

1 Christopher Kao (SBN 237716)

2 ckao@velaw.com

3 David J. Tsai (SBN 244479)

4 dtsai@velaw.com

5 Brock S. Weber (SBN 261383)

6 bweber@velaw.com

7 VINSON & ELKINS L.L.P.

8 555 Mission Street, Suite 2000

9 San Francisco, CA 94105

10 Tel.: 415.979.6900

11 Fax: 415.651.8786

12 *Attorneys for Defendant*
13 *Lite-On, Inc.*

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 DOCUMENT SECURITY SYSTEMS,
17 INC., a New York corporation,

18 Plaintiff,

19 vs.

20 LITE-ON, INC., a California corporation,
21 and LITE-ON TECHNOLOGY
22 CORPORATION, a Taiwanese
23 corporation,

24 Defendants.

Case No. 2:17-cv-6050-JVS-JCG

**DEFENDANT LITE-ON, INC.'S
REPLY IN SUPPORT OF ITS
MOTION TO DISMISS
PLAINTIFF'S COMPLAINT
UNDER RULE 12(B)(6)**

Date: February 5, 2018

Time: 1:30 p.m.

Courtroom: 10C

Judge: Honorable James V. Selna

1 Defendant Lite-On, Inc. (“Lite-On”) respectfully submits this reply brief in
2 support of its Motion to Dismiss Plaintiff’s Complaint Under Rule 12(B)(6) (Dkt. 42,
3 “Motion”) and in response to Plaintiff Document Security Systems, Inc.’s (“DSS’s”)
4 Opposition (Dkt. 43, “Opp.”).

5 INTRODUCTION

6 Plaintiff’s Opposition fails to rebut the showing in Lite-On’s Motion to Dismiss
7 that the allegations of willful patent infringement in the First Amended Complaint
8 (Dkt. 36, “FAC”) are legally deficient. These claims lack any factual support and
9 Plaintiff has failed to cure any of the deficiencies in its original Complaint.
10 Accordingly, Plaintiff’s claims for willful infringement in the FAC should be
11 dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

12 ARGUMENT

13 **I. PLAINTIFF DOES NOT ADEQUATELY PLEAD WILLFUL** 14 **INFRINGEMENT.**

15 **A. Plaintiff Merely Alleges that Lite-On has Acted “Egregiously” by** 16 **Continuing its Previous Activities, Which is Insufficient as a Matter** **of Law.**

17 As an initial matter, Plaintiff argues in its Opposition that Lite-On confuses the
18 standard for proving willful infringement with the standard for pleading willful
19 infringement. (Opp. at 6). This is false. As shown in the opening Motion (at 6-7), a
20 willful infringement claim is required to meet the factual and plausibility pleading
21 requirements just like any other claim, and is therefore “subject to a motion to dismiss.”
22 *Novitaz, Inc. v. inMarket Media, LLC*, No. 16-cv-6795, 2017 WL 2311407, at *5 (N.D.
23 Cal. May 26, 2017).

24 Here, the FAC simply restates the unexceptional assertion from the original
25 Complaint that Plaintiff sued Lite-On, and that Lite-On continued to do what it did
26 before the suit. (Motion at 8-10.) Plaintiff has alleged no facts—because there are
27 none—to articulate how this could be an “egregious case[] of misconduct beyond
28 typical infringement.” *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1935

1 (2016). The bare assertion in the FAC that Lite-On allegedly knew about the patents-
2 in-suit before this suit was filed is insufficient to save a willfulness claim from a
3 motion to dismiss. *See, e.g., Emazing Lights, LLC v. De Oca*, No. 15-cv-1561, 2016
4 WL 7507765, at *2 (C.D. Cal. June 20, 2016) (dismissing willfulness claim, even
5 though plaintiff had provided defendants a written “cease and desist” letter, because
6 the complaint failed to include any “plausible allegation” that defendants acted
7 egregiously).

8 Likewise, the unsupported allegations in the FAC that Lite-On has acted
9 “egregiously” by continuing to infringe after purportedly learning of the patents-in-
10 suit is insufficient for a willfulness claim as matter of law. *See, e.g., XpertUniverse,*
11 *Inc. v. Cisco Sys., Inc.*, No. 17-cv-03848-RS, 2017 WL 4551519, *6 (N.D. Cal. Oct.
12 11, 2017) (dismissing willfulness claim, explaining that, “[a]lthough XpertUniverse
13 has alleged knowledge and continued infringement, it needs to do more to show that
14 Cisco has engaged in ‘egregious cases of misconduct beyond typical infringement’
15 that could possibly warrant enhanced damages.”) (quoting *Halo*, 136 S. Ct. at 1935);
16 *Finjan, Inc. v. Cisco Sys. Inc.*, No. 17-CV-00072-BLF, 2017 WL 2462423, at *5
17 (N.D. Cal. June 7, 2017) (dismissing a willfulness claim premised on continued
18 infringement because it contained “no specific factual allegations . . . that would
19 suggest [the defendant’s] behavior was ‘egregious’”).

