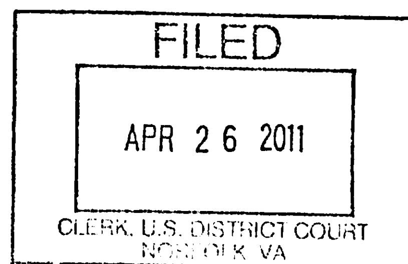

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

ADISCOV, L.L.C.,

Plaintiff,

v. **Civil No. 2:11cv201**

AUTONOMY CORP., PLC,

and

RECOMMIND, INC.,

Defendants.

MEMORANDUM ORDER

This matter comes before the court on defendant Autonomy Corp., PLC's ("Autonomy") Motion to Dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons which follow, this court **DENIES** the motion.

I.

Adiscov, L.L.C. ("Adiscov") filed suit in this court on February 2, 2011, seeking declaratory relief and damages for patent infringement by Autonomy, FTI Consulting Inc. ("FTI"),[1] and Recommind, Inc. In its complaint, Adiscov alleges that each of the defendants are infringing Adiscov's patent entitled, "Method and System for Providing Electronic Discovery on Computer Databases and

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[1] FTI was dismissed with prejudice upon agreement of the parties on April 21, 2011.

Archives Using Artificial Intelligence to Recover Legally Relevant Data" ("the '760 patent"), by manufacturing, using, and selling products and services claimed by the '760 patent. Compl. ¶¶ 13, 15, 17. The '760 patent claims a number of methods for conducting electronic discovery on computer systems through the use of algorithms to locate responsive documents and data. Specifically, as regards Autonomy, Adiscov alleges that Autonomy's eDiscovery Platform, eDiscovery Appliance, Hosted eDiscovery Software, and Legal Hold, Investigator, Early Case Assessment, and Introspect products infringe the '760 patent in various ways. Compl. ¶¶ 13-14. Adiscov has included a "claim chart" in its complaint which sets out the provisions of Claim 1 of the '760 patent which are infringed by specific attributes of Autonomy products. See Compl. ¶ 14.

On March 22, 2011, Autonomy filed the instant Motion to Dismiss the Complaint for failure to state a claim. Adiscov responded on April 5, 2011. Autonomy replied on April 11, 2011, and the motion is now ripe for decision.

II.

This court has previously ruled on a motion to dismiss between these parties in a prior suit filed by Adiscov in this court on May 17, 2010. See Adiscov, LLC v. Autonomy, Corp. PLC, __ F. Supp.

2d __, 2011 W.L. 326000 (E.D. Va. Jan. 27, 2011) (hereinafter "January 27 Opinion"); Adiscov, LLC v. Autonomy, Corp., PLC et al., 2:10cv218 (filed May 17, 2010). In that case, the court dismissed the amended complaint without prejudice as to each of the defendants for Adiscov's failure to meet the Federal Rule of Civil Procedure 8(a) standards as clarified by the Supreme Court in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, __ U.S. __, 129 S. Ct. 1937 (2009).[2] In the opinion dismissing that prior case, this court explored the standards in Twombly and Iqbal, see January 27 Opinion at *1 - *2, and their application in patent cases, see id. at *3 - *4, in depth. Given that thorough discussion of the law of sufficiency of the pleadings in patent cases, which does not bear repeating in full here, this Order instead presents the law in a more summary form.

III.

Federal Rule of Civil Procedure 8(a) ("Rule 8") provides, in pertinent part, "[a] pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." There are two basic requirements

[2] In the previous suit, Adiscov had joined a fourth defendant, Stroz Friedberg, LLC, which was dismissed with prejudice upon agreement of the parties on October 4, 2010.

for a pleading to comply with Rule 8: sufficient factual allegations and plausibility of those allegations. First, the complaint need not have detailed factual allegations, but Rule 8 "requires more than labels and conclusions[.] [A] formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555. Second, given the facts pled, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Iqbal, 129 S. Ct. at 1949 (emphasis added) (citation and internal quotation marks omitted). Thus, the "factual allegations must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555.

In considering a motion to dismiss in a patent case, the district court applies the substantive law of the relevant circuit, not that of the Federal Circuit. McZeal v. Spring Nextel Corp., 501 F.3d 1354, 1355-56 (Fed. Cir. 2007). As this court earlier recognized, the Fourth Circuit has not yet considered a motion to dismiss in a patent case with the benefit of the Supreme Court's precedent in Twombly and Iqbal. This court may be guided by the Federal Circuit in McZeal, which held that in patent cases a complaint is sufficiently plead under Twombly if the complaint: "(1) asserts that the

plaintiff owns the patent at issue; (2) names the defendants; (3) states that the defendant infringed the patent; (4) describes, in general terms, the means by which the patent was infringed; (5) and identifies the specific parts of patent law that are implicated." Taltwell, LLC v. Zonet USA Corp., 2007 W.L. 4562874, at *14 (E.D. Va. Dec. 20, 2007) (unpublished) (citing McZeal, 501 F.3d at 1357).

