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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Continental Circuits LLC,  
10 Plaintiff,

11 v.

12 Intel Corporation, et al.,  
13 Defendants.  
14

No. CV16-2026 PHX DGC

**ORDER**

15  
16 Defendants Ividen U.S.A. Corporation and Ividen Co. Ltd. (collectively, "Ividen")  
17 and Intel Corporation have filed separate motions to dismiss Plaintiff Continental Circuits  
18 LLC's complaint under Federal Rule of Civil Procedure 12(b)(6). Docs. 49, 52. After  
19 the motion was fully briefed (Docs. 49, 52, 54, 58, 60) and scheduled for oral argument,  
20 Plaintiff filed an amended complaint (Doc. 95).<sup>1</sup> The Court heard oral argument on  
21 February 3, 2017. For the following reasons, Defendants' motions to dismiss will be  
22 granted in part and denied in part.

23 **I. Background.**

24 Plaintiff alleges that Ividen and Intel infringed four of its patents directly,  
25 indirectly by inducing and contributing to infringement, and willfully. *See* Doc. 95,  
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27 <sup>1</sup> The parties agree that the amended complaint "has no effect on the issues  
28 presented in the motions," and "Defendants maintain their arguments in their pending  
motions to dismiss as against the Amended Complaint." Doc. 96, at 2 & n.1 (citations  
omitted). The Court will therefore address the amended complaint in this order.

1 ¶¶ 120-55. The Court will recount Plaintiff’s factual allegations, which must be taken as  
2 true for purposes of this motion. *See Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir.  
3 2009) (citation omitted).

4 **A. The Parties.**

5 Continental Circuits Inc. was a manufacturer of printed circuit boards used in the  
6 computer industry.<sup>2</sup> Doc. 95, ¶ 22. Four employees of Continental Circuits Inc. observed  
7 that electrical devices made of alternating layers of conductive and non-conductive  
8 materials suffered from poor adhesion that caused the layers to separate. *Id.*, ¶ 28. The  
9 employees invented a “novel surface roughening technique” that used etching to produce  
10 a “non-uniformly roughened surface” and allowed for stronger adhesion between layers.  
11 *Id.*, ¶¶ 28, 110. In 1997, the co-inventors filed an application to patent the surface-  
12 roughening technology. Doc. 52, at 6.<sup>3</sup>

13 Another Continental Circuits Inc. employee, sales representative Jeff Long,  
14 learned of this technology in the mid-1990s. Doc. 95, ¶ 29. Plaintiff alleges that Long,  
15 before his discharge from Continental Circuits Inc. in 1997, “entered into a business  
16 arrangement” with Defendant Ividen, a manufacturer of package substrates used in  
17 computer electronics. *Id.*, ¶¶ 30, 44. In the course of this “arrangement,” Long allegedly  
18 shared the technology described in the 1997 patent application with Ividen. Doc. 52, at 6;  
19 Doc. 95, ¶¶ 30-32;. “In the late 1990s,” Ividen was supplying an increasing quantity of  
20 package substrates to Intel, a global computer-processor manufacturer, and other  
21 companies. Doc. 52, at 6; Doc. 95, ¶¶ 33, 43, 147. Like all of Intel’s suppliers, Ividen  
22 collaborated with Intel to develop specifications that Ividen’s products were expected to  
23 meet. Doc. 95, ¶¶ 45-47.

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24  
25 <sup>2</sup> According to Ividen and Intel, Continental Circuits Inc. changed its name to  
26 Microvia, Inc. in 1997. Doc. 49, at 11 n.8; Doc. 52, at 6 n.2. Microvia was dissolved in  
27 2013. Doc. 49, at 11 n.8; Doc. 52, at 6 n.2. Plaintiff Continental Circuits LLC was  
28 formed in 2016, is a non-operating entity, and owns the patents-in-suit. Doc. 49, at 11  
n.8; Doc. 95, ¶ 19.

<sup>3</sup> Page citations are to numbers placed at the top of each page by the Court’s  
CM/ECF system, rather than original page numbers.

1           **B.     The Patents-in-Suit.**

2           The application to patent the surface-roughening technology became U.S. Patent  
3 No. 6,141,870 (the “’870 patent”), issued November 7, 2000, and U.S. Patent No.  
4 6,700,069 (the “’069 patent”), issued March 2, 2004. *See id.*, ¶¶ 12-13. In early 2005, “a  
5 representative of Continental Circuits” sent a letter to Intel’s Chief Legal Counsel,  
6 informing him of the existence of the ’870 and ’069 patents and a related continuation  
7 application. *Id.*, ¶ 34. The representative expressed an interest in licensing the portfolio  
8 to Intel. *Id.* In a letter dated March 2, 2005, an Intel employee acknowledged receipt of  
9 the letter and stated that “[a]n Intel attorney is reviewing the matter.” *Id.*, ¶ 36. On April  
10 21, 2005, Intel sent another letter advising the representative that “Intel has determined  
11 not to pursue this matter.” *Id.*, ¶ 37.

