

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

PARUS HOLDINGS INC.,)
)
Plaintiff,)
)
v.) C.A. No. 6:19-CV-438-ADA
)
SAMSUNG ELECTRONICS CO., LTD. and) **JURY TRIAL DEMANDED**
SAMSUNG ELECTRONICS AMERICA,)
INC.,)
)
Defendants.)

**SAMSUNG’S RENEWED MOTION TO DISMISS CLAIMS OF WILLFUL AND
INDIRECT INFRINGEMENT AND REQUEST FOR INJUNCTIVE RELIEF**

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I. INTRODUCTION

In this case, Parus Holdings, Inc. (“Parus”) alleges that Samsung Electronics Co, Ltd. and Samsung Electronics America, Inc. (collectively, “Samsung”) infringe two patents. In Parus’ First Amended Complaint (FAC), submitted in response to Samsung’s Motion to Dismiss the original Complaint, Parus makes superficial changes in an effort to continue to allege willful infringement, indirect infringement, and to request injunctive relief.

Parus’ FAC does not cure the deficiencies in its original Complaint. *First*, Parus’ claims of willful infringement remain insufficient because Parus concedes that Samsung did not have pre-suit knowledge of the asserted patents by withdrawing all pre-suit willfulness allegations, yet Parus still improperly attempts to base its willfulness allegation on post-suit knowledge. Further, Parus’ willfulness claims still fail to meet the well-established pleading standard for the claim, as Parus does not allege in the FAC, nor could it, that Samsung engaged in “egregious” conduct. *Second*, Parus’ indirect infringement claims should be dismissed because Parus’ FAC still fails to allege, and cannot allege, knowledge of the patent required to state a claim for indirect infringement. Parus’ inducement claims also must be dismissed for the independent reason that Parus does not and cannot plead the requisite specific intent for these claims. *Third*, Parus’ request for injunctive relief remains unsupported because Parus does not allege any injury that is irreparable and cannot be compensated by monetary damages.

Because Parus’ FAC is deficient in all of these respects, Samsung respectfully requests that the Court dismiss Parus’ claims of willful and indirect infringement, and its request for injunctive relief.

II. BACKGROUND

On July 23, 2019, Parus filed a complaint alleging that Samsung infringes U.S. Patent Nos. 7,076,431 and 9,451,084 (the “asserted patents”). (*See generally* Dkt. 1 (“Compl.”).) Parus acknowledged at the outset that Samsung had no knowledge of the asserted patents before the filing of the Complaint and alleged only that Samsung acquired knowledge of the asserted patents “[u]pon filing of the complaint or shortly thereafter.” (*Id.* ¶¶ 18, 59, 66, 101). No other allegations of actual notice were present in the Complaint. Regarding willful infringement, the only other allegation relating to willfulness was a legal conclusion devoid of any facts: “Samsung’s acts of direct infringement of the [asserted patents] are willful, and have caused and will continue to cause substantial damage and irreparable harm to Parus, and Parus has no adequate remedy at law.” (*Id.* ¶¶ 19, 67).

On November 5, 2019, Samsung filed its Motion to Dismiss Claims of Willful and Indirect Infringement and Request for Injunctive Relief. (Dkt. 16.) On November 19, 2019, Parus responded by filing its First Amended Complaint (“FAC”). (Dkt. 22.) Relying on the allegations in the FAC, Parus simultaneously filed its Response in Opposition to Samsung’s Motion to Dismiss Claims of Willful and Indirect Infringement and Request for Injunctive Relief. (Dkt. 23 (“Resp.”).) Because the FAC supersedes the Complaint, a ruling on Samsung’s existing Motion to Dismiss Claims of Willful and Indirect Infringement and Request for Injunctive Relief (Dkt. 16) is not necessary. Accordingly, Samsung respectfully withdrew its original Motion to Dismiss Claims, and now brings the instant Renewed Motion to Dismiss Claims of Willful and Indirect Infringement and Request for Injunctive Relief based on Parus’ FAC.

Parus' revisions in its FAC amount to nothing more than superficial changes, failing to overcome the deficiencies with its Complaint. These changes fall into three categories. First, Parus explicitly withdraws its pre-suit willfulness and indirect infringement allegations, explaining that its claims of willfulness and indirect infringement are premised solely on post-suit knowledge and conduct. (FAC ¶¶ 22-23, 71, 79-80, 121, Prayer for Relief; Resp. at 2).¹ Second, Parus inserts website links alleging that Samsung provides technical support for the accused products, in ostensible support of its indirect infringement allegations. (FAC ¶¶ 27, 83.) Third, Parus adds information regarding products it allegedly sells, which allegedly practice the asserted patents, in an attempt to sustain its request for an injunction. (FAC ¶ 2.) None of these changes are sufficient to salvage Parus' inadequately pleaded claims for willful infringement, indirect infringement, or injunctive relief.

III. LEGAL STANDARD

To survive a motion to dismiss, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The plausibility standard is not met unless the “plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* Courts “are not bound to accept as true a legal conclusion couched as a factual allegation.” *Id.* Thus, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.*

¹ Parus has also withdrawn its allegations of contributory infringement based on pre-suit knowledge. *See generally* FAC; *see* Resp. at 9 n. 4.

IV. ARGUMENT

A. Parus' FAC Fails to Cure Its Inadequately Pleaded Claims of Willful

Infringement

Section 284 of the Patent Act allows a patentee to seek enhanced damages. 35 U.S.C. § 284 (a Court may “increase the damages up to three times the amount found or assessed”). The Supreme Court has explained that willfulness, and the resulting increased damages under Section 284, should be limited to “egregious cases of misconduct beyond typical infringement.” *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1935 (2016). Whether the alleged infringement is egregious enough to justify enhanced damages turns on an assessment of the accused infringer’s state of mind. *See id.* at 1933 (“culpability is generally measured against the knowledge of the actor at the time of the challenged conduct.”).

A claim of willful infringement is a serious charge. It accuses a defendant of conduct that is “willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or—indeed—characteristic of a pirate.” *Id.* at 1932. Accordingly, a claim of willful infringement cannot be pleaded in a perfunctory manner with mere boilerplate allegations. To state a claim for willful infringement, “a plaintiff must allege facts plausibly showing that as of the time of the claim’s filing, the accused infringer: (1) knew of the patent-in-suit; (2) after acquiring that knowledge, it infringed the patent; and (3) in doing so, it knew, or should have known, that its conduct amounted to infringement of the patent.” *Parity Networks, LLC v. Cisco Sys., Inc.*, No. 6:19-cv-207-ADA, 2019 WL 3940952, at *3 (W.D. Tex. July 26, 2019) (quoting *Valinge Innovations AB v. Halstead New England Corp.*, No. 16-1082-LPS-CJB, 2018 WL 2411218, at *13 (D. Del. May 29, 2018)).

In other words, the patentee must plead facts from which one can at least infer that the accused infringer knew about the asserted patents, infringed them, and knew, or should have known about the infringement, all *before* the lawsuit was filed. *See Inhale, Inc. v. Gravitron, LLC*, No. 1-18-CV-762-LY, 2018 WL 7324886, at *3 (W.D. Tex. Dec. 10, 2018); *In re Seagate Tech., LLC*, 497 F.3d 1360, 1374 (Fed. Cir. 2007) (en banc), *overruled on other grounds by Halo*, 135 S. Ct. 192 (2016) (“a willfulness claim asserted in the original complaint must necessarily be grounded exclusively in the accused infringer’s pre-filing conduct.”).

Parus’ FAC does not, and cannot, plausibly allege what is required for willfulness. First, Parus does not allege that Samsung had pre-suit knowledge of, or was willfully blind to, the asserted patents, and instead improperly bases its claim for willfulness entirely on post-suit knowledge. Second, Parus’ claims are merely “garden-variety” patent claims “ill-suited” for a willfulness determination under *Halo*, which fail to raise the plausible inference of egregiousness required for a claim of willful infringement.

1. Willfulness May Not Be Based on Post-Suit Knowledge Alone and Parus’ FAC Fails to Allege Facts to Plausibly Show Samsung Had Pre-Suit Knowledge of the Asserted Patents

To state a claim for willful infringement, Parus must first allege facts showing that Samsung had pre-suit knowledge of the asserted patents. *See Inhale, Inc.*, 2018 WL 7324886 at *3 (“Willful infringement requires knowledge of the allegedly infringed patent.”); *Parity Networks*, 2019 WL 3940952 at *3 (plaintiff must allege knowledge of facts “as of the time of the claim’s filing”). Parus’ FAC does not allege *any* such facts. In fact, Parus acknowledges that Samsung did not have actual knowledge of the asserted patents until the filing of this case. (*See* FAC ¶¶ 22-23, 71, 79-80, 101, 121, Prayer for Relief (alleging Samsung had actual knowledge of the patents only “[u]pon filing of the complaint or shortly thereafter.”).) This post-filing

knowledge is not enough to support a claim for willful infringement. *See Inhale, Inc.*, 2018 WL 7324886 at *3.

Though Parus cites to Eastern District of Texas cases holding that a pleading of post-suit knowledge alone can form the basis of willful infringement (*see* Resp. at 5-6), those decisions are contrary to precedent, contrary to the state of the law in this District, and are incorrect. As this Court has explained, “[o]rdinarily, the Court would dismiss an allegation of willful infringement without prejudice absent a specific allegation of pre-suit knowledge of the asserted patents.” *Frac Shack Inc. v. AFD Petroleum (Tex.) Inc.*, 2019 WL 3818049, at *5 (W.D. Tex. Jun. 13, 2019); *see also VLSI Tech., LLC v. Intel Corp.*, No. 6:19-cv-254-ADA, Dkt. No. 52, at 2 (W.D. Tex. Aug. 6, 2019) (dismissing willful infringement claims). Where a complaint “wholly lacks factual allegations raising a reasonable inference of pre-suit knowledge” of the asserted patent, that complaint “fails to state a claim of willful infringement.” *Inhale, Inc.*, 2018 WL 7324886, at *3. Here, there can be no “reasonable inference of pre-suit knowledge” because Parus has alleged that Samsung learned of the patents only after the complaint was filed.

Indeed, in *Mentor Graphics Corporation v. EVE-USA, Inc.*, decided after *Halo*, the Federal Circuit affirmed that “in ordinary circumstances, willfulness will depend on an infringer’s prelitigation conduct” because “a patentee must have a good faith basis for alleging willful infringement.” 851 F.3d 1275, 1295 (Fed. Cir. 2017) (quoting *In re Seagate*, 497 F.3d at 1374). This comports with the Supreme Court’s explanation that, “culpability is generally measured against the knowledge of the actor at the time of the challenged conduct.” *Halo*, 136 S. Ct. at 1933. Accordingly, district courts examining this controlling authority generally conclude that post-suit knowledge alone fails to support a pleading of willful infringement. *E.g.*, *Valinge Innovation AB*, 2018 WL 2411218, at *11 (D. Del. May 29, 2018); *Adidas Am., Inc. v.*

Sketchers USA, Inc., 2017 WL 2543811, at *4 (D. Or. June 12, 2017). As one court recently held, “the complaint itself cannot serve as the basis for a defendant’s actionable knowledge,” because “[t]he purpose of a complaint is not to create a claim but rather to obtain relief for an existing claim.” *VLSI Tech. LLC v. Intel Corp.*, 2019 WL 1349468, at *2 (D. Del. Mar. 26, 2019).

Further, though Parus pleads—albeit with no supporting facts—that “Samsung had constructive notice of the [asserted patents] based on Parus’s marking” (FAC ¶¶ 22, 79), constructive notice does not satisfy the required pre-suit knowledge for a claim of willful infringement as a matter of law.² *Nike, Inc. v. Wal-Mart Stores, Inc.*, 138 F.3d 1437, 1446 (Fed. Cir. 1998) (“the issue of willfulness turns on the actual knowledge of the infringer, and is unrelated to the adequacy of constructive notice by the patentee.”); *VNUS Med. Techs., Inc. v. Diomed Holdings, Inc.*, 527 F. Supp. 2d 1072, 1075 n.4 (N.D. Cal. 2007) (“actual notice of patent, for purposes of [a] claim of willful infringement, is not established by ‘constructive notice, as by marking a product with a patent number.’” (citation omitted)); *Puma SE v. Forever 21, Inc.*, No. CV17-2523 PSG Ex, 2017 WL 4771004, at *3 (C.D. Cal. Jun. 29, 2017) (“Actual knowledge—not constructive knowledge—is the criterion [for willful infringement].” (citation omitted)).

Because Parus’ FAC fails to allege the requisite pre-suit knowledge of the asserted patents, its willfulness claims should be dismissed on this basis alone.

² Though the Supreme Court in *Halo* abrogated the “objective recklessness” prong of the Federal Circuit’s willfulness test in favor of a more flexible inquiry, the Court made clear that it did not overrule pre-*Halo* cases on enhanced damages. *See Halo*, 136 S. Ct. at 1934 (“[c]onsistent with nearly two centuries of enhanced damages under patent law, . . . [enhanced damages] should generally be reserved for egregious cases typified by willful misconduct.”).

2. Parus' FAC Raises No Plausible Inference That Samsung Engaged In Any of The Allegedly Egregious Conduct Required Under *Halo*

To state a claim for willful infringement, Parus must also allege “facts raising a plausible inference of the egregious behavior required under *Halo*.” *Meetrix IP, LLC v. Cisco Sys., Inc.*, No. 1-18-cv-309-LY, 2018 WL 8261315, at *3 (W.D. Tex. Nov. 30, 2018). “[G]arden-variety” patent cases, in which an accused infringer first receives notice of a patent from a complaint and continues the allegedly infringing behavior, do not give rise to a claim of willful infringement. *Halo*, 136 S. Ct. at 1935; *M&C Innovations, LLC v. Igloo Prods. Corp.*, No. 4:17-cv-2372, 2018 WL 4620713, at *5 (S.D. Tex. July 31, 2018) (assuming “the complaint put Igloo on notice of the existing patents, and Igloo continued its manufacturing [of] its infringing products, this would simply be the kind of ‘garden-variety’ patent case that *Halo* affirms is ill-suited for a finding of willfulness.” (citation omitted)).

Parus' FAC, like its original Complaint, fails to allege any egregious conduct. Parus alleges only a conventional case in which a patentee alleges infringement, and the defendant learns of the alleged infringement solely based on the lawsuit. This is precisely the type of case for which willful infringement cannot be found, as “[a]wards of enhanced damages under the Patent Act over the past 180 years establish that they are not to be meted out in a typical infringement case, but are instead designed as a ‘punitive’ or ‘vindictive’ sanction for egregious infringement behavior.” *Halo*, 136 S. Ct. at 1932 (2016). Indeed, where an accused infringer learns of the patent post-suit, and then merely continues to manufacture infringing products, that would “simply be the kind of ‘garden-variety’ patent case that *Halo* affirms is ill-suited for a finding of willfulness.” *M&C Innovations*, 2018 WL 4620713 at *5 (the “post-suit fact pattern characterizes every infringement action except for those in which an alleged infringer immediately ceases production following service of the complaint”); *see also Princeton Digital*

Image Corp. v. Ubisoft Entm't SA, 2016 WL 6594076, at *11 (D. Del. Nov. 4, 2016) (dismissing willful infringement claims in a third amended complaint, where that complaint “does not sufficiently articulate how [defendant’s] actions during a short, three-month period of time amount to an ‘egregious’ case of infringement of the patent”).

The *Meetrix* opinion is applicable and instructive here. There, the plaintiff alleged in boilerplate fashion that the defendant “knowingly or with reckless disregard willfully infringed o6e [sic] or more of the Patents-in-Suit in a deliberate act of bad-faith”; the defendant “had actual notice of infringement of one or more of the Patents-in-Suit and acted despite an objectively high likelihood that its actions constituted infringement of a Plaintiff’s valid patent rights”; and “[t]his objective risk was either known or so obvious that it should have been known” to the defendant. *Meetrix*, 2018 WL 8261315 at *3 (first alteration in original) (quoting *Meetrix* complaint). The court dismissed the plaintiff’s willfulness claims, holding that the allegations were “legal conclusions without factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (internal quotation marks and citation omitted). Parus’ allegations, despite its opportunity to cure the deficiencies with its FAC, remain even worse than those found lacking in *Meetrix*—Parus makes no attempt whatsoever to aver egregiousness.

