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INTERNATIONAL, N.V. AND
12 ASM AMERICA, INC.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 HITACHI KOKUSAI ELECTRIC INC.,
17 Plaintiff,
18 v.
19 ASM INTERNATIONAL, N.V. AND ASM
20 AMERICA, INC.,
21 Defendants.

Civil Action No. 5:17-cv-6880

MOTION TO DISMISS

Hon. Beth Labson Freeman

Date: March 29, 2018

Time: 9:00 a.m.

Courtroom: 3

Complaint Filed: December 1, 2017

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TABLE OF CONTENTS

Page

NOTICE OF MOTION & MOTION1

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:1

I. INTRODUCTION.....1

II. STATEMENT OF FACTS.....2

 A. Genesis Of The Parties’ Dispute2

 B. HiKE’s Complaint Lacks Specific Factual Allegations2

 1. The Complaint Lacks Factual Support for Claims of Direct
 Infringement2

 2. The Complaint Lacks Factual Support for Claims of Indirect
 Infringement4

III. APPLICABLE LEGAL STANDARDS.....6

IV. ARGUMENT7

 A. The Complaint Fails To State A Claim For Direct Infringement.....7

 B. The Complaint Fails To State A Claim For Indirect Infringement8

V. CONCLUSION11

TABLE OF AUTHORITIES

	<u>Page</u>
Cases	
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
<i>Anza Tech, Inc. v. Hawking Tech., Inc.</i> , 3:16-cv-1264, 2016 WL 8732648,(S.D. Cal. Nov. 4, 2016).....	8
<i>Asetek Holdings, Inc. v. Coolit Sys., Inc.</i> , No. C-12-4498, 2013 WL 256522 (N.D. Cal. Jan. 23, 2013)	9
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662, 129 S. Ct. 1937 (2009)	1, 6, 7, 8, 10
<i>Atlas IP LLC v. Exelon Corp.</i> , 189 F. Supp. 3d 768 (N.D. Ill. 2016), <i>aff'd</i> , 686 Fed. Appx. 921 (Fed. Cir. 2017)	7
<i>Bascom Research LLC v. Facebook, Inc.</i> , No. C 12-6293, 2013 WL 968210 (N.D. Cal. Mar. 12, 2013)	6-7, 9
<i>Atlas IP LLC v. Pac. Gas & Elec. Co.</i> , No. 15-cv-05469, 2016 WL 1719545 (N.D. Cal. Mar. 9, 2016).....	6, 7, 8
<i>Bell Atlantic v. Twombly</i> , 550 U.S. 433 (2007)	6, 7, 8, 10
<i>Bender v. LG Elecs. USA, Inc.</i> , No. C09-2114-JF(PVT), 2010 WL 889541 (N.D. Cal. Mar. 11, 2010).....	7
<i>Chavez v. United States</i> , 683 F.3d 1102 (9th Cir. 2012).....	6
<i>Emblaze Ltd v. Apple Inc.</i> , No. C 11-01709, 2012 WL 5940782 (N.D. Cal. Nov. 27, 2012).....	9-10
<i>eDigital Corp. v. iBaby Labs, Inc.</i> , No. 15-cv-05790, 2016 WL 4427209 (N.D. Cal. Aug. 22, 2016)	7
<i>In re Gilead Scis. Sec. Litig.</i> , 536 F.3d 1049 (9th Cir. 2008).....	6
<i>Intellicheck Mobilisa, Inc. v. Honeywell Int’l Inc.</i> , No. C16-0341 JLR, 2017 WL 5634131 (W.D. Wash. Nov. 21, 2017).....	6
<i>Logic Devices Inc. v. Apple Inc.</i> , No. C 13-02943, 2014 WL 60056 (N.D. Cal. Jan. 7, 2014)	9
<i>Memory Integrity, LLC v. Intel Corp.</i> , 144 F. Supp. 3d 1185 (D. Or. 2015).....	8, 10
<i>Mendondo v. Centinela Hosp. Med. Ctr.</i> , 521 F.3d 1097 (9th Cir. 2008).....	6
<i>North Star Innovations, Inc. v. Micron Tech., Inc.</i> , No. 17-506-LPS, 2017 WL 5501489 (D. Del. Nov. 16, 2017).....	7, 8