12           Ibiden received the same offer in early 2005. *See id.*, ¶ 35. “[A] representative of  
13 Continental Circuits” sent a letter to the General Counsel of Ibiden Circuits of America,  
14 purporting to inform him of the existence of the ’870 and ’069 patents and the  
15 continuation application, and expressing an interest in licensing the portfolio to Ibiden.  
16 *Id.* The amended complaint does not mention a response from Ibiden.

17           The continuation application referenced in the letters to Ibiden and Intel resulted in  
18 issuance of the four patents at issue in this action: U.S. Patent No. 7,501,582 (the “’582  
19 patent”), issued March 10, 2009; U.S. Patent No. 8,278,560 (the “’560 patent”), issued  
20 October 2, 2012; U.S. Patent No. 8,581,105 (the “’105 patent”), issued November 12,  
21 2013; and U.S. Patent No. 9,374,912 (the “’912 patent”), issued June 21, 2016. *See id.*,  
22 ¶¶ 14-17, 34-35. In 2014, “it was confirmed” during a “conversation . . . between a  
23 representative of Continental Circuits and a business development manager at Ibiden”  
24 that “the technology claimed in the patents-in-suit is still in use at Ibiden today.” *Id.*  
25 ¶ 41. When pressed for specifics, “the Ibiden manager became evasive and ended the  
26 discussion.” *Id.*

1           **C.     The Infringement Complaint.**

2           Plaintiff initiated this action on June 22, 2016, one day after the '912 patent was  
3 issued. *See* Doc. 1, ¶ 17. The complaint sets forth one patent infringement count each  
4 against Ividen and Intel, alleging direct infringement, induced infringement, and  
5 contributory infringement of the four patents-in-suit. Doc. 95, ¶¶ 120-55. The complaint  
6 also alleges that the infringement was willful. *Id.*, ¶¶ 136, 154.

7           Plaintiff's amended complaint implicates hundreds of products and hundreds of  
8 patent claims. The complaint defines "Accused Instrumentalities" to include "any  
9 version" of products from nine Intel product lines: Atom, Core, Pentium, Celeron, Xeon,  
10 Itanium, and Quark series processors, and "any processors manufactured in a manner  
11 similar to those," and also Intel's Chipsets and Wireless Network Adapters. Doc. 95,  
12 ¶ 103. The amended complaint lists model numbers of individual products comprising  
13 each of these product lines. *See id.*, ¶¶ 51, 56, 61, 66, 71, 76, 81, 86, 91. Plaintiff claims  
14 that "any" of the products in these product lines – more than 1,000 total – "meet or  
15 embody the limitations of at least one claim" of the patents-in-suit. Doc. 52, at 5; Doc.  
16 95, ¶ 103; *see, e.g.*, Doc. 95, ¶¶ 52-55 (allegations as to Atom series). The four patents  
17 contain 337 total claims. Doc. 49, at 2; Doc. 52, at 5. The amended complaint identifies,  
18 "by way of example and not limitation," claim 14 of the '560 patent as representative.  
19 Doc. 95, ¶¶ 122, 141. The term "Accused Instrumentalities" also encompasses "any  
20 Package Substrates manufactured by Ividen for Intel *or others.*" *Id.* ¶ 103 (emphasis  
21 added).

22           The amended complaint includes magnified cross-section images of the roughened  
23 surface between conductive and non-conductive layers from five of Intel's product lines:  
24 Core, Atom, Pentium, Celeron, and Xeon. *Id.* ¶ 107. It does not include cross-section  
25 images from the Itanium or Quark series processors, the chipsets, or the wireless network  
26 adapters. In an effort to tie the images to these products, the amended complaint alleges  
27 that "[t]he images . . . are representative of the cross-sections of a substrate layer within  
28 each of the Accused Instrumentalities," and that "[t]here is no material difference in the

1 substrate layers between any versions of the Accused Instrumentalities.” *Id.*, ¶¶ 108-09.  
2 Plaintiff “rel[ies] on the cross-section images of the majority of the accused product lines  
3 for a factual basis supporting its contentions of infringement.” Doc. 54, at 11.

## 4 **II. Legal Standard.**

5 A successful motion to dismiss under Rule 12(b)(6) must show either that the  
6 complaint lacks a cognizable legal theory or fails to allege facts sufficient to support its  
7 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). A  
8 complaint that sets forth a cognizable legal theory will survive a motion to dismiss as  
9 long as it contains “sufficient factual matter, accepted as true, to ‘state a claim to relief  
10 that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl.*  
11 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim has facial plausibility when “the  
12 plaintiff pleads factual content that allows the court to draw the reasonable inference that  
13 the defendant is liable for the misconduct alleged.” *Id.* at 678 (citing *Twombly*, 550 U.S.  
14 at 556). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks  
15 for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (citing  
16 *Twombly*, 550 U.S. at 556).

