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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NETWORK-1 TECHNOLOGIES, INC., **Plaintiff,** **v.** **HIKVISION USA, INC.,** **Defendant.**	**Case No. 2:22-CV-08050 CJC(JDEx)** **OPPOSITION TO PARTIAL MOTION TO DISMISS UNDER FED. R. CIV. P. 12(B)(6)**

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RULES

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Hikvision asserts that Network-1's indirect infringement claims should be dismissed because the Amended Complaint does not allege facts that support a reasonable inference that Hikvision knew of the '930 patent and knew of infringement before the patent expired. [1] Hikvision is wrong. The Amended Complaint alleges specific facts that make it plausible that Hikvision was aware of the '930 patent and knew about its infringement. Moreover, the Amended Complaint alleges facts that line up with the willful blindness standard set forth in *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 765-66 (2011). Accordingly, Hikvision's Motion should be denied with respect to indirect infringement. To simplify the issues, Network-1 does not oppose Hikvision's Motion with respect to willful infringement.

I. HIKVISION'S MOTION SHOULD BE DENIED IF THE AMENDED COMPLAINT CONTAINS ALLEGATIONS WHICH, ACCEPTED AS TRUE, STATE CLAIMS FOR INDIRECT INFRINGEMENT THAT ARE PLAUSIBLE.

Rule 8 requires a complaint to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "Specific facts are not necessary; the statement need only give the defendant fair notice of what the claim is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93, 2200 (2007) (internal quotations omitted). The short and plain statement "must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)) (internal quotations omitted). To meet this factual plausibility standard, the plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," based on "more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Rule 8(a) "[plausibility] does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence" to support the allegations. *Twombly*, 550 U.S. at 556. "[O]f course, a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of

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[1] Hikvision does not present any other challenge to Network-1's indirect infringement allegations, which are properly plead in the Amended Complaint. *See* Dkt 25 ¶¶82-90; Exh. 4.

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1 those facts is improbable, and that a recovery is very remote and unlikely." *Id.* (internal
2 quotations omitted). Plaintiff's claims may be dismissed only when plaintiff's explanation
3 is implausible—the factual allegations need only "plausibly suggest an entitlement to
4 relief." *Iqbal*, 556 U.S. at 680.

5 **II. THE AMENDED COMPLAINT CONTAINS FACTS WHICH, ACCEPTED AS**
6 **TRUE, STATE PLAUSIBLE CLAIMS FOR INDIRECT INFRINGEMENT.**

7 **A. Network-1's indirect infringement claims should not be dismissed if it is plausible that Hikvision knew of the '930 patent and patent infringement.**

8 Pleading indirect infringement requires plausible, factual allegations that the defendant
9 knew of the infringed patent and of the infringing acts, or was willfully blind to these facts.
10 *Global-Tech*, 563 U.S. at 765-66; 35 U.S.C. § 271(b), (c). If it is plausible—i.e., if there is a
11 "reasonable inference" based on the facts alleged, accepted as true—that these knowledge
12 requirements are satisfied, then Hikvision's Motion should be denied. *Ashcroft*, 556 U.S. at 677-
13 79. Only if the knowledge requirements are implausible should the Motion be granted. *Id.*

14 **B. The Amended Complaint alleges facts, which accepted as true, make it**
15 **plausible that Hikvision knew of the '930 patent.**

16 The Amended Complaint alleges that "Defendant knew of … the '930 Patent." Dkt. 25
17 ¶84. It supports this conclusion with fifty-seven paragraphs of detailed, factual allegations. Dkt.
18 25 ¶¶24 –76; 84-89. These allegations make it plausible that Hikvision knew of the '930 patent.
19 First, if a patent is widely known and recognized for fifteen years as a "hugely important"
20 patent in a tight-knit industry, it is plausible that a business person, in house attorney, marketing
21 person, or engineer at a company in that tight-knit industry would know about the hugely
22 important patent. *See InvestPic, LLC v. FactSet Research Sys.*, No. 10-1028-SLR, 2011 U.S. Dist.
23 LEXIS 112891, at *6-7 (D. Del. Sep. 30, 2011) (denying motion to dismiss under 12(b)(6)
24 because "if a patent is 'publicly' known, one can infer (i.e., it is more probably true than not) that
25 an individual defendant had knowledge of it."). As alleged in the Amended Complaint, it is
26 plausible that Hikvision knew of the '930 patent because "[s]ince 2005, the '930 Patent (often
27 referred to in the Power over Ethernet industry as the 'Remote Power Patent'), has been widely
28

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