IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

COLLABO INNOVATIONS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 16-197-SLR-SRF
	)	
OMNIVISION TECHNOLOGIES, INC.,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION

I. INTRODUCTION

On March 29, 2016, plaintiff Collabo Innovations, Inc. ("Collabo" or "plaintiff") filed this action against defendant OmniVision Technologies, Inc. ("OmniVision" or "defendant"), alleging infringement of United States Patent Nos. 7,411,180 ("the '180 patent"), 8,592,880 ("the '880 patent"), 7,944,493 ("the '493 patent"), 7,728,895 ("the '895 patent"), and 8,004,026 ("the '026 patent") (collectively, the "patents-in-suit"). (D.I. 1) Pending before the court are OmniVision's motion to transfer venue to the Northern District of California pursuant to 28 U.S.C. § 1404(a) (D.I. 8), and OmniVision's motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) (D.I. 19). For the following reasons, I recommend that the court deny OmniVision's motion to transfer and grant-in-part OmniVision's motion to dismiss Collabo's claims for indirect infringement.

II. BACKGROUND

Collabo is a Delaware corporation with its principal place of business in Costa Mesa, California. (D.I. 14 at ¶ 1) OmniVision is a Delaware corporation maintaining its principal place of business in Santa Clara, California. (*Id.* at ¶ 2) On August 12, 2008, the '180 patent, entitled "Solid state image sensor with transparent film on micro-lenses and offsetting positions

of micro-lenses and color filters from a central portion of a corresponding light receiving area," was issued by the U.S. Patent and Trademark Office ("PTO"). (*Id.* at ¶ 6) On November 26, 2013, the '880 patent, entitled "Solid-State Imaging Device," was issued by the PTO. (*Id.* at ¶ 7) The '493 patent, entitled "Solid-State Imaging Device with Specific Contact Arrangement," was issued by the PTO on May 17, 2011. (*Id.* at ¶ 8) On June 1, 2010, the PTO issued the '895 patent, entitled "Solid-state image sensing device having shared floating diffusion portions." (*Id.* at ¶ 9) The '026 patent, entitled "Solid-State Imaging Device," was issued by the PTO on August 23, 2011. (*Id.* at ¶ 10) Collabo is the sole owner by assignment of the patents-in-suit. (*Id.* at ¶¶ 6-10)

Collabo filed its original complaint against OmniVision in this case on March 29, 2016, alleging direct and indirect infringement of the patents-in-suit. (D.I. 1) On May 17, 2016, OmniVision filed a motion to dismiss Collabo's claims for indirect infringement. (D.I. 5) Collabo responded by filing an amended complaint on June 3, 2016, alleging direct and indirect infringement of the patents-in-suit. (D.I. 14) OmniVision filed the pending motion to dismiss the claims for indirect infringement set forth in the amended complaint on June 20, 2016. (D.I. 19) For each of the five asserted patents, Collabo makes identical allegations regarding induced and contributory infringement:

> Upon information and belief, Defendant has been and continues to actively and knowingly induce, with specific intent, infringement of the '180 patent under 35 U.S.C. § 271(b) and contributes to the infringement of the '180 patent under 35 U.S.C. § 271(c), by making, using, offering for sale, selling, and/or importing image sensors, including, but not limited to, the OmniVision OV7740 Image Sensor, and related products and technologies, including, but not limited to, camera modules in products such as the Nintendo Wii U Gamepad Console.

(D.I. 14 at ¶ 18; *see also* ¶¶ 25 ['880 patent], 32 ['493 patent], 39, 41 ['895 patent], 48, 50 ['026 patent]). The amended complaint sets forth the following allegations regarding Collabo's knowledge of the patents-in-suit:

> Upon information and belief, the products containing these semiconductor devices have no substantial non-infringing uses, and Defendant had knowledge of the non-staple nature of the products containing these semiconductor devices and the '180 patent at least by the filing of the Original Complaint identifying the '180 patent and products accused of infringement.