## 17 **III. Discussion.**

18 *Ibiden* and Intel argue that Plaintiff’s direct infringement claims should be  
19 dismissed because Plaintiff has not pled sufficient facts to make the claims plausible.  
20 Doc. 49, at 2-3; Doc. 52, at 5. They also argue that the inducement, contributory  
21 infringement, and willfulness claims fail if the direct infringement claims fail, and, in any  
22 event, that Plaintiff has not alleged facts to support the state of mind required for these  
23 claims. Doc. 49, at 3; Doc. 52, at 5.

### 24 **A. Direct Infringement.**

25 “[W]hoever without authority makes, uses, offers to sell, or sells any patented  
26 invention, within the United States or imports into the United States any patented  
27 invention during the term of the patent” is liable for direct infringement. 35 U.S.C.  
28 § 271(a). Section 271(g) extends direct infringement to patented processes: “[w]hoever

1 without authority imports into the United States or offers to sell, sells, or uses within the  
2 United States a product which is made by a process patented in the United States” is also  
3 liable.

#### 4 **1. Direct Infringement Pleading after Form 18.**

5 Until its abrogation on December 1, 2015, Rule 84 of the Federal Rules of Civil  
6 Procedure directed that “[t]he forms in the Appendix suffice[d]” at the pleading stage.  
7 Form 18 provided a sample complaint for patent infringement, and courts considering the  
8 sufficiency of patent infringement complaints compared them to Form 18. *e.Dig. Corp.*  
9 *v. iBaby Labs, Inc.*, No. 15-5790, 2016 U.S. Dist. LEXIS 111689, at \*4 (N.D. Cal. Aug.  
10 22, 2016).<sup>4</sup> “[T]o the extent any conflict exist[ed] between *Twombly* (and its progeny)  
11 and the Forms regarding pleading requirements, the Forms control[led].” *K-Tech*  
12 *Telecomms. v. Time Warner Cable, Inc.*, 714 F.3d 1277, 1283 (Fed. Cir. 2013).

13 Because Form 18 was abrogated along with Rule 84 and the rest of the forms, it no  
14 longer maintains any force. *e.Digital*, 2016 U.S. Dist. LEXIS 111689, at \*5-8; *accord*  
15 *Avago Techs. Gen. IP (Sing.) PTE Ltd. v. Asustek Comput., Inc.*, No. 15-4525, 2016 U.S.  
16 Dist. LEXIS 55655, at \*12-13 (N.D. Cal. Apr. 25, 2016); *Atlas IP LLC v. Pac. Gas &*  
17 *Elec. Co.*, No. 15-5469, 2016 U.S. Dist. LEXIS 60211, at \*4 (N.D. Cal. Mar. 9,  
18 2016); *InCom Corp. v. Walt Disney Co.*, No. 15-3011, 2016 U.S. Dist. LEXIS 71319, at  
19 \*5-6 (C.D. Cal. Feb. 4, 2016). In Form 18’s absence, *Twombly* and *Iqbal* govern direct  
20 infringement claims. *FootBalance Sys. v. Zero Gravity Inside, Inc.*, No. 15-1058, 2016  
21 U.S. Dist. LEXIS 137978, at \*6 (S.D. Cal. Oct. 4, 2016); *accord e.Digital*, 2016 U.S.  
22 Dist. LEXIS 111689, at \*7-8; *TeleSign Corp. v. Twilio, Inc.*, No. 16-2106, 2016 U.S.  
23 Dist. LEXIS 123516, at \*4 (C.D. Cal. Aug. 3, 2016); *Tannerite Sports, LLC v. Jerent*  
24 *Enters., LLC*, No. 15-180, 2016 U.S. Dist. LEXIS 57942, at \*9 (D. Or. May 2, 2016).

25 Plaintiff notes that one court in this Circuit has held otherwise. Doc. 54, at 9 n.5  
26 (citing *Hologram USA, Inc. v. Pulse Evolution Corp.*, No. 14-772, 2016 U.S. Dist.

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28 <sup>4</sup> In a patent infringement action, “the law of the regional circuit” rather than  
Federal Circuit law applies in reviewing a motion to dismiss that involves purely  
procedural questions. *Lyda v. CBS Corp.*, 838 F.3d 1331, 1337 (Fed. Cir. 2016).

