

**CSC Holdings, LLC v Samsung Elecs. Am., Inc.**

2020 NY Slip Op 32956(U)

September 8, 2020

Supreme Court, New York County

Docket Number: 655424/2018

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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CSC HOLDINGS, LLC.,	Plaintiff,	INDEX NO.	<u>655424/2018</u>
		MOTION DATE	_____
	- v -	MOTION SEQ. NO.	<u>002</u>
SAMSUNG ELECTRONICS AMERICA, INC.,	Defendant.	<b>DECISION + ORDER ON MOTION</b>	

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 30, 33, 63, 65, 66, 67, 68,

were read on this motion to/for DISMISS

In motion sequence number 002, defendant Samsung Electronics America, Inc. (Samsung) moves, pursuant to CPLR 3211, to dismiss the complaint filed by plaintiff CSC Holdings, LLC (CSC).

**Background**

The following facts are alleged in the complaint unless noted otherwise, and for purposes of this motion, accepted as true.

CSC entered into an agreement with Samsung on January 15, 2010 (Agreement). (NYSCEF Doc. No. [NYSCEF] 21, Complaint ¶ 12.) Pursuant to the Agreement, Samsung promised to sell, license or provide CSC "Hardware" and "Software", collectively referred to as "Products". (NYSCEF 21, ex 1, Agreement § 1 [a], [b].) CSC in turn promised to purchase, license, accept and pay for the Products. (*Id.* § 1.) CSC alleges that the "Products" refer to Set-Top boxes such as the SMT-C5320. (NYSCEF 21, Complaint ¶ 2.)

Under the Agreement, Samsung promised to indemnify CSC if any claim is brought against CSC "alleging that the manufacture, use or sale of the Samsung products, or use

of associated software licensed by Samsung to [CSC], infringes any patent.” (*Id.* ¶ 3; NYSCEF 21, ex 1, Agreement § 19.) Samsung also promised to procure and pay royalties for all intellectual property rights “associated with the manufacture and use of the Set Top including, but not limited to MPEG 4, 1394, OCAP, Alticast middleware and NDS JCAS.” (NYSCEF 21, ex 1, Agreement, ex A § 2; NYSCEF 21, Complaint ¶¶ 4, 40.) Samsung further promised to procure and pay “all Samsung supplied head end equipment.” (NYSCEF 21, Agreement, ex A § 2.)

On September 8, 2015, nonparty TiVo Corporation (TiVo) commenced an action against Samsung alleging that Samsung’s Set-Top boxes infringe TiVo’s patents. (NYSCEF 21, Complaint ¶ 42.) Subsequently, TiVo and Samsung entered into a confidential Patent License Agreement (TiVo-Samsung License). (*Id.* ¶ 44.) TiVo announced that both parties “agreed to terms regarding a broad intellectual property license that will provide certain rights under TiVo’s patent portfolios for Samsung’s leading mobile, consumer electronic and set-top box businesses.” (*Id.* ¶ 45.) CSC alleges that Samsung carved out from the scope of the TiVo-Samsung License Set-Top boxes that Samsung provided to CSC. (*Id.* ¶ 47.)

In 2017, TiVo “made a claim against [CSC] alleging that certain Samsung Products, including without limitation the use of the Samsung SMT-C5420 set-top box in [CSC’s] Remote Storage DVR (RS-DVR) network and/or with a USB live-TV ‘Rewind Buffer,’ infringes certain of TiVo’s United States patents.” (*Id.* ¶ 5.) TiVo allegedly represented to CSC’s parent corporation that “[w]hile we [TiVo] previously concluded an agreement with Samsung, as we recently informed your team, the Samsung set-top boxes deployed in the [CSC] Optimum services are not licensed under that agreement. This exclusion of Samsung set-top boxes deployed in the [CSC] Optimum service has also been confirmed by Samsung.” (*Id.* ¶ 48.)

CSC provided Samsung with a formal written notice of TiVo's claims, requested that Samsung indemnify CSC, and gave Samsung the right to defend or settle the claim with counsel of Samsung's choice. (*Id.* ¶¶ 50-54.) Samsung responded that "indemnification is not warranted." (*Id.* ¶ 56.) Samsung asserted that "the 'Rewind Buffer' referenced in TiVo's presentation is not a part of a Samsung set-top box as sold to [CSC] ('Samsung Products')." (*Id.* ¶ 57.) Samsung also asserted that "[m]odification of such boxes and/or combination with software and other products so as to include a 'Rewind Buffer' fall within exception clauses ... thus confirming Samsung has no indemnification obligations as to the TiVo matter." (*Id.* ¶ 57.)

