IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

JAWBONE INNOVATIONS, LLC, **Plaintiff(s),** **v.** **APPLE INC.,** **Defendant(s).**	**Case No. 6:21-CV-00984-ADA** **PATENT CASE** **JURY TRIAL DEMANDED**

DEFENDANT'S REPLY IN SUPPORT OF ITS
RENEWED MOTION TO DISMISS FIRST AMENDED COMPLAINT
PURSUANT TO FED. R. CIV. P. 12(b)(6) FOR FAILURE TO STATE A CLAIM

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After Jawbone Innovations amended its complaint, the allegations of indirect and willful infringement remained inadequately pled. Apple renewed its motion to dismiss. In its opposition, Jawbone Innovations offers no compelling reason or authority for finding its speculations and conclusory recitals of claim elements suffice. The first amendment complaint ("FAC") fails to state a claim for willful and indirect infringement at least because the allegations fail to lead to a plausible inference that Apple knew of the asserted patents. The willful infringement claim fails for another reason—the FAC contains no factual allegations that Apple deliberately and intentionally infringed. As for indirect infringement, Jawbone Innovations did not allege Apple had the specific intent to induce infringement, an element separate from knowledge, which Jawbone Innovations also failed to sufficiently plead. Despite having the benefit of Apple's motion to dismiss the original complaint before it when Jawbone Innovations amended its complaint, the willful and indirect infringement allegations fall far short of the pleading standard. Jawbone Innovations does not deserve a third chance. Apple requests the Court grant the motion to dismiss the claims for willful and indirect infringement with prejudice.

I. ARGUMENT

A. Jawbone Innovations Fails to Allege Facts Showing Apple Had Pre-Suit Knowledge of the Asserted Patents

Jawbone Innovations alleges two theories for how Apple allegedly came to have knowledge of the asserted patents. Neither leads to a plausible inference that Apple knew of the asserted patents—a deficiency that is fatal to its willful and indirect infringement claims.[1]

[1] Jawbone Innovations requests the Court apply its reasoning in *Frac Shack Inc. v. AFT Petroleum (Texas) Inc.*, No. 7:19-cv-26-DC, 2019 WL 3818048 , at *2 (W.D. Tex. June 13, 2019), to deny Apple's motion because the original complaint put Apple on notice of the patents and Jawbone's infringement theories. (Opp. at 5.) Recently, another court has taken a different approach. *See Bos. Sci. Corp. v. Nevro Corp.*, No. CV 16-1163-CFC, 2021 WL 4262668, at *5 (D. Del. Sept. 20, 2021) (adopting the rule that the operative complaint in a lawsuit fails to state a claim for indirect and willful infringement where the defendant's alleged knowledge of the asserted patents is based

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