1 LEXIS 5426 (D. Nev. Jan. 15, 2016)). *Hologram* relied on an Advisory Committee Note  
2 statement that “[t]he abrogation of Rule 84 does not alter existing pleading standards or  
3 otherwise change the requirements of Civil Rule 8.” *Id.* at \*7-8 n.1 (quoting Fed. R. Civ.  
4 P. 84 advisory committee’s note to 2015 amendments). *Hologram* assumed the phrase  
5 “existing pleading standards” included Form 18, and therefore applied Form 18 even  
6 after its abrogation. *See Hologram*, 2016 U.S. Dist. LEXIS 5426, at \*8 & n.1.

7 The Court finds *Hologram*’s rationale unpersuasive for the same reason as Judge  
8 Tigar in *e.Digital*:

9 First, it is just as likely, if not more so, that the Advisory Committee used  
10 the phrase “existing pleading standards” simply to refer to *Twombly* and its  
11 progeny, but not including the exception recognized by *K-Tech*. Indeed,  
12 nothing in the Advisory Committee note suggests that it was aware of the  
13 *K-Tech* exception to *Twombly*. Second, *K-Tech*’s holding was premised on  
14 the fact that “to the extent any conflict exists between *Twombly* (and its  
15 progeny) and the Forms regarding pleading requirements, the Forms  
16 control.” Absent Form 18 itself, there is simply no support in the Federal  
17 Rules of Civil Procedure for a different pleading standard for direct patent  
18 infringement claims. As a result, the Court concludes that former Form 18  
19 no longer controls and that allegations of direct infringement are now  
20 subject to the pleading standards established by *Twombly* and *Iqbal*,  
21 requiring plaintiffs to demonstrate a “plausible claim for relief.”

22 *e.Digital*, 2016 U.S. Dist. LEXIS 111689 at \*7-8 (some quotation marks and citations  
23 omitted).

24 In addition, the Court notes that the records of deliberations leading up to the  
25 abrogation of Rule 84 and Form 18 suggest that the Advisory Committee was well aware  
26 of Form 18 and did not intend it to live on. *See, e.g.*, Notes of Rule 84 Subcommittee  
27 Conference Call (Mar. 5, 2014), *in* Agenda Book for Advisory Committee on Civil  
28 Rules, Portland, OR, April 10-11, 2014, 557, 558 (2014) (“Form 18 is a good illustration  
of a serious problem with a Form.”). The Court joins the many other cases which have  
looked to *Iqbal* and *Twombly* for infringement pleading standards after December 1,  
2015. Decisions based on Form 18 are no longer good law. *See Scripps Research Inst. v.*

1 *Illumina, Inc.*, No. 16-661, 2016 U.S. Dist. LEXIS 161279, at \*14 n.4 (S.D. Cal. Nov. 21,  
2 2016).<sup>5</sup>

3 **2. Sufficiency of the Direct Infringement Claims.**

4 Ibiden and Intel argue that even Plaintiff's most detailed direct infringement claim,  
5 representative claim 14, fails because the amended complaint does not allege that each of  
6 claim 14's limitations is met by the allegedly-infringing products. Doc. 49, at 6-7;  
7 Doc. 52, at 8-9. They also argue that, to the extent Plaintiff relies on cross-section  
8 images to support its allegations, the amended complaint does not provide images for  
9 four product lines: Itanium processors, Quark processors, chipsets, and wireless network  
10 adapters. Doc. 49, at 7-8; Doc. 52, at 10. Plaintiff responds that the cross-section images  
11 in the complaint illustrate that every claim has been met. Doc. 54, at 11-13.

12 Subsequent developments during discovery have resolved some of these issues.  
13 As part of its interrogatory responses, Plaintiff provided claim charts showing how the  
14 accused products meet the limitations of 184 patent claims. One of these charts applies to  
15 claim 14 of the '560 patent, and the parties have stipulated that the sufficiency of claim  
16 14 is no longer in dispute. Doc. 103, ¶ 5. At oral argument, Defendants' counsel stated  
17 that Defendants no longer contest the sufficiency of any of the 184 charted claims.

18 This leaves 153 claims in the patents-in suit that have not been addressed in the  
19 amended complaint or a claim chart. This fact alone does not doom those claims, as a  
20 chart specifically identifying where each limitation of an asserted claim can be found in  
21 an accused instrumentality is not required absent a local rule stating otherwise. *See Fr.*  
22 *Telecom, S.A. v. Marvell Semiconductor, Inc.*, No. 12-4967, 2013 U.S. Dist. LEXIS  
23 63823, at \*4-5 (N.D. Cal. May 3, 2013).

24 Nor is Plaintiff required, as Defendants maintain, to allege facts supporting every  
25 limitation of every claim in each of the four patents-in-suit. *See* Doc. 60, at 6. The case  
26 law does not support such an exacting standard. Plaintiff must provide factual allegations

27 \_\_\_\_\_  
28 <sup>5</sup> As the chair of the Advisory Committee when Rule 84 was abrogated, the undersigned fully concurs with the majority view on this issue.



1 regarding every limitation of at least one claim of each allegedly-infringed patent. *See,*  
2 *e.g., CG Tech. Dev., LLC v. FanDuel, Inc.*, No. 16-801, 2016 U.S. Dist. LEXIS 144078,  
3 at \*10 (D. Nev. Oct. 18, 2016) (direct infringement pleading “requires plausible  
4 allegations as to all elements of *a* cause of action,” i.e., “each limitation of the patent  
5 claim at issue” (emphasis added)); *e.Digital*, 2016 U.S. Dist. LEXIS 111689, at \*8, \*10  
6 (“each of the limitations found in at least one asserted claim”); *TeleSign*, 2016 U.S. Dist.  
7 LEXIS 123516, at \*7-8 (“each element of at least one claim”); *Atlas IP, LLC v. Exelon*  
8 *Corp. (Exelon)*, 189 F. Supp. 3d 768, 2016 U.S. Dist. LEXIS 64571, at \*12 (N.D. Ill.  
9 2016) (“each element of at least one claim”); *see also Glob. Tech Led, LLC v. Every Watt*  
10 *Matters, LLC*, No. 15-61933, 2016 U.S. Dist. LEXIS 122111, at \*9 (S.D. Fla. May 18,  
11 2016) (plaintiff failed to “sufficiently tie any specific operation to *a* patent claim”  
12 (emphasis added)).<sup>6</sup>

13 This pleading standard requires Plaintiff to address every limitation of at least one  
14 claim of the each of the '560, '582, '105, and '912 patents. The parties' stipulation as to  
15 the sufficiency of claim 14 of the '560 patent suffices for infringement of the '560 patent.  
16 *Ibidem* and Intel do not dispute that at least one claim in each of the three remaining  
17 patents has been sufficiently disclosed in the claim charts. Accordingly, the motions to  
18 dismiss are denied on this basis.<sup>7</sup>

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20 <sup>6</sup> Defendants cite dicta in *Asghari-Kamrani v. United Services Automobile Ass'n*,  
21 No. 15-478, 2016 U.S. Dist. LEXIS 48012, at \*9-11 (E.D. Va. Mar. 22, 2016), where the  
22 court required the plaintiffs to “detail how each claim is infringed.” *See id.* at \*11. But  
23 only one patent was at issue, and the court found that the complaint did not sufficiently  
allege infringement of any of its claims. The Court finds the dicta in *Asghari-Kamrani* to  
be contrary to the majority of cases cited above.

24 <sup>7</sup> The Court does not adopt the view that failure to state a claim under  
25 Rule 12(b)(6) can be solved through discovery responses. Complaints must state a  
26 sufficient cause of action. But Defendants made clear before and during the hearing that  
27 they no longer ask the Court to dismiss the complaint with respect to the claims disclosed  
28 in the claim charts. *See* Doc. 103 (stipulating that some issues are no longer before the  
Court). The Court also notes that although a plaintiff need not “prove its case at the  
pleading stage,” *R+L Carriers, Inc. v. DriverTech LLC (In re Bill of Lading*  
*Transmission & Processing Sys. Patent Litig.)*, 681 F.3d 1323, 1339 (Fed. Cir. 2012),  
Plaintiff must make the required showing for each claim it expects to survive a motion  
for summary judgment. *See TeleSign*, 2016 U.S. Dist. LEXIS 123516, at \*7 (“a product  
must practice all elements of a patent claim” to directly infringe).

1 In addition to the cross-section images included in the amended complaint, which  
2 represent five Intel product lines, Plaintiff has provided Defendants with a cross-section  
3 from a Quark series processor as part of its discovery responses. Doc. 103, ¶ 6. The  
4 parties have stipulated that the Quark series is no longer at issue in this motion.<sup>8</sup> *Id.*

5 **a. Product Claims.**

6 Defendants concentrate their attack on the three product lines for which no cross-  
7 sections have been supplied: Itanium series processors, chipsets, and wireless network  
8 adapters. As to those product lines, Plaintiff alleges only that the other lines' cross-  
9 sections are "representative of the cross-sections of a substrate layer within each of the  
10 Accused Instrumentalities," and that "[t]here is no material difference in the substrate  
11 layers between any versions of the Accused Instrumentalities." Doc. 95, ¶¶ 108-09.  
12 These are conclusory allegations. They provide no facts to connect the six product lines  
13 for which cross-sections have been provided to the three product lines for which they  
14 have not. In the absence of such facts, Plaintiff has failed to plead a plausible claim of  
15 direct infringement with respect to Itanium processors, chipsets, and wireless network  
16 adapters. Conclusory allegations cannot take the place of well-pleaded facts. *See Iqbal*,  
17 556 U.S. at 678-79. The motions to dismiss will be granted for these three product lines.  
18 The Court does not hold that a cross-section image for each product line is required, but  
19 Plaintiff must supply enough facts to make plausible the allegations that the images of  
20 other product lines "are representative" of the three product lines and that there is "no  
21 material difference" between them.