(*Id.* at ¶ 19; *see also* ¶¶ 26 ['880 patent], 33 ['493 patent], 42 ['895 patent], 51 ['026 patent])

III. STANDARDS OF REVIEW

A. Transfer of Venue

Section 1404(a) of Title 28 of the United States Code grants district courts the authority to transfer venue "[f]or the convenience of parties and witnesses, in the interests of justice . . . to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). Much has been written about the legal standard for motions to transfer under 28 U.S.C. § 1404(a). *See, e.g.*, *In re Link_A_Media Devices Corp.*, 662 F.3d 1221 (Fed. Cir. 2011); *Jumara v. State Farm Ins. Co.*, 55 F.3d 873 (3d Cir. 1995); *Helicos Biosciences Corp. v. Illumina, Inc.*, 858 F. Supp. 2d 367 (D. Del. 2012).

Referring specifically to the analytical framework described in *Helicos*, the court starts with the premise that a defendant's state of incorporation has always been "a predictable, legitimate venue for bringing suit" and that "a plaintiff, as the injured party, generally ha[s] been 'accorded [the] privilege of bringing an action where he chooses.'" 858 F. Supp. 2d at 371 (quoting *Norwood v. Kirkpatrick*, 349 U.S. 29, 31 (1955)). Indeed, the Third Circuit in *Jumara* reminds the reader that "[t]he burden of establishing the need for transfer . . . rests with the

movant" and that, "in ruling on defendants' motion, the plaintiff's choice of venue should not be lightly disturbed." 55 F.3d at 879 (citation omitted).

The Third Circuit goes on to recognize that,

> [i]n ruling on § 1404(a) motions, courts have not limited their consideration to the three enumerated factors in § 1404(a) (convenience of parties, convenience of witnesses, or interests of justice), and, indeed, commentators have called on the courts to "consider all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interests of justice be better served by transfer to a different forum."

Id. (citation omitted). The Court then describes some of the "many variants of the private and public interests protected by the language of § 1404(a)." *Id.*

> The private interests have included: plaintiff's forum of preference as manifested in the original choice; the defendant's preference; whether the claim arose elsewhere; the convenience of the parties as indicated by their relative physical and financial condition; the convenience of the witnesses – but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and the location of books and records (similarly limited to the extent that the files could not be produced in the alternative forum).
>
> The public interests have included: the enforceability of the judgment; practical considerations that could make the trial easy, expeditious, or inexpensive; the relative administrative difficulty in the two fora resulting from court congestion; the local interest in deciding local controversies at home; the public policies of the fora; and the familiarity of the trial judge with the applicable state law in diversity cases.

Id. (citations omitted).

B. Failure to State a Claim

Rule 12(b)(6) permits a party to move to dismiss a complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). When considering a Rule 12(b)(6) motion to dismiss, the court must accept as true all factual allegations in the complaint and view them in the light most favorable to the plaintiff. *Umland v. Planco Fin. Servs.*, 542 F.3d 59, 64 (3d Cir. 2008).

To state a claim upon which relief can be granted pursuant to Rule 12(b)(6), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Although detailed factual allegations are not required, the complaint must set forth sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). A claim is facially plausible when the factual allegations allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 663; *Twombly*, 550 U.S. at 555-56.

When determining whether dismissal is appropriate, the court must take three steps.[1] *See Santiago v. Warminster Twp.*, 629 F.3d 121, 130 (3d Cir. 2010). First, the court must identify the elements of the claim. *Iqbal*, 556 U.S. at 675. Second, the court must identify and reject conclusory allegations. *Id.* at 678. Third, the court should assume the veracity of the well-pleaded factual allegations identified under the first prong of the analysis, and determine whether they are sufficiently alleged to state a claim for relief. *Id.*; *see also Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011). The third prong presents a context-specific inquiry that "draw[s] on [the court's] experience and common sense." *Id.* at 663-64; *see also Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). As the Supreme Court instructed in *Iqbal*, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not 'show[n]' - 'that the pleader is entitled to relief.'" *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

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[1] Although *Iqbal* describes the analysis as a "two-pronged approach," the Supreme Court observed that it is often necessary to "begin by taking note of the elements a plaintiff must plead to state a claim." 556 U.S. at 675, 679. For this reason, the Third Circuit has adopted a three-pronged approach. *See Santiago v. Warminster Twp.*, 629 F.3d 121, 130 n.7 (3d Cir. 2010); *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011).

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