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9

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
SOUTHERN DIVISION

12 DOCUMENT SECURITY SYSTEMS,
13 INC.,

14 Plaintiff,

15 v.

16 OSRAM GMBH; OSRAM OPTO
17 SEMICONDUCTORS GMBH & CO.;
and OSRAM SYLVANIA INC.,

18 Defendants.

Case No. 2:17-cv-05184-JVS-JCG

DEFENDANT
OSRAM SYLVANIA INC.'S
NOTICE OF MOTION AND
MOTION TO DISMISS
THE COMPLAINT

Judge: Honorable James V. Selna
Date: October 23, 2017
Time: 1:30 pm
Courtroom: 10C

19

20 TO PLAINTIFF DOCUMENT SECURITY SYSTEMS, INC.:

21 PLEASE TAKE NOTICE that, on October 23, 2017, at 1:30 pm, or as soon
22 thereafter as counsel may be heard, in Courtroom 10C before the Honorable James
23 V. Selna of the United States District Court for the Central District of California,
24 located at 411 West Fourth Street, Santa Ana, California, defendant OSRAM
25 SYLVANIA Inc. ("OSI") will, and hereby does, move this Court pursuant to
26 Rule 12(b)(6) of the Federal Rules of Civil Procedure for an order dismissing all
27 claims against OSI that plaintiff Document Security Systems, Inc. ("DSS" or
28 "Plaintiff") asserts in its Complaint (D.I. 1). Plaintiff's allegations do not satisfy the

1 requirements of Rule 8(a)(2) of the Federal Rules of Civil Procedure and thus fail to
2 state any plausible claim upon which relief can be granted.

3 This motion is supported by the attached Memorandum of Points and
4 Authorities; the files, records, and pleadings in this action; and any arguments
5 presented at the time of the hearing on this motion.

6

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LOCAL RULE 7-3 STATEMENT

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This motion is made following the conference of counsel pursuant to Local
Rule 7-3, which took place on September 15, 2017.

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DATED: September 22, 2017

By: /s/ Benjamin W. Hattenbach

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 I. INTRODUCTION

4 Defendant OSRAM SYLVANIA Inc. ("OSI") respectfully moves this Court
5 pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for an order
6 dismissing all claims asserted by plaintiff Document Security Systems, Inc. ("DSS"
7 or "Plaintiff") in its Complaint. *See* D.I. 1, Complaint (Ex. 1).¹ The allegations do
8 not satisfy the requirements of Rule 8(a)(2) of the Federal Rules of Civil Procedure
9 and thus fail to state any claim upon which relief can be granted.

10 Plaintiff's Complaint asserts claims for infringement of four patents, including
11 for each allegations of direct, induced, and willful infringement. For each of its
12 allegations, Plaintiff comes nowhere close to pleading facts sufficient to state a
13 claim for relief that is plausible on its face, as Supreme Court precedent requires.
14 And indeed, this should be little surprise given the manner in which Plaintiff has
15 proceeded with its campaign of litigation. To begin with, Plaintiff did not develop
16 the patents itself—it purchased them less than a year ago using funds from a venture
17 capitalist. Then Plaintiff asserted the patents in an indiscriminate fashion, against
18 five separate sets of operating companies, plainly without doing the homework the
19 law requires before initiating a patent infringement lawsuit. This is evident from
20 Plaintiff's failure to tailor each of its complaints to the activities of the particular
21 defendants accused. Plaintiff's Complaint against OSI is filled with unspecific and
22 conclusory allegations that were recycled from Plaintiff's complaints against
23 defendants in other cases. As a result, the allegations against OSI fail in numerous
24 respects to comport with the legal requirements for patent infringement pleadings.

25 First, to adequately plead *direct infringement*, the law requires sufficient
26 factual allegations from which the Court could plausibly infer that at least one

27
28 ¹ All Exhibit citations herein refer to the Exhibits to the Declaration of Benjamin W. Hattenbach, which OSI filed concurrently herewith.

1 accused product infringes each limitation of at least one asserted patent claim. The
2 Complaint cannot merely parrot the claim language while generally pointing to an
3 accused product. Rather, it must map each claim limitation to a specific product
4 feature, and the Court must be able to plausibly infer that each limitation is met. The
5 direct infringement allegations in Plaintiff's Complaint do not come anywhere close
6 to meeting this standard. For each of the patents-in-suit, the Complaint merely
7 recites the language of one asserted claim, while providing a few images of an
8 exemplary accused product as a whole. The analysis spans only a few paragraphs for
9 each patent. Plaintiff makes no attempt to map the claim limitations to specific
10 features in the images, leaving OSI and the Court to speculate as to what features, if
11 any, Plaintiff may be pointing to for its allegations. The Complaint thus does little
12 more than identify an exemplary accused product and asserted claim for each patent,
13 which is plainly insufficient to state a plausible claim for direct infringement.

14 To make matters even worse, for two of the patents-in-suit, the Complaint's
15 allegations affirmatively show that that the asserted claims are *not* infringed. For
16 example, the asserted claims of the '771 patent require an "***aperture***" that extends all
17 the way through the substrate, from a "***first opening in the first surface***" to a
18 "***second opening in said second surface.***" But the images of the exemplary accused
19 product in Plaintiff's Complaint clearly show that the recess formed in the top
20 substrate surface does *not* extend all the way through the substrate and does *not*
21 create any opening in the substrate's bottom surface. Similarly, the asserted claims
22 of the '087 patent require a "***plurality of lead receiving compartments***" that are
23 "***formed in the peripheral sidewall***" of the housing. Yet for the exemplary accused
24 product, the images in the Complaint show a housing with flat peripheral sidewalls
25 having no compartments. It is thus clear that the Complaint's deficiencies regarding
26 at least the '771 and '087 patents cannot be cured, even by an amended pleading.

27 Second, with respect to ***induced infringement***, the Complaint fails to plead
28 facts from which the Court could plausibly infer that the three required knowledge

1 elements of inducement are met. Under longstanding Supreme Court authority,
2 Plaintiff would need to plead facts from which the Court could plausibly infer that
3 OSI acted with "knowledge of the existence of the patent that is infringed,"
4 "knowledge that the induced acts constitute patent infringement," and the "specific
5 intent to encourage another's infringement." Plaintiff has not adequately pleaded any
6 of these required knowledge elements, for any of the four patents-in-suit. The
7 Complaint reproduces virtually identical boiler plate allegations for each patent,
8 while just substituting the patent numbers. And those generic allegations at most
9 allege that OSI provided technical support to its customers and intended that its
10 customers would use OSI's products—none of which has any relevance to the three
11 required knowledge elements of an induced infringement claim.

12 Third, allegations of *willful infringement* must meet the same pleading
13 standards as any other claim, and the facts alleged must permit a court to plausibly
14 infer "egregious misconduct" by the accused infringer. The Complaint readily
15 concedes that Plaintiff cannot plead facts sufficient to state a plausible claim for
16 willfulness, so it tries to pass off placeholder allegations instead. For each patent-in-
17 suit, the Complaint purportedly "reserves the right to request" a finding of willful
18 infringement "[t]o the extent facts learned in discovery" might one day support such
19 a claim. But an unsupported hope about the future is not a claim, and it has no place
20 in a proper pleading. The Federal Rules and this Court have well-established
21 deadlines for making claims, and those deadlines cannot be circumvented with
22 unilateral "reservations" of this sort by a private party. Nor can such a reservation
23 possibly satisfy the Supreme Court's pleading requirement of factual plausibility.

24 In sum, Plaintiff has failed to meet its most basic responsibilities for initiating
25 a patent case. OSI accordingly requests that the Court dismiss Plaintiff's Complaint
26 in its entirety. And because it is clear that the Complaint's deficiencies with respect
27 to at least the '771 and '087 patents cannot be cured by any amended pleading, the
28 dismissal of all allegations regarding those patents should be *with prejudice*.

