UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DYNAMIC DATA TECHNOLOGIES, LLC, Plaintiff, -against- DELL INC., Defendant.	:	**ORDER DENYING DEFENDANT'S MOTION TO DISMISS** 18 Civ. 10454 (AKH)

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ALVIN K. HELLERSTEIN, U.S.D.J.:

Plaintiff Dynamic Data Technologies, LLC sues Defendant Dell Inc., alleging infringement of fourteen patents relating to mechanisms for the manipulation of graphics and video data. Plaintiff filed this lawsuit on November 9, 2018. Defendant moved to dismiss, and Plaintiff filed its First Amended Complaint ("FAC") on February 4, 2019 (ECF No. 22). Defendant again moves for dismissal for failure to state a claim pursuant to Rule 12(b)(6) (ECF No. 44). For the reasons stated below, Defendant's motion to dismiss is denied.

I. The First Amended Complaint

The following facts are taken from the FAC, which I must "accept[] as true" for the purpose of this motion. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiff is a Delaware limited liability company, FAC ¶ 12, and Defendant is a Delaware corporation. FAC ¶ 15. Plaintiff manages a patent portfolio of over 1,000 patents, including patents that concern technologies arising from research and development by Koninklijke Philips N.V., commonly known as "Philips." FAC ¶¶ 9-10. As relevant to this lawsuit, Defendant designs, produces, and sells products that contain video compression and transmission technology, including graphics

processors with H.265/High Efficiency Video Coding ("HEVC") or processing functionality. The HEVC standard "requires processing edge data from edge-adaptive interpolation processing." *Id.* at ¶ 146. The products relevant to Count XI use a different processing functionality, called VP9. *Id.* at ¶ 489.

The FAC contains fourteen counts, each pertaining to one of the patents at issue ("the Accused Patents").[1] Plaintiff alleges that certain Dell products infringe its patents "by complying with the HEVC standard," *id.* at ¶ 145, or the VP9 standard. *Id.* at ¶ 490. The allegedly infringing technology is contained in the products' graphics processing units ("GPUs"), which are manufactured by third parties such as NVIDIA and Intel. *See, e.g.*, *id.* at ¶ 142. The FAC also alleges, on information and belief, that "any implementation of the HEVC standard would infringe" its patents. *Id.* at ¶ 162. Accordingly, because Defendant used and induced others to use products implementing these technologies, Plaintiff claims that Defendant is liable for infringement.

II. Discussion

Defendant argues that Plaintiff fails to plead direct infringement as to Count XI and certain products in Counts I-V, VII-X, and XIII, and fails to plead indirect infringement and willful infringement as to all counts. As to Count XI, involving claim 6 of the '230 patent, it argues that the FAC merely parrots the language of claim 6, and fails to adequately allege "that each element of any asserted claim is present in the accused Dell products." Def.'s Br. 11 (ECF No. 45). As to Counts I-V, VII-X, and XIII, it argues that only a small subset of the accused

[1] U.S. Patent Nos.: 8,189,105 (the "'105 Patent"); 7,929,609 (the "'609 Patent"); 8,135,073 (the "'073 Patent"); 8,073,054 (the "'054 Patent"); 6,774,918 (the "'918 Patent"); 8,184,689 (the "'689 Patent"); 6,996,177 (the "'177 Patent"); 7,010,039 (the "'039 Patent"); 8,311,112 (the "'112 Patent"); 7,894,529 (the "'529 Patent"); 7,519,230 (the "'230 Patent"); 7,542,041 (the "'041 Patent"); 7,571,450 (the "'450 Patent"); and 7,750,979 (the "'979 Patent").

Dell products are alleged to contain the infringing HEVC-compliant video processing technology. As to all counts, it alleges that the FAC fails to state a claim for indirect infringement or willful infringement.

a. Legal Standard

In ruling on a motion to dismiss, the court must accept the factual allegations in the complaint as true and draw all reasonable inferences in favor of the nonmoving party. *Gregory v. Daly*, 243 F.3d 687, 691 (2d Cir. 2001), *as amended* (Apr. 20, 2001). To survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* In a patent infringement case, the complaint must "place the alleged infringer on notice of what activity . . . is being accused of infringement." *Lifetime Indus., Inc. v. Trim-Lok, Inc.*, 869 F.3d 1372, 1379 (Fed. Cir. 2017) (internal citations and quotations omitted).

b. Direct Infringement

i. Count XI

The FAC alleges that the following Dell products used the VP9 standard:

> Chromebook 11, Chromebook 13 3380, Chromebook 5190 Education, Inspiron Chromebook 11 3181, Chromebook 11 3180, Chromebook 3120, Chromebook 7310, Inspiron Chromebook 11 3181 2-in-1, Chromebook 11 3189, Chromebook 5190 2-in-1, Inspiron Chromebook 7486, ChromeBox For Meetings, Dell Chromebox 3010, Inspiron Chromebook 7486, Inspiron Chromebook 11 3181, and Inspiron Chromebook 11 3181 2-in-1.