"Unable to gain the benefit of Samsung's contractual obligations," CSC alleges that it "resolved TiVo's [c]laims against it by entering into an agreement with TiVo." (*Id.* ¶ 94.) CSC subsequently commenced this action against Samsung alleging breaches of the Agreement and a breach of the implied covenant of good faith and fair dealing.

CSC alleges that TiVo's patent infringement claim against it was not based on a modification to the Samsung products made by CSC without the written consent of Samsung or other circumstances that would trigger the exception clauses to Samsung's indemnification obligations. (*Id.* ¶ 92.)

CSC states that its "RS-DVR network and USB live-TV 'Rewind Buffer' are made available on the Samsung SMT-C5320 [S]et-[T]op boxes for use by [CSC's] cable television service subscribers." (*Id.* ¶ 6.) CSC insists that it "did not modify the Samsung Products in any way beyond the Samsung Products' intended uses known and approved by Samsung." (*Id.* ¶ 58.) Apparently, "[i]n a March 19, 2010 email, [CSC] requested from Samsung prototype SMT-C5320 [S]et-[T]op boxes (Samsung Products include SMT-C5320 set-top boxes) that had a single tuner DVR that would be used in [CSC's] soon-to-be deployed RS-DVR environment (an external, cloud-hosted hard drive DVR

environment), with a small, internally mounted solid state hard drive to be used for local pause/live buffer (e.g., Rewind Buffer).” (*Id.* ¶ 70.) CSC requested that the Set-Top box “have either an *external* or internal solid state hard drive flash memory for the Rewind Buffer functionality.” (*Id.* [emphasis in original].) Allegedly, “Samsung responded with a written slide-deck proposal and request for approval of a purchase order to commence development of an SMT-C5320 [S]et-[T]op box having an *external* USB connected hard drive.” (*Id.* ¶ 71 [emphasis in original].) CSC confirmed in writing Samsung’s proposal. (*Id.* ¶ 72.)

Allegedly, “Samsung worked with [CSC] to implement and deploy the Samsung Products for use in the [CSC] RS-DVR network.” (*Id.* ¶ 77.) “Samsung worked directly with [CSC] to identify and develop USB hard drives that would support the Rewind Buffer functionality on the Samsung Products. Such efforts are memorialized through written correspondence between [CSC] and Samsung.” (*Id.* ¶ 80.) Subsequently, CSC and Samsung allegedly worked together to implement the “porting of an updated software platform back into the currently existing Samsung SMT-C5320 set-top box hardware provided by Samsung to [CSC].” (*Id.* ¶ 83.) This software allegedly included “the software platform to deploy the Rewind Buffer functionality that Samsung first demonstrated to [CSC] in 2011.” (*Id.* ¶ 84.)

In short, CSC alleges that “Samsung developed and implemented for [CSC] the software and hardware identified in TiVo’s [c]laim, knowing that the software and hardware would be deployed for use in [CSC’s] RS-DVR network and with the Rewind Buffer technology.” (*Id.* ¶ 91.)

## Discussion

On a motion to dismiss pursuant to CPLR 3211 (a) (7), the court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible

favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994].) However, factual allegations “that consist of bare legal conclusions, as well as factual claims which are either inherently incredible or flatly contradicted by documentary evidence” cannot survive a motion to dismiss. (*Summit Solomon & Feldesman v Lacher*, 212 AD2d 487, 487 [1st Dept 1995] [citation omitted]; *see also* CPLR 3211 [a] [1].)

#### A. Breach of Contract

“The elements of a breach of contract claim are formation of a contract between the parties, performance by the plaintiff, the defendant’s failure to perform, and resulting damage.” (*Flomenbaum v New York Univ.*, 71 AD3d 80, 91 [1st Dept 2009].) CSC sufficiently alleges the first and second elements. (NYSCEF 21, Complaint ¶¶100 28, 12 [parties entered into an enforceable agreement on January 15, 2010]; *id.* ¶¶ 101, 31, 37, 52, 54 [CSC performed all the conditions, covenants, and promises required by the Agreement, including purchasing and licensing the Hardware and Software and providing formal notice to Samsung of TiVo’s patent infringement claims, a request that Samsung indemnify it, and permission to defend or settle the claim at Samsung’s expense with Samsung’s counsel of choice].)

