

THE HONORABLE JAMES L. ROBERT

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION**

CYWEE GROUP LTD.,

Plaintiff,

v.

HTC CORPORATION and HTC AMERICA,

INC.,

Defendants.

Civil Action No. 2:17-cv-00932-JLR

PLAINTIFF’S OPPOSITION TO
DEFENDANTS’ MOTION TO DISMISS

I. INTRODUCTION

Defendants’ (“HTC”) Motion to Dismiss CyWee Group Ltd.’s (“CyWee”) Amended Complaint should be denied because the Court may reasonably infer from the complaint and attached materials that HTC actively induces infringement by its customers and end users. HTC’s motion focuses myopically on limited portions of the complaint, while ignoring other portions and materials attached to the complaint which conclusively illustrate infringement by others. More specifically, CyWee’s complaint includes two detailed claim charts illustrating how

1 its claims are infringed and a declaration of its expert, Dr. Nicholas Gans, showing how the
2 accused devices infringe as a matter of course through their ordinary and expected use.

3 II. LEGAL STANDARD

4 Under Federal Rule of Civil Procedure 12(b)(6), dismissal of a complaint is “appropriate
5 only where the complaint lacks a cognizable legal theory or sufficient facts to support a
6 cognizable legal theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th
7 Cir. 2008). In reviewing a motion to dismiss, a court must accept as true all facts alleged in the
8 complaint and draw all reasonable inferences in favor of the plaintiff. *Skyworks Sols. Inc. v.*
9 *Kinetic Techs. Inc.*, No. C 14-00010 SI, 2014 WL 1339829, at *2 (N.D. Cal. Apr. 2, 2014)
10 (citing *al-Kidd v. Ashcroft*, 580 F.3d 949, 956 (9th Cir. 2009)). In so reviewing, “[c]ourts must
11 consider the complaint *in its entirety*, as well as other sources courts ordinarily examine when
12 ruling on Rule 12(b)(6) motions to dismiss, in particular, *documents incorporated into the*
13 *complaint by reference*, and matters of which a court may take judicial notice.” *Tellabs, Inc. v.*
14 *Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (emphases added).

15 To state a claim for induced infringement, a plaintiff must allege facts plausibly showing
16 (1) the defendant knew of the patent, (2) the defendant knew that the induced acts constitute
17 patent infringement, and (3) that the defendant specifically intended its customers to infringe.
18 *Brooks Mfg. Co. v. Dis-Tran Wood Prod., LLC*, No. C11-0309JLR, 2011 WL 13127155, at *2
19 (W.D. Wash. Nov. 3, 2011); *see also Commil USA, LLC v. Cisco Sys.*, ___ U.S. ___, 135 S. Ct.
20 1920, 1926 (2015) (describing knowledge requirements); *In re Bill of Lading Transmission and*
21 *Processing System Patent Litig.*, 681 F.3d 1323, 1339 (Fed. Cir. 2012) (describing specific intent
22 requirement). This standard is also met where a plaintiff has “willfully blinded itself to the
23 infringing nature” of the acts it encouraged others to make. *Global-Tech Appliances, Inc. v. SEB*
24 *S.A.*, 563 U.S. 754, 771 (2011); *see also Windy City Innovations, LLC v. Microsoft Corp.*, 193 F.
25 Supp. 3d 1109, 1115 (N.D. Cal. 2016) (holding same).

1 **III. ARGUMENT**

2 **A. The Amended Complaint Properly Pleads HTC’s Knowledge of the**
3 **Patents-in-Suit**

4 HTC does not deny that CyWee adequately pled HTC’s knowledge of the patents-in-suit.
5 The amended complaint states that HTC is aware of both patents-in-suit “as a result of the filing
6 of this action.” Courts in this circuit routinely hold that post-suit knowledge is sufficient to
7 sustain a finding of indirect infringement. *E.g., CAP Co., Ltd. v. McAfee, Inc.*, Nos. 14-cv-05068
8 & 14-cv-05071, 2015 WL 3945875, at *4–5 (N.D. Cal. June 26, 2015); *TeleSign Corp. v. Twilio,*
9 *Inc.*, No. CV 15-3240 PSG (SSX), 2015 WL 12765482, at *8 (C.D. Cal. Oct. 16, 2015);
10 *MyMedicalRecords, Inc. v. Jardogs, LLC*, 1 F. Supp. 3d 1020, 1023-26 (C.D. Cal. 2014).

11 **B. The Amended Complaint and Attached Claim Charts Demonstrate that**
12 **HTC Knew or Should Have Known of Infringement by its Customers and**
13 **End Users**

14 Induced infringement requires that the defendant knew or should have known that its
15 customers and/or end users infringed the patent-in-suit. *See DSU Med. Corp. v. JMS Co.*, 471
16 F.3d 1293, 1304 (Fed. Cir. 2006). When determining whether a patentee has informed a
17 defendant of infringement by others, all reasonable inferences must be made in the patentee’s
18 favor. *Intellicheck Mobilisa, Inc. v. Wizz Sys., L.L.C.*, No. C15-0366JLR, 2016 WL 258524, at *4
19 (W.D. Wash. Jan. 21, 2016) (“Rather, drawing all reasonable inferences in Intellicheck's favor,
20 the court can infer from Intellicheck's allegations regarding the December 20, 2014, letter that
21 IDScan knew its customers were infringing the Patents-in-Suit.”); *In re Bill of Lading*
22 *Transmission & Processing Sys. Patent Litig.*, 681 F.3d 1323, 1340 (Fed. Cir. 2012) (a court may
23 not “choose among competing inferences as long as there are sufficient facts alleged to render
24 the non-movant’s asserted inferences plausible.”).

