

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CYWEE GROUP LTD.,

Plaintiffs,

v.

HTC CORPORATION; and HTC AMERICA,  
INC.,

Defendants.

CASE NO.: 2:17-cv-00932-JLR

**DEFENDANTS' REPLY BRIEF IN  
SUPPORT OF MOTION TO DISMISS  
PURSUANT TO RULE 12(b)(6)**

NOTE ON MOTION CALENDAR:  
November 17, 2017

JURY DEMAND

DEFENDANTS' REPLY BRIEF IN SUPPORT OF

WILSON SONSINI GOODRICH & ROSATI  
701 Fifth Avenue, Suite 5100

**I. INTRODUCTION**

CyWee concedes that it failed to expressly allege acts sufficient to support a claim of indirect infringement. Nevertheless, CyWee argues that the Court should deny HTC's motion to dismiss the inducement claims on the ground that the Court may reasonably infer from CyWee's Amended Complaint and attached materials that HTC actively induces infringement by its customers and end users. This argument is without merit. It is not enough for CyWee to simply rely on factual allegations that focus on direct infringement. The allegations do not address, even by inference, the requisite elements of induced infringement. None of the allegations that CyWee points to in its Opposition is sufficient to support an inference that HTC specifically intended and took affirmative steps to induce its customers to infringe. Further, CyWee's Opposition cannot rebut the clear showing in support of the motion to dismiss by introducing, for the first time, HTC-specific materials that could relate to the patented technology, but which were not part of the actual allegations of the Amended Complaint. *See Seoul Laser Dieboard Sys. Co.*, No. 12-cv-02427, 2013 WL 3761535, at \*5 (S.D. Cal. July 16, 2013).

For these reasons and others discussed below, the Court should grant HTC's motion to dismiss. However, because this case is still in its infancy without a schedule set, HTC does not oppose CyWee's request for leave to amend.

**II. CYWEE FAILS TO STATE A CLAIM FOR INDIRECT INFRINGEMENT**

The parties do not dispute that "[t]o state a claim for induced infringement, a plaintiff must allege facts plausibly showing (1) the defendant knew of the patent, (2) the defendant knew that the induced acts constitute patent infringement, and (3) that the defendant specifically intended its customers to infringe." Opp'n at 2 (citing *Brooks Mfg. Co. v. Dis-Tran Wood Prod., LLC*, No. 11-cv-00309, 2011 WL 13127155, at \*2 (W.D. Wash. Nov. 3, 2011)). "[I]nducement must involve the taking of affirmative steps to bring about the desired result." *Global-Tech. Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 760 (2011). However, rather than sufficiently pleading these elements, CyWee asks the Court to infer induced infringement from its allegations

1 of direct infringement—allegations that rely almost entirely on materials distributed by a third  
2 party. Third-party materials do not—and, indeed, cannot—support an inference regarding what  
3 HTC specifically intended its customers to do. Because CyWee’s direct infringement allegations  
4 are silent regarding HTC’s specific intent and affirmative steps to induce, CyWee fails to plead  
5 facts sufficient to plausibly show that HTC induced infringement and fails to satisfy the pleading  
6 requirements of *Twombly* and *Iqbal* for its indirect infringement claims.

7       **A. Because CyWee Relies on Third-Party Materials to Plead Direct**  
8       **Infringement, Inferring Specific Intent and Affirmative Steps by HTC Is**  
9       **Improper and Insufficient to Sustain a Claim of Inducement.**

9       Liability for induced infringement requires not only knowledge of the patents but  
10 knowledge that the allegedly induced acts constitute infringement. *Id.* at 764-766. Even if the  
11 Court finds that CyWee adequately pleaded knowledge that the induced acts constitute  
12 infringement, a claim for induced infringement “must contain facts plausibly showing that  
13 [Defendant] specifically intended [its] customers to infringe the [patent-in-suit] and knew that the  
14 customer’s acts constituted infringement.” *In re Bill of Lading Transmission and Processing Sys.*  
15 *Patent Litig.*, 631 F.3d 1323, 1339 (Fed. Cir. 2012); *see also Pragmatus AV, LLC v. TangoMe,*  
16 *Inc.*, No. 11-cv-01092, 2013 U.S. Dist. LEXIS 19075, at \*33 (D. Del. Feb. 13, 2013)  
17 (“inducement requires evidence of culpable conduct, directed to encouraging another’s  
18 infringement, not merely that the inducer had knowledge of the direct infringer’s activities”)  
19 (citation omitted). “Instead of requiring strict specific intent, then, courts typically allow juries to  
20 construct the required intentionality out of evidence that the defendant deliberately exploits the  
21 *potential* for the product to be used in infringement. Such evidence ordinarily consists of  
22 *knowledge* that the accused product may be and is used to infringe the patent-in-suit plus some  
23 other factor ***indicating the defendant’s desire to ‘attract users of a mind to infringe.’***” *Tierra*  
24 *Intellectual Borinquen, Inc. v. ASUS Computer Int’l, Inc.*, No. 13-cv-00038-JRG, 2014 U.S. Dist.  
25 LEXIS 28249, at \*11-12 (E.D. Tex. Mar. 3, 2014) (emphasis added) (citing *Metro-Goldwyn-*  
26 *Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 926 (2005)). “To plead allegations of  
27