22 *Ibiden* makes three additional arguments as to its products. First, *Ibiden* argued in  
23 its motion that the complaint contains no allegations that any of its products infringe.  
24 The amended complaint added allegations of infringement by *Ibiden* substrates. *See*  
25 Doc. 95, ¶¶ 96-102. This issue has been resolved.

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28 <sup>8</sup> Although each cross-section provided in paragraph 107 of the amended  
complaint purports to represent an entire product line, *Ibiden* and Intel do not contend  
that allegations regarding each individual product within that product line are necessary.

1 Second, *Ibiden* argues that Plaintiff failed to allege that any of the cross-section  
2 images in paragraph 107 of the amended complaint are actually of *Ibiden* products.  
3 Doc. 49, at 8. The amended complaint alleges, however, that the images are of “the  
4 Accused Instrumentalities” (Doc. 95, ¶¶ 107-09), a phrase that includes *Ibiden* products  
5 (*id.*, ¶ 103).

6 Third, *Ibiden* argues that Plaintiff’s allegations of infringement by unidentified  
7 *Ibiden* products manufactured for unidentified companies are deficient. Doc. 49, at 15.  
8 The Court agrees. The amended complaint contains no facts about those unspecified  
9 products, and thus sets forth no plausible basis for infringement by them. *Ibiden*’s  
10 motion to dismiss will be granted with respect to products other than those identified in  
11 the amended complaint.

12 **b. Method Claims.**

13 Unlike a product claim, which alleges that a specific product infringes a patent, a  
14 method claim applies “to a process, which consists of a series of acts or steps.” *In re*  
15 *Kollar*, 286 F.3d 1326, 1332 (Fed. Cir. 2002). Plaintiff asserts method infringement  
16 claims against *Ibiden* – apparently, that *Ibiden* uses patented processes in the creation of  
17 its substrates. Doc. 49, at 3, 10. Although the original complaint alleged only direct  
18 method infringement under § 271(a) (Doc. 1, ¶¶ 116, 128, 133, 140), the amended  
19 complaint adds claims of method infringement under § 271(g) and allegations tracking  
20 the language of that section (Doc. 95, ¶¶ 115-17, 125-26, 138, 144-45).

21 At oral argument, Defendants stated that they do not challenge Plaintiff’s § 271(g)  
22 method claims on pleading grounds. The Court therefore will not address those claims.  
23 *Ibiden* does assert, however, that Plaintiff’s method claims under § 271(a) are deficient  
24 for two reasons.

25 First, *Ibiden* argues that a § 271(a) method claim must allege that the infringing  
26 manufacturing process is used in the United States, which Plaintiff has not alleged.  
27 Doc. 49, at 3, 10. *Ibiden* is correct that “[u]nder section 271(a), the concept of ‘use’ of a  
28 patented method or process is fundamentally different from the use of a patented system

1 or device.” *NTP, Inc. v. Research In Motion, Ltd.*, 418 F.3d 1282, 1317 (Fed. Cir. 2005).  
2 “[A] process cannot be used ‘within’ the United States as required by section 271(a)  
3 unless each of the steps is performed within this country.” *Id.* at 1318. Because the  
4 amended complaint does not allege that Ividen uses any of the steps of a patented process  
5 in the United States, this type of § 271(a) method claim will be dismissed.

6 At oral argument, Plaintiff argued that even though a patented manufacturing  
7 process is performed outside the United States, method infringement occurs when  
8 products made by that process are imported into the United States for sale.  
9 Section 271(a) does apply to a person or entity who “offers to sell, or sells any patented  
10 invention, within the United States or imports into the United States any patented  
11 invention,” 35 U.S.C. § 271(a), but the Federal Circuit has repeatedly declined to decide  
12 “whether method claims can be infringed under the ‘sells’ and ‘offers to sell’ prongs” of  
13 the provision, *W.L. Gore & Assocs. v. Medtronic, Inc.*, 874 F. Supp. 2d 526, 543 (E.D.  
14 Va. 2012). The Federal Circuit has, however, strongly suggested in dicta that they  
15 cannot. *See NTP*, 418 F.3d at 1320 (“[T]he legislative history of section 271(a) indicates  
16 Congress’s understanding that method claims could only be directly infringed by use.”);  
17 *see also Ricoh Co., Ltd. v. Quanta Comput. Inc.*, 550 F.3d 1325, 1335 (Fed. Cir. 2008)  
18 (for a method claim to infringe under the “sell” prong of § 271(a), the seller must be  
19 selling the *process* itself). As one district court explained:

20 Since the Federal Circuit appears to have concluded that [the “sale”] prong  
21 does not apply to method claims, and since the law is currently unclear as  
22 to whether selling a final *product* within the United States would even  
23 qualify as the ‘sale’ or ‘performance’ of a *method* claim, it appears the  
proper course is . . . to consider infringement only under 271(g).

