

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

Bartonfalls LLC	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Case No. 2:16-cv-1127-JRG-RSP
	§	LEAD CASE
Turner Broadcasting Systems, Inc. et al.,	§	
	§	
<i>Defendants.</i>	§	
	§	
	§	

REPORT AND RECOMMENDATIONS

Before the Court is Defendants' Motions to Dismiss (Dkt. No. 21) (the "Motion"). For the reasons stated herein, the Court recommends the Motion be **GRANTED**.

LEGAL STANDARD

On a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the Court must assume that all well-pleaded facts are true and view those facts in the light most favorable to the plaintiff. *Bowlby v. City of Aberdeen*, 681 F.3d 215, 218 (5th Cir. 2012). The court may consider "the complaint, any documents attached to the complaint, and any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint." *Lone Star Fund V (U.S.) L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010). Then, the Court must then decide whether those facts state a claim for relief that is plausible on its face. *Bowlby*, 681 F.3d at 217. Plausibility "simply calls for enough fact[s] to raise a reasonable expectation that discovery will reveal" that the defendant is liable for the alleged misconduct. *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 556 (2007).

ANALYSIS

Defendants advance a number of arguments in the Motion, but the Court need only address two of them because the Court is of the opinion that they are meritorious and dispose of all claims.

First, Defendants argue that all allegations concerning U.S. Patent 9,094,694 (“the ’694 Patent”) must be dismissed because it never had any enforceable term. Put another way, the ’694 Patent expired before it issued.

A patent’s term begins on the date of issuance and ends twenty years after the filing date of the earliest filed non-provisional application to which it claims priority. 35 U.S.C. § 154(a)(2). This term may be extended in cases where a delay in issuance is attributed to the Patent and Trademark Office. 35 U.S.C. § 154(b). The ’694 patent expired on June 8, 2015—more than a month before it issued on July 28, 2015—and therefore it had no enforceable term.

None of Bartonfalls LLC’s (“Bartonfalls”) arguments to the contrary is persuasive. For example, Bartonfalls argues that a patent cannot expire before it issues and emphasizes the language of the statute which states that patent terms “begin on the date on which the patent issues.” 35 U.S.C. §154(a)(2) (emphasis added). In other words, Bartonfalls contends that because issuance marks the beginning point of the term, the end date must occur some point thereafter. However, assuming such is the case (and there is neither support for such a notion in the statutory text nor in the case law), Bartonfalls acknowledges what must result: that the patent term “must exist . . . for at least a certain period of time” after issuance. (Dkt. No. 26 at 8.) Further, Bartonfalls argues that the ’694 patent must have some undefined enforceable term because “[f]or the government to accept these fees and to then fail to grant the patentees the benefit of an enforceable patent is inequitable,” akin to an unlawful taking.

Case law does not provide the answer to this question. In the absence of case law, the Court applies the plain language of the statute and common sense. Bartonfalls claims that “finding [an issued patent could have no term] would render the statute meaningless and create an inequitable result for patent owners.” (Dkt. No. 26 at 8.) But in fact, the opposite is true. If the statute were construed as Bartonfalls proposes, *i.e.*, so that an expired-when-issued patent had some indefinite term extension

past the ordinary twenty-year mark to be determined by the Court, then the public would have no notice as to when such patent term would end. Clearly, that cannot be the case. Equally clear, the fact that the government accepted fees from the patentee does not result in an inequity or a taking. Rather, it reflects a (perhaps misguided) decision to pay for a patent that would have no term under the terms of the statute. Whatever the reason, the public should not bear the burden of the patentee's questionable but intentional decision.

Second, Defendants argue that Bartonfalls fails to plead and cannot plead a plausible infringement claim with respect to the other two asserted patents, U.S. Patent No. 7,917,922 (“the ‘922 Patent”) and U.S. Patent No. 8,769,561 (“the ‘561 Patent”). Specifically, Defendants argue that the no plausible construction of the claim term “TV Channel” results in a uniform resource locator (“URL”) meeting the TV Channel limitation as alleged. The Court agrees.

Bartonfalls argues that “[n]othing in the specification or file history . . . or in the definition of the term URL as it is understood by a person of ordinary skill in the art . . . forbids URLs from being considered a channel.” (Dkt. No. 26 at 10.) However, Bartonfalls points to nothing in the intrinsic evidence that *permits* a URL to be considered a TV channel. Nor has it suggested that the inventor provided a special meaning for “TV Channel” that deviates from the plain and ordinary meaning of the term. Bartonfalls appears to admit that the infringement dispute turns on whether URLs fall inside or outside the plain and ordinary meaning of “TV Channels.” (Dkt. No. 39 at 5.) Regarding that dispute, Defendants are correct. Having reviewed the parties’ arguments, the specification, and the portions of the prosecution history cited in the briefing, Bartonfalls has no plausible basis for alleging that the plain and ordinary meaning of “TV Channel” (or “TV Channel” properly construed) covers URLs, *i.e.*, a unique address for a web page that makes content addressable on the Internet. (See Dkt. No. 26 at 10.) The Supreme Court has opined that “determining whether a complaint states a plausible claim is context-specific, requiring the reviewing court to draw on its experience and common sense.” *Ashcroft v. Iqbal*, 556 U.S. 662,

663–64 (2009). Applying Iqbal, this case falls squarely into the narrow slice of cases where based on the claims, specification, its experience, and common sense, the Court can readily conclude that plaintiff’s infringement allegations are implausible on their face. *See also Ruby Sands LLC v. Am. Nat'l Bank of Texas*, 2016 WL 3542430, at *4 (E.D. Tex. June 28, 2016).

CONCLUSION

Therefore, **IT IS RECOMMENDED** that the Motion to Dismiss be **GRANTED**, and that all claims against Defendants be **DISMISSED WITH PREJUDICE**.

A party’s failure to file objections to the findings, conclusions, and recommendations contained in this report within **FOURTEEN (14) DAYS** after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings, and legal conclusions accepted and adopted by the district court. Fed. R. Civ. P. 72(b)(2); *see Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc)

SIGNED this 15th day of March, 2017.



ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE