

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BLITZSAFE TEXAS, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 2:15-cv-1274-JRG-RSP
	§	[Lead Case]
VOLKSWAGEN GROUP OF AMERICA,	§	Case No. 2:15-cv-1278-JRG-RSP
INC. & VOLKSWAGEN GROUP OF	§	[Member Case]
AMERICA CHATTANOOGA	§	
OPERATIONS, LLC.,	§	
	§	
Defendants.	§	

REPORT AND RECOMMENDATION

Before the Court is Defendants Volkswagen Group of America, Inc. (“VWGoA”) and Volkswagen Group of America Chattanooga Operations, LLC’s (“VWGoA Operations”) (collectively, “the VW Defendants”) Motion to Dismiss Plaintiff Blitzsafe Texas, LLC’s (“Blitzsafe”) First Amended Complaint for Failure to State a Claim. (Dkt. No. 24.) The Court has considered the arguments and **RECOMMENDS** the Motion to Dismiss (Dkt. No. 24) be **DENIED**.¹

APPLICABLE LAW

A. Motion to dismiss standard

In assessing a motion to dismiss under Rule 12(b)(6), the Court must decide if a complaint contains “enough factual matter” which, if taken as true, would “state a claim for relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Bowlby v. City of*

¹ Docket Numbers 22 and 24 are filed in Case No. 2:15-cv-1278-JRG-RSP. Docket Numbers 33, 37, and 38 are filed in Case No. 2:15-cv-1274-JRG-RSP.

Aberdeen, 681 F.3d 215, 217 (5th Cir. 2012) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Plausibility should not be treated as a “probability requirement at the pleading state; it simply calls for enough fact[s] to raise a reasonable expectation that discovery will reveal” the defendant is liable for the misconduct alleged. *In re Bill of Lading Transmission & Processing Sys. Patent Lit.*, 681 F.3d 1323, 1341 (Fed. Cir. 2012) (quoting *Twombly*, 550 U.S. at 556).

In considering a motion to dismiss, the Court must assume that all well-plead facts as true and view those facts in the light most favorable to the plaintiff. *Bowlby*, 681 F.3d at 218. The Court may consider “the complaint, any documents attached to the complaint, and any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint.” *Lone Star Fund V (U.S.) L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010).

B. Infringement standards

A claim of literal infringement requires a showing that “each and every limitation set forth in a claim appears in the accused product.” *Becton Dickinson & Co. v. C.R. Bard, Inc.*, 922 F.2d 792, 796 (Fed. Cir. 1990). A claim of induced infringement requires (1) an act of direct infringement by another and (2) a defendant who knowingly induced that direct infringement with specific intent to encourage the other’s infringement. 35 U.S.C. § 271(b); *see DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1306 (Fed. Cir. 2006) (“[I]nducement requires that the alleged infringer knowingly induced infringement and possessed specific intent to encourage another’s infringement.”). A claim of contributory infringement requires (1) an act of direct infringement, (2) a defendant who “knew that the combination for which its components were especially made was both patented and infringing,” and (3) the defendant having provided components which

have “no substantial non-infringing uses.” 35 U.S.C. § 271(c); *Cross Med. Prods., Inc. v. Medtronic Sofamore Danek, Inc.*, 424 F.3d 1293, 1312 (Fed. Cir. 2005).

C. Willful infringement standard

Section 284 of the Patent Act provides that a “court may increase the damages up to three times the amount found or assessed.” 35 U.S.C. § 284. An award of enhanced damages is “not to be meted out in a typical infringement case.” *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1932 (2016). Instead, it is to be reserved as a “sanction for egregious infringement behavior” which can be described as “willful, wanton, malicious bad-faith, deliberate, consciously wrongful, flagrant, or—indeed—characteristic of a pirate.” *Halo*, 136 S. Ct. at 1932. Enhanced damages do not always follow a “finding of egregious misconduct.” *Halo*, 136 S. Ct. at 1933. A court’s discretion on whether to award enhanced damages, and in what amount, must “take into account the particular circumstances of each case.” *Halo*, 136 S. Ct. at 1933. An award of enhanced damages in any case must be supported by a preponderance of the evidence. *Halo*, 136 S. Ct. at 1934.