To satisfy the third element, CSC alleges two separate breaches.

##### *1. The First Breach: Failure to Indemnify*

CSC alleges that Samsung breached the Agreement by failing to indemnify and defend CSC from a patent infringement suit commenced by nonparty TiVo. (*Id.* ¶ 104.)

The relevant provision of the Agreement states,

“[i]f any claim, suit, action or proceeding is brought against [CSC] (or any of its officers, directors, subsidiaries, affiliates, subcontractors, customers and employees) (collectively “(Indemnified Parties”) [sic] alleging that the manufacture, use or sale of the Samsung products, or use of associated software licensed by Samsung to [CSC], infringes any

patent ... Samsung shall indemnify, defend and hold harmless such Indemnified Parties from and against all costs, liabilities, expense and actual increased and statutory damage”

(NYSCEF 21, ex 1, Agreement § 19.) CSC then alleges that “[i]n 2017, third party TiVo made a claim against [CSC] alleging that certain Samsung Products, including without limitation the use of the Samsung SMT-C5320 set-top box in [CSC’s] Remote Storage DVR (RS-DVR) network and/or a USB live-TV ‘Rewind Buffer,’ infringes certain of TiVo’s United States patents.” (NYSCEF 21, Complaint ¶ 5.) Nevertheless, “Samsung refused [CSC’s] tender of TiVo’s Claim and refuse[d] to honor its indemnification ... obligations that arose at the time of TiVo’s Claims. (*Id.* ¶ 8.)

CSC argues that it states a claim because the undefined term “Samsung products” encompasses Samsung’s SMT-C5420 Set-Top box although CSC alternatively posits that the term “Samsung products” is ambiguous. Samsung argues that a breach is not stated because neither the Rewind Buffer nor the RS-DVR network is included in the features and specifications listed in the Agreement’s Attachment A; thus, “Samsung products” refers only to the products actually provided by Samsung, as defined in the Agreement’s Attachment A. It is the use of these products i.e. SMT-C5420 alone that must cause the infringement, according to Samsung, otherwise it does not have an obligation to indemnify.

“[A] contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose.” (*Matter of Westmoreland Coal Co. v Entech, Inc.*, 100 NY2d 352, 358 [2003] [internal quotation marks and citation omitted].) “Thus, a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms.” (*Greenfield v Philles Records*, 98 NY2d 562, 569 [2002] [citations omitted].) “A contract is unambiguous if the language it uses has a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself,

and concerning which there is no reasonable basis for a difference of opinion.” (*Id.* [internal quotation marks and citation omitted].) “A contract is ambiguous if ‘on its face [it] is reasonably susceptible of more than one interpretation.’” (*Telerep, LLC v U.S.Intl. Media, LLC*, 74 AD3d 401, 402 [1st Dept 2010] [citation omitted].) The test for ambiguity is to examine the four corners of the document, not outside sources. (*W.W.W. Assocs. v Giancontieri*, 77NY2d 157, 162 [1990].)

The court should review “the entire contract and consider the relation of the parties and the circumstances under which it was executed. Particular words should be considered, not as if isolated from the context, but in the light of the obligation as a whole and the intention of the parties as manifested thereby. Form should not prevail over substance and a sensible meaning of words should be sought.” (*Kass v Kass*, 91 NY2d 554, 566 [1998] [internal quotation and citation omitted].) “[E]xtrinsic and parol evidence is not admissible to create ambiguity in a written agreement which is complete and clear and unambiguous upon its face.” (*Intercontinental Planning v Daystrom, Inc.*, 24 NY2d 372, 379 [1969] [citations omitted].) “If the court concludes that a contract is ambiguous, it cannot be construed as a matter of law, and dismissal under CPLR 3211 (a) (7) is not appropriate.” (*Telerep, LLC*, 74 AD3d at 402 [citation omitted].)

