

# Exhibit 1

From: Ben b davidson@davidson-lawfirm.com  
Subject: DSS v. Everlight  
Date: August 31, 2017 at 10:34 AM  
To: Brian Ledahl bledahl@raklaw.com, Neil Rubin nrubin@raklaw.com, Jacob Buczko jbcuzko@raklaw.com  
Cc: Michael Bednarek Michael.Bednarek@arlaw.com

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Dear Brian, Neil, and Jacob:

We are writing to meet and confer under Local Rule 7-3 regarding a motion to dismiss for failure to state a claim that Defendants Everlight Electronic Co. Ltd. and Everlight Americas Inc. (“Defendants”) intend to file pursuant to Rule 12(b)(6).

As you know, while a complaint does not need detailed factual allegations to survive a 12(b)(6) motion, a plaintiff must provide grounds demonstrating its entitlement to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). To do so, “the plaintiff must allege sufficient factual allegations to raise a right to relief above the speculative level.” *Id.* Under *Twombly* and *Iqbal*, this threshold requires that the complaint contains “sufficient factual matter . . . to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). A complaint will fail to state a claim if factual allegations “do not permit the court to infer more than the mere possibility of misconduct . . . .” *Id.* at 679.

The Complaint in this case alleges infringement of patents without alleging facts that would allow the Court to infer more than the mere possibility of infringement. As to the ‘771 Patent, for example, paragraphs 14 and 15 of the Complaint merely allege that a wide array of products and, apparently, all of their “predecessor and successor models” somehow infringe claims 1-8 “because they contain each element of those claims.” This conclusory allegation obviously fails to include “sufficient factual matter” to show that DSS is entitled to relief on its infringement claim as to any particular product.

The Complaint uses the same or very similar language to allege that the ‘087 Patent, 355 Patent, ‘486 Patent are infringed. In each case, the allegations in support of these claims are conclusory and fail to include factual matter to show why any claim has allegedly been infringed. As a result, the Complaint fails to state a claim for infringement of these patents by Defendants. There are no facts alleged at all but only the conclusion that various series of products and their predecessors and successors, whatever those are, somehow infringe and that Defendants somehow indirectly are liable for direct infringement by others. As a result, the Complaint fails to state a claim for infringement, either literally or through the doctrine of equivalents. There is no plausible factual basis for the Court to determine that any product directly infringes, let alone that either Defendant has induced through any factual allegations another party’s infringement of a specific product. *See, e.g., Jenkins v. LogicMark, LLC*, No. 3:16-CV-751-HEH, 2017 WL 376154, at \*1, 3 (E.D. Va. Jan. 25, 2017) (complaint “fail[ed] to specify which features of [the accused products] correspond to the limitations of any claims in the identified patents,” and “d[id] not identify with any particularity how each allegedly infringing features of the accused products infringe any of the named patents”); *N. Star Innovations, Inc. v. Etron Tech. Am. Inc.*, No. CV 8:16-00599, 2016 WL 9046909, at \*4 (C.D. Cal. Sept. 21, 2016) (dismissing complaint that contained only “conclusory statement[s] that the referenced product . . . infringes

because the referenced product allegedly includes the identified claim language” and did not “draw any parallels between the accused products and the claim elements and further fail[ed] to cite any supporting product documentation in its allegations”); *Asghari-Kamrani v. United Servs. Auto. Ass’n*, No. 2:15-CV-478, 2016 WL 1253533, at \*3-4 (E.D. Va. Mar. 22, 2016) (dismissing complaint because plaintiff failed to map the patented functionality to the accused product).

In addition, with respect to the inducement claims, DSS alleges that “at least as of the service of this Complaint . . . Defendants know and intend that customers that purchase the . . . Accused Instrumentalities will use those products for their intended purpose.” These allegations are insufficient to plausibly support a claim that either of the Defendants intended to induce infringement. The Federal Circuit has held that the “specific intent necessary to induce infringement requires more than just intent to cause the acts that produce direct infringement . . . the inducer must have an affirmative intent to cause direct infringement.” *Kyocera Wireless Corp. v. Int’l Trade Comm’n*, 545 F.3d 1340, 1354 (Fed. Cir. 2008) (internal quotation marks omitted). As explained above, the Complaint failed to provide notice that any product was infringing. In addition, the only facts DSS cites to support for the specific intent to induce infringement are the commonplace distribution of technical guides, product data sheets and the like. *See, e.g.*, Complaint, ¶ 23. That is insufficient to plausibly allege that Defendants have intended to induce others to infringe any specific patents using any specific products merely because of the service of a conclusory Complaint. *See e.g., Unisone Strategic IP, Inc. v. Life Techs. Corp.*, No. 3:13-cv-1278-GPC-JMA, 2013 WL 5729487, at \*3 (S.D. Cal. Oct. 22, 2013) (“[Plaintiff’s allegations] fail because they merely indicate that Defendant provides instruction, technical support, and training for using its own software . . . [and are] not sufficient to plausibly infer that Defendant had the specific intent to induce others to infringe.”); *Ameranth, Inc. v. Hilton Resorts Corp.*, No. 11-CV-1810 JLS (NLS), 2013 WL 12071642, at \*8-9 (S.D. Cal. July 18, 2013) (allegations that the defendant “provides instructions and direction . . . and advertises, promotes, and encourages the use of [the accused product]” were insufficient). At a minimum, even assuming that the Court accepts the view that service of a Complaint is sufficient to allege inducement, we would ask that DSS clarify that it is only seeking damages for the period after service of the Complaint.

We also intend to ask the Court to dismiss any allegation of willfulness that DSS would pursue but that it has not alleged based. DSS purports to reserve the right to pursue willfulness allegations without amending the complaint to allege willfulness. We do not believe there is any support for that approach. The reservation of rights does not give our clients notice of any willfulness allegation that DSS is contemplating pursuing at some point in the future.

We are aware that DSS recently has agreed to file amended complaints to avoid motion practice in connection with cases it has filed against other defendants. We also would like to avoid burdening the Court with unnecessary motion practice and would like to reach agreement with you on a stipulation to file an amended complaint.

Please let me know what time(s) you are available to discuss our anticipated motion either later today, Friday between 8:30 a.m. and 11:30 a.m. or after 3:30 p.m. or any time

Tuesday of next week.

Thank you.

--Ben

Ben M. Davidson  
Davidson Law Group  
11377 West Olympic Blvd.  
Los Angeles, California 90064  
310-473-2300  
Email: [bdavidson@davidson-lawfirm.com](mailto:bdavidson@davidson-lawfirm.com)  
[www.davidson-lawfirm.com](http://www.davidson-lawfirm.com)