1 **II. BACKGROUND**

2 Plaintiff filed its Complaint in this action on July 13, 2017, accusing
3 defendants OSRAM GmbH ("OSRAM"), OSRAM Opto Semiconductors GmbH
4 ("OOS"), and OSRAM SYLVANIA Inc. ("OSI") of patent infringement. (Ex. 1,
5 Complaint.) Plaintiff thereafter served the Complaint on OSI on August 2, 2017.
6 (*See* D.I. 28 at 2.) Plaintiff and OSI then stipulated to an extension of time,
7 to September 22, 2017, for OSI to respond to the Complaint (D.I. 28), which this
8 Court approved (D.I. 29).

9 Defendants OSRAM and OOS are German corporations and are thus subject
10 to the service procedures set forth under the Hague Convention. (*See* D.I. 28 at 2.)
11 To OSI's knowledge, Plaintiff has not yet served the Complaint on either OSRAM
12 or OOS. Defendant OSI thus brings the present motion solely on its own behalf.

13 The Complaint accuses OSI of infringing four patents owned by Plaintiff,
14 including U.S. Patent No. 6,949,771 ("the '771 patent") (Ex. 2), U.S. Patent No.
15 7,524,087 ("the '087 patent") (Ex. 3), U.S. Patent No. 7,256,486 ("the '486 patent")
16 (Ex. 4), and U.S. Patent No. 7,652,297 ("the '297 patent") (Ex. 5), referred to
17 collectively herein as the "patents-in-suit." (Ex. 1, Complaint ¶¶ 9-12.)

18 The patents-in-suit were all originally assigned to Agilent Technologies, Inc.
19 and/or its successor Avago Technologies ECBU IP (Singapore) Pte. Ltd. (Ex. 1,
20 Complaint ¶ 2; *see also* Exs. 2-5). Plaintiff acquired the patents-in-suit by
21 assignment less than a year ago with the help of venture capitalist firm Brickell Key
22 Investments LP ("BKI"), which retains a financial interest in the outcome of this
23 litigation. (*See* D.I. 4, Plaintiff's Certification and Notice of Interested Parties; *see*
24 *also* Form 8-K, Document Security Systems, Inc. (Nov. 14, 2016), *available at*
25 <https://www.sec.gov/Archives/edgar/data/771999/000149315216015144/form8->
26 [k.htm](https://www.sec.gov/Archives/edgar/data/771999/000149315216015144/form8-k.htm) (last visited Sept. 22, 2017).)

27 No doubt eager to show a return on BKI's investment, Plaintiff wasted no
28 time in filing cases against multiple operating companies, including not only the

1 present litigation, but also cases against Cree, Inc. (No. 2:17-cv-04263-JVS-JCG),
2 Everlight Electronics Co. (No. 2:17-cv-04273-JVS-JCG), Seoul Semiconductor Co.
3 (No. 8:17-cv-00981-JVS-JCG), and Lite-On Inc. (No. 2:17-cv-06050-JVS-JCG),
4 all pending before this Court. The patents Plaintiff asserted in each of these cases
5 overlap with three of the four patents-in-suit here (the '771, '087, and '486 patents).

6 The Complaint in this case accuses a broad array of products, but makes no
7 attempt to map the limitations of any representative patent claim onto the features of
8 any accused product. Plaintiff filled its Complaint with generic accusations copied
9 from its pleadings against others, rote recitation of claim language, and images
10 reproduced without meaningful explanation. OSI contacted Plaintiff to discuss these
11 fundamental deficiencies, including in a discussion of these issues on September 15,
12 2017. Plaintiff refused to cure any of the problems OSI identified. Moreover, as is
13 discussed below, the assertions already present in the Complaint affirmatively
14 establish that at least several of the problems cannot be cured. This motion followed.

15 **III. LEGAL STANDARD**

16 Under Rule 8(a), a complaint must plead facts sufficient to "show[] that the
17 pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The purpose of this rule is to
18 ensure that the plaintiff "give[s] the defendant fair notice of what the claim is and
19 the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). The
20 Supreme Court has held that "a plaintiff's obligation to provide the 'grounds' of his
21 'entitle[ment] to relief'" under Rule 8(a) "requires more than labels and conclusions,
22 and a formulaic recitation of the elements of a cause of action will not do." *Bell*
23 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Accordingly, "[t]o survive a
24 motion to dismiss, a complaint must contain sufficient factual matter, accepted as
25 true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556
26 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). Facial plausibility exists
27 only if "the plaintiff pleads factual content that allows the court to draw the
28 reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

1 Dismissal under Rule 12(b)(6) is thus appropriate if the factual allegations do not
2 "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555-56.

3 When weighing a Rule 12(b)(6) motion to dismiss, only well-pleaded *facts*
4 alleged in the complaint are to be considered. "Threadbare recitals of the elements
5 of a cause of action, supported by mere conclusory statements, do not suffice,"
6 because "the tenet that a court must accept as true all of the allegations in a
7 complaint is inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 678. Further,
8 "only a complaint that states a *plausible* claim for relief survives a motion to
9 dismiss. . . . [W]here the well-pleaded facts do not permit the court to infer more
10 than the mere possibility of misconduct, the complaint has alleged—but it has not
11 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679 (emphasis added).

12 **IV. ARGUMENT**

13 **A. Plaintiff Fails to Adequately Plead Direct Infringement**

14 "To be liable for direct infringement, a product must practice all elements of a
15 patent claim." *TeleSign Corp. v. Twilio, Inc.*, No. 16-cv-2106, 2016 WL 4703873, at
16 *3 (C.D. Cal. Aug. 3, 2016). This Court has accordingly held that, to plead direct
17 infringement of an asserted patent under *Twombly* and *Iqbal*, the Complaint "*must*
18 *include allegations sufficient to permit [the] court to infer that the accused*
19 *product infringes each element of at least one claim.*" *Id.* (emphasis added)
20 (citation and quotation marks omitted). And indeed, numerous other district courts
21 have held the same. *See, e.g., Scripps Research Ins. v. Illumina, Inc.*, No. 16-cv-661,
22 2016 WL 6834024, at *5 (S.D. Cal. Nov. 21, 2016) ("[T]o properly plead direct
23 infringement under *Twombly* and *Iqbal*, a plaintiff must plausibly allege that a
24 defendant directly infringes each limitation in at least one asserted claim.");
25 *e.Digital Corp. v. iBaby Labs, Inc.*, No. 15-cv-5790, 2016 WL 4427209, at *4 (N.D.
26 Cal. Aug. 22, 2016) (requiring plaintiff "to plausibly allege that the accused
27 products practice each of the limitations found in at least one asserted claim"); *Atlas*
28 *IP, LLC v. Exelon Corp.*, 189 F. Supp. 3d 768, 775-76 (N.D. Ill. 2016) (dismissing