Here, the Agreement provides that Samsung will sell, license or provide “Hardware” and “Software”. (NYSCEF 21, ex 1, Agreement § 1 [a], [b].) The term “Hardware” refers to “digital video products, including set-top terminals and ancillary products.” (*Id.* § 1 [a].) The term “Software” refers to software, “in object code form including software embedded in Hardware or on a stand-alone basis.” (*Id.* § 1 [b].)

The terms “Hardware” and “Software” are collectively referred to as the “Products”. (*Id.* § 1.) These “Products” are what CSC “will purchase, license, accept and pay for.” (*Id.*) The Agreement refers to “Products” in the sections concerning Purchase Orders and the

Six Month Rolling Forecast. (*Id.* §§ 2, 2.4.) The section concerning “Shipment, Delivery and Inspection” also refers to “Products” but also uses the term “products”. (*Id.* § 5.) Similarly, section 8 concerning “Prices and Payment” refers to “Products”. (*Id.* § 8.) Section 9 entitled “Taxes and Fees” uses the term “products.” (*Id.* § 9.) Section 11 uses refers for the first time the singular term “Product” but also uses “Products”. (*Id.* § 11.) Section 12 refers to the singular “Product”. (*Id.* § 12.)

In section 19, entitled “Intellectual Property Indemnification”, the Agreement addresses any claim brought against CDC alleging “that the manufacture, use or sale of the Samsung products, or use of associated software licensed by Samsung to [CSC], infringes any patent ... of any third party.” (*Id.* § 19 [emphasis added].) This provision presents an ambiguity. Whereas the term “Products” is defined as the collective use of the terms “Hardware” and “Software”, the terms “products” or “Samsung products” are not defined, creating a reasonable basis for a difference of opinion as to whether “products” and “Samsung products” are interchangeable with “Products”.

On one hand, it is a reasonable interpretation that section 19 distinguishes between “Samsung products” or “products” and “associated software licensed by Samsung.” Therefore, implying that the term “Samsung products” or “products” do not include “associated software licensed by Samsung.” Because of this implication, a reasonable reading is that the term “Samsung products” is not interchangeable with “Products” because the term “Products” explicitly includes the term “Software”. However, another reasonable reading of this provision is that the term “Samsung products” is interchangeable with “Products” but “associated software licensed by Samsung” is not “Software, in object code form including software embedded in Hardware or on a stand-alone basis.”

The term “associated software” is referenced later in section 19 in what might be deemed the exception clauses to indemnification and this later reference muddies the waters further. The provision states,

“Samsung shall not be obligated to indemnify, defend or hold any Indemnified Party harmless if the alleged infringement or violation would not have occurred but for (1) modification to the *Equipment or associated software* made by an Indemnified Party or third party without the written consent of Samsung, (2) the *combination of the Samsung equipment or associated software and other products* not approved in writing by Samsung, or (3) the failure by [CSC] to implement changes, replacements or new releases recommended by Samsung, where the infringement would have been avoided by such changes, replacements, or new releases, provided that there is not loss in functionality or nonconformance to a specifications as a result of such change, replacement or new release ...”

(NYSCEF 1, ex 1, Agreement § 19.) Whereas the Agreement previously indicated that CSC will be purchasing, licensing and paying for “Products” that collectively refer to “Hardware” and “Software”, now it refers to the undefined terms “Equipment,” “Samsung equipment” and “associated software with other products.” It is unclear how these terms relate to the term “Products”, but one can reasonably interpret that these terms mean something else. Had the parties meant “(1) modification to the Products” or “(2) the combination of Products with other products,” they could have said that, but they did not.

A core principle of commercial drafting is to say the same thing the same way. Whether the parties intentionally adhered to or diverged from this principle, the contract “on its face ... is reasonably susceptible of more than one interpretation.” (*Telerep, LLC*, 74 AD3d at 402 [citation omitted].) Indeed, the term “Samsung products” “does not have a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion.” (*Greenfield*, 98 NY2d 562 at 569 [internal quotation marks and citation omitted].)

“Because neither party has established that its interpretation is correct as a matter of law, the motion to dismiss [is] properly denied.” (*China Privatization Fund (Del), L.P. v Galaxy Entertainment Group Ltd.*, 95 AD3d 769, 772 [1st Dept 2012].)

