

1 Dale M. Cendali (*pro hac vice* forthcoming)
dale.cendali@kirkland.com
2 Joshua L. Simmons (*pro hac vice* forthcoming)
joshua.simmons@kirkland.com
3 Miranda Means (*pro hac vice* forthcoming)
miranda.means@kirkland.com
4 KIRKLAND & ELLIS LLP
601 Lexington Avenue
5 New York, NY 10022
Tel. (212) 446-4800
6 Fax (212) 446-4900

7 Yimeng Dou (SBN 285248)
yimeng.dou@kirkland.com
8 N. Yvonne Stoddard (SBN 325321)
yvonne.stoddard@kirkland.com
9 KIRKLAND & ELLIS LLP
555 South Flower Street, Suite 3700
10 Los Angeles, CA 90071
Tel. (213) 680-8400
11 Fax (213) 680-8500

12 *Attorneys for Defendants*

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION - LOS ANGELES**

16 TERADYNE, INC.,) CASE NO. 2:20-cv-02713 GW (SHK)
17)
18 Plaintiff,) **MEMORANDUM OF POINTS AND**
19 v.) **AUTHORITIES IN SUPPORT OF**
20) **DEFENDANTS’ MOTION TO**
21) **DISMISS FOR FAILURE TO**
22) **STATE A CLAIM AND LACK OF**
23) **PERSONAL JURISDICTION**
24)
25) Complaint Filed: March 23, 2020
26)
27) Judge: Judge George H. Wu
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1 **I. INTRODUCTION**

2 Teradyne’s Complaint is a classic example of overreaching and under pleading
3 that requires dismissal in its entirety.¹ **First**, although Teradyne asserts patent
4 infringement, the ’479 Patent fails the Supreme Court’s two-step, “threshold” *Alice*
5 *Corp. Pty. Ltd. v. CLS Bank Int’l* inquiry, 573 U.S. 208, 217–18 (2014), based on
6 which numerous patents have been invalidated on motions to dismiss:

- 7 • As to step one, the ’479 Patent is directed to the abstract idea of comparing
8 values and generating a result. This type of comparison is as ancient as
9 mathematics, and easily can be completed in the human mind—both hallmarks
10 of an abstract idea. It also uses broad, functional language describing the
11 claim’s result, not how it is achieved. This too underscores its abstractness.
- 12 • As to step two, the patent does not contain a specific, inventive concept that
13 would make it patent eligible. Instead, it uses generic, well-known structures
14 (*e.g.*, common circuits and inputs) that its own specification refers to as
15 “conventional” or that are off-the-shelf components that it concedes have been
16 used for several decades. And its claims merely proceed in a conventional
17 order that the Federal Circuit has held is devoid of an inventive concept.

18 As the ’479 Patent fails both *Alice* steps, it is invalid and Teradyne’s patent claim
19 should be dismissed. Teradyne cannot monopolize such a simple, abstract idea.

20 **Second**, Teradyne’s Complaint contains numerous pleading failures. As to its
21 patent claim, although the Court need not reach it if the patent is invalid, Teradyne
22 separately fails to allege plausibly that the accused products practice the asserted
23 claim’s limitations. Also, Teradyne’s induced and willful infringement allegations fail
24 as Teradyne has not pleaded the required pre-suit notice or egregious misconduct.

25 As to Teradyne’s copyright claim, the Complaint merely refers to a handful of
26 copyrighted works and asserts that “one or more” might be infringed, without

27 ¹ Capitalized terms not defined here are defined in Astronics’ notice of motion,
28 which also contains, for the Court’s convenience, a chart summarizing the
application of each of Astronics’ bases for dismissal to each of Terdayne’s claims.

1 specifying which are at issue. Likewise, it does not contain allegations explaining
2 how Astronics allegedly used protectable elements from Teradyne's works. These
3 failures alone require dismissal. Moreover, although Teradyne seeks to recover
4 statutory damages and attorney's fees for copyright infringement, it is not entitled to
5 them under 17 U.S.C. § 412, as it claims that the infringement began before it
6 registered its copyrights and it did not register them timely.

7 And Teradyne's negligent interference with economic advantage claim can be
8 dismissed as Teradyne has not pleaded the duty of care required to state a claim. Nor
9 can it as there is no such duty of care between competitors, as the parties are.

10 **Third**, all of Teradyne's state law claims are preempted by the Copyright Act,
11 as both prongs of the preemption analysis are readily met here. As to the first prong
12 (whether the work is within the subject matter of copyright), all of Teradyne's state
13 law claims are predicated on computer programs, the same ones that are the subject of
14 its copyright claim. As to the second prong (whether the claims seek to vindicate
15 rights equivalent to those protected by copyright law), these claims are based on either
16 Astronics causing Teradyne's customers to distribute copies of Teradyne's software
17 (*i.e.*, an indirect copyright infringement claim) or Astronics' computer programs
18 copying or "emulating" Teradyne's (*i.e.*, a direct infringement claim). Teradyne
19 cannot use state law to avoid the rigors of pursuing a copyright infringement claim.

20 **Finally**, in addition to the foregoing, Astronics Corp. (a different entity than
21 ATS) should be dismissed from this lawsuit for two, independent reasons. First,
22 Teradyne has not pleaded specific facts that would establish the elements of its claims
23 as to Astronics Corp. Second, this Court lacks personal jurisdiction over Astronics
24 Corp. as (a) it is neither incorporated nor has its principal place of business in
25 California, and (b) Teradyne fails to allege that Astronics Corp. has minimal contacts
26 with California related to this action, nor can it as there are no such contacts.

27 Thus, Astronics respectfully requests that the Complaint be dismissed. Further,
28 as Teradyne was informed of the grounds of this motion and elected to proceed based

1 on its original Complaint, Astronics requests that the dismissal be with prejudice.

2 **II. STATEMENT OF ALLEGED FACTS**

3 **A. Astronics and Its Test Equipment**

4 ATS is a leading automated test company for the “aerospace, military,
5 semiconductor, medical, and mass transit industries.” Compl. ¶ 4. With nearly 60
6 years of experience, ATS provides test solutions that enable the realization of the
7 world’s most advanced electronic products, from heart monitors to commuter trains.

8 Astronics Corp. is a New York corporation with its principal place of business
9 in East Aurora, NY. Compl. ¶ 7. It is the parent and holding company of ATS, but
10 does not otherwise make, use, sell, advertise, or distribute products or provide services
11 related to any products at issue in this case. Burney Decl. ¶ 2.

12 **B. Teradyne and Its Asserted Intellectual Property**

13 According to the Complaint, Teradyne develops automatic electronic test
14 systems and software for automatic testing. *See* Compl. ¶¶ 14, 19. It claims to own
15 two types of intellectual property at issue in this lawsuit.

16 *First*, Teradyne asserts that it owns the ’479 Patent titled, “Over-voltage test for
17 automatic test equipment,” *id.* ¶ 19, Ex. U, and that Astronics has infringed “at least
18 claim 9” (the “Asserted Claim”). *Id.* ¶ 29. The Asserted Claim is representative of
19 the other claims in the patent and directed to an automatic test equipment that
20 compares voltage values and generates the results. *Id.* Ex. U, cl. 9. Specifically, it
21 recites “a plurality of circuits” each having (1) a signal input, (2) a threshold input,
22 (3) a comparison sub-circuit, and (4) control circuitry having “a measured value
23 input” that is “adapted to generate an output.” *Id.* It further requires “the output being
24 a test result and/or being an over-voltage indication.” *Id.*

25 Although the ’479 Patent’s purported invention is “to detect over-voltage
26 situations, particularly on digital channels that are intended to receive low voltage
27 signals,” *id.* at 5:29–31, its own specification makes clear that the invention does not
28 improve test instruments from a technical perspective, merely relying on equipment