25 HTC’s claim that CyWee alleges no facts showing how any third party’s use constitutes
26 infringement is without merit. Along with both its original complaint (Dkt. No. 1) and amended
 complaint (Dkt. No. 20), CyWee attached two claim charts showing infringement of two

1 illustrative claims: claim 14 of U.S. Patent No. 8,441,438 and claim 10 of U.S. Patent No.
2 8,771,978. Dkt. Nos. 1-1, 20-1, 20-2. Both charted claims are method claims and CyWee’s charts
3 show how a person using an exemplar accused device, the HTC One M9, infringes the patents-
4 in-suit when using the device. As this Court has stated, a method claim is infringed when the
5 process is performed. *Brooks Mfg. Co. v. Dis-Tran Wood Prod., LLC*, No. C11-0309JLR, 2011
6 WL 13127155, at *4 (W.D. Wash. Nov. 3, 2011) (“A reasonable inference from this allegation
7 [that Dis-Tran’s customers use the accused devices to practice the patented method] is that each
8 of Dis-Tran’s customers performed every step in the method, thereby directly infringing the
9 patent.”) (citing *Joy Techs., Inc. v. Flakt, Inc.*, 6 F.3d 770, 773 (Fed. Cir. 1993)).

10 Several courts have held that claim charts—such as those filed by CyWee—sufficiently
11 inform a defendant that its product infringes for purposes of induced infringement. For example,
12 in *Intellicheck Mobilisa, Inc. v. Wizz Sys., L.L.C.*, No. C15-0366JLR, 2016 WL 258524, at *3
13 (W.D. Wash. Jan. 21, 2016), this Court drew a “reasonable inference” that the defendant “knew
14 its customers were infringing the Patents-in-Suit” based on a pre-suit letter sent to that defendant
15 along with a claim chart providing examples of such infringement. Similarly, in *Largan*
16 *Precision Co, Ltd. v. Genius Electronics Optical Co., Ltd.*, No. 13- 2502, 2013 WL 5934698, at
17 *3 (N.D. Cal. Nov. 4, 2013), the patent owner provided the accused inducer with a detailed claim
18 chart prior to filing the lawsuit. The claim chart “appear[ed] to explain in detail how [the accused
19 infringer’s] lenses, incorporated into the two identified [accused] products, read on the claims of
20 the patents-in-suit.” *Id.* at *4.

21 Further, CyWee’s amended complaint includes numerous and specific contentions
22 regarding use, which relate directly to CyWee’s claims. The following excerpts are exemplar:

23 39. The HTC 10 includes a 3-axis accelerometer that is capable of measuring
24 accelerations using a “Sensor Coordinate System” as described in the Android™
25 developer library. See [https://developer.android.com/guide/topics](https://developer.android.com/guide/topics/sensors/sensors_overview.html)
26 [sensors/sensors_overview.html](https://developer.android.com/guide/topics/sensors/sensors_overview.html) (describing “Sensor Coordinate System”).

1 44. The Android™ operating system that runs on the HTC 10 uses the
2 measurement from a 3-axis gyroscope included in the device.

3 45. The Android™ operating system that runs on the HTC 10 uses the
4 measurement from a 3-axis accelerometer and the measurement from a 3-axis
5 gyroscope to calculate an attitude of the device.

6 Dkt. No. 1 at 8. When these contentions are considered along with CyWee’s allegations regarding
7 induced infringement and its claim charts, the most reasonable inference is that HTC is well aware
8 of how its customers and end users infringe the charted methods.

9 **C. CyWee’s Complaint Sufficiently Alleges That HTC Specifically Intends for
10 its Customers and End Users to Infringe the Patents-in-Suit**

11 Regarding this element, to survive a motion to dismiss a claim of induced infringement, a
12 complaint need only contain facts that plausibly suggest the defendant had specific intent to
13 encourage others to infringe the patent. *In re Bill of Lading Transmission & Processing System
14 Patent Litig.*, 681 F.3d 1323, 1339 (Fed. Cir. June 7, 2012). The plaintiff need not prove intent,
15 but instead must merely provide enough facts from which intent can be reasonably inferred. *Id.*
16 The facts alleged must simply raise a reasonable expectation that discovery will ultimately reveal
17 the proof required. *Id.* at 1341. Further, “direct evidence is not required; rather, circumstantial
18 evidence may suffice.” *MEMC Elec. Materials, Inc. v. Mitsubishi Materials Silicon Corp.*, 420
19 F.3d 1369, 1378 (Fed. Cir. 2005) (internal quotation marks omitted). Indeed, “[t]he requisite
20 intent to induce infringement may be inferred from all of the circumstances.” *Water Techs. Corp.
21 v. Calco, Ltd.*, 850 F.2d 660, 669 (Fed. Cir. 1988).

22 It is well established that, in a case such as this, once a defendant has knowledge that its
23 products infringe, continued related activities including sales of infringing products and/or
24 providing instructions on infringing use can lead to a reasonable inference that the defendant had
25 the specific intent to infringe. *CreAgri, Inc. v. Pinnaclife Inc.*, No. 5:11-CV-06635-LHK, 2013
26 WL 3958379, at *4 (N.D. Cal. July 29, 2013) (“To the extent Pinnaclife continued these activities
after the patent was issued, the continued activities reflect an intent to infringe upon the ’599

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