Other courts have held that allegations of patent knowledge alone are not sufficient to plead egregious conduct. For instance, in *Novartis Vaccines and Diagnostics, Inc. v. Regeneron Pharmaceuticals, Inc.*, the court held that plaintiff failed to adequately plead willfulness based on defendant’s “awareness of the existence of the [asserted patent], of [plaintiff’s] existence in the marketplace as a competitor,” and of a prior patent infringement litigation involving third parties. 2018 WL 5282887, at *3 (S.D.N.Y. Oct. 24, 2018). “Noticeably absent” from that complaint

was any allegation that the plaintiff had made the defendant aware of the asserted patent or its infringement. *Id.* Similarly, in *Finjan, Inc. v. Cisco Systems, Inc.*, the court found a failure to plead egregiousness based on the defendant’s knowledge of plaintiff’s patent portfolio, despite a history of business relationships between the companies from the year 2000 onward. 2017 WL 2462423, at *2, *5 (N.D. Cal. June 7, 2017). The court was skeptical that knowledge of the plaintiff’s patent portfolio from prior business dealings was equivalent to knowledge of the specific patents and their infringement, or—even assuming there was knowledge—that any resulting infringement was egregious. *Id.*

Like its original Complaint, Parus’ FAC does not even plead, let alone allege facts plausibly showing, that Samsung engaged in any egregious conduct. It makes only a single allegation related to willfulness: “Samsung’s *continued* acts of direct infringement of the [asserted patents], *post-filing of this Complaint*, are willful, and have caused and will continue to cause substantial damage and irreparable harm to Parus, and Parus has no adequate remedy at law.” (FAC ¶¶ 23, 80, emphasis added indicating Parus’ changes from Complaint to FAC.) This is a legal conclusion, not a fact. The addition of language to indicate that these unsupported allegations relate to the post-filing time period do nothing to change this. Neither this allegation, nor anything else in the FAC, suggests that Samsung’s conduct was “willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or—indeed—characteristic of a pirate.” *Halo*, 136 S. Ct. at 1932. Parus’ garden-variety patent infringement allegations are not enough to support a willfulness claim. Accordingly, the Court should dismiss Parus’ claims.

And Samsung respectfully requests that the Court dismiss Parus’ willfulness claims without leave to amend. Having failed to allege any pre-suit notice of the asserted patents, in both its Complaint and FAC, “it is impossible that [Parus] could allege, in good faith and at this

stage, pre-filing knowledge of those patents.” *Monolithic Power Sys., Inc. v. Silergy Corp.*, 127 F. Supp. 3d 1071, 1077 (N.D. Cal. 2015); *see also Cap. Co., Ltd. v. McAfee, Inc.*, No. 14-cv-05068-JD, 2015 WL 3945875, at *3 (N.D. Cal. Jun. 26, 2015) (“the limitations on willfulness imposed by *Seagate* would be turned to dust by allowing a patentee to amend a complaint to assert willfulness on the basis of notice of the patents provided for the first time by the original complaint itself”). Nor is it possible for Parus at this stage in the case to come up with any facts to support any egregious conduct allegations. *See., e.g., Cont’l Circuits LLC v. Intel Corp.*, No. CV16-2026 PHX DGC, 2017 WL 679116, at *11 (D. Ariz. Feb. 21, 2017) (dismissing willfulness claims where “Plaintiff has alleged sufficient facts to show knowledge, but not to show the additional element of egregiousness.”).