1 that was well-known when the patent was filed. As it explains, “detector input[s]”
2 were part of the prior art, as were “thresholds” as circuits “*usually* ha[d] two . . .
3 thresholds” that were “*often* used . . . to verify . . . receiving voltages above the
4 specified high voltage or below the specified voltage.” *Id.* at 1:36–37, 46–51.²
5 Moreover, the claimed “measured [voltage] value input” and “generat[ing] an output”
6 are achieved using common components in a known manner: “switches *have been*
7 *used* along with a voltage sensing circuit that activates the switch to disconnect the
8 test instrument from an input when the voltage or current at the input exceeds a
9 specific value.” *Id.* at 1:58–61, 5:37–40 (“information *traditionally captured as a*
10 *result* of a test failure”). Further, “*any* suitable circuit may be used” as “control
11 circuit[ry].” *Id.* at 6:4–9. Likewise, rather than using special “comparison sub-
12 circuit[s],” the ’479 Patent calls for the type that “may also be as in a *conventional*
13 digital test instrument, whether *currently known* or hereinafter developed” (likely by
14 a third party), *id.* at 6:19–23, such that “*any suitable construction* for comparators
15 203 and 205 may be used.” *Id.* at 7:10–11. Even the circuitry for voltage detection
16 may just be “circuitry that is *similar to prior art* digital channels,” and the driver used
17 for setting thresholds and outputting a result, *id.* at 1:33–36; 5:49–51, “may be a driver
18 as used in a *conventional* digital test instruments, whether currently known or
19 hereafter developed.” *Id.* at 5:49–56. And as an overall combination, “the specific
20 configuration of digital test instrument 103 is *not critical to the invention*,” *id.* at
21 4:14–15, as the claimed automatic test equipment merely uses common, conventional
22 circuitry components, such as “a normally closed switch” that “may be implemented .
23 . . in any other suitable way.” *Id.* at 8:43–46.

24 **Second**, Teradyne attaches to the Complaint copyright registration certificates
25 for eleven API packages and nine dynamic link libraries. Compl. ¶¶ 17–18. Although
26 it attaches 20 certificates, it is not clear which, if any, of these works is at issue.
27 Instead, Teradyne’s claim appears to hinge on its reading of an ATS data sheet

28 ² Unless otherwise indicated, all emphasis in this section is added.

1 discussing the compatibility of ATS’ hardware with “legacy products,” *see id.* Ex. W,
2 which Teradyne asserts are its own products. *Id.* ¶ 50. Teradyne does not explain in
3 the Complaint what Astronics is alleged to have done to infringe what works.

4 Teradyne also alleges that its customers purchased its software pursuant to a
5 Software License Agreement (“SLA”). Compl ¶ 59. Teradyne does not attach the
6 SLA to the Complaint, nor does it quote or provide specific language from the SLA.
7 Teradyne does not explain how its customers purportedly assented to the SLA, nor
8 specify which of its copyrighted works, if any, were subject to the SLA. Beyond
9 stating that the SLA was posted on Teradyne’s website and generally asserting that
10 Astronics shared customers and employees with Teradyne, *id.* ¶¶ 48, 60, Teradyne
11 does not specify how Astronics would have known about the SLA.

12 **III. TERADYNE FAILS TO STATE A CLAIM AS TO BOTH DEFENDANTS**

13 To survive a motion to dismiss pursuant to Rule 12(b)(6), the Complaint “must
14 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is
15 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
16 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Teradyne must plead “factual content
17 that allows the court to draw the reasonable inference that the defendant is liable for
18 the misconduct alleged.” *Id.* “The court is not required to accept as true legal
19 conclusions couched as factual allegations.” *Proxyconn Inc. v. Microsoft Corp.*, No.
20 11 Civ. 1681, 2012 WL 1835680, at *2 (C.D. Cal. May 16, 2012). As discussed
21 below, Teradyne cannot plead facts sufficient to support its claims.

22 **A. The ’479 Patent Is Invalid As Directed to an Abstract Idea**

23 Patent eligibility under 35 U.S.C. § 101 is a “threshold” legal issue, *see Bilski v.*
24 *Kappos*, 561 U.S. 593, 602 (2010), under which this Court has granted motions to
25 dismiss when the asserted patent is directed to ineligible subject matter. *See, e.g.,*
26 *Prod. Ass’n Techs. LLC v. Clique Media Grp.*, No. 17 Civ. 5463, 2017 WL 5664986,
27 at *9–10 (C.D. Cal. Oct. 12, 2017) (Wu, J.) (granting motion to dismiss where
28 complaint’s only specifically identified patent claim was patent-ineligible), *aff’d* 738

1 F. App'x 1021 (Fed. Cir. 2018); *Eclipse IP LLC v. McKinley Equip. Corp.*, No. 14
 2 Civ. 154, 2014 WL 4407592, at *12 (C.D. Cal. Sept. 4, 2014) (Wu, J.) (dismissing
 3 challenged claims under Section 101). Likewise, the Federal Circuit repeatedly has
 4 affirmed the dismissal of patent cases at the pleadings stage pursuant to Section 101.
 5 *See Ubisoft Entm't, S.A. v. Oy*, No. 19-2399, 2020 WL 3096369 (Fed. Cir. June 11,
 6 2020) (affirming Rule 12(b)(6) dismissal of patents that were patent-ineligible under
 7 Section 101); *British Telecomms. PLC v. IAC/InterActiveCorp.*, No. 19-1917, 2020
 8 WL 2892601, at *3 (Fed. Cir. June 3, 2020) (same); *Voter Verified, Inc. v. Election*
 9 *Sys. & Software LLC*, 887 F.3d 1376, 1384–85 (Fed. Cir. 2018) (same).³

10 35 U.S.C. § 101 defines patentable subject matter as “any new and useful
 11 process, machine, manufacture, or composition of matter, or any new and useful
 12 improvement thereof.” The Supreme Court has “long held that this provision contains
 13 an important implicit exception: Laws of nature, natural phenomena, and abstract
 14 ideas are not patentable.” *Alice*, 573 U.S. at 216 (quoting *Ass'n for Molecular*
 15 *Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576–77 (2013)). To determine whether
 16 a patent claims patent-ineligible subject matter, courts apply the two-step test set forth
 17 by the Supreme Court in *Alice*:

18 (1) whether the claim is directed to a patent ineligible concept, i.e., a law
 19 of nature, a natural phenomenon, or an abstract idea; and if so

20 (2) whether the elements of the claim, considered “both individually and
 21 ‘as an ordered combination,’” add enough to “transform the nature of the
 22

23 ³ *See FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1097–98 (Fed. Cir.
 24 2016) (same); *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1380 (Fed. Cir.
 25 2016) (same); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1360, 1362
 26 (Fed. Cir. 2015) (same); *Content Extraction & Transmission LLC v. Wells Fargo*
 27 *Bank, Nat'l Ass'n*, 776 F.3d 1343, 1345, 1349 (Fed. Cir. 2014) (same);
 28 *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 712 (Fed. Cir. 2014) (same); *see*
 also *SAP Am., Inc. v. Investpic, LLC*, 898 F.3d 1161, 1170 (Fed. Cir. 2018)
 (affirming Rule 12(c) dismissal of patents that were patent-ineligible under 35
 U.S.C. § 101); *Automated Tracking Sols., LLC v. Coca-Cola Co.*, 723 F. App'x
 989, 995–96 (Fed. Cir. 2018) (same); *Two-Way Media Ltd. v. Comcast Cable*
Commc'ns, LLC, 874 F.3d 1329, 1341 (Fed. Cir. 2017) (same); *RecogniCorp, LLC*
v. Nintendo Co., 855 F.3d 1322, 1328 (Fed. Cir. 2017) (same).

1 claim' into a patent-eligible application.

2 *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1325 (Fed. Cir. 2017)
3 (citing *Alice*, 573 U.S. at 217–18).⁴

4 As discussed below, the '479 Patent fails both steps of the *Alice* inquiry. **First**,
5 it is directed to the unpatentable abstract idea of comparing voltage values and
6 generating a result. *See* Compl. Ex. U at 5:29–31. As the patent specification makes
7 clear, this is a conventional idea. *Id.* at 1:46–53, 58–61; 5:49–54; 6:19–23.⁵ **Second**,
8 the '479 Patent's claims do not describe elements that individually, or as an ordered
9 combination, would provide an inventive concept sufficient to make the claims patent
10 eligible. Notably, the '479 Patent was never subjected to scrutiny under the *Alice* test
11 as it was filed on January 14, 2005 and issued on July 1, 2008, before the 2014 *Alice*
12 decision. Compl. Ex. U at 1. As the claims are invalid under the Supreme Court's
13 recent jurisprudence, Teradyne's patent claim should be dismissed.