24 *W.L. Gore*, 874 F. Supp. 2d at 545 (emphasis added).

25 Second, Ividen argues that even if Plaintiff’s § 271(a) method claim has a sound  
26 legal basis, Plaintiff has not alleged sufficient facts to support such a method claim.  
27 Doc. 49, at 10. The Court agrees. Just as a “product claim” of direct infringement  
28 requires facts sufficient to “plausibly allege that the accused product practices each of the

1 limitations” of an asserted claim, *e.Digital*, 2016 U.S. Dist. LEXIS 111689, at \*8, a  
2 method claim requires “pleading facts sufficient to allow a reasonable inference that all  
3 steps of the claimed method are performed,” *Lyda v. CBS Corp.*, 838 F.3d 1331, 1339  
4 (Fed. Cir. 2016). The amended complaint lacks sufficient facts to show that *Ibiden* uses  
5 all steps of a patented process in the production of its substrates.

6 The Court will grant *Ibiden*’s motion to dismiss Plaintiff’s § 271(a) method claims  
7 for lack of a factual basis. In light of this holding, the Court need no decide whether  
8 method claims are available under § 271(a) for merely importing and selling products.<sup>9</sup>

9 **B. Indirect Infringement.**

10 “Absent direct infringement of the claims of a patent, there can be neither  
11 contributory infringement nor inducement of infringement.” *Carborundum Co. v. Molten*  
12 *Metal Equip. Innovations, Inc.*, 72 F.3d 872, 876 n.4 (Fed. Cir. 1995); *see also Dynacore*  
13 *Holdings Corp. v. U.S. Philips Corp.*, 363 F.3d 1263, 1272 (Fed. Cir. 2004). As a result,  
14 where Defendants’ motions to dismiss Plaintiff’s direct infringement claims have been  
15 granted, Plaintiff’s related allegations of indirect and willful infringement must also be  
16 dismissed.

17 Because some of Plaintiff’s direct infringement claims have survived, however,  
18 the Court must address the induced infringement, contributory infringement, and  
19 willfulness claims. An alleged infringer’s state of mind is irrelevant to strict-liability  
20 direct infringement claims, but it is a key component of indirect and willful infringement.  
21 *See Commil USA, LLC v. Cisco Sys.*, 135 S. Ct. 1920, 1926 (2015).

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23 <sup>9</sup> Plaintiff stated during the hearing that even if the Court were to dismiss method  
24 claims under § 271(a), it should preserve Plaintiff’s “product-by-process” claims, which  
25 it described as infringement by sale of a product made through a patented process.  
26 Doc. 110 at 49-50. This argument does not seem to match the case law. Product-by-  
27 process claims are not expressly mentioned in the patent statute and were developed for  
28 the purpose of “enabl[ing] an applicant to claim an otherwise patentable product that  
resists definition by other than the process by which it is made.” *In re Thorpe*, 777 F.2d  
695, 697 (Fed. Cir. 1985). Product-by-process claims need to be “defined by the process  
of making [them]” because of “language limitations.” *McAirlaids, Inc. v. Kimberly-  
Clark Corp.*, No. 13-193, 2013 U.S. Dist. LEXIS 181611, at \*6 (W.D. Va. Dec. 31, 2013)  
(alteration in original) (quoting *In re Bridgeford*, 357 F.2d 679, 682 (C.C.P.A. 1966)).  
The Court does not understand any of the products at issue in this case to fall into this  
category.

1                                   **1. Induced Infringement.**

2           Section 271(b) provides that “[w]hoever actively induces infringement of a patent  
3 shall be liable as an infringer.” 35 U.S.C. § 271(b). Inducement requires a showing that  
4 the alleged inducer knew of the patent, knowingly induced the infringing acts, and  
5 possessed a specific intent to encourage another’s infringement of the patent. *DSU Med.*  
6 *Corp. v. JMS Co.*, 471 F.3d 1293, 1305-06 (Fed. Cir. 2006) (en banc).