1 complaint because "factual allegations that do not permit a court to infer that the
2 accused product infringes each element of at least one claim are not suggestive of
3 infringement"); *Raindance Techs., Inc. v. 10x Genomics, Inc.*, No. 15-cv-152, 2016
4 WL 927143, at *2 (D. Del. Mar. 4, 2016) (finding complaint failed to state a claim
5 for direct infringement after conducting a limitation-by-limitation analysis,
6 comparing the asserted claim to the factual allegations in the complaint); *Global*
7 *Tech Led, LLC v. Every Watt Matters, LLC*, No. 15-cv-61933, 2016 WL 6682015, at
8 *2 (S.D. Fla. May 18, 2016) ("[A]n allegation of direct patent infringement is
9 insufficient under *Twombly* and *Iqbal* if it 'simply recit[es] some of the elements of a
10 representative claim and then describe[s] generally how an accused product
11 operates, without specifically tying the operation to any asserted claim or addressing
12 all of the claim requirements.'") (quoting *Atlas IP LLC v. Pacific Gas & Elec. Co.*,
13 No. 15-cv-5469, 2016 WL 1719545, at *2 (N.D. Cal. Mar. 9, 2016); *Continental*
14 *Circuits LLC v. Intel Corp.*, No. 16-cv-2026, 2017 WL 679116, at *5 (D. Ariz. Feb.
15 21, 2017) ("Plaintiff must provide factual allegations regarding every limitation of at
16 least one claim of each allegedly-infringed patent."); *CG Tech. Dev., LLC v.*
17 *FanDuel, Inc.*, No. 16-cv-801, 2016 WL 6089693, at *10 (D. Nev. Oct. 18, 2016)
18 (direct infringement pleading "requires plausible allegations as to . . . each limitation
19 of the patent claim at issue"); *Wright's Well Control Servs., LLC v. Oceaneering*
20 *Int'l, Inc.*, No. 15-cv-1720, 2017 WL 568781, at * (E.D. La. Feb. 13, 2017) (noting
21 that "a litany of cases" have established that "in order to satisfy *Twombly* and *Iqbal* a
22 plaintiff must plead facts alleging that the accused product infringes each element or
23 limitation of at least one patent claim").

24 To meet the foregoing standard, the Complaint cannot merely "allege[] that
25 each element of a cited claim is infringed and then parrot[] the claim language for
26 each element." *Macronix Int'l Co. v. Spansion, Inc.*, 4 F. Supp. 3d 797, 804 (E.D.
27 Va. 2014) (dismissing complaint); *see also Apollo Finance, LLC v. Cisco Systems,*
28 *Inc.*, 190 F. Supp. 3d 939, 942 (C.D. Cal. 2016) ("[W]ith regard to [a] direct

1 infringement claim, [a] court need not accept as true conclusory legal allegations
2 cast in the form of factual allegations.") (citation omitted). Rather, the Complaint
3 must "*map [each] claim limitation onto [a] portion of the accused products*" and
4 "*draw any parallels between the accused products and the claim elements*" in a
5 manner sufficient for the Court to plausibly infer that each claim limitation is met.
6 *N. Star Innovations, Inc. v. Etron Tech. Am. Inc.*, No. CV 8:16-00599, 2016 WL
7 9046909, at *4 (C.D. Cal. Sept. 21, 2016) (emphasis added) (holding that failure to
8 plead plausible factual allegations for even a single limitation warrants dismissal).

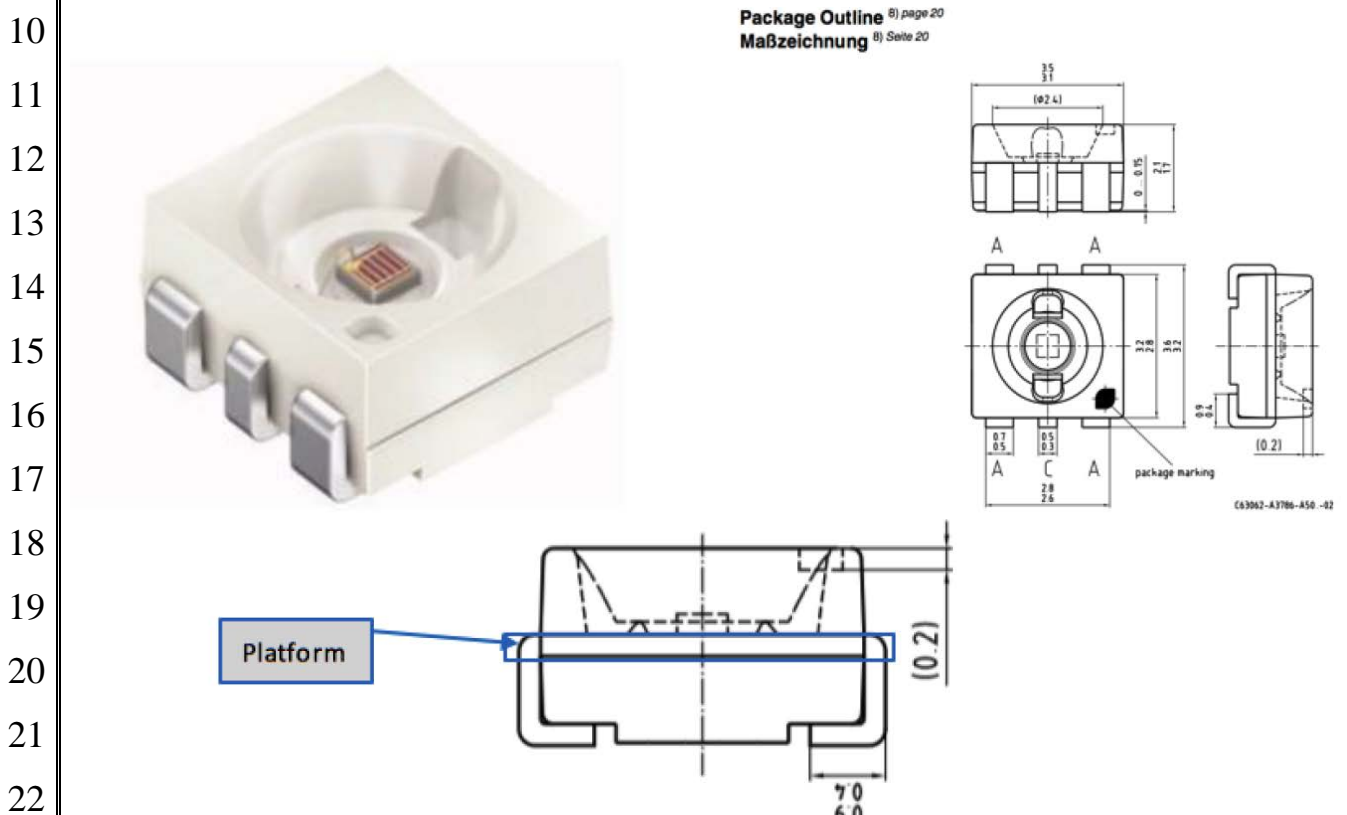
9 The direct infringement allegations in Plaintiff's Complaint do not come
10 anywhere close to meeting this standard. For each of the four patents-in-suit, the
11 Complaint merely recites the language of one claim, while providing two or three
12 images of an exemplary accused product as a whole. The Complaint's entire analysis
13 in this regard—including the parroted claim language and generic images—spans
14 only a few paragraphs for each patent-in-suit. (*See* Ex. 1, Complaint ¶¶ 17-20 ('771
15 patent); *id.* ¶¶ 27-30 ('087 patent); *id.* ¶¶ 38-42 ('486 patent); *id.* ¶¶ 50-51 ('297
16 patent).) The Complaint makes no attempt to map each of the claim limitations to
17 specific features shown in the included pictures. Indeed, most of the pictures do not
18 even include any relevant annotations, leaving OSI and the Court to speculate as to
19 what features, if any, Plaintiff may be pointing to for its infringement allegations.
20 The Complaint thus imparts little information beyond identifying an exemplary
21 accused product and asserted claim for each patent, which is plainly insufficient to
22 state a plausible claim for direct infringement. *See Jenkins v. LogicMark, LLC*, No.
23 16-cv-751, 2017 WL 376154, at *1, 3 (E.D. Va. Jan. 25, 2017) (complaint that
24 "merely recite[d] several 'exemplary' claims" and gave a "general overview of
25 Defendant's allegedly infringing products" was "clearly deficient," as it "fail[ed] to
26 specify which features of [the] products correspond to the [claim] limitations").

27 In the subsections below, OSI discusses a number of specific deficiencies
28 regarding Plaintiff's direct infringement allegations for each of the patents-in-suit.