14 **1. *Alice* Step One: the '479 Patent is Directed to An Abstract Idea**

15 Step one of *Alice* analyzes whether the “‘focus’ of the claims, their ‘character as
16 a whole,’” is directed to an abstract idea. *Elec. Power Grp., LLC v. Alstom S.A.*, 830
17 F.3d 1350, 1353 (Fed. Cir. 2016). In determining whether a claim encompasses an
18 abstract idea, “it is often useful to determine the breadth of the claims in order to
19 determine whether the claims extend to cover a ‘fundamental . . . practice long
20 prevalent in our system.’” *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611
21 (Fed. Cir. 2016). The '479 Patent is directed to an abstract idea for three reasons.

22 **First**, the '479 Patent's claims are directed to the classic abstract ideas of
23 receiving, comparing, and outputting information. Compl. Ex. U, cl. 9 (reciting

24 _____
25 ⁴ The patent eligibility analysis applies to system claims. *Alice*, 573 U.S. at 224–26.

26 ⁵ Courts may look to the specification to understand “the problem facing the
27 inventor” and, ultimately, what the patent describes as the invention. *ChargePoint,*
28 *Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 767 (Fed. Cir. 2019). For example, a
claim likely is directed to an abstract idea when the specification does not suggest
an “improve[ment] from a technical perspective,” or that the claimed invention
results in something “operat[ing] differently than it otherwise could,” or “that the
invention involved overcoming some sort of technical difficulty.” *Id.* at 768.

1 “circuits” that “receive at least one threshold input signal,” compare the “threshold
 2 input and the signal input,” and output “a test result” or “over-voltage indication”).⁶
 3 The Federal Circuit has held that “‘claims are directed to an abstract idea’ when they
 4 recite ‘a process of gathering and analyzing information of a specified content, then
 5 displaying the results.’” *Ubisoft*, 2020 WL 3096369, at *3 (quoting *Elec. Power*, 830
 6 F.3d at 1354). Thus, in *Intellectual Ventures I LLC v. Symantec Corp.*, it held that
 7 claims directed to “**determining** . . . whether each received content identifier **matches**
 8 a characteristic” or “**outputting** . . . an **indication** of the characteristic of the data file”
 9 were abstract. 838 F.3d 1307, 1315 (Fed. Cir. 2016) (emphasis added). Likewise,
 10 courts in this Circuit have found claims invalid under Section 101 when they are
 11 directed to “comparing one thing to another,” *Blue Spike, LLC v. Google Inc.*, No. 14
 12 Civ. 1650, 2015 WL 5260506, *5–7 (N.D. Cal. Sept. 8, 2015), or receiving,
 13 analyzing, or outputting signals. *See Immersion Corp. v. Fitbit, Inc.*, 313 F. Supp. 3d
 14 1005, 1027–28 (N.D. Cal. 2018).

15 **Second**, the claims’ steps could be, and often are, completed by a human.
 16 Compl. Ex. U at 1:39–53 (user can program thresholds for voltage comparison), 3:38–
 17 41 (user can compare measured values). This too shows that they are directed to an
 18 abstract idea as “mental processes are not patent-eligible subject matter because the
 19 ‘application of [only] human intelligence to the solution of practical problems is no
 20 more than a claim to a fundamental principle.’” *CyberSource Corp. v. Retail*
 21 *Decisions, Inc.*, 654 F.3d 1366, 1371 (Fed Cir. 2011); *see also Elec. Power*, 830 F.3d
 22 at 1352–54 (claims for monitoring power grid, including voltage metrics, were
 23 ineligible mental process); *Blue Spike*, 2015 WL 5260506, at *6 (“comparisons
 24 mirror[ing] the manner in which the human mind undertakes the same task”
 25 ineligible); *Content Aggregation Sols. LLC v. Blu Prods., Inc.*, No. 16 Civ. 527, 2016

26
 27 ⁶ Each claim need not be addressed where particular claims are representative as
 28 claims are “substantially similar and linked to the same abstract idea.” *Content*
Extraction, 776 F.3d at 1348 (citation omitted); *see also Mortgage Grader, Inc. v.*
First Choice Loan Servs. Inc., 811 F.3d 1314, 1324 n.6 (Fed. Cir. 2016).

1 WL 6995490, at *3 (S.D. Cal. Nov. 29, 2016) (“Where the steps of the claim could be
2 performed by a human being . . . the claim is likely directed to an abstract idea”).

3 The fact that the abstract idea is completed by a circuit does not make it less
4 abstract—the circuitry is just the conduit to perform the abstract idea. As the Federal
5 Circuit has made clear, “limit[ing] the invention to a technological environment . . .
6 do[es] not make an abstract concept any less abstract.” *Intellectual Ventures I LLC v.*
7 *Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed Cir. 2017). Nor does reciting
8 physical components make the claim eligible. *See ChargePoint*, 920 F.3d at 770, 775
9 (Fed. Cir. 2019) (finding claims directed to networked electric vehicle charging
10 stations patent-ineligible, despite claims requiring “a physical machine that is quite
11 tangible—an electric vehicle charging station” and citing *TLI Commc’ns*, 823 F.3d at
12 611 (“[N]ot every claim that recites concrete, tangible components escapes the reach
13 of the abstract-idea inquiry.”)).⁷ Indeed, “[e]ven a specification full of technical
14 details about a physical invention may nonetheless conclude with claims that claim
15 nothing more than the broad law or abstract idea underlying the claims, thus
16 preempting all use of that law or idea.” *ChargePoint*, 920 F.3d at 769.

17 **Third**, the Asserted Claim’s broad, functional language underscores that it is
18 directed to an abstract idea as, when a patent’s claims do not “focus on a *specific*
19 means or method,” but rather are “directed to a *result or effect* that itself is the abstract
20 idea and merely invokes generic processes and machinery,” they are abstract.
21 *Clarilogic, Inc. v. FormFree Holdings Corp.*, 681 F. App’x 950, 954 (Fed. Cir. 2017).

22
23 ⁷ See also *Chamberlain Grp., Inc. v. Techtronic Indus. Co.*, 935 F.3d 1341, 1346–49
24 (Fed. Cir. 2019) (“garage door openers” ineligible, despite physical elements);
25 *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146–47 (Fed. Cir. 2016)
26 (logic circuit design abstract); *Elec. Power Grp., LLC*, 830 F.3d at 1351–54
27 (“power grid” and “phasor measurements” did not confer patent eligibility as they
28 merely “limit[ed] the claims to the particular environment of power-grid
monitoring”); *Groundswell Techs., Inc. v. Synapsense Corp.*, No. 15 Civ. 6024,
2016 WL 6661177, at *8 (C.D. Cal. Apr. 28, 2016) (“generic sensors and telemetry
equipment” does not confer patent eligibility); *Automated Tracking Sols., LLC v.*
Coca-Cola Co., 223 F. Supp. 3d 1278, 1289 (N.D. Ga. 2016) (physical
components such as a “transponder,” “reader,” and “antenna” merely provided
environment to carry out abstract idea), *aff’d*, 723 F. App’x 989 (Fed. Cir. 2018).

1 In other words, where, as here, the “claim language . . . provides only a result-oriented
2 solution, with insufficient detail” for how such solution is achieved, it is describing an
3 abstract idea. *See Capital One*, 850 F.3d at 1342; *Immersion*, 313 F. Supp. 3d at 1028
4 (claims directed to abstract idea where they used “result-based functional language”).

