IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

INTELLIGENT AGENCY, LLC ***Plaintiff,***	§	
	§	**1-20-CV-0777-ADA**
v.	§	
NEIGHBORFAVOR, INC., ***Defendant.***	§	

ORDER DENYING DEFENDANT NEIGHBORFAVOR'S MOTION TO DISMISS

Came on for consideration is Defendant Neighborfavor's Motion to Dismiss Plaintiff Intelligent Agency's Second Amended Complaint, filed on June 8, 2020. ECF No. 13. Plaintiff Intelligent Agency filed its Response on July 8, 2020. ECF No. 16. Defendant Neighborfavor filed its Reply on July 13, 2020. ECF No. 17. After careful consideration of the parties' briefs, the relevant law, and all relevant pleadings, the Court finds that Defendant's Motion should be **DENIED**.

I. BACKGROUND

In January 2020, Plaintiff Intelligent Agency, LLC filed this lawsuit alleging patent infringement of United States Patent No. 9,286,610 (the "'610 patent"), United States Patent No. 9,439,035 (the "'035 patent"), and United States Patent No. 9,894,476 (the "'476 patent"). *See generally* Compl., ECF No. 1; Second Am. Compl., ECF No. 12. The Court granted the parties' Joint Motion for Partial Dismissal of all claims and counterclaims regarding the '035 patent on March 19, 2021. ECF No. 46. Plaintiff alleges that Defendant is infringing the two remaining patents. *See* Second Am. Compl., ECF No. 12. The '610 patent is entitled "Method and Apparatus for a Principal / Agent Based Mobile Commerce." Second Am. Compl. ¶ 10, ECF No. 12. The '476 patent is entitled "Method, System and Apparatus for Location-Based Machine-Assisted

Interactions." *Id.* Defendant Neighborfavor argues that Plaintiff Intelligent Agency has failed to plead claims of patent infringement properly. Mot., ECF No. 13.

II. LEGAL STANDARD

"A motion to dismiss under rule 12(b)(6) 'is viewed with disfavor and is rarely granted.'" *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000) (quoting *Kaiser Aluminum & Chem. Sales v. Avondale Shipyards*, 677 F.2d 1045, 1050 (5th Cir.1982)). "The complaint must be liberally construed in favor of the plaintiff, and all facts pleaded in the complaint must be taken as true." *Id.* To survive a motion for dismissal under 12(b)(6), the plaintiff must state a claim upon which relief may be granted. *See Legate v. Livingston*, 822 F.3d 207, 210 (5th Cir. 2016). A complaint is insufficient if it offers only "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, (2007)).

When presented with a Rule 12(b)(6) motion, a court conducts a two-part analysis. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). First, the court separates the factual and legal elements, accepting "all of the complaint's well-pleaded facts as true, [while] … disregard[ing] any legal conclusions." *Id.* at 210–11. Second, the court determines "whether the facts alleged in the complaint are sufficient to show that the plaintiff has a 'plausible claim for relief.'" *Id.* at 211 (quoting *Iqbal*, 556 U.S. at 679).

III. ANALYSIS

Plaintiff filed its Second Amended Complaint to address Defendant's request for additional detail beyond what was included in the Original Complaint and First Amended Complaint. Pl.'s Resp. at 5, ECF No. 16. Defendant contends that Plaintiff's Second Amended Complaint is still legally deficient to establish a plausible claim to relief for patent infringement of the '610 patent

and the '476 patent. Defendant contends that Plaintiff fails to identify at least one allegedly infringed claim for each asserted patent and fails to allege how each claim element of that allegedly infringed claim is practiced by Defendant. Mot. at 1–2, ECF No. 13. Specifically, Defendant argues that Plaintiff fails to articulate how the use of the allegedly infringing product constitutes infringement but instead repeats the language of the claim. *Id.* at 7. The Court finds that Plaintiff's pleadings are sufficient and that any deficiencies will necessarily be addressed at the summary judgment stage or at trial.

The '476 Patent

Plaintiff alleges that Defendant infringes at least claim 1 of the '476 patent. Second Am. Compl. ¶ 135, ECF No. 12. Defendant seeks the dismissal of Plaintiff's claim regarding the '476 patent based on the argument that Plaintiff fails to explain how Defendant practices all of the claim elements. Defendant contends that Plaintiff's Second Amended Complaint does not provide an "element-by-element comparison of a claim to an allegedly infringing product or service." Def.'s Reply at 2, ECF No. 17.

Federal Rule of Civil Procedure 8(a)(2) requires a complaint to have "a short and plain statement of the claim showing that the pleader is entitled to relief." Plaintiff's complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570).

Notwithstanding Defendant's argument, Plaintiff adequately pleaded a claim of infringement for the '476 patent. After stripping Plaintiff's complaint of conclusory statements, the well-pleaded facts are sufficient to demonstrate a plausible claim for relief. Accordingly, the Court denies Defendant's Motion as it relates to Plaintiff's claims of infringement of the '476 patent.

The '610 Patent

Plaintiff alleges that Defendant infringes at least claim 1 of the '610 patent. Second Am. Compl. ¶ 80, ECF No. 12. Defendant seeks the dismissal of Plaintiff's claim regarding the '610 patent based on the argument that Plaintiff fails to include facts consistent with Defendant's alleged infringement of claim elements within a closed Markush group. Mot. at 12, ECF No. 13. Claim 1 in the '610 patent states that the product consists of "an agent-user matching algorithm using predefined data selected from the group consisting of . . ." then lists ten predefined data types. *Id.* Defendant contends that Plaintiff's Second Amended Complaint was deficient based on the lack of facts consistent with Defendant's allegedly infringing product using at least one of the predefined data types, and no other predefined data types.

A complaint is insufficient if it offers only "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

Plaintiff adequately pleaded a claim of infringement for the '610 patent. Plaintiff's Second Amended Complaint contains facts sufficient to show a plausible claim for relief. Defendant's argument relies on claim construction unsuitable for the pleading stage of the suit. Accordingly, the Court denies Defendant's Motion as it relates to Plaintiff's claims of infringement of the '610 patent.

IV. CONCLUSION

Because of the reasons stated above, the Court hereby **DENIES** Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint for Failure to State a Claim.

Signed on June 7, 2021.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE