

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**CHAMPION POWER EQUIPMENT, INC.,
Plaintiff,**

v.

Case No. 24-C-1281

**GENERAC POWER SYSTEMS, INC.,
Defendant.**

DECISION AND ORDER

Plaintiff Champion Power Equipment, Inc., alleges that Generac Power Systems, Inc., sells portable multi-fuel generators that infringe its patents. Before me now is Generac's motion to dismiss the complaint for failure to state a claim, Fed. R. Civ. P. 12(b)(6), or in the alternative, for a more definite statement, Fed. R. Civ. P. 12(e).

I. BACKGROUND

Champion designs and sells outdoor chore equipment, such as portable generators, leaf blowers, chainsaws, pressure washers, and snow blowers. Generac designs and sells equipment in this area as well. Champion alleges that five specific models of Generac portable generators—some of which are sold under the name “Powermate”—infringe multiple claims of eleven patents owned by Champion. Each model is a dual-fuel or multi-fuel generator, meaning that it can use either propane or gasoline to generate power. The eleven patents at issue claim such multi-fuel generators or features of such generators. The complaint alleges that Champion owns the patents, identifies the claims in each patent that Champion believes the accused products infringe, and alleges that Generac has committed direct infringement by making, using, selling, or

offering for sale within the United States the five models of portable generators identified in the complaint.

The complaint is 77 pages long, but its length is due mostly to Champion's having reproduced the entirety of the claim language at issue rather than its having made detailed factual allegations about the nature of the alleged infringement. Although Champion alleges that all elements of the claims are present in the accused products, the complaint does not include images of the accused products or attempt to describe how those products satisfy the claim language. Generac contends that because the complaint lacks factual allegations linking the physical features of its generators to the nearly 100 claims at issue, the complaint fails to state a claim upon which relief can be granted and must be dismissed. Alternatively, Generac contends that Champion should be required to provide a more definite statement that consists of "specific details showing where each element of each asserted claim is allegedly met in each accused product, either through detailed annotated diagrams and/or claim charts." (Br. in Supp. at 10.) Generac contends that, without this information, it is left to guess at how its products might fall within the claims.

I consider Generac's arguments below.

II. DISCUSSION

A. Motion to Dismiss Under Rule 12(b)(6)

Federal Rule of Civil Procedure 8(a)(2) "generally requires only a plausible 'short and plain' statement of the plaintiff's claim." *Skinner v. Switzer*, 562 U.S. 521, 530 (2011). To avoid dismissal under Rule 12(b)(6), a complaint must (1) describe the claim in sufficient detail to give the defendant fair notice of the claim and grounds on which it rests,

and (2) contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Cornelsen v. Infinium Cap. Mgmt., LLC*, 916 F.3d 589, 598 (7th Cir. 2019). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Determining whether a complaint states a plausible claim for relief [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.

In patent cases, the law of the regional circuit generally applies to motions to dismiss under Rule 12(b)(6), but Federal Circuit law applies to the specific question of whether a complaint states a claim of patent infringement on which relief may be granted. *AlexSam, Inc. v. Aetna, Inc.*, 119 F.4th 27, 34–35 (Fed. Cir. 2024). The Federal Circuit has repeatedly reminded parties and district courts that “patentees need not prove their case at the pleading stage.” *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1346 (Fed. Cir. 2021). Rather, “an adequate complaint need only contain ‘some factual allegations that, when taken as true, articulate why it is plausible that the accused product infringes the patent claim.’” *AlexSam*, 119 F.4th at 35 (quoting *Bot M8 LLC*). “More particularly: ‘[a] plaintiff is not required to plead infringement on an element-by-element basis. Instead, it is enough that a complaint place the alleged infringer on notice of what activity . . . is being accused of infringement.’” *Id.*

Generac contends that the complaint is deficient because Champion does not make factual allegations that tie the features of its products to the claim language. Instead, the complaint identifies the accused products, quotes the claim language, and then

makes the conclusory assertion that the accused products satisfy all elements of the claims. Generac's description of the complaint is not far off the mark. Champion does not make factual allegations that describe how the features of the accused products satisfy the claim language. Still, that has not prevented Generac from receiving fair notice of Champion's claims of infringement and the grounds upon which they rest. Indeed, Generac demonstrates that it understands what it is accused of by pointing to a specific structure required by a claim and arguing that its products completely lack that structure. (Br. in Supp. at 4–5.)