1	<i>Novatel Wireless, Inc. v. Franklin Wireless Corp.</i> ,	
2	No. 10cv2530, 2012 WL 12845614 (S.D. Cal. Mar. 29, 2012).....	9, 10
3	<i>Scripps Research Institute v. Illumina, Inc.</i> , No. 16-cv-661,	
4	2016 WL 6834024.....	8
5	<i>Varian Med. Sys., Inc. v. Elekta AB</i> ,	
6	No. CV 15-871-LPS, 2016 WL 3748772 (D. Del. July 12, 2016).....	9
7	Rules and Regulations	
8	Fed. R. Civ. P. 8(a)(2)	6
9	Fed. R. Civ. P. 12(b)(6).....	1, 6
10	Additional Authorities	
11	U.S. Patent No. 7,033,937.....	3, 5
12		
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NOTICE OF MOTION & MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on March 29, 2018, at 9:00 a.m., the undersigned shall appear before the Honorable Beth Labson Freeman in Courtroom 3 on the 5th Floor of the United States District Court for the Northern District of California, San Jose Courthouse, 280 South 1st Street, San Jose, CA 95113 and shall present Defendants ASM America, Inc. and ASM International, N.V.’s Motion to Dismiss. This Motion is based on this Notice of Motion and Motion, the other records and papers provided to the Court herewith, any oral argument, and all other evidence the Court may consider in hearing this Motion.

Pursuant to L.R. 7-2(b)(3), Defendants ASM America, Inc. and ASM International, N.V. respectfully request that the Court grant its Motion to Dismiss and dismiss the Complaint filed by Plaintiff Hitachi Kokusai Electric Inc. (“HiKE”) in this Action for failure to state a claim.

STATEMENT OF ISSUES TO BE DECIDED (L.R. 7-3(a)(3))

Whether HiKE’s Complaint is deficient pursuant to Federal Rule of Civil Procedure 12(b)(6) because it lacks sufficient factual allegations to state a cognizable claim for relief.

1 **I. INTRODUCTION**

2 The Complaint filed by Hitachi Kokusai Electric Inc. (“HiKE” or “Plaintiff”) in this patent
3 case against ASM International, N.V. and its U.S.-based subsidiary ASM America, Inc. is a relic
4 of pleading standards long ago abandoned—namely, it is devoid of *any* of the factual allegations
5 now required by U.S. Supreme Court precedent in view of the 2015 Amendments to the Federal
6 Rules of Civil Procedure. Following the abrogation of Rule 84 and its corresponding Appendix of
7 Forms in the 2015 Amendments, district courts (including this Court) have routinely held that
8 merely parroting back the language of asserted claim elements combined with a conclusory
9 statement that the accused product is comprised of such elements renders a patent complaint
10 deficient as a matter of law. Nevertheless, that is precisely what HiKE has done – strongly
11 suggesting that HiKE lacks evidentiary support for its infringement claims. Accordingly, HiKE’s
12 allegations of direct infringement fail as a matter of law.

13 HiKE’s allegations of indirect infringement are likewise deficient—relying exclusively on
14 recitation of the legal standards applicable to induced and contributory infringement without
15 including any factual allegations tailored to either defendant’s conduct or their customers.
16 Pursuant to the framework established by *Iqbal* and *Twombly*, however, such legal conclusions are
17 *disregarded* when evaluating the sufficiency of pleadings. Because HiKE’s Complaint fails to
18 identify facts demonstrating how any of the asserted claim elements are practiced by the accused
19 products or performed by either defendant or any third party within the United States, its claims of
20 indirect infringement must also fail as there can be no indirect infringement without a
21 corresponding direct infringement. Additionally, HiKE’s Complaint fails to identify a single U.S.-
22 based installation or use of any of the accused products or identify any domestic third-party
23 infringer, much less any affirmative acts Defendants have undertaken to induce or contribute to
24 such unspecified third-party infringement. Consequently, each of HiKE’s allegations of indirect
25 infringement also fail as a matter of law, and HiKE’s Complaint should be dismissed.

