

## Rampage's Patent Suit Inks a Partial Victory in Surviving Motion to Dismiss

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Judge Allison Burroughs of the District of Massachusetts recently issued a decision that provides much-needed insight into pleading standards in patent cases. With the demise of Form 18 of the Federal Rules of Civil Procedure, litigants have been faced with a number of questions concerning the level of detail a plaintiff needs to include in a patent complaint – and interestingly, it appears that *direct* infringement may at times be more difficult to plead than *indirect* infringement.

Here, Rampage, which owns a patent on its multi-level screening technology for inkjet printing, accused Global Graphics of direct infringement, induced infringement, and contributory infringement. In its complaint, Rampage alleged that Global Graphics had sent one newly-developed infringing product to another entity for testing and research. But Rampage could not name that other entity in the complaint, and without having access to an accused product, could not examine the product to determine whether it infringed.

The court began its analysis by addressing an important question: with the December 2015 abrogation of Form 18, will complaints be held to the Supreme Court's *Twombly/Iqbal* standard, or will some other standard apply? Here, Judge Burroughs sided with the vast majority of other courts to have examined this issue – in the absence of Form 18, the *Iqbal/Twombly* “heightened pleading” standard must apply to a patent complaint.

Rampage's direct infringement pleadings, however, failed the *Iqbal/Twombly* test. In order to make out a claim for direct infringement, Judge Burroughs said, a plaintiff needed to allege that the defendant's product practices all the elements of at least one of the claims of the patent, and that at least one act of direct infringement had occurred in United States territory. Although Rampage's complaint adequately alleged that the product practiced the patent, it could not meet this second requirement. Rampage argued that because Global Graphics had published a brochure and a white paper regarding its product, its products must have been tested by an entity somewhere in the United States. But because the publications Rampage had submitted did not even mention testing, Judge Burroughs found that they couldn't support the inference that any acts of direct infringement had actually occurred.

Turning to induced and contributory infringement, however, Judge Burroughs reached a different conclusion. Although indirect infringement also requires an underlying act of direct infringement, the current pleading standards for indirect infringement actually helped Rampage make out its claim. Judge Burroughs noted that courts have adopted a “relaxed” pleading standard for allegations of *underlying* direct infringement – a plaintiff does not need to allege that a *specific* direct infringer exists, but rather that there are facts sufficient to infer that such a direct infringer exists. Because Rampage's theory that testing may have occurred was plausible – and discovery might reveal more information about the purported testing – Judge Burroughs denied Global Graphics' motion to dismiss with respect to these claims.

Post Form 18, this opinion is an important one for patent plaintiffs and defendants alike when assessing the likelihood that a motion to dismiss will succeed. It helps address at least two important issues litigants face: it clarifies the standard of review to which patent complaints will now be subject, and it sheds some light on how closely courts will scrutinize patent claims under the *Twombly/Iqbal* standard.



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The case is *Rampage LLC v. Global Graphics*, No. 16-cv-10691-ADB (D. Mass.), before Judge Allison D. Burroughs.

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