IV.

Autonomy has moved to dismiss Adiscov's complaint on the grounds that it has failed to meet the Twombly and Iqbal standards because Adiscov's "flawed and mixed-up allegations" fail to "provide Autonomy with reasonable notice of how Autonomy's products are alleged to infringe Adiscov's patent." Mem. in Supp. Mot. to Dismiss 1. In particular, Autonomy faults the complaint for being overinclusive by alleging infringement by both Autonomy products and "marketing terms," providing a claim chart which only obfuscates the claim, and making conclusory statements as to infringement. Id. at 1-2.

Adiscov responds that it has met, and even exceeded, the pleading requirements of Rule 8 because it has named with particularity Autonomy's products which are alleged to violate Claim 1 of the '760 patent. Furthermore, Adiscov argues its complaint

meets the five requirements suggested in McZeal, such that it is sufficient under Rule 8. Finally, Adiscov points to the claim chart as evidence that it has sufficiently given notice to Autonomy as to which of its products are alleged to infringe the '760 patent.

This court agrees with Adiscov and finds that it has met the requirement that its complaint "state a claim to relief that is plausible on its face." Iqbal, 129 S. Ct. at 1949. Adiscov has cured the fatal deficiencies which caused the court to dismiss its complaint in the first case. In that order granting Autonomy and FTI's Motion to Dismiss, the court found that:

> Adiscov never identifies any particular products or services that are alleged to be infringing. Rather, with regard to each defendant, the complaint merely states: "[The defendant] manufactures, uses, and sells products and services that infringe at least Claim 1 of the '760 patent, including, for example and without limitation, [the defendant's] legal discovery software and services, as well as any other legal discovery software or services acting or capable of acting in the manner described and claimed in the '760 patent."

January 27 Opinion at *4 (emphasis added). In essence, the court found that Adiscov did not meet the fourth element of the McZeal factors: identifying the how the patent has been infringed.

This time around there is no question that Adiscov has specifically identified Autonomy's products that it claims to infringe the '760 patent as it states "Autonomy manufactures, uses,

and sells products and services that infringe at least Claim 1 of the '760 patent, including, for example and without limitation, Autonomy's eDiscovery platform, Legal Hold, Investigator and Early Case Assessment, Introspect, eDiscovery Appliance, and Hosted eDiscovery software . . . ." Compl. ¶ 13. Autonomy, in its memorandum in support of its motion, admits that Legal Hold, Investigator and Early Case Assessment, and Introspect are its products. Mem. in Supp. Mot. to Dismiss 4.[3] In addition, Adiscov names the elements of Claim 1 of the '760 patent which are specifically infringed by Autonomy's products. Therefore, this court finds that by naming the Autonomy products alleged to be infringing and stating in general how such products infringe the '760 patent, Adiscov has met the pleading requirements of Rule 8, Twombly, Iqbal, McZeal, and this court's Opinion in the previous case. See also Eidos Commc'ns LLC v. Skype Technologies SA, 686 F. Supp. 2d

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[3] Autonomy argues that it is evidence of Adiscov's failure to sufficiently "undertake the required pre-filing analysis," that Adiscov alleges both Autonomy products and "non-product marketing terms" infringe the patent. Mem. in Supp. Mot. to Dismiss 1. This argument is a "red herring" because by referring to these "non-products" as "marketing terms," Autonomy essentially admits that it markets its products to the public by using the terms "eDiscovery Platform, eDiscovery Appliance, and Hosted eDiscovery Software." Thus, while these terms may not be technical product names, it can only be expected that Adiscov would name them as products or services offered by Autonomy which infringe the '760 patent.

465, 467 (D. Del. 2010) (holding that plaintiffs alleging infringement "were obligated to specify, at a minimum, a general class of products or a general identification of the infringing methods"); Realtime Data, LLC v. Stanley, 721 F. Supp. 2d 538, 543 (E.D. Tex. 2010) (requiring that the plaintiff alleging infringement "specifically identify any accused products or services").

IV.

Accordingly, the court **DENIES** Autonomy's Motion to Dismiss the Complaint. The court **DIRECTS** the Clerk to send a copy of this Memorandum Order to counsel for all parties in this case.

IT IS SO ORDERED.

/s/
Rebecca Beach Smith
United States District Judge

Rebecca Beach Smith
United States District Judge

Norfolk, Virginia
April 26, 2011