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1 **II. STATEMENT OF FACTS**

2 **A. Genesis Of The Parties' Dispute**

3 ASM International NV (“ASMI”) is a foreign corporation founded, organized, and
4 operated in the Netherlands. ASM America, Inc. (“ASMA”) is a United States subsidiary of
5 ASMI incorporated in Delaware with its principal place of business in Arizona. ASMI, ASMA,
6 and their corporate affiliates (collectively “ASM” or “Defendants”) are leading innovators in the
7 semiconductor industry and suppliers of semiconductor processing equipment. Specifically, ASM
8 designs and develops reactors used in the deposition of thin films on semiconductor substrates
9 during the fabrication of complex integrated circuits (*i.e.*, microchips) for use in computers and
10 other electronic devices. Techniques and technologies developed by ASM have helped drive the
11 miniaturization of microchips used in consumer and industrial computing devices, an area of
12 innovation known as nanotechnology. ASM’s products include complex reactors designed to
13 perform atomic layer deposition, chemical vapor deposition, and other thin film processing
14 techniques used globally in the fabrication of microprocessors and memory chips. ASM also
15 makes substantial R&D investments in identifying the appropriate chemical reactants used in these
16 thin film processes.

17 HiKE is also a supplier of semiconductor manufacturing equipment. Like ASM, HiKE
18 develops and sells thin film processing equipment for use in semiconductor fabrication globally.
19 Dkt. 1., ¶ 12. For years, ASM and HiKE coexisted (and even competed) peacefully under the
20 terms of a patent license agreement whereby ASM licensed certain patents to HiKE in certain
21 fields of use. Efforts to negotiate a renewal of the license were unsuccessful and ASM affiliate
22 ASM IP Holding BV initiated a patent infringement action against HiKE on December 1, 2017.
23 *ASM IP Holding BV v. Hitachi Kokusai Electric, Inc.*, Case No. 3:17-cv-6879, Dkt. 1 (N.D. Cal.
24 Dec. 1, 2017). Immediately thereafter, HiKE filed the present action against ASMI and ASMA.

25 **B. HiKE’s Complaint Lacks Specific Factual Allegations**

26 1. The Complaint Lacks Factual Support for Claims of Direct Infringement

27 HiKE’s Complaint in this action asserts patent infringement of seven (7) patents. HiKE
28 did not attach copies of the asserted patents to its Complaint. Aside from the title of the Patent,

1 HiKE’s Complaint provides no description of its claimed inventions or what it considers to be the
 2 subject matter of its claims. Dkt. 1, ¶¶ 15-21. HiKE’s pleading regarding U.S. Patent No.
 3 7,033,937 is illustrative:

The Patents-in-Suit

5 15. On April 25, 2006, the United States Patent and Trademark Office (“USPTO”)
 6 duly and legally issued the ’937 patent, which is titled “Apparatus and Method for Use in
 7 Manufacturing a Semiconductor Device.” The ’937 patent has been assigned to HiKE. HiKE
 8 holds all right, title, and interest in the ’937 patent, including the right to collect and receive
 9 damages for past, present, and future infringement of the ’937 patent.

10 Following identification of the Patents-in-Suit, the Complaint includes seven (7) counts for
 11 infringement of U.S. Patent Nos. 7,033,937 (“the ’937 patent”), 6,576,063 (“the ’063 patent”),
 12 7,808,396 (“the ’396 patent”), RE43,023 (“the ’023 patent”), 6,744,018 (“the ’018 patent”),
 13 8,409,988 (“the ’988 patent”), and 9,318,316 (“the ’316 patent”) (collectively, “the Asserted
 14 Patents”). The allegations in each count are virtually identical. For each, HiKE asserts that “[b]y
 15 making, using, importing, selling, and/or offering for sale one or more of the Accused Products,
 16 including but not limited to [an exemplary system], Defendants have infringed and continue to
 17 infringe the [] patent in this District and throughout the United States.” HiKE identifies the
 18 following exemplary accused “systems” in its Complaint:

Asserted Patent	Exemplary Accused System	Dkt. 1
U.S. Patent No. 7,033,937	Pulsar XP ALD System	¶ 24
U.S. Patent No. 6,576,063	Pulsar XP ALD system	¶ 34
U.S. Patent No. 7,808,396	Intrepid XP epitaxy system	¶ 44
U.S. Patent No. RE43,023	A412 batch vertical furnace system	¶ 54
U.S. Patent No. 6,744,018	XP8 system	¶ 64
U.S. Patent No. 8,409,988	XP8 system	¶ 74
U.S. Patent No. 9,318,316	XP8 system	¶ 84

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1 Thereafter, HiKE’s Complaint identifies an exemplary asserted claim and recites the bare
2 claim elements. HiKE’s allegations relating to the ’937 Patent are representative:

3 25. For example, the Pulsar XP ALD system infringes at least claim 10 of the ’937
4 patent because it practices a semiconductor device manufacturing method that includes the steps
5 of (a) generating a plasma in at least one plasma source arranged outside a reaction chamber
6 where the reaction chamber has at least one substrate to be processed; and (b) supplying and
7 removing active species generated by the plasma source into and from the reaction chamber
8 through a supply port arranged at a side of the reaction chamber and an exhaust port arranged at a
9 substantially opposite side to the supply port where the supply port and the exhaust port are
10 positioned substantially at a same level, and the active species flows in a substantially horizontal
11 direction from the supply port to the exhaust port.