1 These deficiencies are exemplary only, and Plaintiff's direct infringement claims
2 warrant dismissal regardless of the added discussion below. Simply put, because the
3 Complaint does not even attempt to perform the required element-by-element claim
4 mapping, Plaintiff's direct infringement allegations fail to provide "fair notice of
5 what the claim is and the grounds upon which it rests." *Conley*, 355 U.S. at 47.
6 Plaintiff's direct infringement allegations must therefore be dismissed.

7 **1. Alleged Direct Infringement of the '771 Patent**

8 Plaintiff's direct infringement allegations for the '771 patent consist merely of
9 reciting the language of claim 3, while generally pointing to the following images:



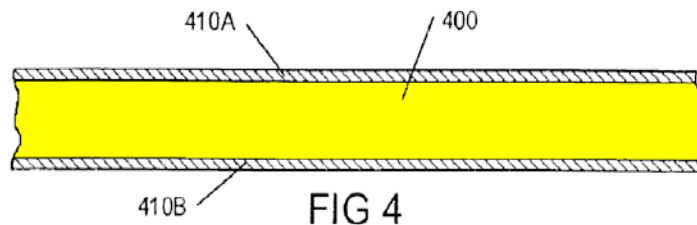
23 (Ex. 1, Complaint ¶¶ 17-20.)

24 The only specific feature the Complaint purports to map to a limitation of
25 claim 3 is the alleged "platform" limitation, which Plaintiff purported to label in an
26 annotation as shown above. *Id.* ¶ 18. But the Complaint provides no indication of
27 what alleged features Plaintiff is pointing to for any of the other claim limitations.
28 This deficiency alone warrants dismissal. *See, e.g., TeleSign*, 2016 WL 4703873, at

1 *3; *N. Star Innovations*, 2016 WL 9046909, at *4. But to make matters even worse,
2 the allegations in Plaintiff's Complaint *affirmatively show* that multiple claim
3 limitations are *not* met. It is thus clear that the Complaint's deficiencies regarding
4 the '771 patent cannot be cured, even by an amended pleading.

5 Claim 3 of the '771 patent, for instance, requires: "a substrate having opposing
6 first and second surfaces, the substrate defining an *aperture extending from the first*
7 *surface to the second surface*, said aperture having a *first opening in the first*
8 *surface and a second opening in said second surface*." (Ex. 2, '771 Pat., Cl. 3, at
9 8:17-21 (emphasis added).) Claim 3 further requires a "platform *covering said first*
10 *opening*, said platform being *located outside said aperture*." (*Id.* at 8:22-23
11 (emphasis added).) In other words, these limitations require an aperture that extends
12 all the way through the substrate, from a first (bottom) opening to a second (top)
13 opening, and a platform outside the aperture that covers the first (bottom) opening.
14 The allegations in the Complaint show that these limitations are not met.

15 The foregoing limitations can be better understood with reference to Figures 4
16 and 5 of the '771 patent, which illustrate an embodiment of the invention at different
17 manufacturing stages. At an initial stage shown in Figure 4, a "bare glass-fiber board
18 unit 400 [i.e., substrate] is first plated on the upper and lower surfaces with copper
19 410A, 410B using standard plating techniques." (*Id.* at 5:14-15.) For clarity, we
20 have highlighted the substrate in yellow in the annotated figures below:



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25 (Ex. 2, '771 Pat., Fig. 4 (emphasis added).) After adding copper plating layers 410A
26 and 410B to substrate 400, the unit is then "drilled with two differently shaped drill
27 bits 430, 450 as illustrated in FIG. 5." (*Id.* at 5:19-21.)
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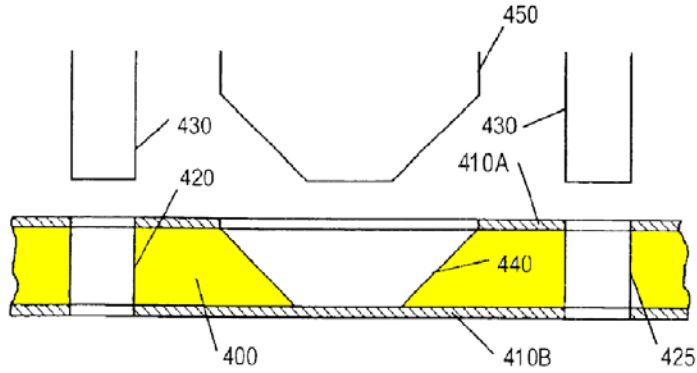
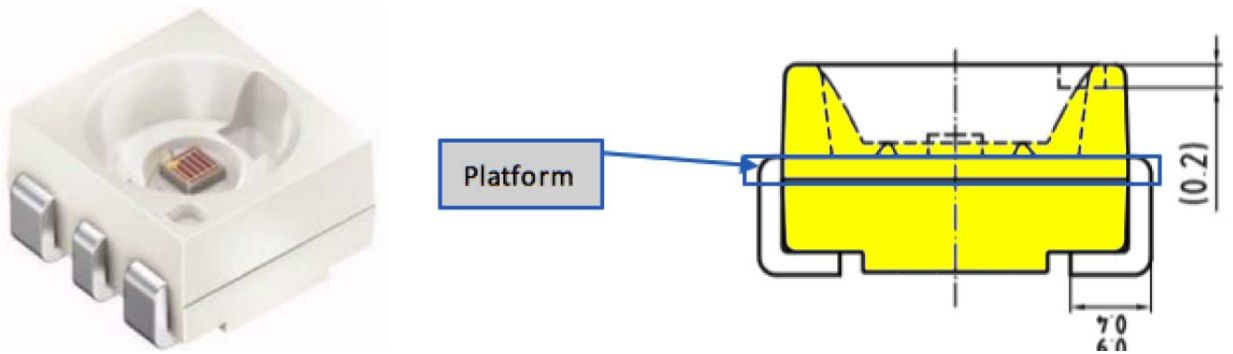


FIG 5

(Ex. 2, '771 Pat., Fig. 5 (emphasis added).) "The drill bit 450 drills to a depth . . . sufficient to ensure that an aperture is formed in the board 400 but is not so deep as to drill through the lower copper plating 410B." (*Id.* at 5:29-33.) This results in the creation of "aperture 440," which extends all the way through the substrate, and "the copper plating [i.e., platform] is left covering the lower opening of the aperture 440, as shown in FIG. 5." (*Id.* at 5:36-38.)

In stark contrast, the images in Plaintiff's Complaint make clear that the exemplary accused product does *not* have any aperture that extends all the way through the substrate, from a first (bottom) opening to a second (top) opening. For clarity, we have again highlighted the substrate in yellow below:



(Ex. 1, Complaint ¶¶ 17-18 (emphasis added).)

As shown in the images above, the recess formed in the top surface of the substrate does not extend to any opening in the bottom surface of the substrate. Thus, the exemplary accused product cannot meet the claim 3 limitations of "a substrate having opposing first and second surfaces, the substrate defining an

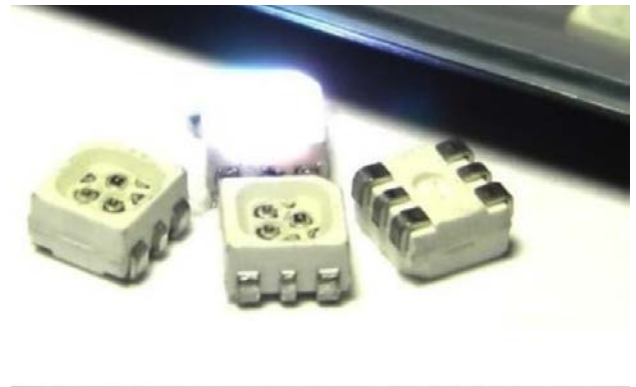
1 *aperture extending from the first surface to the second surface*, said aperture
2 having a *first opening in the first surface and a second opening in said second*
3 *surface.*" (Ex. 2, '771 Pat., Cl. 3, at 8:17-21 (emphasis added).)