B. Parus’ FAC Fails to Cure the Fatal Flaws In Its Indirect Infringement Claims

For a claim of induced infringement, “Plaintiff must allege facts showing that [Defendant]: (1) had actual knowledge of the patent; (2) knowingly induced a third-party to infringe the patent; and (3) had specific intent to induce the patent infringement.” *Affinity Labs of Tex., LLC v. Toyota Motor N. Am.*, No. W:13-cv-365, 2014 WL 2892285, at *2 (W.D. Tex. May 12, 2014) (citing *DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1305 (Fed. Cir. 2006)). The Supreme Court has made clear that “[i]nduced infringement under § 271(b) requires knowledge that the induced acts constitute patent infringement.” *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 765-66 (2011).

For claims of contributory infringement, a patentee must allege “1) that there is direct infringement, 2) that the accused infringer had knowledge of the patent, 3) that the component has no substantial noninfringing uses, and 4) that the component is a material part of the

invention.” *Affinity Labs*, 2014 WL 2892285 at *8 (internal quotation marks omitted). As with induced infringement, “contributory infringement requires knowledge of the patent in suit and knowledge of patent infringement.” *Commil USA, LLC v. Cisco Sys., Inc.*, 135 S. Ct. 1920, 1926 (2015).

1. Parus’ FAC Still Fails to Allege the Requisite Knowledge for Indirect Infringement

Parus’ indirect infringement claims (inducement, and to the extent Parus still pursues any contributory infringement claims) fail for reasons similar to its willfulness claims.

As discussed above, Parus concedes Samsung had no pre-suit knowledge of the asserted patents. *See supra*, IV.A.1. Like willfulness, claims for both contributory and induced infringement require “knowledge of the patent in suit and knowledge of patent infringement.” *Commil USA*, 135 S. Ct. at 1926; *see also Global-Tech*, 563 U.S. at 765-66 (indirect infringement requires “knowledge of the existence of the patent that is [allegedly] infringed” and “knowledge that the induced acts constitute patent infringement.”). “To survive a motion to dismiss, a plaintiff alleging contributory infringement must plausibly allege that the accused infringer knew of the asserted patents.” *Artip v. Ball Corp.*, 735 F. App’x 708, 713 (Fed. Cir. 2018) (citing *Commil*, 135 S. Ct. at 1926). Similarly, “[t]o state a claim for induced infringement, a plaintiff must allege that the defendant knew of the patent and that the induced acts constitute patent infringement.” *Addiction & Detoxification Inst. L.L.C. v. Carpenter*, 620 F. App’x 934, 938 (Fed. Cir. 2015) (citing *Commil*, 135 S. Ct. at 1926).

Parus’ sole allegation of speculative post-suit knowledge does not cure the fatal flaw of Parus’ Complaint, which persists in its FAC. As with willful infringement, “[t]he weight of authority addressing the knowledge required for indirect infringement, especially following the Supreme Court’s decision in *Global-Tech*, requires a plaintiff to allege that defendant had *pre-*

suit knowledge of the patents-in-suit.” *Brandywine Commc’ns Techs., LLC v. Casio Computer Co.*, 912 F. Supp. 2d 1338, 1345 (M.D. Fla. 2012) (emphasis added); *see also Aguirre v. Powerchute Sports LLC*, 2011 WL 2471299, at *3 (W.D. Tex. June 17, 2011) (“To the extent [plaintiff] relies on knowledge of [plaintiff’s] patent after the lawsuit was filed, such knowledge is insufficient to plead the requisite knowledge for indirect infringement.”); *Orlando Commc’ns LLC v. LG Elecs., Inc.*, 2015 WL 1246500 at *9 (M.D. Fla. Mar 16, 2015) (“If post-suit notification were permissible, then the knowledge / willful blindness requirement would be meaningless—*of course* alleged infringers have actual knowledge of the patent(s) at issue once they have received the complaint.” (emphasis in original)); *see also Simplivity Corp. v. Springpath, Inc.*, No. CV 4:15-13345-TSH, 2016 WL 5388951, at *8 (D. Mass. July 15, 2016) (“The suggested ‘knowledge via filing’ framework dilutes the knowledge requirement to the point of meaninglessness, since by virtue of being sued for infringement, a party necessarily is aware of the patent-in-suit.”). Yet Parus avers no pre-suit knowledge.