12 Though HiKE’s Complaint recites the elements of asserted claims, it fails to provide any factual
13 allegations regarding how, if at all, the accused products meet the claim requirements. *See* Dkt. 1,
14 ¶¶ 25, 35, 45, 55, 65, 75. Moreover, many of the Asserted Patents, like Claim 10 of the ’937
15 Patent identified above, involve method – not apparatus – claims. For its asserted method claims,
16 HiKE does not identify any accused processes nor does it explain how, if at all, the identified
17 systems may be used to perform the claimed methods.

18 2. The Complaint Lacks Factual Support for Claims of Indirect Infringement

19 HiKE’s Complaint further alleges “on information and belief” that “Defendants have also
20 induced and/or are inducing the infringement” of the asserted patents but fails to identify any
21 allegedly inducing activities. Dkt. 1, ¶¶ 27, 37, 47, 57, 67, 77. HiKE’s inducement allegations
22 relating to the ’937 Patent, reproduced in full below, are exemplary of the conclusory language
23 used for all of its Counts of indirect infringement:
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1 27. On information and belief, Defendants have also induced and/or are inducing the
2 infringement of the '937 patent by making, using, importing, offering for sale, and/or selling one
3 or more of the Accused Products, including but not limited to the Pulsar XP ALD system. At
4 least this product, as provided by Defendants to their customers and used as intended and
5 instructed, infringes the '937 patent. Defendants sold and/or offered for sale one or more of the
6 Accused Products, including but not limited to the Pulsar XP ALD system, and are continuing to
7 do so, to customers with the specific intent to actively encourage them to use one or more of the
8 Accused Products, including but not limited to the Pulsar XP ALD system in the United States in
9 a manner that Defendants know to be infringing.

10 Similarly, HiKE alleges “on information and belief” that “Defendants have also
11 contributed to and/or are contributing to the infringement of the” asserted patents, but fail to
12 provide any factual allegations in support of its contributory infringement claims. *Id.*, ¶¶ 28, 38,
13 48, 58, 68, 78. As with its inducement claims, HiKE uses the same language for each of its
14 counts, which is reproduced below:
15

16 28. On information and belief, Defendants have also contributed to and/or are
17 contributing to the infringement of the '937 patent by making, using, importing, offering for sale,
18 and/or selling one or more of the Accused Products, including but not limited to the Pulsar XP
19 ALD system. Defendants have made and/or sold such products with knowledge that they are
20 especially designed for use in a patented system and/or apparatus for use in a patented process
21 and are not a staple article of commerce suitable for substantial non-infringing use. For example,
22 among other things, on information and belief, Defendants actively and knowingly sell such
23 products and provide customer support, installation and instruction material, and other
24 documentation to customers for such products' use as a component of a patented system and/or
25 apparatus for use in a patented process. On information and belief, Defendants' customers have
26 used and continue to use such products in the United States in this manner and infringed the '937
27 patent.
28

1 **III. APPLICABLE LEGAL STANDARDS**

2 Under Federal Rule of Civil Procedure 12(b)(6), dismissal of a complaint is required if
3 “the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal
4 theory.” *Bascom Research LLC v. Facebook, Inc.*, No. C 12-6293, 2013 WL 968210, at *3 (N.D.
5 Cal. Mar. 12, 2013) (quoting *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th
6 Cir. 2008)). “Notice pleading requires only a ‘short and plain statement of the claim showing that
7 the pleader is entitled to relief.’” *Id.* (quoting Fed. R. Civ. P. 8(a)(2)). However, “such a showing
8 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of
9 action will not do.” *Id.* (quoting *Bell Atlantic v. Twombly*, 550 U.S. 433, 444 (2007)). “Rather,
10 the plaintiff must allege ‘enough facts to state a claim to relief that is plausible on its face.’” *Id.*
11 (quoting *Twombly*, 550 U.S. at 570). “Legal conclusions may ‘provide the framework of a
12 complaint, but they must be supported by factual allegations.’” *Id.* (quoting *Ashcroft v. Iqbal*, 556
13 U.S. 662, 679, 129 S. Ct. 1937, 1950 (2009)).