1 specific intent sufficient to state an indirect infringement claim, the patentee need not cite  
2 statements from the accused infringer specifically instructing the direct infringer ‘to perform all  
3 of the steps of the patented method’; it is enough to cite examples where the accused infringer  
4 advertised benefits that can be achieved only through use of the asserted patent.” *CAP Co., Ltd.*  
5 *v. McAfee, Inc.*, Nos. 14-cv-05068 & 14-cv-05071, 2015 WL 3945875, at \*15-16 (N.D. Cal. June  
6 26, 2015) (citing *In re Bill of Lading*, 680 F.3d at 1341-42). Here, CyWee neither cites to  
7 statements from HTC specifically instructing the direct infringer to perform any steps of the  
8 patented method nor provides any examples where HTC advertised benefits that can be achieved  
9 only through the use of the Asserted Patents.

10 The only HTC “advertising” cited by CyWee are product descriptions listing all the  
11 major hardware components contained in HTC’s accused smartphones. *See* Opp’n at 6  
12 (“[T]hose claim charts specifically identify a product specification published by HTC in which it  
13 touts inclusion of an accelerometer, gyroscope, and magnetometer, which are key components of  
14 the patents-in-suit.”). As shown below, these technical specifications do not provide a  
15 reasonable inference that HTC specifically intended or intends to induce infringement by its  
16 customers:

Claim 14

A method for obtaining a resulting deviation including resultant angles in a spatial pointer reference frame of a three-dimensional (3D) pointing device utilizing a **six-axis motion sensor module** therein and subject to movements and rotations in dynamic environments in said spatial pointer reference frame, comprising the steps of:

**six-axis motion sensor module**

Technical Specifications		
<b>Size</b> 144.6 x 69.7 x 9.61 mm	<b>Weight</b> 157g	<b>Display</b> 5.0 inch, Full HD 1080p Corning® Gorilla® Glass
<b>CPU Speed</b> Qualcomm® Snapdragon™ 810 octa core 64-bit 4 x 2.0GHz + 4 x 1.5GHz	<b>Platform Android</b> Android™ with HTC Sense™	<b>SIM card Type</b> nano SIM
<b>Network<sup>1</sup></b> 2G/2.5G/GSM/GPRS/EDGE - 850/900/1800/1900 MHz 3G UMTS - 850/900/1900/2100 MHz 4G LTE - FDD: Bands 1,3,5,7,8,20,28 TDD: Bands 38, 40, 41	<b>Memory<sup>2</sup></b> ROM: 32GB / RAM: 3GB Extended memory: microSD™ up to 2TB	<b>Sensors</b> Ambient light sensor Proximity sensor Accelerometer Compass sensor Gyro sensor Magnetic sensor Sensor Hub
<b>Connectivity</b> NFC Bluetooth® 4.1 Wi-Fi®: 802.11 a/b/g/n/ac (2.4 & 5 GHz) DLNA® HDMI MHL 3.0 CIR 3.5 mm stereo audio jack micro-USB 2.0 (5-pin) port	<b>Sound</b> HTC BoomSound™ with Dolby Audio™	<b>Camera</b> <b>Main camera:</b> 20MP with sapphire cover lens auto-focus, BSI sensor f/2.2, 27.8mm lens 4K video recording <b>Front camera:</b> HTC UltraPixel™ BSI sensor f/2.0 26.8mm lens 1080p video recording
<b>Additional Features</b> Dual-tone metal unibody, Themes, HTC Sense™ Home, One Gallery, +Photo Editor	<b>Battery<sup>3</sup></b> Capacity: 2840 mAh <b>Talk time:</b> Up to 25.4 hours for 2G 21.7 hours for 3G <b>Standby time:</b> Up to 391 hours for 2G 402 hours for 3G	<b>Multimedia</b> Audio supported formats: <b>Playback:</b> .aac, .amr, .ogg, .m4a, .mid, .mp3, .wav, .wma, .flac, .ac3, .ec3, .eac3 <b>Recording:</b> .aac Video supported formats: <b>Playback:</b> .3gp, .3g2, .mp4, .wmv, .avi, .mkv <b>Recording:</b> .mp4

Source: <http://www.htc.com/us/smartphones/htc-one-m9/buy-b/#!carrier=spr&color=silver>

SUBJECT TO CHANGE

3

Am. Compl., Ex. A at 3.

In fact, the bulk of the remaining materials cited by CyWee are from a third-party source. Beyond generic stock photos of HTC’s accused smartphones and the aforementioned hardware component lists, CyWee’s claim charts are entirely based on documentation published by Google for Google’s Android operating system:

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