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ATM Patent Suit Against First Niagara To Proceed

By **Samuel Howard**

Law360, New York (February 14, 2011) -- A federal judge has determined that infringement allegations under the Federal Rules of Civil Procedure trump the high pleading standards required under *Twombly* and *Iqbal*, forcing First Niagara Financial Group Inc. to face Automated Transactions LLC's ATM patent claims.

On Friday, Judge Richard Arcara of the U.S. District Court for the Western District of New York agreed with a magistrate judge, holding that Automated's complaint alleging infringement of four ATM patents was sufficient, even though the allegations against First Niagara has fell short of the specificity invoked in the recent U.S. Supreme Court cases.

The Supreme Court in *Twombly* ruled that a plaintiff making a claim under the Sherman Act had to allege more than just "parallel conduct and a bare assertion of conspiracy." In *Iqbal*, the high court ruled that the *Twombly* pleading standard extended to all civil actions.

Judge Arcara supported Magistrate Judge Jeremiah J. McCarthy's conclusion, handed down in August, that Form 18 of the Civil Procedure rules enable Automated to bring suit without conforming to the more strenuous standards.

The court agreed that while Form 18 cannot be reconciled with the heightened pleading standards of *Twombly* and *Iqbal*, current Civil Procedure rules do not require Automated to particularize its infringement allegations.

"Therefore, unless or until Rule 84 is amended, I conclude that the sufficiency of Automated's direct infringement allegations is governed by Appendix Form 18, not by the requirements of *Twombly* and *Iqbal*," the magistrate judge said.

Troutman Sanders LLP's Albert Jacobs Jr., lead counsel for Automated, applauded Judge Arcara's ruling, noting that the complaint put First Niagara on notice and fully alleges that its ATM machines infringe Automated's patents.

"I find it difficult to believe that the Supreme Court intended the summary judgment standards in *Twombly* and *Iqbal* to apply to parties that have not yet engaged in discovery," Jacobs said. "The idea is that the complaint places the defendant on fair notice and enables a proper defense subject to discovery. The court properly recognized the completeness of the complaint."

The patents-in-suit are U.S. Patent Numbers 7,575,158; 7,597,248; 7,600,677; and 7,699,220.

On July 30, the bank filed a motion to dismiss Automated's second amended complaint, arguing that the suit "parrots claim language, as opposed to pleading facts that identify

allegedly infringing ATMs" and makes allegations that are "only bare assertions" that First Niagara practices the patents-in-suit. These assertions, the bank added, are not accepted as true under Twombly and Iqbal.

To an extent, the magistrate judge agreed, noting that if sufficiency of the second amended complaint were governed solely by Twombly and Iqbal, the allegations should be dismissed.

However, until the Civil Procedure rules are amended and aligned with the stricter standards, allegations satisfying Form 18 are adequate to state a cause of action for patent infringement, according to the report.

Representatives for First Niagara could not be immediately reached for comment Monday.

Automated is represented by Troutman Sanders LLP's Albert Jacobs Jr. and Gerard Diebner as well as Gibson McAskill & Crosby LLP's Robert Scumaci and Brian Crosby.

First Niagara is represented by Hodgson Russ LLP's Jessica Copeland, Paul Perlman and Jodyann Galvin.

The case is Automated Transactions v. First Niagara Financial Group et al., case number 10-cv-00407, in the U.S. District Court for the Western District of New York.

--Additional reporting by Pete Brush. Editing by Andrew Park.

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