4 Similarly, the exemplary accused product cannot meet the claim 3 limitations
5 of a "platform *covering said first opening*, said platform being *located outside said*
6 *aperture.*" (*Id.* at 8:22-23 (emphasis added).) As shown above, the metal lead that
7 Plaintiff alleges is the "platform" extends through—and is surrounded by—the
8 substrate, such that there is plenty of substrate beneath, above, and to the sides of it.
9 There is no first (bottom) opening in the substrate for the alleged "platform" to
10 cover, and the alleged platform is not located outside of any "aperture" as claimed.

11 For at least the foregoing reasons, the Complaint fails to plausibly allege
12 direct infringement of the '771 patent. Moreover, OSI respectfully submits that the
13 foregoing deficiencies cannot be cured by an amended pleading. Plaintiff's direct
14 (and induced)² infringement allegations regarding the '771 patent should therefore
15 be dismissed *with prejudice*.

16 2. Alleged Direct Infringement of the '087 Patent

17 Plaintiff's direct infringement allegations for the '087 patent consist merely of
18 reciting the language of claim 1, while generally pointing to the following images:



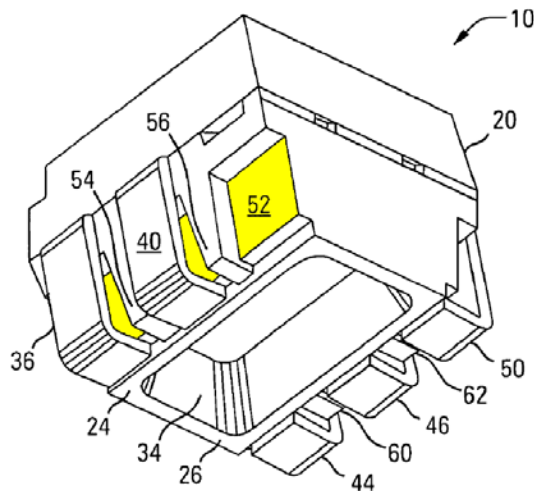
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² Plaintiff's corresponding induced infringement allegations must also be dismissed, because "[t]here can be no inducement . . . without an underlying act of direct infringement." *McRO, Inc. v. Namco Banda Games America, Inc.*, No. 12-cv-10322, 2013 WL 12145596, at *5 (C.D. Cal. Mar. 4, 2013) (quoting *Linear Tech. Corp. v. Impala Linear Corp.*, 379 F.3d 1311, 1326 (Fed. Cir. 2004)).

1 (Ex. 1, Complaint ¶¶ 27-30.)

2 The Complaint makes no attempt to map any features in the above images to
3 any of the limitations in claim 1 of the '087 patent. This deficiency alone warrants
4 dismissal. *See, e.g., TeleSign*, 2016 WL 4703873, at *3; *N. Star Innovations*, 2016
5 WL 9046909, at *4. But even further, the Complaint's allegations once again
6 **affirmatively show** that certain claim limitations are **not** met. It is thus clear that the
7 Complaint's deficiencies regarding the '087 patent cannot be cured by amendment.

8 For example, claim 1 of the '087 patent requires that "a **plurality of lead**
9 **receiving compartments** are **formed in the peripheral sidewall** of the reflector
10 housing." (Ex. 3, '087 Pat., Cl. 1, at 6:35-38 (emphasis added).) This claimed
11 element is shown in Figure 2 of the '087 patent:



20 **FIG. 2**

21 (Ex. 3, '087 Pat., Fig. 2 (emphasis added).)

22 As the '087 patent explains: "Each of the leads 36, 40, 42, 44, 46 and 50 of the
23 exemplary embodiment is located over a **cavity or lead receiving compartment**
24 (**e.g., 52**) formed **in the exterior of the peripheral wall 26**." (Ex. 3, '087 Pat. at 2:64-
25 67 (emphasis added).) "Each of the **cavities (e.g., 52)** under the leads 36, 40, 42, 44,
26 46 and 50 is separated by ribs 54, 56, 60 and 62 **formed in the peripheral wall 26** of
27 the housing 20." (*Id.* at 3:9-12 (emphasis added).)

28

1 The images in Plaintiff's Complaint show nothing of the sort:



12 (Ex. 1, Complaint ¶¶ 28 & 30 (resized and cropped).)

13 To the contrary, the images above show *flat peripheral sidewalls* with no lead
14 receiving compartments, and a ledge formed *in the second (bottom) end face*, not in
15 the sidewall. The exemplary accused product thus cannot meet the claim 1
16 requirement that "a plurality of lead receiving compartments are *formed in the*
17 *peripheral sidewall* of the reflector housing," because there are no such cavities
18 formed in the sidewall. (Ex. 3, '087 Pat., Cl. 1, at 6:35-38 (emphasis added).)

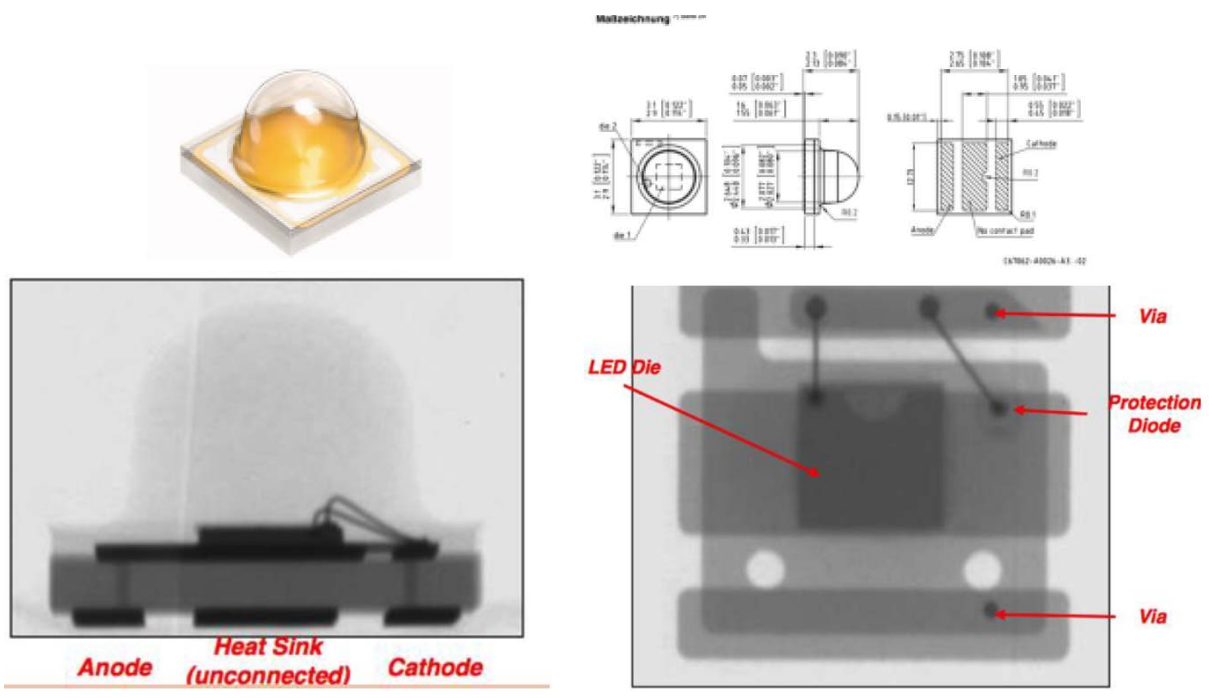
19 For at least the foregoing reasons, the Complaint fails to plausibly allege
20 direct infringement of the '087 patent. Moreover, OSI respectfully submits that the
21 foregoing deficiencies cannot be cured by an amended pleading. Plaintiff's direct
22 (and induced) infringement allegations regarding the '087 patent should therefore be
23 dismissed *with prejudice*.