5 Here, claim 9 has functionally claimed elements: (1) “a signal input . . . *adapted*
6 *to receive* as an input,” (2) “a threshold input *adapted to receive* at least one
7 threshold,” (3) “the test equipment *adapted to compare* the value,” and (4) “the control
8 circuitry *adapted to generate* an output based on the value of the measured value
9 signal.” *See* Compl. Ex. U, cl. 9 (emphasis added). None of these elements explain
10 how to perform the claimed functions of receiving an input, receiving at least one
11 threshold, comparing the value, or generating an output based on the value of the
12 measure value signal. *Id.* This is exactly the type of functional claiming—elements
13 “adapted to” perform the desired function but not specifying how to perform the
14 function—that signals an abstract idea. *See, e.g., Sarif Biomed. LLC v. Brainlab, Inc.*,
15 No. 13 Civ. 846, 2015 WL 5072085, at *6 (D. Del. Aug. 26, 2015) (claim abstract
16 where it involved “computer adapted to” perform a function); *Intellicheck Mobilisa,*
17 *Inc. v. Wizz Sys., LLC*, 173 F. Supp. 3d 1085, 1114 (W.D. Wash. 2016) (finding “a
18 jurisdiction discriminator engine adapted to determine” functional). As claim 9 is
19 directed at an abstract idea, the analysis proceeds to step two.

20 **2. Alice Step Two: The ’479 Patent’s Claims Lack a Specific,** 21 **Inventive Concept**

22 Step two of the *Alice* analysis determines whether the claim elements,
23 individually or in their ordered combination, add an “inventive concept” that
24 “transform[s] the nature of the claim’ into a patent-eligible application” or “amounts
25 to significantly more” than a patent on the abstract idea itself. *Alice*, 573 U.S. at 217–
26 18. To be patent eligible, the claim must recite more than “well-understood, routine,
27 conventional activities.” *Id.* at 225 (alteration omitted). In other words, simply
28 having “an ‘abstract-idea-based solution implemented with generic technical

1 components in a conventional way” does not satisfy step two of *Alice*. See
2 *ChargePoint*, 920 F.3d at 775 (“add[ing] network connectivity to these charging
3 stations” does not improve the charging station “in an unconventional way” (citation
4 omitted)); *TLI Commc’ns*, 823 F.3d at 613 (“It is well-settled that mere recitation of
5 concrete, tangible components is insufficient to confer patent eligibility to an
6 otherwise abstract idea.”). Indeed, “[w]ithout more, the mere physical nature of [a
7 patent’s] claim elements (e.g., controller, interface, and wireless data transmitter) is
8 not enough to save the claims from abstractness, where the claimed advance is
9 directed to . . . status information using off-the-shelf technology for its intended
10 purpose.” See *Chamberlain*, 935 F.3d at 1348.

11 The Asserted Claim does not have such an inventive step whether considered
12 individually or as a combination. **First**, looking at the claim elements individually, it
13 is clear that they “do not add enough to transform the nature of the claim into a patent-
14 eligible application.” *SAP*, 898 F.3d 1161, 1166–67 (internal quotation marks
15 omitted). The ’479 Patent’s specification explains that each of the components used
16 to conduct the Asserted Claim’s comparison and output—such as “a signal connection
17 point,” “a threshold input,” “a comparison sub-circuit,” and “control circuitry”—is a
18 routine element, known in the prior art. For instance, use of single and dual
19 thresholds for over-voltage detections are prior art. Compl. Ex. U at 1:46–53
20 (thresholds “often used in digital channels of test equipment” to verify voltage levels);
21 see also *id.*, 5:52–59 (“Driver 210 may be a driver as used in a conventional digital
22 test instruments, whether currently known or hereafter developed” and *id.* 1:39–40
23 (prior art drivers circuits “usually has two or more user programmable levels”).
24 Likewise, prior to the invention, “switches ha[d] been used along with a voltage
25 sensing circuit” to indicate over-voltage. *Id.* at 1:57–61. Indeed, the described
26 “invention” is so routine that the specification discusses complying with voltage
27 specifications as a requirement for reliable tests in the background section:
28 “[c]onformance to these voltage specifications is required to reliability test the UUT.”

1 *Id.* at 1:52–53. Further, the ’479 Patent acknowledges that the claimed “comparison
2 sub-circuit”—the “comparators” in the specification—may have “any suitable
3 construction,” *id.* at 7:10–11, and “may also be as in a conventional digital test
4 instrument, whether currently known or hereafter developed.” *Id.* at 6:20–23. The
5 claimed “control circuitry” is also well-known as “any suitable circuit may be used to
6 implement digital controls 201.” *Id.* at 6:6–8.

7 **Second**, looking at the claim as an “ordered combination” again confirms that it
8 is directed to nothing more than a “conventional ordering of steps.” *Two-Way Media*,
9 874 F.3d at 1339. For example, the Asserted Claim recites “a threshold input,” “a
10 comparison-sub-circuit” that has “a comparison output,” and “control circuitry” that is
11 “adapted to generate an output based on the value of the measured value signal.”
12 Compl. Ex. U, cl. 9. This combination of claim elements merely reflects the
13 conventional, logical ordering of typical steps—receiving input, comparing the values,
14 and generating outputs. *See id.* at 1:30–38 (describing as prior art that “[t]he ATE is
15 programmed to *provide stimulus* to a particular circuit or component in the UUT and
16 then *measure the output* to *determine* if the UUT has *performed to its specifications*”
17 (emphasis added)); *see also id.* at 1:58–62 (“Also, switches have been used along with
18 a voltage sensing circuit that activates the switch to disconnect the test instrument
19 from an input when the voltage or current at the input exceeds a specific value.”).
20 Such conventional orderings of steps are devoid of an inventive concept. *See Two-*
21 *Way Media*, 874 F.3d at 1339 (“The claim uses a conventional ordering of steps—first
22 processing the data, then routing it, controlling it, and monitoring its reception . . .”).

23 Moreover, simply identifying an overarching desirable outcome (such as
24 optimizing power usage) without any specifying technical improvements over the
25 prior art to achieve that outcome does not rise to the level of an inventive and, thus,
26 patent-eligible concept. *See Erie Indemnity*, 850 F.3d at 1330–32. Further, the
27 alleged improvement achieved by the Asserted Claim (comparing voltage values and
28 generating results, such as an over-voltage indication) is merely a natural consequence

1 of performing the abstract idea using well-known automatic test equipment. This is
 2 not an inventive concept. *See id.* at 1329 (finding “[t]he use of metafiles . . . is yet
 3 another natural consequence of carrying out the abstract idea in a computing
 4 environment”); *Blackberry Ltd.v. Twitter, Inc.*, No. 19 Civ. 1444, 2019 WL 6315538,
 5 at *6 (C.D. Cal. Oct. 1, 2019) (“These benefits . . . flow from performing an abstract
 6 idea in conjunction with a well-known database structure.” (citing *BSG Tech LLC v.*
 7 *Buyseasons, Inc.*, 899 F.3d 1281, 1288 (Fed. Cir. 2018))).

8 Finally, the breadth of the ’479 Patent’s claims is so vast that there can be no
 9 doubt that they are directed to patent-ineligible subject matter. At the heart of the
 10 Section 101 inquiry is the “pre-emption concern that undergirds [the Supreme
 11 Court’s] § 101 jurisprudence.” *Alice*, 573 U.S. at 223. Here, the claims seek to
 12 monopolize all uses of the abstract idea in a test equipment environment, using
 13 entirely well-known, conventional components. If deemed patent-eligible, the scope
 14 of potential preemption is striking: any person who compares a voltage and says
 15 whether it is over a set number could be in danger of infringing the ’479 Patent. “Put
 16 simply . . . [i]ts preemptive breadth is enormous.” *Lumen View Tech. LLC v.*
 17 *Findthebest.com, Inc.*, 984 F. Supp. 2d 189, 199 (S.D.N.Y. 2013). These broad claims
 18 are precisely the type that the Supreme Court intended to invalidate through its *Alice*
 19 decision. Accordingly, Astronics respectfully requests that this Court invalidate them
 20 and dismiss Teradyne’s patent claim.⁸

21 ⁸ In the Complaint, Teradyne only has alleged that Astronics infringed claim 9. To
 22 the extent that Teradyne attempts to allege infringement of additional claims, they
 23 are directed to the same abstract idea. In particular, independent claim 1 explicitly
 24 recites “at least two comparison sub-circuits . . . wherein each of the comparison
 25 sub-circuits is adapted to produce a comparison output signal.” Compl. Ex. U, cl.
 26 1. But prior art teaches this element. *Id.* at 1:46–51, 1:38–41, 3:38–39 (“Such
 27 programming is *traditionally* a part of a user program” (emphasis added)).
 28 Likewise, prior art discloses “control circuitry adapted to generate a test output . . .
 and to generate the over-voltage output.” *Compare id.*, cl. 1 *with id.* at 1:58–61
 (teaching output when voltage “exceeds a specific value”), 5:37–40 (prior art
 output “information *traditionally captured* as a result of a test failure” (emphasis
 added)). Claim 1 also recites that the test equipment “is adapted to independently
 set the value of the threshold input signal,” but that element too is well-known in
 the art. *See id.* at 1:39–41 (“The driver circuit *usually* has two or more user
 programmable levels.” (emphasis added)). Thus, it is directed to the same abstract

1 **B. Teradyne Fails to State Several of Its Claims**

2 In addition to the '479 Patent being invalid under *Alice*, Teradyne has failed to
3 plead adequately several of its claims.

