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## Google Says Rushed Website IP Suit Misses The Mark

By **Kevin Stawicki**

Law360 (November 9, 2020, 3:20 PM EST) -- Google has told a Texas federal court that a small mobile technology company is rushing to jam through another suit that alleges infringement of patents for website development methods, saying the mobile technology company failed to meet baseline requirements for the case to survive.

Express Mobile Inc. failed to meet the pleading standards to proceed with its suit alleging Google infringed five patents that cover inventions for browser-based website-creation concepts and other methods for solving technical problems with content displays, Google said in its motion to dismiss on Friday.

"In an apparent rush to get yet another case on file, Express Mobile drafted a complaint that — even accepting all of the allegations as true — fails to plausibly allege any of those claims," Google said in its motion.

The complaint alleges Google used Express Mobile's patented methods for letting users produce their own websites and that a variety of Google's products, such as Google Docs and Presentation Extensions, directly infringe the patented methods that let users produce browser-based websites.

While Express Mobile said Google Docs and Google Presentation Extensions, which are referred to as the "accused instrumentality," performed the methods at issue, Google argued Friday that "an 'accused instrumentality' cannot infringe a method claim."

"Express Mobile's complaint refers repeatedly to steps that Google's 'accused instrumentalities' allegedly could perform, but fails to plausibly allege that anyone at Google actually did anything that would constitute infringement of the claimed method," Google wrote.

Google also argued that the infringement claims can't meet the pleading standard as set in the U.S. Supreme Court's 2007 holdings in *Bell Atlantic Co. v. Twombly* and the justices' ruling two years later in *Ashcroft v. Iqbal*, which said parties must provide factual content that allows courts to draw a reasonable inference that the defendant is responsible for the alleged misconduct.

Express Mobile's attorney, Robert Kramer of Feinberg Day Kramer Alberti Lim Tonkovich & Belloli LLP, told Law360 in an email that the motion was without merit.

"Google filed a wasteful motion in the Express Mobile case raising minor issues that likely would have been resolved if Google counsel had picked up the phone and discussed, rather than burdening the court with yet another questionable motion," Kramer said.

Representatives for Google did not immediately respond to requests for comment.

Express Mobile **sued Google in September** and launched a series of suits against Dropbox, eBay, Expedia and Microsoft alleging similar illegal conduct.

"Google engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement," Express Mobile alleged in the complaint, noting that Google continued with the alleged infringement despite Express Mobile's warnings.

The suit seeks a permanent injunction banning Google from further infringement, as well as treble damages for willful infringement and attorney fees.

Express Mobile is hardly new to litigation over the website-creation patents. It sued companies including Rishabh Business Solutions Inc. in 2019 over the same patents at issue in its latest string of suits.

The patents-in-suit are U.S. Patent Nos. 6,546,397; 7,594,168; 9,928,044; 9,471,287; and 9,063,755.

Express Mobile is represented by Feinberg Day Kramer Alberti Lim Tonkovich & Belloli LLP, King & Spalding LLP, MoloLamken LLP, Steptoe & Johnson LLP and the Devlin Law Firm LLC.

Google is represented by G. Blake Thompson and J. Mark Mann of MT2 Law Group, and Ameet A. Modi, Emily H. Chen and Karim Z. Oussayef of Desmarais LLP.

The case is *Express Mobile Inc. v. Google*, case number 6:20-cv-00804, in the U.S. District Court for the Western District of Texas.

--Editing by Jack Karp.