Because Generac has received fair notice, its motion focuses more on the plausibility requirement. It contends that, to plead a plausible claim, the complaint must contain more details about how the accused products satisfy the claim elements. However, it is not clear how Champion would do that in this case. A patent claim delineates the “metes and bounds” of an invention by using words. *See, e.g., Thorner v. Sony Comput. Ent. of Am. LLC*, 669 F.3d 1362, 1367 (Fed. Cir. 2012). To infringe, all the elements of the claim must be present in the accused device, either literally or equivalently. *See, e.g., Networld, LLC v. Central Corp.*, 242 F.3d 1347, 1353–55 (Fed. Cir. 2001). Thus, an allegation of patent infringement is inherently conclusory to some extent: the plaintiff must assert that the accused product satisfies the actual words used in the patent claim. *Cf. K-Tech Telecomms., Inc. v. Time Warner Cable, Inc.*, 714 F.3d 1277 (2013) (Wallach, J., concurring) (“Although the allegation that defendant ‘is infringing’ seems to be a legal conclusion of the type we are instructed to disregard under *Twombly*, it is no more conclusory than [an] allegation of ‘negligence.’”). Because the language of the claim controls, it does not make sense to require the plaintiff to replace

the words of the claim with different words describing the accused product to show how the product satisfies the claim. Thus, if a claim requires “a mechanical fuel lockout switch for a dual fuel engine having a mechanical fuel valve actuateable between a first position and a second position to selectively control fuel flow” (Compl. ¶ 14.a.), then the plaintiff should plead that the accused product has “a mechanical fuel lockout switch for a dual fuel engine having a mechanical fuel valve actuateable between a first position and a second position to selectively control fuel flow.” To make this claim plausible, the plaintiff does not have to use different words than those that appear in the claim to allege that the accused product has the switch.

Generac suggests that the complaint could include images, diagrams, schematics, claim charts, or product manuals to demonstrate that the accused product satisfies the claims. (Br. in Supp. at 4.) Generac apparently has in mind something like the claim charts that parties will often exchange in advance of a *Markman* hearing or before the deadline for filing motions for summary judgment on infringement. See *In re Apple Inc.*, 979 F.3d 1332, 1342 (Fed. Cir. 2020) (discussing the parties’ exchange of infringement and invalidity contentions); *Perfect Web Techs., Inc. v. InfoUSA, Inc.*, 587 F.3d 1324, 1326 (Fed. Cir. 2009) (discussing the parties’ filing of “joint claim chart” prior to *Markman* hearing). Generac specifically cites a claim chart that Champion sent to Generac that contains annotated images of the accused products alongside the claim language. (ECF No. 16-1 at 4–27.) But this claim chart—which covers only one of the 11 patents at issue—is 24 pages long and goes well beyond the “short and plain statement” required by Federal Rule of Civil Procedure 8. Moreover, the Federal Circuit has stated that its own precedent, the Supreme Court’s rulings in *Twombly* and *Iqbal*, and Federal Rule 8 all “make clear

that neither claim construction nor prior art is required to be included in the pleadings.” *Hall v. Bed Bath & Beyond, Inc.*, 705 F.3d 1357, 1372 (Fed. Cir. 2013); see also *Heidary v. Amazon.com, Inc.*, No. 2024-1580, 2024 WL 4489918, at *4 (Oct. 15, 2024) (a plaintiff “is not required to attach claim charts or allege how each limitation of a claim is infringed”). Thus, the plausibility requirement does not call for the level of detail that Generac demands.

It is true that the Federal Circuit has stated that “a plaintiff cannot assert a plausible claim for infringement under the *Iqbal/Twombly* standard by reciting the claim elements and merely concluding that the accused product has those elements.” *Bot M8*, 4 F.4th at 1353. Rather, “[t]here must be some factual allegations that, when taken as true, articulate why it is plausible that the accused product infringes the patent claim.” *Id.* But the court has also stated that “[t]he level of detail required in any given case will vary depending upon a number of factors, including the complexity of the technology, the materiality of any given element to practicing the asserted claim(s), and the nature of the allegedly infringing device.” *Id.* at 1353. According to the Federal Circuit, when the technology is simple, the plausibility requirement may be satisfied by identifying the accused products by name, identifying the patents at issue, and then simply alleging that the accused products meet “each and every element of at least one claim of the [patents], either literally or equivalently.” *Disc Disease Sols. Inc. v. VGH Sols., Inc.*, 888 F.3d 1256, 1260 (Fed. Cir. 2018).