Further, in addition to the allegations made for willful infringement, Parus’ FAC continues to make the allegation that “[b]y the time of trial, Defendants will have known and intended (since receiving such notice) that their continued actions would actively induce the infringement of the claims of the [asserted patents].” (FAC. ¶¶ 71, 121). This speculative wish also cannot cure any deficiencies for the same reasons Parus’ allegations regarding knowledge based on the FAC cannot cure any deficiencies—knowledge as a result of the plaintiff’s lawsuit is “insufficient to plead the requisite knowledge for indirect infringement.” *Brandywine*, 912 F. Supp. 2d at 1345. Allowing such knowledge to suffice for inducement “would vitiate the Supreme Court’s holding in *Global-Tech*.” *Id.*; *see also Aguirre*, 2011 WL 2471299 at *3 (citing *Xpoint Techs., Inc. v. Microsoft Corp.*, 730 F. Supp. 2d 349, 357 (D. Del. 2010) (requisite

knowledge for indirect infringement cannot be established by the filing of the plaintiffs' complaint)).

Because Parus' FAC in no way cures Parus' failure to plead requisite knowledge for claims of indirect infringement, Parus' claims of indirect infringement should be dismissed without leave to amend.

2. Parus' FAC Raises No Plausible Inference That Samsung Had the Specific Intent to Encourage Others, As Required for Inducement

Parus' induced infringement claim also fails because Parus did not plead facts supporting that Samsung had the specific intent to encourage others to infringe, providing an independent basis to dismiss that claim. For induced infringement, a plaintiff is required to "plead facts that plausibly show that the defendant has specific intent to cause another party's direct infringement and knew that the other party's acts constitute infringement." *Joao Control & Monitoring Sys., LLC v. Protect Am., Inc.*, No. 1-14-CV-134-LY, 2015 WL 3513151, at *5 (W.D. Tex. Mar. 24, 2015). Specific intent necessarily "requires more than just intent to cause the acts that produce direct infringement. Beyond that threshold knowledge, the inducer must have an affirmative intent to cause direct infringement." *DSU Med. Corp.*, 471 F.3d at 1306. "[S]imply recit[ing] the legal conclusion that Defendants acted with specific intent" fails to plead "facts that would allow a court to reasonably infer that Defendants had the specific intent to induce infringement." *Addiction & Detoxification Inst.*, 620 F. App'x at 938.

Parus' FAC, like its original Complaint, provides only threadbare, conclusory recitations of the elements of induced infringement. Parus' specific intent claims appear to consist entirely of Parus' allegations that "Samsung provides technical support for [the accused products] on its websites instructing users, for example, how to use [the accused products] in such a manner that infringes the asserted patents," (FAC ¶¶ 27, 83) and the conclusory recitation that "instructions

of encouragement include [...] advertising and promoting the use of the [asserted patents'] technology.” (FAC ¶¶ 74, 123). But the addition of web addresses along with the allegation that Samsung provides technical support for the accused products cannot save Parus' inadequately pleaded claims.

Parus' reliance on *Opticurrent, LLC v. Power Integrations, Inc.*, No. 2:16-cv-325, 2016 U.S. Dist. LEXIS 194970, at *6-*8 (E.D. Tex. Oct. 19, 2016) for this point is misplaced. (*See* Resp. at 12.). There, the Court found that specific intent was adequately pleaded based on detailed “product briefs” and “specification sheets” that explained to engineers how to incorporate the accused products (a circuit design within a semiconductor switch) into consumer electronic products. *Id.* This is a far cry from the unsubstantiated assertions of advertising and promotion and generic citations to user support pages that Parus attempts to use here.