Samsung further argues that this claim should be denied because CSC has not properly pled the claim in other respects, but this argument is unavailing. As a preliminary matter, Samsung argues that exception clauses to indemnification are conditions precedent. It is true that they are conditions. “A condition ... is ‘an event, not certain to occur, which must occur, unless its non-occurrence is excused, before performance under a contract becomes due.’” (*Merritt Hill Vineyards v Windy Hgts. Vineyard*, 61 NY2d 106, 112 [1984] [citation omitted].) Performance, as relevant here, means Samsung will indemnify CSC. But Samsung need not indemnify CSC if the infringement would not have occurred but for (1) a modification to the Equipment or associated software by CSC without Samsung’s written consent or (2) a combination of Samsung’s equipment or associated software and other products that Samsung does not approve in writing. In this respect, prongs (1) and (2) are events not certain to occur especially concerning Samsung’s consent and approval in writing or the lack thereof. They are, in effect, conditions to Samsung’s performance.

Despite arguing that prongs 1 and 2 are conditions precedent, Samsung maintains that a breach of contract claim is not stated because the complaint lacks any allegation that Samsung provided written consent or approval in writing. In fact, Samsung asserts that “the dispositive issue on this motion is whether [CSC] sufficiently alleged that Samsung provided written consent to [CSC’s] modification or contribution of the set-top boxes.” (NYSCEF 22, Memorandum in Support at 1.) However, this “issue” is neither dispositive nor an accurate framing of New York’s pleading requirements. “The performance or occurrence of a condition precedent in a contract need not be pleaded.” (CPLR 3015 [a].)

“In enacting CPLR 3015 (subd. (a)), the Legislature ... eliminated any requirement that performance or occurrence of conditions precedent be pleaded.” (*Allis-Chalmers Mfg. Co. v Malan Constr. Corp.*, 30 NY2d 225, 232 [1972].) For instance, where a defendant moved to dismiss a complaint on the grounds that the plaintiff failed to allege compliance with conditions contained in an instrument, and the lower court granted the motion, the First Department reversed because the “Supreme Court placed an improper pleading burden on plaintiff.” (*1199 Hous. Corp. v International Fid. Ins. Co.*, 14 AD3d 383, 384 [1st Dept 2005].)

An improper pleading burden is exactly what Samsung argues for when it contends that the complaint should be dismissed because CSC does not allege that Samsung provided written consent or approval. Moreover, Samsung’s reliance on *Oppenheimer & Co. v Oppenheim, Appel, Dixon & Co.* (86 NY2d 685 [1995]) to show that express conditions must be literally performed and alleged is misplaced because that decision did not concern a motion to dismiss pursuant to CPLR 3211 where “[t]he scope of a court’s inquiry ... is narrowly circumscribed.” (*1199 Housing Corp.*, 14 AD3d at 384.) The *Oppenheimer* Court makes no mention of the allegations needed to withstand a 3211 motion for breach of contract. Rather, *Oppenheimer* concerned a motion for judgment notwithstanding the verdict after a jury trial, and therefore, the procedural posture and scope of the court’s inquiry were different to say the least. (*Oppenheimer & Co.*, 86 NY2d at 689-690.)

The parties further dispute whether the written consent and approval is shown in the record. But “[w]hether the plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss.” (*Nomura Home Equity Loan, Inc., Series 2006-FM2 v Nomura Credit & Capital, Inc.*, 30 NY2d 572, 601 [2017] [internal quotation marks and citations omitted].)

Accordingly, dismissal on the grounds that CSC has either failed to state a breach concerning Samsung's failure to indemnify or that a defense is based on documentary evidence is denied.

*2. The Second Breach: Failure to Procure Intellectual Property Rights*

CSC also alleges that "Samsung had an obligation under the Agreement to procure 'all intellectual property rights associated with the manufacture and use of the Set Top,' and to make royalty payments associated with such procurement of intellectual property rights." (NYSCEF 21, Complaint ¶ 103.) However, Samsung "breached the Agreement by failing to procure all intellectual property rights from TiVo associated with CSC's use of the Samsung Products and by failing to make royalty payments for such intellectual property rights." (*Id.* ¶ 105.) The relevant provision of the Agreement provides that,

"[e]xcept for [CSC]-supplied software and the NDS use license, Samsung will be responsible for the procurement and royalty payments for all intellectual property rights associated with the manufacture and use of the Set Top, including, but not limited to MPEG 4, 1394, OCAP, Alticast middleware and NDS JCAS. Samsung will be responsible for the procurement and royalty payments for all Samsung supplied head end equipment."