4 Patent Infringement. A patent claim should be dismissed if the patent owner
5 fails to allege “that the accused product practices each of the limitations found in at
6 least one asserted claim.” *e.Digital Corp. v. iBaby Labs, Inc.*, No. 15 Civ. 5790, 2016
7 WL 4427209, at *3 (N.D. Cal. Aug. 22, 2016). It “cannot meet its obligation . . . by
8 merely copying the language of a claim element, and then baldly stating (without
9 more) that an accused product has such an element.” *N. Star Innovations, Inc. v.*
10 *Micron Tech., Inc.*, No. 17 Civ. 506, 2017 WL 5501489, at *2 (D. Del. Nov. 16,
11 2017). Yet, Teradyne has done just that: it identifies the alleged “Infringing Products”
12 as “the PXIe and VXI series of digital test instruments,” Compl. ¶ 29, but it fails to
13 allege that either product meets the Asserted Claim’s limitations. Instead, it merely
14 recites the Asserted Claim’s elements as factual allegations. *Id.* ¶¶ 30–32.⁹ That is
15 insufficient to state a patent claim.¹⁰ *N. Star Innovations Inc. v. Kingston Tech. Co.,*
16 *Inc.*, No. 17 Civ. 1833, 2018 WL 3155258, at *2–4 (C.D. Cal. May 7, 2018), *R&R*
17 *adopted*, 2018 WL 3155708 (C.D. Cal. June 25, 2018) (dismissing complaint as
18 plaintiff “simply parrots the claim language” and “fails to provide any factual
19 allegations that are not direct recitations of each claim’s limitations”). Teradyne’s
20 contributory infringement claim also fails for a separate reason: it did not allege a lack
21 of substantial non-infringing uses. *In re Bill of Lading*, 681 F.3d 1323, 1337 (Fed.

22
23 idea, and there is no inventive concept as the claim recites routine, conventional
24 elements in a conventional ordering of steps. For at least similar reasons, the
remaining unasserted dependent claims also are ineligible.

25 ⁹ Although Teradyne alleges that Astronics promoted products in a PXIe-6943
26 Product Sheet, *id.* ¶ 35, Ex. W, Teradyne fails to tie any features from the product
sheet to the Asserted Claim’s limitations. For the other accused product—the VSI
27 Talon Model T940—Teradyne does not even include a product sheet, nor any other
allegations to tie its features to the Asserted Claim’s limitations.

28 ¹⁰ Because Teradyne’s contributory infringement claim merely alleges baldly
Astronics’ “offering for sale and selling the [alleged] Infringing Products,” Compl.
¶ 38, it too fails for the same reasons.

1 Cir. 2012) (contributory infringement requires allegations “that allow an inference that
2 components sold or offered for sale have no substantial non-infringing uses”).

3 Induced or Willful Patent Infringement. To plead induced infringement, a
4 plaintiff must allege: (1) direct infringement by a third party; (2) that the defendant
5 induced that infringement, and (3) that the defendant “knew the acts it induced
6 constituted infringement” through some kind of pre-suit notice. *Power Integrations,*
7 *Inc. v. Fairchild Semiconductor Int’l, Inc.*, 843 F.3d 1315, 1332 (Fed. Cir. 2016). To
8 establish the third element, a patent holder must show that the defendant “knew of the
9 patent and knew as well that the induced acts constitute patent infringement.” *Commil*
10 *USA, LLC v. Cisco Sys., Inc.*, 135 S. Ct. 1920, 1926 (2015). Allegations of
11 inducement are insufficient “where the purported pre-suit notice fails to tie allegedly
12 infringing features or designs to particular patents.” *Polaris PowerLED Techs., LLC*
13 *v. Vizio, Inc.*, No. 18 Civ. 1571, 2019 WL 3220016, at *3 (C.D. Cal. May 7, 2019).
14 Likewise, to plead willful infringement requires allegations of pre-suit notice and
15 egregious misconduct. *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1932
16 (2016); *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1341 (Fed. Cir. 2016) (knowledge
17 of the alleged patent “continues” to be a prerequisite for willful infringement).

18 Here, Teradyne fails to plead sufficient facts regarding the purported pre-suit
19 notice of the ’479 Patent to plead either induced or willful infringement. Teradyne
20 asserts that in two pre-suit letters it informed first a company that Astronics later
21 acquired and then Astronics itself of Teradyne’s intellectual property rights, including
22 the ’479 Patent.¹¹ Compl. ¶ 28. Teradyne, however, has not alleged that the letters
23 identified any accused infringing product, let alone that they tied any allegedly

24 ¹¹ Teradyne fails to specify to which company it sent the purported February 10,
25 2015 letter: ATS or Astronics Corp. or both. This too is grounds for dismissal.
26 See *In re iPhone Application Litig.*, No. 11 Civ. 2250, 2011 WL 4403963, at *8
27 (N.D. Cal. Sept. 20, 2011) (“[F]ailure to allege what role each Defendant played in
28 the alleged harm makes it exceedingly difficult, if not impossible, for individual
Defendants to respond to Plaintiffs’ allegations.”); *Gen-Probe, Inc. v. Amoco*
Corp., 926 F. Supp. 948, 960-62 (S.D. Cal. 1996) (“Defendants may be accused of
a violation only by supporting allegations that specifically refer to that
defendant.”).

1 infringing features of the now-accused PXIe or VXI products to the '479 Patent, or
2 that the letters provided information concerning specific acts of infringement. Nor
3 can it as the letters do not contain such assertions. Burney Decl. Exs. 1, 2. As merely
4 informing a defendant of one's intellectual property rights and/or ownership of a
5 patent is not sufficient to provide pre-suit notice of infringement, Teradyne's
6 inducement and willful infringement claims fail. *See Polaris*, 2019 WL 3220016, at
7 *3 (dismissing claim of induced infringement as "Letter provides scarce information
8 about the specific acts of infringement alleged, and includes only broad, unspecific
9 descriptions of the Asserted Patents without any guidance as to how certain [of
10 defendant's] products were infringing or what features were at issue").

11 Teradyne's willful infringement claim fails for the independent reason that it
12 fails to allege egregious misconduct. The Complaint states that "Defendants' acts of
13 direct and indirect infringement are willful, as Defendants had actual knowledge of
14 the '479 patent at least as of February 28, 2014 and knew, or should have known, that
15 making, having made, using, offering to sell, selling, and/or importing into the United
16 States the Infringing Products would infringe the '479 patent." Compl. ¶ 39. That,
17 however, is not an allegation of conduct that is "willful, wanton, malicious, bad-faith,
18 deliberate, consciously wrongful, flagrant, or—indeed—characteristic of a pirate."
19 *Halo*, 136 S. Ct. at 1932; *Polaris*, 2019 WL 3220016, at *4 (alleging "garden variety"
20 infringement "insufficient" to show "egregious conduct under *Halo*"). Thus,
21 Teradyne's willful infringement claim should be dismissed for this reason as well.