ANALYSIS

A. Infringement

The VW Defendants assert that the First Amended Complaint (“the Complaint”) does not allege enough facts to state a claim for direct infringement. The VW Defendants say that in order to state a claim for direct infringement, the Complaint must list the specific claims alleged to be infringed and contend “how the offending products [infringe] the claims recited in the [Complaint].” (Dkt. No. 24 at 6 (quoting *Macronix, Int’l Co., Ltd. v. Spansion Inc.*, 4 F. Supp. 3d 797, 804 (E.D. Va. 2014).)

The VW Defendants also say the Complaint does not include enough detail to state a claim for induced infringement. The VW Defendants note a claim for induced infringement requires direct infringement by another. The VW Defendants contend, for the reason above, that the Complaint does not allege sufficient facts to state a claim for direct infringement. The VW Defendants specifically assert the Complaint must “plead [] facts from which it can be inferred that the[] [accused] products include the particular combinations of subsystems, microcontrollers, program code, interfaces, data, and control commands as required by any one of the 220 claims of the Blitzsafe patents.” (Dkt. No. 24 at 11.)

The VW Defendants finally assert the Complaint does not contain sufficient detail to allege a claim for contributory infringement. The VW Defendants say the Complaint includes nothing more than conclusory statements that the “components sold or offered for sale” “are not a staple article or commodity of commerce suitable for substantial non-infringing use.” (Dkt. No. 24 at 12.)

The Court finds the Complaint states a plausible claim of direct infringement. The Complaint alleges the VW Defendants “manufacture, import and/or sell . . . an ‘infotainment’ system, in Volkswagen branded vehicles” and “an audio and multimedia integration system, called Multi Media Interface™ or MMI . . . in Audi-branded vehicles” (Dkt. No. 22 at ¶¶ 10–11.) The Complaint describes the infotainment and MMI systems (“Accused Systems”) in this way:

The Volkswagen infotainment system and MMI support the integration of third-party external audio devices, such as MP3 players, with the car radio. The Volkswagen infotainment system and MMI permit an end user to connect a third-party external audio or multimedia device to the car radio by wire, such as through a USB port or auxiliary port, or wirelessly, such as through Bluetooth. Once connected, the end user may control the third-party external audio device using the car radio’s controls, and the audio from the external audio device may be played through the car radio and speakers.

(Dkt. No. 22 at ¶ 12.)

In plainer English, the Complaint says the Accused Systems allow devices such as MP3 players to be integrated with a car radio using USB or Bluetooth. The integration makes the MP3 player controllable from the car radio and makes the audio from the MP3 player playable from the car's speakers.

This description of the Accused Systems states facts from which a plausible claim of direct infringement of the claims in U.S. Patent No. 7,489,786 (the "'786 patent") and U.S. Patent No. 8,155,342 can be inferred. For example, claim 1 of the '786 patent recites "a second connector electrically connectable to an after-market audio device external to the car stereo." ('786 patent col. 21, ll. 33–34.) This limitation contains two principal elements: (1) a "car stereo" and (2) "a second connector" "electrically connectable" to an "external" "after-market audio device."

The Complaint describes parts of the Accused Systems that can potentially satisfy both principal elements. First, the Complaint states a user's MP3 player can serve as the "external" "after-market audio device." Second, the Complaint says the infotainment or MMI system is "connectable" to the MP3 player. Either the infotainment or MMI system can serve as a "car stereo." Finally, the Complaint says the MP3 player is "connectable" to the infotainment or MMI system by USB. A USB link can serve as a "second connector."

The VW Defendants appear to recognize the Complaint includes these facts. Thus, the brass tacks of their Motion focus on showing that the Complaint does not allege elements such as a "particular combinations of subsystems, microcontrollers, program code, interfaces, data, and control commands." (Dkt. No. 24 at 11; *see also* Dkt. No. 24 at 8 ("[T]he First Amended Complaint fails to plead any facts from which it can be plausibly inferred that the accused

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