(NYSCEF 21, Agreement, ex A § 2.) Again, the allegations above would be sufficient to state a claim under the interpretation of the Agreement advanced by CSC. This is especially true in light of the complaint's allegations that Samsung failed to procure a license concerning the Set-Top Boxes from Tivo despite obtaining licenses concerning other matters. (NYSCEF 21, Complaint ¶¶ 45, 46, 47.)

Accordingly, dismissal on the grounds that CSC has either failed to state a breach concerning Samsung's failure to procure patent licenses and pay royalties or that a defense is based on documentary evidence is denied.

CSC lastly alleges the fourth breach of contract element by claiming that CSC was damaged insofar as nonparty TiVo sued CSC for patent infringement and CSC resolved the action by entering into an agreement with TiVo. (*Id.* ¶¶ 94, 106.)

B. Breach of The Implied Covenant of Good Faith and Fair Dealing

CSC alleges that Samsung

“breached its duty of good faith and fair dealing by entering into the TiVo-Samsung License that excluded from its royalty-bearing provisions the Samsung Products provided to [CSC], thereby attempting to impose a royalty obligation on [CSC] in connection with the royalty-free license granted by Samsung to use the Software provided by Samsung on the hardware for which it is designated, and for its intended purpose.”

(NYSCEF 21, Complaint ¶ 115.) The complaint adds that “[a]s a direct and proximate result of Samsung’s breaches of the covenants of good faith and fair dealings, [CSC] has incurred ... damages in an amount to be determined at trial.” (*Id.* ¶ 117.)

“The implied covenant of good faith and fair dealing between parties to a contract embraces a pledge that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.” (*Moran v Erk*, 11 NY3d 452 [2008] [internal quotation marks and citation omitted].) “Where a good faith claim arises from the same facts and seeks the same damages as a breach of contract claim, it should be dismissed.” (*Mill Fin., LLC v Gillett*, 122 AD3d 98, 104 [1st Dept 2014].) “The conduct alleged in the two causes of action need not be identical in every respect. It is enough that they arise from the same operative facts.” (*Id.* at 104-105.) Moreover, a good faith and fair dealing claim cannot be maintained where it is “intrinsically tied to the damages allegedly resulting from a breach of the contract.” (*MBA Ins. Corp. v Merrill Lynch*, 81 AD3d 419, 419-420 [1st Dept 2011] [internal quotation marks and citations omitted].)

Here, the damages alleged concerning the breach of the implied covenant are intrinsically tied, if not identical, to the damages alleged for breach of the Agreement. (*Mill Fin., LLC v Gillett*, 122 AD3d 98, 104 [1st Dept 2014]; *MBIA Ins. Corp. v Merrill Lynch*, 81 AD3d 419, 419-420 [1st Dept 2011].) Both damages concern the money CSC expended when it was sued by TiVo as a result of Samsung's failure to procure and pay royalties on the relevant patent. There is no way around that construction of the complaint despite CSC's vague allegation of damages. Moreover, the claims arise from the same operative facts: Samsung failed to procure and pay royalties to TiVo.

The claim is dismissed.

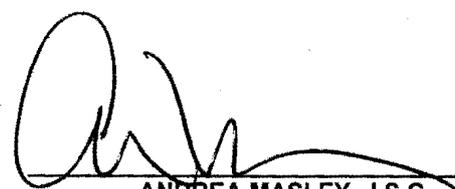
The court has considered the balance of the parties' arguments, and to the extent that they are properly before the court, they do not yield an alternative result on this motion.

Accordingly, it is

ORDERED that motion sequence number 002 is granted, in part, and the second cause of action for breach of the implied covenant of good faith and fair dealing is dismissed. Samsung shall file an answer in 14 days; and it is further

ORDERED that the parties are directed to submit a jointly proposed preliminary conference order by September 30, 2020 at 4 pm; if the parties cannot agree, they shall email [SFC-Part48@nycourts.gov](mailto:SFC-Part48@nycourts.gov) prior to that date.

9/8/2020  
DATE

  
ANDREA MASLEY, J.S.C.

CHECK ONE:

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<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	