22 Copyright Infringement. To state a copyright infringement claim, Teradyne
23 must allege "(1) ownership of a valid copyright, and (2) copying of constituent
24 elements of the work that are original." *Feist Publ'ns, Inc. v. Rural Telephone Serv.*
25 *Co.*, 499 U.S. 340, 361 (1991). A copyright claim fails to meet the pleading standard
26 where the claim contains only "bare [legal] conclusions" of copying of protectable
27 expression without describing the specific work at issue "or explaining the manner in
28 which Defendant used such" work. *Kirby Morgan Dive Sys., Inc. v. Submarine Sys.*,

1 *Ltd.*, No. 08 Civ. 7722, 2009 WL 10671411, at *1 (C.D. Cal. Dec. 8, 2009). In *Patel*
2 *Burcia & Associates, Inc. v. Lin*, for example, the court dismissed a copyright claim as
3 insufficiently pleaded where the plaintiff did not allege facts that allowed the
4 defendants to identify which specific works they have impermissibly copied. No.
5 8:19 Civ. 1833, 2019 WL 6954256 (C.D. Cal. Dec. 19, 2019); *see also Boost Beauty*
6 *LLC v. Woo Signatures, LLC*, No. 18 Civ. 02960, 2018 WL 6219895, at *4 (C.D. Cal.
7 Jul. 23, 2018) (dismissing claim where plaintiff “failed to put defendants on notice of
8 which advertisement defendants allegedly copied”). In *Patel*, the court noted that the
9 pleading deficiency was particularly problematic where the plaintiff was attempting to
10 plead “substantial similarity.” 2019 WL 6954256, at *4 (“without alleging what the
11 copyrighted works here are, and what the purported infringing works are. . . [plaintiff]
12 cannot allege that the two sets of works here are substantially similar”).

13 Here, Teradyne’s Complaint fails to adequately address either required element.
14 **First**, the Complaint does not specify which particular works were copied. Instead, it
15 generally points to a laundry list of 20 possibilities, leaving Astronics to guess which
16 ones Teradyne is asserting. Compl. ¶ 51 (alleging copying of “certain of Teradyne’s
17 copyrighted works, **including at least one or more** versions of M9 APIs set forth in
18 paragraph 17 above”). This is not sufficient. *See Cole v. John Wiley & Sons, Inc.*,
19 No. 11 Civ. 2090, 2012 WL 3133530, at *12 (S.D.N.Y. Aug. 1, 2012) (“[I]t [is]
20 inadequate to base an infringement claim on overly-inclusive lists
21 of copyrighted works” (*citing Cole v. Allen*, 3 F.R.D. 236, 237 (S.D.N.Y. 1942)
22 (allegations that defendant copied from any of six books lacked sufficient
23 specificity))). **Second**, the Complaint does not explain in what act of infringement
24 Astronics is alleged to have engaged, instead generally asserting that “Defendants
25 have intentionally copied and are continuing to copy original, protectable expression
26 in the Teradyne Works without authorization.” Compl. ¶ 50. Recasting the legal test
27 for infringement as a factual allegation is insufficient to satisfy Teradyne’s pleading
28 obligations. *Hayes v. Minaj*, No. 2:12 Civ. 7972, 2012 WL 12887393, at *5 (C.D.

1 Cal. Dec. 18, 2012) (finding allegations of copying insufficient to plead substantial
 2 similarity; “Plaintiff must identify the particular aspects of the [work] that were
 3 allegedly copied”).¹² As the claim is insufficiently pleaded, it should be dismissed.

4 Copyright Statutory Damages and Attorney’s Fees. Under the Copyright Act,
 5 statutory damages and attorney’s fees are not available when the work at issue was
 6 registered after the infringement commenced and more than three months after the
 7 first publication of the work. 17 U.S.C. § 412. Here, Teradyne asserts that the alleged
 8 infringement occurred at least as early as 2018. In particular, Teradyne attaches a
 9 document dated from 2018 containing statements that Teradyne alleges show that
 10 “without authorization Defendants have copied certain of Teradyne’s copyrighted
 11 works.” Compl. ¶ 51, Ex. W. Yet, all of Teradyne’s copyright registrations have
 12 effective dates in 2019 or later, and each was registered over three months from
 13 publication. *Id.*, Exs. A–K, L–T. Thus, Teradyne’s claims for statutory damages and
 14 attorney’s fees for its copyright claim should be dismissed. *Por Los Rios, Inc. v.*
 15 *Lions Gate Entm’t, Inc.*, No. 2:13 Civ. 7640, 2014 WL 12605374, at *5 (C.D. Cal.
 16 May 21, 2014) (dismissing request for statutory damages and attorney’s fees under
 17 Rule 12(b)(6) where alleged infringement commenced prior to registration).¹³

18 Negligent Interference with Prospective Business Advantage. A negligent
 19 interference claim requires “the existence of a duty to use due care toward an interest
 20 of another that enjoys legal protection against unintentional invasion.” *Lake Alammor*
 21 *Assocs. L.P. v. Huffman–Broadway Grp., Inc.*, 178 Cal. App. 4th 1194, 1205
 22 (2009). Competitors do not owe each other such a duty. *See Stolz v. Wong*
 23 *Commc’ns*, 25 Cal. App. 4th 1811, 1825 (1994) (affirming trial court’s finding that

24 ¹² *See also Media.net Advert. FZ-LLC v. NetSeer, Inc.*, 156 F. Supp. 3d 1052, 1068
 25 (N.D. Cal. 2016) (dismissing claim that fails to set forth how defendant copied).

26 ¹³ Section 412’s prohibition applies equally to pre-registration and post-registration
 27 conduct “of the same kind.” *See Derek Andrew, Inc. v. Poof Apparel Corp.*, 528
 28 F.3d 696, 700 (9th Cir. 2008). To hold otherwise would “defeat the dual
 incentives of § 412” to incentivize “copyright owners . . . to register their
 copyrights promptly, “ and “potential infringers to check the Copyright Office’s
 database.” *Id.* Here, Teradyne does not distinguish pre- and post-registration acts.

1 plaintiff failed to state a claim for negligent interference where defendant was
 2 competitor). Here, the Complaint specifically alleges that “Teradyne and Defendants
 3 are direct competitors in the electronics and automation testing industry.” Compl. ¶ 5.
 4 As a result, there is no duty of care between them, and this claim should be dismissed.

5 **C. Teradyne’s State Law Claims are Preempted by the Copyright Act**

6 Teradyne’s state law claims (Counts III–VII) are preempted by the Copyright
 7 Act and, thus, should be dismissed. Copyright law provides the exclusive remedy for
 8 “all legal and equitable rights that are equivalent to any of the exclusive rights within
 9 the general scope of copyright.” 17 U.S.C. § 301(a). A state law claim is preempted
 10 if (1) the “‘subject matter’ of the state law claim falls within the subject matter of
 11 copyright”; and (2) “the rights asserted under state law are equivalent to the rights
 12 contained in” the Copyright Act. *Laws v. Sony Music Entm’t, Inc.*, 448 F.3d 1134,
 13 1137–38 (9th Cir. 2006)

14 As to the first prong, Teradyne’s state law claims are predicated on the same
 15 computer program that forms the basis of its copyright claim. *See* Compl. ¶¶ 16–18.
 16 As computer programs are the subject matter of copyright, 17 U.S.C. §§ 101, 102, the
 17 first prong is satisfied. *See Syntek Semiconductor Co. v. Microchip Tech. Inc.*, 307
 18 F.3d 775, 779 (9th Cir. 2002) (“Computer programs are works of authorship entitled
 19 to protection under the Copyright Act.”); *Patnaik v. Hearst Corp.*, No. 14 Civ. 5158,
 20 2015 WL 12746704, at *8 (C.D. Cal. Jan. 7, 2015) (dismissing claims as preempted
 21 where as “Plaintiff claims copyright protection for the software or program”).