24 **3. Alleged Direct Infringement of the '486 Patent**

25 Plaintiff's direct infringement allegations for the '486 patent consist merely of
26 reciting the language of claim 1, while generally pointing to the following images:

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(Ex. 1, Complaint ¶¶ 38-42.)

The Complaint makes no attempt to map any specific features in the above images to any of the limitations in claim 1 of the '486 patent. Instead, OSI and the Court are left to speculate as to what specific features, if any, Plaintiff may be pointing to in the images above for the various claim limitations. This deficiency alone warrants dismissal. *See, e.g., TeleSign*, 2016 WL 4703873, at *3; *N. Star Innovations*, 2016 WL 9046909, at *4. But further, even if significantly greater clarity were added in an amended pleading, it is clear that the images above would still be insufficient to plausibly allege that multiple claim limitations are met.

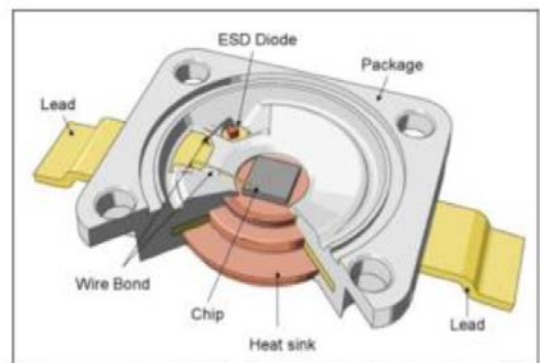
For example, claim 1 of the '486 patent requires "a light emitting diode (LED) having a *metallized bottom major surface*." (Ex. 4, '486 Pat., Cl. 1, at 12:12-13 (emphasis added).) As the patent describes, the "bottom major surface" of the LED die must be "coated with a metallization layer." (*Id.* at 5:49-51.) The images of the exemplary accused product cited in Plaintiff's Complaint include nothing from which the Court could plausibly infer that the LED die has any particular metal components on its bottom major surface, much less a "metallized bottom major surface" as required by claim 1 of the '486 patent.

1 Further, claim 1 requires "a light emitting diode (LED) having a *metallized*
2 *bottom major surface* that is *mounted on* the electrically conductive mounting pad."
3 (Ex. 4, '486 Pat., Cl. 1, at 12:12-15 (emphasis added).) As the patent describes, the
4 "metallized bottom major surface" itself must be "mounted on" the mounting pad.
5 (See, e.g., *id.* at 5:10-12 ("Semiconductor die 250 is mounted on packaging device
6 100 with the metallization on its bottom major surface attached to mounting pad
7 130."); *id.* at 8:27-29 ("Specifically, semiconductor die 250 is mounted on
8 packaging device 300 with the metallization on its bottom major surface attached to
9 mounting pad 330.")) The images cited in Plaintiff's Complaint include nothing
10 from which the Court could plausibly infer that the LED die has a "metallized
11 bottom major surface" that is "mounted on" any mounting pad, as opposed to having
12 another layer or layers of material (such as a die attach layer, for example)
13 interposed between the bottom major surface of the LED die and any mounting pad.

14 For at least the foregoing reasons, the Complaint fails to plausibly allege
15 direct infringement of the '486 patent. Plaintiff's direct (and induced) infringement
16 allegations regarding the '486 patent should be dismissed.

17 **4. Alleged Direct Infringement of the '297 Patent**

18 Plaintiff's direct infringement allegations for the '297 patent consist merely of
19 reciting the language of claim 1, while generally pointing to the following images:



27 **Figure 2: Principle design of the**
28 **DRAGON LEDs**

27 (Ex. 1, Complaint ¶¶ 50-51.) Indeed, the allegations for the '297 patent are among
28 the thinnest in the Complaint. Even including the parroted claim language and

1 generic images, these allegations span only *two* paragraphs. (*Id.* ¶¶ 50-51.) The
2 Complaint again makes no attempt to map the claim limitations to specific features,
3 leaving OSI and the Court to speculate as to what Plaintiff may even be alleging.

4 For example, claim 1 of the '297 patent requires "a **substrate**; [and] a **reflector**
5 extending from said substrate, said reflector forming a **cavity** in conjunction with
6 said substrate." (Ex. 5, '297 Pat., Cl. 1, at 3:37-39 (emphasis added).) The
7 Complaint's bare reference to the images above leaves many questions as to how
8 these claim limitations allegedly map to the exemplary accused product, such as:

- 9 • *What is Plaintiff pointing to as the alleged "substrate," and where*
10 *does it purportedly begin and end?*
- 11 • *What is Plaintiff pointing to as the alleged "reflector," and where*
12 *does it purportedly begin and end?*
- 13 • *What is Plaintiff pointing to as the alleged "cavity," and where does*
14 *it purportedly begin and end?*

15 Claim 1 further requires "at least one **first notch** located **in said reflector**, said
16 at least one first notch extending substantially axially around said reflector, said at
17 least one first notch being formed by a **first wall** and a **second wall** wherein said first
18 wall and said second wall **extend substantially perpendicular to said substrate.**"
19 (Ex. 5, '297 Pat., Cl. 1, at 3:42-44 (emphasis added).) The Complaint's bare
20 reference to the images above leaves only more questions, such as:

- 21 • *What is Plaintiff pointing to as the alleged "first notch"?*
- 22 • *Without identifying the alleged "reflector" or where it purportedly*
23 *begins and ends, how can it be plausibly alleged that any "first*
24 *notch" is located "in said reflector"?*
- 25 • *What is Plaintiff pointing to as the alleged "first wall" and "second*
26 *wall" that form the alleged "first notch"?*
- 27 • *Without identifying the alleged "substrate," "first wall," or "second*
28 *wall," how can it be plausibly alleged that "said first wall and said*

1 *second wall extend substantially perpendicular to said substrate"?*

2 In sum, the Complaint's direct infringement allegations regarding the '297
3 patent consist of merely identifying an exemplary accused product and an asserted
4 claim, while inviting OSI and the Court to speculate as to what Plaintiff is alleging.
5 Such bare allegations fail to provide "fair notice of what the claim is and the
6 grounds upon which it rests." *Conley*, 355 U.S. at 47; *see also TeleSign*, 2016 WL
7 4703873, at *3; *N. Star Innovations*, 2016 WL 9046909, at *4. Plaintiff's direct (and
8 induced) infringement allegations for the '297 patent should therefore be dismissed.

9 **B. Plaintiff Fails to Adequately Plead Induced Infringement**

10 Under 35 U.S.C. § 271(b), "whoever actively induces infringement of a patent
11 shall be liable as an infringer." Courts have interpreted § 271(b) as requiring proof
12 of at least the following elements: (1) an "underlying act of direct infringement" by
13 a third party, *In re Bill of Lading*, 681 F.3d 1323, 1333 (Fed. Cir. 2012) (citation
14 omitted); (2) an "affirmative act" by the defendant that "actively induces" the direct
15 infringement, *Tegal Corp. v. Tokyo Electron Co.*, 248 F.3d 1376, 1378-79 (Fed. Cir.
16 2001) (citations omitted); (3) "knowledge of the existence of the patent that is
17 infringed," *Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 2068 (2011);
18 (4) "knowledge that the induced acts constitute patent infringement," *id.*; and (5) the
19 "specific intent to encourage another's infringement," *DSU Med. Corp. v. JMS Co.*,
20 471 F.3d 1293, 1306 (Fed. Cir. 2006) (en banc).