In the present case, the technology is relatively simple. The patents involve mechanical systems rather than abstract subjects like software or drug delivery mechanisms. Thus, simply identifying the accused products and asserting that they

satisfy the claim elements is all that is necessary to render the claim plausible, since it is almost inherently plausible to think that a dual-fuel generator could infringe a series of patents that claim dual-fuel generators or specific features of such generators. See *Swanson v. Citibank, N.A.*, 614 F.3d 400 (7th Cir. 2010) (to test whether claim is plausible, court asks whether the complaint gives “enough details about the subject-matter of the case to present a story that holds together”). In a case like this, more details about how the accused product embodies the claim language would be needed only if there were an apparent contradiction between the claims and what the complaint alleges about the accused product. For example, if the patents appeared to claim pressure washers, more details would be needed to explain how an accused portable generator plausibly satisfies the claim language.

On this point, one of the Federal Circuit cases cited by the parties is instructive. In *Heidary v. Amazon.com, Inc.*, the Federal Circuit held that a complaint that did nothing more than list claim language and allege infringement failed to cross the plausibility threshold. 2024 WL 4489918, at *3–4. However, that was because there was a “facially apparent disconnect” between the claim language and the accused product. *Id.* at 4. Although the patent at issue claimed a fire protection system, the accused device appeared to be only a single component of such a system. *Id.* The Federal Circuit upheld the district court’s dismissal of the complaint because the complaint failed to provide “any reason to plausibly conclude that the accused products are a complete fire protection system as claimed by the [relevant] patent.” *Id.* at *4. In contrast, Champion’s complaint contains no such disconnect. The patents claim dual-fuel generators and features of such generators, and the accused products are dual-fuel generators. Thus, it is plausible to

infer that the accused products *could* satisfy the claim language. See *Swanson*, 614 F.3d at 404 (when assessing plausibility, “the court will ask itself *could* these things have happened, not *did* they happen”).

A related way a complaint asserting infringement could fail the plausibility requirement in a simple case like this is to plead facts that are inconsistent with the claim requirements. *Bot M8*, 4 F.4th at 1346. That is, the complaint could essentially plead “too much rather than too little” and thereby allege “away” from infringement. *Id.* at 1354. For example, if Champion had alleged facts showing that Generac’s products lacked the fuel lockout switch discussed above, then it would have “pleaded itself out of court” by showing that the accused products lacked a required element of the claim. *Id.* But here, Champion has not pleaded itself out of court. Although Generac asserts in its brief that its products lack a required structure (Br. in Supp. at 5), I may not consider this assertion on a motion under Rule 12(b)(6) because it is not contained in the complaint itself. *E.g., Edgenet, Inc. v. Home Depot U.S.A., Inc.*, 658 F.3d 662, 664–65 (7th Cir. 2011). Generac’s likelihood of eventually being able to prove that its products do not infringe is not a basis for granting a motion to dismiss for failure to state a claim.

In short, because it is plausible to think that the accused dual-fuel generators could satisfy all the elements of the claims identified in the complaint, Generac’s motion to dismiss will be denied.

B. Motion for a More Definite Statement

Under Federal Rule of Civil Procedure 12(e), a party may move for a more definite statement “[i]f a pleading to which a responsive pleading is allowed . . . is so vague or ambiguous that the party cannot reasonably prepare a response.” This rule “allows district

courts to ask a plaintiff to provide ‘details that enable the defendants to respond intelligently and the court to handle the litigation effectively.’” *Shuhaiber v. Ill. Dep’t of Corr.*, 980 F.3d 1167, 1170 (7th Cir. 2020) (quoting *Chapman v. Yellow Cab Coop.*, 875 F.3d 846, 849 (7th Cir. 2017)).