22 As to the second prong, “[g]enerally, tortious interference claims (with contract
 23 or prospective economic advantage) are held to be preempted because the rights
 24 asserted in such claims are not qualitatively different from the rights protected by
 25 copyright.” *Stromback v. New Line Cinema*, 384 F.3d 283, 306 (6th Cir. 2004). Here,
 26 no extra element makes Teradyne’s claims different from copyright claims:

- 27 • Teradyne’s inducing breach of contract (Count III) and intentional interference
 28 with contractual relations (Count IV) claims are based on inducing Teradyne’s

1 customers to distribute Teradyne’s software to Astronics. Compl. ¶¶ 59, 67.
 2 That is, at best, a secondary liability theory of copyright infringement claim as
 3 breached promises not to distribute a work are equivalent to copyright claims.
 4 *See also Wilder v. CBS Corp.*, No. 2:12 Civ. 8961, 2016 WL 693070, at *7
 5 (C.D. Cal. Feb. 13, 2016) (intentional interference with contract claim
 6 preempted where breached promise was unauthorized distribution); *cf. Rumble,*
 7 *Inc. v. The Daily Mail & General Trust PLC*, No. 19 Civ. 8420, 2020 WL
 8 2510652, at *3 (C.D. Cal. Feb. 12, 2020) (contract claim preempted where
 9 breached promise was agreement not to infringe copyrights); *Selby v. New Line*
 10 *Cinema Corp.*, 96 F. Supp. 2d 1053, 1062 (C.D. Cal. 2000) (promise not to
 11 infringe copyrighted material was equivalent under the second prong).¹⁴

- 12 • Teradyne’s intentional interference with prospective economic advantage
 13 (Count V), negligent interference with prospective economic advantage (Count
 14 VI), and unfair competition (Count VII) claims are based on Astronics allegedly
 15 selling and distributing products that use Teradyne’s software. Compl. ¶¶ 75,
 16 85, 89. They too are preempted. *See Sybersound Records, Inc. v. UAV Corp.*,
 17 517 F.3d 1137, 1151 (9th Cir. 2008) (interference with prospective economic
 18 relations claim preempted as “wrongful act” was copyright infringement);
 19 *Ricketts v. CBS Corps.*, No. 19 Civ. 03895, 2020 WL 1643864, at *4 (C.D. Cal.
 20 Feb. 18, 2020) (unfair competition claim preempted); *Wilder*, 2016 WL
 21 693070, at *8; *Wild v. NBC Universal, Inc.*, No. 10 Civ. 03615, 2011 WL
 22 13272427, at *18 (C.D. Cal. June 28, 2011) (economic interference claims
 23 preempted as based on “improper use” of copyrighted work).¹⁵

24
 25 ¹⁴ *See also Masterson Marketing, Inc. v. KSL Recreation Corp.*, No. 02 Civ. 2028,
 2006 WL 8455398, at *3 (S.D. Cal. Mar. 29, 2006) (promise to return copyrighted
 images to plaintiff timely was equivalent under second prong).

26 ¹⁵ *See also Crafty Prod., Inc. v. Michaels Co.*, 424 F. Supp. 3d 983, 996 (S.D. Cal.
 27 2019) (intentional interference with economic advantage and unfair competition
 claims preempted where harm was defendants’ sale of plaintiff’s products); *Hire A*
 28 *Helper LLC v. Move Lift, LLC*, No. 3:17 Civ. 00711, 2017 WL 4480873, at *2–3
 (S.D. Cal. Oct. 6, 2017) (negligent and intentional interference claims preempted

1 As these claims are qualitatively the same as copyright claims, they are preempted.¹⁶

2 **IV. ASTRONICS CORP. SHOULD BE DISMISSED FROM THIS ACTION**

3 Teradyne’s claims against Astronics Corp. should be dismissed for two
4 independent reasons: (a) pleading failures, and (b) lack of personal jurisdiction.

5 **A. The Complaint Fails to Plead Claims Against Astronics Corp.**

6 Teradyne has not adequately pleaded that Astronics Corp. (a distinct entity from
7 ATS) has violated any of Teradyne’s rights. To sufficiently plead direct patent
8 infringement, a plaintiff must allege sufficient facts to show that the defendant
9 “without authority makes, uses, offers to sell, or sells any patented invention.” 35
10 U.S.C. § 271(a). Teradyne identifies the PXIe and VXI series of digital test
11 instruments as the alleged “Infringing Products,” Compl. ¶ 29, but Teradyne fails to
12 allege any facts showing that Astronics Corp. makes, uses, offers to sell or sells
13 them.¹⁷ Nor can it as the data sheet on which Teradyne relies to support its claim was
14 produced by ATS and makes no mention of Astronics Corp. Compl. ¶¶ 35, 51, Ex.
15 W. Teradyne cannot overcome this flaw by lumping the Defendants together for the
16 purpose of its infringement allegations. *In re iPhone Application Litig.*, 2011 WL
17 4403963, at *8 (“generalized allegations against Defendants as a whole” insufficient
18 to state a claim); *Gen-Probe*, 926 F. Supp. at 960-62 (lumping defendants “fails to
19 provide fair notice”). Similarly, Teradyne’s inducement claim fails as it does not (and

20 _____
21 where plaintiff allegedly interfered by presenting bid for contract that copied
22 copyrighted material from plaintiff’s website); *Media.net*, 156 F. Supp. 3d at 1074
(unfair competition claim based on copying preempted).

23 ¹⁶ Elements of “inducement” or “intent” cannot save Teradyne’s claims. *See Harper*
24 *& Row, Publishers, Inc. v. Nation Enters.*, 723 F.2d 195, 201 (2d Cir. 1983)
(neither knowledge nor intent is a “separate element”), *rev’d on other grounds* 471
25 U.S. 539 (1985); *Worth v. Universal Pictures, Inc.*, 5 F. Supp. 2d 816, 822 (C.D.
Cal. 1997) (same).

26 ¹⁷ Because direct infringement is a prerequisite for willful infringement, Teradyne
27 has also failed to plead willful infringement. *See, e.g.*, 35 U.S.C. § 284. As to
28 contributory infringement, Teradyne conclusory alleges only that “Defendants . . .
offer[] for sale and sell[]” the accused products, Compl. ¶ 38, and thus, it too fails.
It also fails to allege no substantial non-infringing uses. *In re Bill of Lading*, 681
F.3d at 1337.

1 cannot) allege that Astronics Corp. “provid[es] instructions, manuals, services, [or]
2 technical assistance” for ATS’ products. *See* Compl. ¶¶ 33–34.

3 This same flaw dooms Teradyne’s other claims against Astronics Corp.
4 because, as noted above, each hinges on the alleged distribution or sale of products
5 purportedly containing Teradyne’s proprietary software. *See supra* 16-20. Moreover,
6 in copyright actions, where the putative defendant “has no operations and does not
7 create, develop, market, sell, distribute, or otherwise exploit” the copyrighted product,
8 the claims against that defendant fail. *Apps v. Universal Music Grp., Inc.*, 283 F.
9 Supp. 3d 946, 950 (D. Nev. 2017) (“A general principle of corporate law . . . is that a
10 parent corporation . . . is not liable for the acts of its subsidiaries.” (internal quotation
11 marks omitted)). For this reason alone, Astronics Corp. should be dismissed.

12 **B. This Court Lacks Personal Jurisdiction over Astronics Corp.**

13 Independently, Teradyne cannot satisfy its burden to show that this Court has
14 general or specific personal jurisdiction over Astronics Corp. *See Pebble Beach Co. v.*
15 *Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006) (plaintiff has burden to establish personal
16 jurisdiction).¹⁸ As to **general jurisdiction**, “[t]he paradigm all-purpose forums for
17 general jurisdiction are a corporation’s place of incorporation and principal place of
18 business.” *Daimler AG v. Bauman*, 571 U.S. 117, 118, (2014). A court may assert
19 jurisdiction over out-of-state corporations only when “their affiliations with the State
20 are so ‘continuous and systematic’ as to render them essentially at home in the forum
21 State.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).
22 This standard is an exacting one and must “approximate physical presence.”
23 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004).

24 Here, Teradyne admits that Astronics Corp. is a New York corporation with its
25 principal place of business in East Aurora, New York. Compl. ¶ 7. Because neither
26 its state of incorporation nor its principal place of business is in California, this Court

27 ¹⁸ For the patent claim, Federal Circuit law applies. *Amana Refrigeration, Inc. v.*
28 *Quadlux, Inc.*, 172 F.3d 852, 856-57 (Fed. Cir. 1999).