FAC ¶ 489. It alleges that Defendant's VP9-compliant products "enable the use of segmentation where it is used to identify background and foreground areas in encoded video content." *Id.* at

¶ 496 (internal quotation marks omitted). It further alleges, *inter alia*, that Defendant infringed the '230 Patent by "making, using, offering for sale, and/or selling technology for selecting a background motion vector for a pixel in an occlusion region of an image." *Id.* at ¶ 497.

Defendant argues that the FAC's allegations merely parrot the claim language, and includes the following chart in support of its argument:

'230 Patent, Claim 6 (Dkt. 1, Ex. 1)	**Amended Complaint (Dkt. 22)**
6. A method of selecting a background motion vector for a pixel in an occlusion region of an image, from a set of motion vectors being computed for the image, the method comprising:	497. On information and belief, Dell has directly infringed and continues to directly infringe the '230 patent by, among other things, making, using, offering for sale, and/or selling technology for **selecting a background motion vector for a pixel in an occlusion region of an image**, including but not limited to the Dell '230 Products. 499. On information and belief, one or more of the Dell '230 Products include technology for **selecting a background motion vector for a pixel in an occlusion region of an image.**
using a processor to perform the steps of: computing a model-based motion vector for the pixel on basis of a motion model being determined on basis of a part of (402-436) a motion vector field (400) of the image;	493. On information and belief, one or more of the Dell '230 Products **use a processor to compute a model-based motion vector for the pixel on the basis of a motion model being determined on the basis of a part of a motion vector field of an image.**
using a processor to perform the steps of: . . . comparing the model-based motion vector with each of the motion vectors of the set of motion vector	494. On information and belief, one or more of the Dell '230 Products **use a processor to compare the model-based motion vector with each of the motion vectors of the set of motion vectors.**
using a processor to perform the steps of: . . . selecting a particular motion vector of the set of motion vectors on basis of the comparing and for assigning the particular motion vector as the background motion vector.	495. On information and belief, one or more of the Dell '230 Products **use a processor to select a particular motion vector of the set of motion vectors on the basis of the comparing and for assigning the particular motion vector as the background motion vector.**

Def.'s Br. 8 (ECF No. 45). Additionally, it argues that Plaintiff's allegation that Defendant's products enable the use of "segmentation" is conclusory, and that "segmentation" is not one of the technological features mentioned in the claims.

Plaintiff argues that "there is nothing inherently problematic about quoting the language of an allegedly infringed patent." *Holotouch, Inc. v. Microsoft Corp.*, No. 17 Civ. 8717 (AKH), 2018 WL 2290701, at *8 (S.D.N.Y. May 18, 2018). It also notes that it need not allege infringement as to each of the claims in the patent. *See Crypto Research LLC v. Assay Abloy, Inc.*, 236 F. Supp. 3d 671, 686 (E.D.N.Y. 2017) ("I decline to require that the plaintiff plead direct infringement of each and every element of the allegedly infringed claims.").

I hold that the FAC's allegations in Count XI are sufficient to put Defendant on notice of the allegedly infringing activity, and deny Defendant's motion to dismiss Count XI.

ii. Counts I-V, VII-X, and XIII

Defendant argues that Counts I-V, VII-X, and XIII adequately allege infringing technology only as to a small subset of the accused products—*i.e.*, products that appear in tables that follow Plaintiff's full "laundry list" of accused products. *See, e.g.*, FAC ¶ 212. For example, as to Count III, Defendant argues that, of the approximately 100 products that Plaintiff claims infringe the '073 Patent, the table shows only a much smaller number of products containing a GPU with the allegedly infringing HEVC functionality.

Plaintiff responds that the products identified in the FAC's tables are simply representative samples used to demonstrate the components that provide HEVC functionality, and that Defendant can easily determine the similarly infringing technology for the remaining products by extrapolation. It emphasizes that the FAC does allege, as to each product in the

"laundry lists," that the product uses H.265/HVEC functionality, even if it does not allege the specific GPU used by each product.