20 **B. Plaintiff Fails to Address its Concession in the Original Complaint**
21 **that it Did Not Have a Plausible Willful Infringement Claim Against**
22 **Lite-On.**

23 Plaintiff further argues in its Opposition that it did not concede in the original
24 Complaint that it did not have any facts to support a willfulness claim against Lite-On.
25 (Opp. at 11-12.) Plaintiff is plainly wrong, as this Court has previously found. The
26 original Complaint expressly contained such a concession. For each patent-in-suit, the
27 original Complaint attempted to “reserve[] the right to request a finding” of willful
28

1 infringement “[t]o the extent facts learned in discovery” might support such a claim in
2 the future:

3 To the extent facts learned in discovery show that Defendants’
4 infringement of the [] Patent is or has been willful and/or
5 egregious, or to the extent that Defendants’ actions subsequent to
6 the filing of this Complaint—such as their behavior as litigants or
7 their failure to take remedial actions—render their infringement
egregious, DSS reserves the right to request such a finding at time
of trial.

8 (Motion at 3.) Thus, in granting Defendants OSRAM’s and Seoul Semiconductor’s
9 motions to dismiss Plaintiff’s similar willfulness claims, this Court found that “DSS
10 concedes at this time, it cannot plead facts sufficient to state a plausible claim for
11 willful infringement,” which made the claim deficient according to the standards of
12 *Iqbal* and *Twombly*. (Case No. 17-5184, Dkt. 44-1 at 17; Case No. 17-981, Dkt. No.
13 36-1 at 9-10).

14 Despite this, Plaintiff argues that it “did not intend this paragraph to be a
15 concession” and that by removing this language from the FAC, it has corrected the
16 problem. (Opp. at 11-12.) However, Plaintiff cannot erase its previous pleading with a
17 wave of the hand. Plaintiff rightly recognized that it did not have any facts to support a
18 claim for willful infringement against Lite-On in its first Complaint, and this Court
19 relied upon that express concession in dismissing the claim. Instead of addressing its
20 concession that further discovery was needed to plead willfulness and this Court’s
21 ruling to that effect, DSS simply removed the concession in the FAC. Plaintiff has
22 added nothing in the FAC to support a willfulness claim. Thus, Plaintiff’s willful
23 infringement claim is still hollow and should be dismissed.

24 **C. The FAC Does Not Introduce New Allegations to Support its Claims**
25 **for Willful Infringement.**

26 Finally, Plaintiff argues in its Opposition that the FAC “adds considerable
27 detail” to the willful infringement claims compared with Plaintiff’s original
28 Complaint. (Opp. at 12.) This is not the case. As shown in detail in Lite-On’s

1 opening Motion (at 8-9), the original Complaint and the FAC are substantively the
2 same, and Plaintiff did not add any actual factual allegations to the FAC. This is not
3 surprising, as Plaintiff could not have added anything of substance. When Plaintiff
4 filed its FAC on November 16, 2017 (Dkt. 36), no discovery had been conducted on
5 the willfulness issue and only two days had passed between the Court's Order
6 directing Plaintiff to file an amended complaint (Dkt. 35) and Plaintiff's filing of the
7 FAC.

8 Given the near-identical wording in the original Complaint and the FAC, it is
9 simply not true that the FAC "add[ed] considerable detail regarding Defendants'
10 willful infringement of the '771, '087, and '486 patents," as Plaintiff argues. (Opp. at
11 12.) Just as in the original Complaint, the FAC alleges no facts to support a plausible
12 inference that Lite-On has acted egregiously and is liable for willful infringement.
13 (*See, e.g.*, Case No. 17-981, Dkt. No. 36-1 (this Court's Order dismissing Plaintiff
14 DSS's similar willfulness allegations in the Seoul Semiconductor case) (citing
15 *Twombly*, 550 U.S. at 555).)

16 CONCLUSION

17 For the foregoing reasons and those provided in Lite-On's opening Motion
18 (Dkt. 42), Defendant Lite-On respectfully requests that this Court grant Lite-On's
19 Motion to Dismiss Plaintiff's Complaint under Rule 12(B)(6).

20
21 Dated: January 22, 2018

Respectfully submitted,

22 VINSON & ELKINS L.L.P.

23
24 By: /s/ Christopher Kao

Christopher Kao

25 *Attorneys for Defendant*

26 *Lite-On, Inc.*
27
28

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