infringement.

### **3. Willful Infringement**

To state a claim for willful infringement, "a plaintiff must allege facts plausibly showing that as of the time of the claim's filing, the accused infringer: (1) knew of the patent-in-suit; (2) after acquiring that knowledge, it infringed the patent; and (3) in doing so, it knew, or should have known, that its conduct amounted to infringement of the patent." *Valinge Innovation AB v. Halstead New England Corp.*, No. 16-1082-LPS-CJB, 2018 WL 2411218, at \*13 (D. Del. May 29, 2018).

HBCU relied on a September 13, 2024, letter from Plaintiff's attorney to show knowledge by Green Dot of infringement for pre-suit willfulness. Response at 8. However, Green Dot correctly argued that neither the letter nor HBCU's FAC plausibly alleged that Green Dot had knowledge its conduct amounted to infringement. Motion at 9-10. Green Dot correctly pointed out that knowledge of a patent and knowledge of infringement are "distinct elements." *Id.* at 10 (citation omitted).

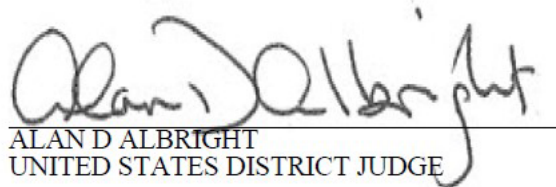
For post-suit willfulness, HBCU failed to plausibly allege that Green Dot directly or indirectly infringed the '827 Patent, as previously addressed. HBCU did not plausibly allege that Green Dot, a third party that received communications from Apple, committed any acts that would constitute direct or indirect infringement.

#### IV. CONCLUSION

For the reasons stated above, the Court GRANTS Defendant Green Dot Corporation's Motion to Dismiss Plaintiff's First Amended complaint under Federal Rule of Civil Procedure 12(b)(6).

**IT IS THEREFORE ORDERED** that Plaintiff HBCU Messaging US LP's claims against Defendant Green Dot Corporation are **DISMISSED WITH PREJUDICE** and that Plaintiff is not entitled to relief as to Green Dot Corporation.

**SIGNED** on September 24, 2025.

  
ALAN D ALBRIGHT  
UNITED STATES DISTRICT JUDGE