1 lacks general jurisdiction over Astronics Corp. *See Akhtar v. Societe Air France*, No.
 2 17 Civ. 2045, 2018 WL 6184767, at *4 (C.D. Cal. Feb. 8, 2018) (citing *Daimler*, 517
 3 U.S. at 134); *Sarafian v. Wright Med. Tech., Inc.*, No. 15 Civ. 9397, 2016 WL
 4 1305087, at *3 (C.D. Cal. Apr. 1, 2016) (citing *Goodyear*, 564 U.S. at 924).¹⁹

5 As to **specific jurisdiction**, a court may exercise jurisdiction where the
 6 defendant has “minimum contacts” within the forum state. *Int’l Shoe Co. v. State of*
 7 *Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945). This
 8 requires (1) the defendant to either “purposefully direct” its activities to the forum or
 9 “purposely avail” itself of the benefits afforded by the forum; (2) the claim to “arise[]
 10 out of or relate[] to the defendant’s forum-related activities”; and (3) the exercise of
 11 jurisdiction to be reasonable. *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1023
 12 (9th Cir. 2017); *Pennington Seed, Inc. v. Produce Exch. No. 299*, 457 F.3d 1334, 1344
 13 (Fed. Cir. 2006).

14 Teradyne does not plead sufficient facts to allege specific jurisdiction.
 15 Teradyne’s statement that Astronics Corp. “regularly does or solicits business,
 16 engages in other persistent course of conduct, and/or derives substantial revenue from
 17 products and/or services provided to individuals in this judicial district,” Compl. ¶ 11,
 18 is conclusory and cannot withstand a motion to dismiss. *See AFTG-TG, LLC v.*
 19 *Nuvoton Tech. Corp.*, 689 F.3d 1358, 1361 (Fed. Cir. 2012) (“bare formulaic
 20 accusation[s]” insufficient to establish jurisdiction); *Uniloc 2017 LLC v. H&R Block,*
 21 *Inc.*, No. 19 Civ. 1149, 2019 WL 8219781, at *6 (C.D. Cal. Dec. 23, 2019)
 22 (conclusory allegations insufficient to establish jurisdiction); *NuCal Foods, Inc. v.*
 23 *Quality Egg LLC*, 887 F. Supp. 2d 977, 988 (E.D. Cal. 2012) (“[T]he court need not
 24 consider merely conclusory claims, or legal conclusions in the complaint as
 25 establishing jurisdiction.”). And Teradyne’s statement that Astronics “has committed

26
 27 ¹⁹ Teradyne’s allegation that Astronics Corp. “established substantial, systematic, and
 28 continuous contacts within this judicial district and expects or reasonably expects
 to be subjected to this Court’s jurisdiction,” Compl. ¶ 11, is the kind of legal
 conclusion that fails to meet the pleading standard. *Twombly*, 550 U.S. at 555.

1 acts of copyright and patent infringement and/or contributed to and/or induced acts of
2 copyright infringement and patent infringement by others in this judicial district,
3 and/or has committed acts of inducing breach of contract, interference with
4 contractual relations, interference with prospective economic advantage, and unfair
5 competition in this judicial district, and continues to do so,” Compl. ¶ 11, is deficient
6 for several reasons. First, it consists of legal conclusions not facts. Second, as
7 described above, Teradyne has failed to state plausible causes of action against
8 Astronics Corp. individually as opposed to impermissible collective pleading against
9 both Defendants. *See supra* 15 n.11, 21-22. Third, as described above, Teradyne has
10 failed to state plausible causes of action against either Defendant due to numerous
11 pleading deficiencies. *See supra* 14–20, 21-22. Because Teradyne’s personal
12 jurisdiction pleading fails, Astronics Corp. should be dismissed from this action.

13 Given Teradyne’s pleading failure, this Court need not consider a factual
14 challenge to personal jurisdiction. There, however, is no question that Astronics
15 Corp. has no contacts with California related to this action. Astronics Corp. has no
16 offices or employees in California. Burney Decl. ¶ 2. It does not have a mailing
17 address, nor a registered agent for service of process in California. *Id.* It does not
18 manufacture or sell products anywhere in the world, let alone in California. *Id.* And
19 it does not do business in California or own property in California. *Id.* As a result,
20 Astronics Corp. lacks the type of minimum contacts with California sufficient to
21 establish specific jurisdiction. *Sarafian*, 2016 WL 1305087, at *4 (finding no specific
22 jurisdiction over holding company that was not registered to do business in California,
23 did not transact business in California, owned no real property in California, had no
24 offices or employees in California, and that did not make, sell, or provide accused
25 products in California); *see also Uniloc 2017 LLC*, 2019 WL 8219781, at *5–6
26 (finding no purposeful availment because defendant did not “have offices or a mailing
27 address in California, employees in California, or a registered agent for service of
28 process located in California” and was “not registered to do business in California

1 with the California Secretary of State”).

2 Finally, Teradyne’s conclusory statements that ATS is a “wholly owned
3 subsidiary and alter ego and/or agent” of Astronics Corp., Compl. ¶¶ 8, 11, are
4 insufficient to plead personal jurisdiction based on an alter ego or agency theory. *See*
5 *Williams*, 851 F.3d at 1022 (“Appellants fail . . . to plead facts sufficient to make out a
6 prima facie case that YMC and YMUS are ‘alter egos.’”); *Celgard, LLC v. SK*
7 *Innovation Co.*, 792 F.3d 1373, 1379-80 (Fed. Cir. 2015) (affirming dismissal because
8 plaintiff “ha[d] not alleged facts sufficient to base jurisdiction on the acts of an alter
9 ego”); *Sarafian*, 2016 WL 1305087, at *3-5 (granting motion to dismiss because
10 “conclusory statements are insufficient” to plead jurisdiction under alter ego or agency
11 theories); *Crystal Cruises, Inc. v. Electra Cruises, Inc.*, No. 08 Civ. 1054, 2008 WL
12 11338635, at *2 (C.D. Cal. Dec. 15, 2008) (granting motion to dismiss because
13 plaintiff failed to plead facts addressing the elements of alter ego theory). Further,
14 merely showing a parent-subsiary relationship is not sufficient to establish personal
15 jurisdiction under an alter ego or agency theory. *Ranza v. Nike, Inc.*, 793 F.3d 1059,
16 1073 (9th Cir. 2015) (“Total ownership and shared management personnel are alone
17 insufficient to establish the requisite level of control.”); *Celgard*, 792 F.3d at 1379
18 (affirming dismissal because plaintiff failed to show the requisite control); *Akhtar*,
19 2018 WL 6184767, at *2; *Sarafian*, 2016 WL 1305087, at *5 (“As a general matter,
20 courts are reluctant to attribute a subsidiary's contacts to its parent.”).

21 **V. CONCLUSION**

22 For the foregoing reasons, Astronics respectfully requests that its motion to
23 dismiss be granted in its entirety. Moreover, as Teradyne refused to change its
24 complaint or drop its futile claims after the parties met and conferred regarding the
25 bases for this Motion, Astronics requests that the dismissal be with prejudice. *See*
26 *Oriol v. H&M Hennes & Mauritz L.P.*, No. 13 Civ. 05088, 2014 WL 12589636, at *3
27 (C.D. Cal. Feb. 10, 2014) (“Dismissal with prejudice is appropriate when further
28 amendment would be futile.”).

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DATED: June 15, 2020

/s/ Dale M. Cendali

Dale M. Cendali (*pro hac vice* forthcoming)
dale.cendali@kirkland.com
Joshua L. Simmons (*pro hac vice* forthcoming)
joshua.simmons@kirkland.com
Miranda Means (*pro hac vice* forthcoming)
miranda.means@kirkland.com
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Tel. (212) 446-4800
Fax (212) 446-4900

Yimeng Dou (SBN 285248)
yimeng.dou@kirkland.com
N. Yvonne Stoddard (SBN 325321)
yvonne.stoddard@kirkland.com
KIRKLAND & ELLIS LLP
555 South Flower Street, Suite 3700
Los Angeles, CA 90071
Tel. (213) 680-8400
Fax (213) 680-8500

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM
AND LACK OF PERSONAL JURISDICTION was filed electronically on this 15th
day of June, 2020, and therefore served electronically upon counsel of record.

/s/ Dale M. Cendali

Dale M. Cendali