21 For the first required element of inducement, the Complaint generally alleges
22 that "Defendants' customers and/or end users have directly infringed and are directly
23 infringing" each of the patents-in-suit. (Ex. 1, Complaint ¶¶ 22, 32, 44 & 53.) And
24 relevant to the second required element, the Complaint alleges that the "Accused
25 Instrumentalities are designed in such a way that when they are used for their
26 intended purpose, the user infringes" each of the patents-in-suit. (*Id.* ¶¶ 22, 32, 44 &
27 53.) In other words, the Complaint alleges OSI is actively inducing infringement
28 simply by selling allegedly infringing products to its customers. But the Complaint's

1 factual allegations directed to the required elements of inducement end there.
2 Notably absent are any alleged facts from which it could be plausibly inferred that
3 any of the three required *knowledge* elements (items 3-5 above) are met.

4 As a threshold matter, Plaintiff's Complaint fails to plead facts from which the
5 Court could plausibly infer that OSI had "knowledge of the existence of the
6 patent[s]" at the time of the alleged inducement. *Global-Tech*, 131 S. Ct. at 2068.
7 For the first two patents-in-suit only, the Complaint alleges that "Defendants" had
8 pre-suit knowledge of the '771 and '087 patents because these patents were cited by
9 an examiner, and/or listed in an IDS, during the prosecution of certain other patents
10 for which one of the Defendants was the original assignee. (Ex. 1, Complaint ¶¶ 23
11 & 33.) But this at most suggests that certain *prosecution counsel* might have known
12 of the '771 and '087 patents at some point in time. Even if that were so, there are no
13 facts alleged from which it could be plausibly inferred that any of the three
14 "Defendants"—much less OSI, its management, or its engineers—learned of the
15 '771 or '087 patents as a result of the cited prosecution records.

16 Beyond the foregoing allegations, for each of the four patents-in-suit, the
17 Complaint generally alleges that "Defendants have had actual knowledge of the
18 [patents-in-suit] at least as of service of this Complaint." (Ex. 1, Complaint ¶¶ 22,
19 32, 44 & 53; *see also id.* ¶¶ 45 & 54.) As this Court has noted, "there is a split in
20 authority regarding whether a patentee must plead pre-suit knowledge for claims of
21 indirect infringement." *TCL Commc'ns Tech. Holdings Ltd. v. Telefonaktenbologet*
22 *LM Ericsson*, No. 14-cv-341, 2014 WL 12588293, at *11 (C.D. Cal. Sep. 30, 2014);
23 *but see Proxyconn Inc. v. Microsoft Corp.*, No. 11-cv-1681, 2012 WL 1835680, at
24 *6 (C.D. Cal. May 16, 2012) ("[T]he Court follows the authorities that hold that
25 'knowledge after filing of the present action is not sufficient for pleading the
26 requisite knowledge for indirect infringement.'") (citation omitted). At minimum,
27 the Court should make clear that "damages for any such indirect infringement will
28 be limited to infringement occurring after [OSI] obtained knowledge of the

1 patent[s]." *TCL*, 2014 WL 12588293, at *11. But it ultimately should not matter.
2 Even if post-suit knowledge were sufficient to plead the first knowledge element,
3 Plaintiff's inducement claims would still be deficient, as the Complaint fails to
4 adequately plead the two other required knowledge elements. *See Tawnsaura*
5 *Group, LLC v. Maximum Human Performance, LLC*, No. 12-cv-7189, 2012 WL
6 12331032, at *2 (C.D. Cal. Nov. 7, 2012) (dismissing inducement claim because
7 "knowledge [of the asserted patent] is only one element of indirect infringement,
8 and Plaintiff is unable to plead the intent element at this time").

9 Specifically, the Complaint fails to plead any facts sufficient to infer that OSI
10 acted with "knowledge that the induced acts constitute patent infringement," *Global-*
11 *Tech*, 131 S. Ct. at 2068, and with the "specific intent to encourage another's
12 infringement," *DSU Med.*, 471 F.3d at 1306. Plaintiff's Complaint includes virtually
13 identical boiler plate allegations for each of the four patents-in-suit, merely
14 substituting the relevant patent numbers. (*See* Ex. 1, Complaint ¶¶ 22, 32, 44 & 53.)
15 We address these cookie-cutter allegations sentence by sentence below, using the
16 placeholder [####] to denote where Plaintiff merely exchanged the patent numbers
17 within its rote allegations. The relevant allegations all begin as follows:

18 Defendants are knowingly inducing their customers and/or end
19 users to directly infringe the [####] Patent, with the specific
20 intent to encourage such infringement, and knowing that the
21 induced acts constitute patent infringement.

22 (Ex. 1, Complaint ¶¶ 22, 32, 44 & 53.) This sentence does not allege any *facts*, but
23 rather includes mere "[t]hreadbare recitals of the elements of [the] cause of action"
24 which are "not entitled to the assumption of truth." *Iqbal*, 556 U.S. at 678-79.

25 The Complaint next alleges the following for each patent-in-suit:

26 Defendants' inducement includes, for example, providing
27 technical guides, product data sheets, demonstrations, software
28 and hardware specifications, installation guides, and other

1 forms of support that induce their customers and/or end users to
2 directly infringe the [####] Patent.

3 (Ex. 1, Complaint ¶¶ 22, 32, 44 & 53.)

4 Plaintiff vaguely refers to assorted categories of documents in the sentence
5 above, but fails to identify any specific document or any content therein. These
6 allegations at most support an inference that OSI provided technical support to its
7 customers. But even accepted as true, that fact does not address whether OSI acted
8 with *knowledge that the accused products were infringing*, or with the *specific*
9 *intent to induce infringement*. See *Star Envirotech, Inc. v. Redline Detection, LLC*,
10 No. 12-cv-1861, 2014 WL 12589111, at *5 (C.D. Cal. Oct. 30, 2014) (allegations
11 that defendant "encourage[ed] its customers to use the [Accused Products]" and
12 provided "instructions and technical assistance" were "insufficient to establish
13 induced infringement"); *Unison Strategic IP, Inc. v. Life Techs. Corp.*, No. 13-cv-
14 1278, 2013 WL 5729487, at *3 (S.D. Cal. Oct. 22, 2013) (allegations that defendant
15 "provides instruction, technical support, and training for using its own software"
16 were "not sufficient to plausibly infer that Defendant had the specific intent to
17 induce others to infringe"); *Avocet Sports Tech., Inc. v. Garmin Int'l, Inc.*, No. 11-
18 cv-4049, 2012 WL 2343163, at *4 (N.D. Cal. June 5, 2012) (allegation that
19 defendant provided "'instruction' and 'training' in the use of [its] own products" did
20 "not constitute evidence . . . of 'culpable conduct' that was 'directed to encouraging
21 another's infringement'" (quoting *DSU Med.*, 471 F.3d at 1306).

22 The Complaint next alleges the following for each patent-in-suit:

23 The [####] Accused Instrumentalities are designed in such a
24 way that when they are used for their intended purpose, the user
25 infringes the [####] Patent. Defendants know and intend that
26 customers that purchase the [####] Accused Instrumentalities
27 will use those products for their intended purpose.

28 (Ex. 1, Complaint ¶¶ 22, 32, 44 & 53.)

1 In the sentences above, Plaintiff merely alleges (a) that the accused products
2 are infringing, and (b) that Defendants know and intend that their customers will use
3 the products. But once again, Plaintiff fails to make any factual allegation that OSI
4 *knew the accused products were infringing* or *specifically intended to induce*
5 *infringement*. "[K]nowledge of the acts alleged to constitute infringement is not
6 enough; specific intent and purposeful, culpable action to induce infringement (not
7 just the acts that produce the infringement) must be proven." *Tawnsaura Group,*
8 *LLC v. Maximum Human Performance, LLC*, No. 12-cv-7189, 2012 WL 12331032,
9 at *1 (C.D. Cal. Nov. 7, 2012). In other words, the "specific intent necessary to
10 induce infringement requires more than just intent to cause the acts that produce
11 direct infringement"; it requires "an affirmative intent to cause direct infringement."
12 *Kyocera Wireless Corp. v. Int'l Trade Comm'n*, 545 F.3d 1340, 1354 (Fed. Cir.
13 2008) (citation omitted); *see also U.S. Ethernet Innovations, LLC v. Netgear, Inc.*,
14 No. 13-cv-2262, 2013 WL 4112601, at *3 (N.D. Cal. Aug. 12, 2013) ("USEI has
15 plead that Netgear provided instructions to its customers on how to use its products
16 and that, when the customers operated the products as instructed by Netgear, they
17 directly infringed the patents-in-suit. However, USEI has not adequately plead that
18 Netgear knew these acts would constitute patent infringement.").