14 In assessing the factual support proffered by the plaintiff’s Complaint, the Court should not
15 “accept allegations that are merely conclusory, unwarranted deductions of fact or unreasonable
16 inferences.” *Bascom*, 2013 WL 968210 at *3 (citing *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049,
17 1055 (9th Cir. 2008)); *see also Intellicheck Mobilisa, Inc. v. Honeywell Int’l Inc.*, No. C16-0341
18 JLR, 2017 WL 5634131, at *5 (W.D. Wash. Nov. 21, 2017) (“‘Mere conclusory statements’ or
19 ‘formulaic recitations of the elements of a cause of action’ . . . ‘are not entitled to the presumption
20 of truth.’”) (quoting *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012)). “Thus, a
21 reviewing court may begin ‘by identifying pleadings that, because they are no more than
22 conclusions, are not entitled to the assumption of truth.’” *Atlas IP LLC v. Pac. Gas & Elec. Co.*,
23 No. 15-cv-05469, 2016 WL 1719545, at *2 (N.D. Cal. Mar. 9, 2016) (quoting *Iqbal*, 129 S. Ct. at
24 1950). Disregarding such unsupported conclusions, the “Court must then determine whether the
25 factual allegations in the complaint ‘plausibly give rise to an entitlement of relief.’” *Id.* (quoting
26 *Iqbal*, 129 S. Ct. at 1950).

27 “In the patent context, it is not enough to merely name a product and provide a conclusory
28 statement that it infringes a patent.” *Intellicheck*, 2017 WL 5634131 at *6 (internal quotations

1 omitted). Similarly, “a patentee cannot meet its obligation to assert a plausible claim of
2 infringement under the *Twombly/Iqbal* standard by merely copying the language of a claim
3 element, and then baldly stating (without more) that an accused product has such an element.”
4 *North Star Innovations, Inc. v. Micron Tech., Inc.*, No. 17-506-LPS, 2017 WL 5501489, at *2 (D.
5 Del. Nov. 16, 2017). “Sufficient allegations would include, at a minimum, a brief description of
6 what the patent at issue does and an allegation that certain named and specifically identified
7 products or product components also do what the patent does thereby raising a plausible claim that
8 the named products are infringing.” *Id.* (quoting *Bender v. LG Elecs. USA, Inc.*, No. C09-2114-
9 JF (PVT), 2010 WL 889541, at *6 (N.D. Cal. Mar. 11, 2010)). “In that vein,” the Complaint must
10 include “factual allegations that . . . permit a court to infer that the accused product infringes each
11 element of at least one claim.” *Atlas IP LLC v. Exelon Corp.*, 189 F. Supp. 3d 768, 775 (N.D. Ill.
12 2016) (dismissing complaint for direct infringement that failed to plausibly identify how the
13 accused product met each claim limitation), *aff’d* 686 Fed. Appx. 921 (Fed. Cir. 2017); *eDigital*
14 *Corp. v. iBaby Labs, Inc.*, No. 15-cv-05790, 2016 WL 4427209, at *3 (N.D. Cal. Aug. 22, 2016).

15 **IV. ARGUMENT**

16 Stripping away its purely legal allegations and conclusory statements, HiKE’s Complaint
17 is devoid of any meaningful factual assertions. Because HiKE provides no factual allegations that
18 would support a finding of infringement, it fails to adequately put Defendants on notice of its
19 asserted claims for relief. HiKE did not even bother to append the asserted patents to its
20 Complaint much less describe the claimed inventions or tether them in any meaningful way to
21 ASM’s products or to ASM’s customers’ use of those products in the fabrication of
22 semiconductors.