Indeed, citation to the existence of websites providing product instructions, advertising, and promotion is insufficient to allege facts plausibly showing specific intent to induce infringement, absent the identification of “any particular statement or material that plausibly suggests Defendants intend to induce infringement of the Patents-in-Suit.” *Dodots Licensing Sols. LLC v. Lenovo Holding Co.*, 2018 WL 6629709, at *4 (D. Del. Dec. 19, 2018) (mere citations to websites were insufficient to plead specific intent). Instead, Parus must include specific allegations mapping the advertisement or promotion to the performance of the claimed steps of the patent. *See Memory Integrity LLC v. Intel Corp.*, 144 F. Supp. 3d 1185, 1195 (D. Or. 2015) (“Where defendants have not touted the benefits of the accused products in ways that track the asserted patents, courts generally do not infer specific intent.”); *Hypermedia Navigation LLC v. Google LLC*, 2019 WL 1455336, at *3 (N.D. Cal. Apr. 2, 2019) (“bald conclusions that an end

user following YouTube instructions results in infringement” are insufficient to plead specific intent).

In Parus’ FAC, such a specific mapping from the instructional material or advertising to the performance of the claims is notably absent. Without such mapping, Parus has only the assertion that Samsung advertises and supports its products—a generic allegation that does not plead any specific intent to induce infringement. *See Affinity Labs*, 2014 WL 2892285, at *7 (allegation that defendant’s advertisements “induced its customers to purchase its vehicles” failed to allege how defendant “induced its customers to use the vehicles in a manner that would violate the Asserted Patents”). Laws against inducement are not intended to prohibit “ordinary acts incident to product distribution, such as offering customers technical support or product updates.” *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 937 (2005).

As Parus’ FAC fails to raise a plausible inference of the specific intent required for inducement, Parus’ inducement claims should also be dismissed on this basis, without leave to amend.

C. Parus’ FAC Fails to Adequately Plead a Claim for Injunctive Relief

Parus’ request for temporary, preliminary, and permanent injunctive relief also cannot stand, because Parus fails to plead facts plausibly supporting irreparable harm. To establish entitlement to injunctive relief, a plaintiff must demonstrate: “(1) that it has suffered an irreparable injury; (2) that remedies in law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

Parus' FAC fails to plead any facts to plausibly support a finding that it has suffered irreparable injury that is not compensable by monetary damages. The insertion of information regarding products Parus allegedly sells, which Parus alleges are in competition with "Samsung Products implementing [the accused products]" (FAC ¶ 2) is insufficient to sustain Parus' request for an injunction. Parus makes no attempt to demonstrate that it actually sells products, that these products actually compete with Samsung's products, or that Samsung's alleged infringement has any impact on Parus' product sales, let alone irreparable harm. There are simply no facts alleged here plausibly leading to an inference that Parus will suffer irreparable harm, that there is no adequate remedy at law, that the balance of hardships tips in Parus' favor, or that the public interest would not be disserved by an injunction. Absent such allegations, Parus' claim for injunctive relief can therefore be dismissed, as "no facts are alleged in the Complaint that support an award of . . . a permanent injunction." *M&C Innovations*, 2018 WL 4620713, at *6.

V. CONCLUSION

For the foregoing reasons, and because even after the opportunity to cure its defective pleadings via its FAC Parus still fails to adequately plead claims for willfulness, indirect infringement, and injunctive relief, Samsung respectfully requests that the Court dismiss Parus' claims for willfulness, indirect infringement, injunctive relief without leave to amend.

Dated: December 3, 2019

Respectfully Submitted,

/s/ Michael E. Jones

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of December 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

PARUS HOLDINGS INC.,)
)
Plaintiff,)
)
v.) C.A. No. 6:19-CV-438-ADA
)
SAMSUNG ELECTRONICS CO., LTD. and) **JURY TRIAL DEMANDED**
SAMSUNG ELECTRONICS AMERICA,)
INC.,)
)
Defendants.)

ORDER GRANTING SAMSUNG’S RENEWED MOTION TO DISMISS

Before the Court is Defendants Samsung Electronics Co., Ltd. And Samsung Electronics America Inc.'s (collectively, “Samsung”) Renewed Motion to Dismiss Claims of Willful and Indirect Infringement and Request for Injunctive Relief. After consideration of same, the Court is of the opinion that it should be **GRANTED**.

IT IS THEREFORE ORDERED that: All claims of willful and indirect infringement and all requests for injunctive relief are dismissed **WITH PREJUDICE**.

SIGNED this the _____ day of _____, 2019.

ALAN D. ALBRIGHT
UNITED STATES DISTRICT JUDGE