19 The Complaint next alleges the following for each patent-in-suit:

20 Defendants also specifically intend its customers infringe the
21 [###] Patent through use of the [###] Accused
22 Instrumentalities through trade show presentations, customer
23 visits, direct customer contacts and application guides. For
24 example, Defendant's United States website:
25 <https://www.osram.com/os/>, instructs customers to use the
26 [###] Accused Instrumentalities in numerous "Applications."

27 (Ex. 1, Complaint ¶¶ 22, 32, 44 & 53.)

28 The foregoing allegations are just more of the same—i.e., vague assertions

1 that the Defendants provide technical support and instructions to their customers.
2 Even if these allegations were true, they would not in any way suggest that OSI
3 ***knew and specifically intended that the accused products infringe*** the patents-in-
4 suit. *See Stillman v. Novartis Consumer Health, Inc.*, No. 11-cv-5603, 2011 WL
5 11745708, at *3-4 (C.D. Cal. Nov. 29, 2011) (dismissing induced infringement
6 claims, despite alleged pre-suit knowledge of the patent by a specific date, because
7 "§ 271(b) requires knowledge that the induced acts constitute patent infringement")
8 (quoting *Global-Tech*, 131 S. Ct. at 2068).

9 Finally, the Complaint alleges the following for each patent-in-suit:

10 In addition, Defendants specifically intend that their customers,
11 such as United States distributors, retailers and consumer
12 product companies, will import, use and sell infringing products
13 in the United States in order to serve and develop the United
14 States market for Defendants' infringing products.

15 (Ex. 1, Complaint ¶¶ 22, 32, 44 & 53.)

16 But once again, these boilerplate allegations do not in any way suggest that
17 OSI ***knew and specifically intended that the accused products are infringing***. *See*
18 *Ameranth, Inc. v. Hilton Resorts Corp.*, No. 11-cv-1810, 2013 WL 12071642, at *8-
19 9 (S.D. Cal. July 18, 2013) (mere allegations that defendant "advertises, promotes,
20 and encourages the use of" the accused products were insufficient to infer that
21 defendants knew or specifically intended that those products infringe).

22 In sum, for each of the patents-in-suit, the Complaint's boilerplate allegations
23 fail to plead any facts from which the required knowledge elements of an induced
24 infringement claim could be plausibly inferred—i.e., "knowledge of the existence of
25 the patent that is infringed," *Global-Tech*, 131 S. Ct. at 2068; "knowledge that the
26 induced acts constitute patent infringement," *id.*; and the "specific intent to
27 encourage another's infringement," *DSU Med.*, 471 F.3d at 1306. Plaintiff's
28 inducement allegations for each of the patents-in-suit must therefore be dismissed.

1 **C. Plaintiff Fails to Adequately Plead Willful Infringement**

2 Enhanced damages for willful infringement under 35 U.S.C. § 284 are
3 reserved solely for "egregious cases of misconduct beyond typical infringement."
4 *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1935 (2016). In assessing
5 egregiousness, "culpability is generally measured against the knowledge of the actor
6 at the time of the challenged conduct." *Id.* at 1933 (citation omitted). An allegation
7 of willful infringement is "a separate claim that can be subject to a motion to
8 dismiss," so any such allegation must meet the factual and plausibility pleading
9 requirements just like any other claim. *Novitaz, Inc. v. inMarket Media, LLC*, No.
10 16-cv-6795, 2017 WL 2311407, at *5 (N.D. Cal. May 26, 2017).

11 In this case, Plaintiff's Complaint "makes no specific factual allegations about
12 [OSI's] subjective intent, or any other aspects of [OSI's] behavior that would suggest
13 its behavior was 'egregious.'" *Finjan, Inc. v. Cisco Sys. Inc.*, No. 17-cv-72, 2017 WL
14 2462423, at *5 (N.D. Cal. June 7, 2017) (dismissing willful infringement
15 allegations). Rather, for each patent-in-suit, Plaintiff merely states that it "**reserves**
16 **the right to request**" a finding of willful infringement "**[t]o the extent facts learned**
17 **in discovery show** that Defendants' infringement of the [patents-in-suit] is or has
18 been willful and/or egregious." (Ex. 1, Complaint ¶¶ 23, 33, 45 & 54 (emphasis
19 added).) Plaintiff thus concedes it cannot plead facts sufficient to state a plausible
20 claim for willful infringement, so it tries to pass off placeholder allegations instead.

21 The Federal Rules and this Court have well-established deadlines for making
22 claims, and those deadlines cannot be circumvented with unilateral "reservations" of
23 this sort. A mere "hope" to be able to plead a claim in the future clearly does not
24 "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555-56.

25 And to be sure, nowhere in the Complaint are the elements of a supportable
26 willful infringement claim actually pleaded. First, as discussed in Part IV.B above,
27 Plaintiff has failed to plausibly allege that OSI had pre-suit knowledge of the
28 patents-in-suit. "California federal courts have required plaintiffs to plead presuit

1 knowledge in order to adequately plead willful infringement." *TCL Commc'ns Tech.*
2 *Holdings Ltd. v. Telefonaktenbologet LM Ericsson*, No. 14-cv-341, 2014 WL
3 12588293, at *12 (C.D. Cal. Sep. 30, 2014) (quoting *Unilin Beheer B.V. v. Tropical*
4 *Flooring*, No. 14-cv-2209, 2014 WL 2795360, at *6 (C.D. Cal. June 13, 2014)).

5 Second, "[e]ven under the more relaxed standard" for willful infringement the
6 Supreme Court set forth "*Halo*," a willfulness claim based on a "'mere allegation,
7 without more,' that Defendants knew of the patents-in-suit will not survive a Rule
8 12(b)(6) motion." *Emazing Lights, LLC v. De Oca*, No. 15-cv-1561, 2016 WL
9 7507765, at *2 (C.D. Cal. June 20, 2016) (dismissing willfulness claim, even though
10 plaintiff had provided defendants a written "cease and desist" letter, because the
11 complaint failed to include any "plausible allegation" that defendants "acted in a
12 manner that amounted to willful infringement") (citation omitted). As discussed
13 above, the Complaint *admits* that Plaintiff needs discovery before it can even hope
14 to possibly assert willfulness claims in the future. (Ex. 1, Complaint ¶¶ 23, 33, 45 &
15 54.) Plaintiff's willful infringement allegations must therefore be dismissed.

16 **V. CONCLUSION**

17 For the foregoing reasons, OSI respectfully requests that the Court dismiss the
18 Complaint in its entirety pursuant to Rules 12(b)(6) and 8(a)(2) of the Federal Rules
19 of Civil Procedure, for failure to state any claim upon which relief can be granted.

20 Moreover, because it is clear that the Complaint's deficiencies regarding the
21 '771 and '087 patents cannot be cured by amendment, OSI respectfully requests that
22 the Court dismiss Plaintiff's allegations regarding those patents *with prejudice*.

23 Respectfully Submitted,

24 DATED: September 22, 2017

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OSRAM SYLVANIA INC.'S
MOTION TO DISMISS
Case No. 2:17-cv-05184-JVS-JCG