23 **A. The Complaint Fails To State A Claim For Direct Infringement**

24 This Court has dismissed patent infringement actions where the operative complaint fails
25 to identify how, in the exemplary accused products, *even a single asserted claim limitation* is met.
26 Here, HiKE’s Complaint does not specify how *any of the asserted claim limitations* are met by
27 the accused products. *eDigital*, 2016 WL 4427209 at *5; *Atlas IP*, 2016 WL 1719545 at *2; *see*
28 *also Bascom*, 2013 WL 968210 at *5 (“Here the complaints only list the titles and dates of

1 issuance of the patents-in-suit and contain no allegations regarding what those patents claim.
2 While the complaints do contain allegations regarding the Defendants’ products, there are no
3 allegations setting forth the similarities between the claims of the patents in suit . . .”). HiKE’s
4 failure to “plead facts that say *something* about . . . what the accused product contains that meets
5 the claim limitations . . . and that helps the Court *understand* why it is plausible that this is so”
6 renders it deficient as a matter of law. *North Star*, 2017 WL 5501489 at *2 (dismissing Complaint
7 for direct infringement “that does little more than parrot back the language of these claim elements
8 and then states that the accused product is comprised of such elements”) (emphasis original).

9 Instead of pleading facts, HiKE’s Complaint includes a bare recitation of claim elements
10 that without more Courts have universally rejected under the *Iqbal/Twombly* standard. *See, e.g.,*
11 *Atlas IP*, 2016 WL 1719545 at *2; *North Star*, 2017 WL 5501489 at *2-3; *Scripps Research*
12 *Institute v. Illumina, Inc.*, No. 16-cv-661, 2016 WL 6834024, at * 6 (“[A] Plaintiff must simply
13 provide sufficient factual allegations concerning how each limitation of the asserted claims is
14 *plausibly* met by the accused products.”). Because HiKE fails to “address all [or any] of the claim
15 requirements” in its Complaint, each of its allegations of direct infringement must be dismissed.
16 *Atlas IP*, 2016 WL 1719545 at *2.¹

17 **B. The Complaint Fails To State A Claim For Indirect Infringement**

18 Having failed to plead a claim for direct infringement, HiKE’s indirect infringement claims
19 necessarily fail because direct infringement is a predicate element. *See, e.g., Memory Integrity*,

21 ¹ Moreover, three of the seven asserted patents in HiKE’s Complaint involve method claims
22 for which no allegedly infringing process is even identified. Instead, HiKE merely identifies an
23 accused product (comprising a complex chemical reactor used for performing many different types
24 of customer-specific chemical deposition processes) that it claims “practices a semiconductor
25 device manufacturing method that includes [the parroted claim limitations].” *See, e.g.,* Dkt. 1, ¶¶
26 25, 75. This is not adequate under *Iqbal/Twombly* as HiKE failed to allege essential facts such as:
27 (i) what the allegedly infringing process is; (ii) the circumstances (*e.g.,* where, how or when) in
28 which either a defendant or its customers perform this unspecified process within the United
States; or (iii) which of Defendants’ customers might be utilizing the claimed method in the
United States. *Id.* Where patent claims are directed to a method, rather than an apparatus, merely
identifying an accused product without sufficiently describing its accused operations is
insufficient. *See, e.g., Anza Tech, Inc. v. Hawking Tech., Inc.*, 3:16-cv-1264, 2016 WL 8732648,
at *4-5 (S.D. Cal. Nov. 4, 2016).

1 *LLC v. Intel Corp.*, 144 F. Supp. 3d 1185, 1196 (D. Or. 2015); *Bascom*, 2013 WL 968210 at *3;
2 *see also Emblaze Ltd v. Apple Inc.*, No. C 11-01709, 2012 WL 5940782, at *6 (N.D. Cal. Nov. 27,
3 2012). Moreover, HiKE’s indirect infringement claims fail for the additional reason that its
4 Complaint provides no factual allegations concerning the additional elements of induced or
5 contributory infringement. For example, HiKE asserts that each defendant has knowledge of the
6 Asserted Patents but provides no factual allegations regarding *how* such knowledge was acquired.
7 *Bascom*, 2013 WL 968210 at *4-5. And despite indirect infringement requiring proof of direct
8 infringement by a third party, HiKE’s Complaint fails to identify a single U.S.-based installation
9 of any of the accused products or specify any alleged domestic third-party infringer. *See Varian*
10 *Med. Sys., Inc. v. Elekta AB*, No. CV 15-871-LPS, 2016 WL 3748772, at *4 (D. Del. July 12,
11 2016), *report and recommendation adopted*, No. CV 15-871-LPS, 2016 WL 9307500 (D. Del.
12 Dec. 22, 2016) (dismissing complaint because it “does not adequately allege that **any third party**
13 **actually used** the accused device” as required by the claims) (emphasis original); *Asetek Holdings,*
14 *Inc. v. Coolit Sys., Inc.*, No. C-12-4498, 2013 WL 256522 (N.D. Cal. Jan. 23, 2013) (dismissing
15 Complaint on the basis that the plaintiff failed to identify any plausible direct infringer).

