

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LITL LLC,

Plaintiff,

v.

DELL TECHNOLOGIES INC. and DELL
INC.,

Defendant.

Civil Action No. 23-121-RGA

MICROSOFT CORPORATION,

Intervenor-Plaintiff,

v.

LITL LLC,

Intervenor-Defendant.

MEMORANDUM ORDER

Before me is Defendants' Motion to Dismiss Plaintiff's Indirect and Willful Infringement Claims in its First Amended Complaint. (D.I. 19). I have considered the parties' briefing. (D.I. 20, 21, 22).

I. BACKGROUND

In the First Amended Complaint ("FAC"), Plaintiff LiTL alleges Defendants Dell Technologies Inc. ("Dell Technologies") and Dell Inc. ("Dell") infringe one or more claims of U.S. Patent Nos. 8,289,688 ("the '688 patent"); 8,624,844 ("the '844 patent"); 9,563,229 ("the '229 patent"); 10,289,154 ("the '154 patent"); 9,003,315 ("the '315 patent"); 9,880,715 ("the '715 patent"); 10,564,818 ("the '818 patent"); and 8,612,888 ("the '888 patent") (collectively,

“the Asserted Patents.”). (D.I. 18 ¶ 2). The Asserted Patents relate to computing devices that can be used in multiple display modes. (*Id.* ¶ 18). Defendants move to dismiss the FAC for failure to state a claim of (1) pre-suit induced infringement under the ’688 and ’844 patents and (2) willful infringement under the ’688 and ’844 patents. (D.I. 19; D.I. 20 at 1).

II. LEGAL STANDARD

Rule 8 requires a complainant 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). Rule 12(b)(6) allows the accused party to bring a motion to dismiss the claim for failing to meet this standard. A Rule 12(b)(6) motion may be granted only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the complainant, a court concludes that those allegations “could not raise a claim of entitlement to relief.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

The factual allegations do not have to be detailed, but they must provide more than labels, conclusions, or a “formulaic recitation” of the claim elements. *Id.* at 555 (“Factual allegations must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact).”). Moreover, there must be sufficient factual matter to state a facially plausible claim to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The facial plausibility standard is satisfied when the complaint’s factual content “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (“Where a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.” (internal quotation marks omitted)).

III. DISCUSSION

This lawsuit is one in a series of patent infringement actions related to the Asserted Patents, including LiTL’s now dismissed lawsuit against Lenovo. *See LiTL LLC v. Lenovo (United States), Inc.*, C.A. No. 20-689-RGA, D.I. 119 (D. Del. Feb. 3, 2023). *Lenovo* involved similar arguments to the ones now raised by Defendants.

A. Pre-Suit Induced Infringement

In *Lenovo*, I set forth the relevant law. 2022 WL 610739, at *6–10 (D. Del. Jan. 21, 2022). “[T]o prove induced infringement, a plaintiff must prove the following elements: (1) direct infringement, (2) knowing inducement of infringement, and (3) specific intent to encourage another’s infringement.” *Id.* at 7. “To prove the second element, ‘knowing inducement of infringement,’ it logically follows that a plaintiff must prove the following sub-elements: (a) knowledge of the patent(s); (b) knowledge of the direct infringement of the patent(s); (c) action(s) taken to induce infringement; (d) knowledge the action(s) would induce the direct infringement; and (e) some causal link between the inducing acts and the direct infringement.” *Id.* (citations omitted). “At the pleading stage, a plaintiff must allege facts that would allow a factfinder plausibly to conclude each of these elements and sub-elements is satisfied.” *Id.*

Defendants argue that the FAC fails to plausibly allege Defendants had pre-suit knowledge of the ’688 and ’844 patents or pre-suit knowledge of infringement of those patents. (D.I. 20 at 8–18). For its pre-suit induced infringement claims, LiTL must allege sufficient facts to support an inference that Defendants had both knowledge of the asserted patents and knowledge of infringement prior to the commencement of this suit. Defendants do not challenge LiTL’s pleading of the other elements.

1. Pre-Suit Knowledge of the Patents

a. Prosecution of the Dell Products Patents

LiTL alleges that Dell Products, L.P. (“Dell Products”) is a wholly-owned subsidiary of Dell that holds the majority of Defendants’ patents and patent applications. (D.I. 18 ¶¶ 53–54). The FAC alleges facts showing that Dell Products and Dell have overlapping officers and patent attorneys and that Dell and its patent attorneys routinely prosecute Dell Products patent applications, including the applications discussed in the FAC. (*See id.* ¶¶ 55–69; 76–99, 133–54).

Defendants submit that outside counsel, rather than the two in-house Dell attorneys listed on the power of attorney, handled the substantive prosecution of the referenced patent applications. (D.I. 20 at 6, 10). I reject Defendants’ implication that they cannot be held accountable for patent prosecution handled by outside counsel. *See id.* It is reasonable to infer that Dell’s in-house counsel is aware of actions taken on Dell’s behalf by the external law firm that Dell hired. Failure to be so aware would raise questions about willful blindness. *See Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 769 (2011) (“The defendant must subjectively believe that there is a high probability that a fact exists and . . . the defendant must take deliberate actions to avoid learning of that fact.”). I therefore find it proper to impute knowledge gained during prosecution of the Dell Products patent applications to Defendants.

b. The ’688 Patent

LiTL has alleged sufficient facts to support a plausible inference that Defendants had pre-suit knowledge of the ’688 patent.

The ’688 patent is cited on the face of four Dell Products patents. (D.I. 18 ¶¶ 77, 82, 87, 91). The published version of the patent application that issued as the ’688 patent (“the ’832

publication”) is cited on the face of one Dell Products patent. (*Id.* ¶ 95). Dell Products identified the ’688 patent in three Information Disclosure Statements it submitted to the USPTO. (*Id.* ¶¶ 75, 86, 90). The USPTO examiner cited the ’688 patent in a rejection of one Dell Products patent application and the ’832 publication in a rejection of another. (*Id.* ¶ 81; *id.* ¶ 94).

Dell Inc. has cited to the ’688 patent four times and to the ’832 publication two times, and LiTL points to 140 citations to the ’688 patent and 168 citations to the ’832 publication in patents and publications by “major players” in the personal computing industry to show the ’688 patent is well-known in the industry. (*Id.* ¶¶ 97–98). These statistics adequately support the conclusion. *See Lenovo*, 2022 WL 610739, at *6–10.

Taken together, these allegations plausibly support an inference that Defendants had pre-suit knowledge of the ’688 patent.

c. The ’844 Patent

LiTL has alleged sufficient facts to support a plausible inference that Defendants had pre-suit knowledge of the ’844 patent.

The ’844 patent is cited on the face of one Dell Products patent. (D.I. 18 ¶ 138). The published version of the patent application that issued as the ’844 patent (“the ’012 publication”) is cited on the face of two Dell Products patents. (*Id.* 18 ¶¶ 144, 151). The USPTO examiner cited the ’012 publication in rejections of three different Dell Products patent applications. (*Id.* ¶¶ 134, 135, 143, 149). The file wrapper of one Dell Products patent application indicates the examiner identified the ’844 patent in a prior art search. (*Id.* ¶ 137).

Dell Inc. has cited to the ’844 patent two times and to the ’012 publication two times, and LiTL points to fifty-one citations to the ’844 patent and sixty-nine citations to the ’012

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