I hold that, although the FAC does not identify the specific GPU used by each accused product, it adequately identifies the functionality used by each product and how that functionality allegedly infringes its patents. Defendant's motion to dismiss portions of Counts I-V, VII-X, and XIII is denied.

c. Indirect Infringement by Inducement

"To sufficiently plead inducement, the patentee must show that the accused inducer took an affirmative act to encourage infringement with the knowledge that the induced acts constitute patent infringement." *LaserDynamics USA, LLC v. Cinram Grp., Inc.*, No. 15 Civ. 1629 (RWS), 2015 WL 6657258, at *6 (S.D.N.Y. Oct. 30, 2015) (quoting *3D Sys., Inc. v. Formlabs, Inc.*, No. 13 Civ. 7973 (RWS), 2014 WL 1904365, at *3 (S.D.N.Y. May 12, 2014)). Defendant argues that Plaintiff has failed to allege facts plausibly suggesting that (i) Defendant intended to induce its customers to infringe the Accused Patents, or (ii) Defendant's product manuals and other materials instructed customers to infringe. In the alternative, it argues that Plaintiff's induced infringement claims should be dismissed at least as they relate to pre-suit conduct, since Plaintiff has not alleged any facts to show Defendant's knowledge of, or willful blindness to, the existence of its patents. *See Verint Sys. Inc. v. Red Box Recorders Ltd.*, No. 14 Civ. 5403 (KBF), 2016 WL 7177844, at *2 (S.D.N.Y. Dec. 7, 2016) ("For a finding of . . . induced infringement, the law requires that a defendant have had actual knowledge of the patents at issue.").

Plaintiff argues that its allegations are sufficient, and points to the FAC's assertions that (i) Defendant was aware that normal and customary use of its products would

infringe, and (ii) Defendant encouraged its customers to infringe by providing them with product manuals and other information about how to use its products. Plaintiff also argues that Defendant's knowledge of the Accused Patents can be inferred from the FAC's allegations that the patents were well known and commonly cited in the industry. *See* FAC ¶ 11.

I hold that the FAC adequately alleges that Defendant, aware both of Plaintiff's patents and of the normal and customary uses to which the accused products would be put, intended to induce its customers to infringe. *See Uni-Sys., LLC v. United States Tennis Ass'n, Inc.*, 350 F. Supp. 3d 143, 168 (E.D.N.Y. 2018) ("Evidence of active steps taken to encourage direct infringement, such as advertising an infringing use or instructing how to engage in an infringing use, show an affirmative intent that the product be used to infringe."). Defendant's motion to dismiss Plaintiff's indirect infringement claims is denied as to pre-suit and post-suit conduct.

d. Willful Infringement

"In order to survive a motion to dismiss a claim of willful misconduct, a complaint must plausibly plead facts sufficient to support an inference that the infringement at issue is 'egregious' in addition to pleading subjective intent.'" *Novartis Vaccines & Diagnostics, Inc. v. Regeneron Pharm., Inc.*, No. 18 Civ. 2434 (DLC), 2018 WL 5282887, at *2 (S.D.N.Y. Oct. 24, 2018). Defendant argues that Plaintiff has failed to adequately plead that Defendant's conduct was egregious, as its willfulness claims merely parrot the standard set forth in *Halo Electronics, Inc. v. Pulse Electronics, Inc. See* 136 S. Ct. 1923, 1932 (2016) ("The sort of conduct warranting enhanced damages has been variously described in our cases as willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or . . . characteristic of a pirate.").

As discussed above, however, the FAC adequately alleges Defendant's knowledge of the Accused Patents and intent with respect to the alleged inducement. Accordingly, the FAC's allegations as to willfulness likewise are sufficient to withstand a motion to dismiss. Defendant's motion to dismiss Plaintiff's willful infringement claim is denied. Discovery issues regarding willfulness will be regulated at discovery conferences.

III. Conclusion

For the reasons discussed above, Defendant's motion to dismiss is denied. The Clerk shall terminate the open motion (ECF No. 44). The oral argument scheduled for May 1, 2019 is canceled. Defendant shall answer on or before May 14, 2019. The parties shall appear for an initial pretrial conference on June 14, 2019 at 10:00 a.m.

SO ORDERED.

Dated: New York, New York
April 23, 2019

ALVIN K. HELLERSTEIN
United States District Judge