Generac contends that, without more information about Champion’s infringement claims, it cannot reasonably respond to the complaint. However, as discussed above, Generac has demonstrated that it has fair notice of what it is accused of by pointing to aspects of the patent claims that it believes are lacking in its products. That Generac was able to formulate this defense is unsurprising, given that the complaint identifies the patents at issue, the five models of accused products, and the specific claims within each patent that are allegedly infringed. Generac does not explain why it would need additional information to prepare its response. As far as I can tell, Generac should be able to decide for itself whether the five accused products meet the claim elements and then admit or deny Champion’s allegations of infringement as appropriate. Further, I have no reason to think that Champion would need additional information to decide what affirmative defenses to assert in its answer.

In support of its motion for a more definite statement, Generac cites this court’s decision in *Bay Industries, Inc. v. Tru-Arx Manufacturing, LLC*, No. 06-C-1010, 2006 WL 3469599 (E.D. Wis. Nov. 29, 2006). In that case, the court required a plaintiff alleging patent infringement to provide a more definite statement that identified “which of defendant’s products allegedly infringe the [patent at issue].” *Id.* at *3. As discussed, however, Champion has precisely identified which of Generac’s products allegedly infringe the patents at issue, so *Bay Industries* is readily distinguishable. Generac points

to language in the opinion in which the court stated that “[d]efendant should not have to guess . . . how its products might fall within plaintiff’s interpretation of the claims of the patent.” *Id.* at *2. Notably, however, the court did not require the more definite statement to include information about plaintiff’s interpretation of the patent, only a statement identifying the accused products. *See id.* at 3. Thus, the language Generac quotes cannot stand for the proposition that a plaintiff must disclose its claim construction and infringement theories before the defendant responds to the complaint.

Indeed, Generac’s request for a more definite statement is really a request that Champion frontload the kind of information about claim construction and infringement theories that a defendant normally receives in the ordinary course of discovery in a patent case. Generac requests a statement containing “specific details showing where each element of each asserted claim is allegedly met in each accused product, either through detailed annotated diagrams and/or claim charts.” (Br. in Supp. at 10.) But these are details that a patent defendant normally obtains in discovery. And in this case, if either party so requests, I will adopt a scheduling order under Rule 16(b)(1) that sets deadlines for the parties to exchange claim charts prior to briefing claim construction and participating in a *Markman* hearing. Further, Generac will be free to serve contention interrogatories on Champion to obtain its theory as to how the physical features of the accused products satisfy the claims as properly construed. *See* Fed. R. Civ. P. 33(a); *Joseph v. Elan Motorsports Techs. Racing Corp.*, 638 F.3d 555, 561 (7th Cir. 2011). A more definite statement would be needed only if Generac could not intelligently respond to the complaint without the information that it will eventually receive in discovery.

However, as explained above, Generac has not shown that the complaint is so vague that its ability to respond has been hindered.

Finally, Generac contends that I should require a more definite statement to “insur[e] that plaintiff has a proper basis for bringing suit in the first place.” (Br. in Supp. at 10.) This argument again relies on *Bay Industries*, where the court noted that if the plaintiff “cannot describe with some specificity the product he claims infringes his patent, there is reason to question whether [his certification under Rule 11(b)] is true.” 2024 WL 3469599, at *2. But again, in this case, Champion has described with precision the products it claims infringe its patent, so the concern that motivated the court in *Bay Industries* is not present here. Generac seems to think that Champion does not have a good-faith basis for alleging infringement, but I do not think that a motion for a more definite statement is the right way to test that theory. Rule 11 contains its own enforcement procedures, see Fed. R. Civ. P. 11(c), and Generac is free to resort to those if it chooses. However, I think the most efficient approach would be for Generac to answer the complaint and then find out more about Champion’s claim construction and infringement theories during discovery. If Champion’s theories prove to be baseless, Generac can seek sanctions at that time.

Accordingly, Generac’s alternative motion for a more definite statement will be denied.

III. CONCLUSION

For the reasons stated, **IT IS ORDERED** that Generac's motion to dismiss, or in the alternative, for a more definite statement (ECF No. 10) is **DENIED**.

Dated at Milwaukee, Wisconsin, this 22nd day of January, 2024.

/s/ Lynn Adelman
LYNN ADELMAN
United States District Judge