16 Furthermore, with respect to induced infringement, HiKE’s Complaint includes no factual
17 allegations “plausibly showing that defendants specifically intended their customers to infringe the
18 patents and knew that their customers’ acts constituted infringement.” *Bascom*, 2013 WL. 968210
19 at *4-5. To meet this requirement, HiKE was required to provide some evidence of **affirmative**
20 **acts** by each defendant to induce direct infringement by a third party. *Id.*; *Logic Devices Inc. v.*
21 *Apple Inc.*, No. C 13-02943, 2014 WL 60056, at *2 (N.D. Cal. Jan. 7, 2014); *see also Novatel*
22 *Wireless, Inc. v. Franklin Wireless Corp.*, No. 10cv2530, 2012 WL 12845614, at *5 (S.D. Cal.
23 Mar. 29, 2012). It did not. Instead, HiKE alleges that “Defendants have also induced and/or are
24 inducing the infringement of the [Asserted] patent by making, using, importing, offering for sale,
25 and/or selling one or more of the Accused Products. . . . At least this product, as provided by
26 Defendants to their customers and used as intended and instructed, infringes the [asserted] patent.”
27 Dkt. 1, ¶¶ 27, 37, 47, 57, 67, 77. But neither a defendant’s use, sale, importation or manufacture
28 of the accused products nor the use of accused products by a defendant’s customers, alone, can

1 plausibly give rise to inducement liability. *Bascom*, 2013 WL 968210 at *4-5; *see also Memory*
2 *Integrity*, 144 F. Supp. 3d at 1196 (“When a product can be used both in an infringing way and a
3 non-infringing way the allegation that its purveyor specifically *teaches* the infringing use is
4 sufficient factual support for the element of specific intent But the mere allegation that a user
5 following the instructions may end up using the device in an infringing way is not sufficient
6 factual support” for a claim of inducement.”). Here, unlike in complaints deemed sufficient
7 under *Iqbal/Twombly*, HiKE has identified no advertisements, product literature, or other material
8 wherein any ASM affiliate (let alone either of the Defendants) has touted the accused features of
9 its products or directed its customers to use the accused products in an infringing manner.
10 *Bascom*, 2013 WL 968210 at *4-5 (“Courts have found inducement allegations sufficient when,
11 for example, the complaints contain factual allegations setting forth the similarities between the
12 patent claims and the advertised features of the defendants products”) (quoting *Infineon Tech*
13 *AG*, 2012 WL 3939353 at *4). Moreover, there are no allegations in the Complaint that either
14 defendant induced or was even aware of a single customer that implements the claimed methods in
15 the United States. *Id.* For these reasons, HiKE’s allegations of induced infringement claims fail
16 as a matter of law.

17 HiKE similarly provides no facts to support its claims for contributory infringement.
18 HiKE’s Complaint does not include “facts plausibly showing direct infringement by any third
19 party” in the United States, facts to support a finding that the accused products “that practice the
20 patented method lack substantial non-infringing uses,” or allegations demonstrating that the
21 accused components “constitute a material part of the invention.” *Emblaze*, 2012 WL 5940782 at
22 *6. Instead, HiKE’s claims “parrot the [judicially] required elements of a § 271(c) action without
23 providing any factual setting.” *Novatel Wireless, Inc. v. Franklin Wireless Corp.*, 10cv2530, 2012
24 WL 12845614, at *6 (S.D. Cal. Mar. 29, 2012). “In short, the allegations in support of
25 [Plaintiff’s] indirect infringement claims provide nothing more than ‘naked assertions devoid of
26 further factual enhancement.’” *Emblaze*, 2012 WL 5940782 at *6 (quoting *Iqbal*, 129 S. Ct. at
27 1949). Consequently, HiKE’s allegations of contributory infringement also fail as a matter of law,
28 rendering the Complaint subject to dismissal.

1 **V. CONCLUSION**

2 For all the foregoing reasons, Defendants respectfully request that the Court grant their
3 Motion to Dismiss and dismiss HiKE's Complaint for failure to state a claim.

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5 DATED: February 2, 2018

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on February 2, 2018 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

Executed on February 2, 2018.

/s/ Michael D. Powell