7                                   **a. Knowledge.**

8           Intel and Ividen argue that they could not have had the requisite knowledge of the  
9 patents-in-suit until, at the earliest, the dates when the patents were issued. *See* Doc. 49,  
10 at 11-12; Doc. 52, at 18-19. Plaintiff responds that “no *per se* rule” requires a patent to  
11 have been issued before it can serve as a basis for knowledge in the indirect-infringement  
12 context.<sup>10</sup> Doc. 54, at 18. Some courts have held that patent applications alone are  
13 insufficient. *See, e.g., Windy City Innovations, LLC v. Microsoft Corp.*, 193 F. Supp. 3d  
14 1109, 2016 U.S. Dist. LEXIS 79380, at \*17-18 (N.D. Cal. 2016) (“defendant’s  
15 knowledge of a related patent and a patent application” was “insufficient to support an  
16 inference that defendant was aware – or at least willfully blind – to the fact that their  
17 products were infringing on the Patents prior to the filing of the complaint”)<sup>11</sup>;  
18 *Vasudevan Software, Inc. v. Tibco Software, Inc.*, No. 11-6638, 2012 U.S. Dist. LEXIS  
19 69952, at \*7-8 (N.D. Cal. May 17, 2012) (related patent and continuation application did  
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21           <sup>10</sup> Plaintiff cites a one-page memorandum order in a district court outside this  
22 Circuit as “authority directly on point.” Doc. 54, at 18; *see also* Doc. 55-7. But because  
23 most of the order was spent analyzing willfulness under a now-abrogated recklessness  
24 standard (see discussion below) that the court recognized was vulnerable to Supreme  
25 Court review, its persuasive value is limited. *See Chestnut Hill Sound Inc. v. Apple Inc.*,  
26 No. 15-261, slip op. (Doc. 53) at 1 (D. Del. Feb. 29, 2016). Of induced infringement, the  
27 court said only that the motion to dismiss was denied “[f]or similar reasons.” *Id.*

28           <sup>11</sup> The allegations in *Windy City* were insufficient to establish *pre*-suit knowledge,  
but sufficient to establish *post*-suit knowledge. 2016 U.S. Dist. LEXIS 79380, at \*18-19.  
This distinction may become relevant as this litigation progresses, especially with respect  
to the ’912 patent, which was issued just one day before the original complaint was filed.  
*See* Doc. 1, ¶ 17. Courts are split on “whether post-suit knowledge of a patent [beginning  
at the time of service] satisfies the knowledge element for indirect infringement claims.”  
*Simplivity Corp. v. Springpath, Inc.*, No. 15-13345, 2016 U.S. Dist. LEXIS 155017, at  
\*20-22 (D. Mass. July 15, 2016)

1 not establish actual knowledge, because “[t]o willfully infringe a patent, the patent must  
2 exist and one must have knowledge of it” (quoting *State Indus., Inc. v. A.O. Smith Corp.*,  
3 751 F.2d 1226, 1236 (Fed. Cir. 1985))).

4 It is also the case, however, that additional “specific, supporting facts” pled in  
5 conjunction with the related patent and continuation application may suffice to establish  
6 knowledge at the pleading stage. See *Vasudevan*, 2012 U.S. Dist. LEXIS 69952, at \*20.  
7 “While true that indirect infringement requires actual knowledge of the patent-in-suit, it  
8 equally is true that ‘knowledge of the patents may be proven by either direct or  
9 circumstantial evidence.’” *Simplivity Corp. v. Springpath, Inc.*, No. 15-13345, 2016 U.S.  
10 Dist. LEXIS 155017, at \*34 (D. Mass. July 15, 2016) (citation omitted) (quoting *SynQor,*  
11 *Inc. v. Artesyn Techs., Inc.*, No. 07-497, 2011 U.S. Dist. LEXIS 91668, at \*11 (E.D. Tex.  
12 Aug. 17, 2011), *aff’d*, 709 F.3d 1365 (Fed. Cir. 2013)). In *Simplivity*, the plaintiff alleged  
13 that while its patent application was pending and publicly available on the internet, a co-  
14 founder of the “sophisticated” infringing entity intentionally obfuscated his identity and  
15 “surreptitiously investigated” the technology at a trade show. 2016 U.S. Dist. LEXIS  
16 155017, at \*30-32. After the trade show, the infringer released a similar technology. *Id.*  
17 at \*31-32. Relying on this circumstantial evidence, the court concluded that the  
18 allegations were sufficient to support a reasonable inference of pre-suit knowledge. *Id.* at  
19 \*32-34.

20 For similar reasons, the Court finds Plaintiff’s allegations of Ividen’s knowledge  
21 sufficient to survive a motion to dismiss. The amended complaint alleges that Jeff Long  
22 took the patented technology to Ividen in 1997 as part of his “business arrangement”  
23 (Doc. 95, ¶¶ 29-32); that a representative of Continental Circuits contacted Ividen in 2005  
24 regarding patents from the same family, as well as the continuation application that  
25 became the patents-in-suit (*id.*, ¶ 35); and that another representative confirmed in a 2014  
26 conversation with an Ividen manager that Ividen was still using that same technology (*id.*,  
27 ¶ 41). Taking these factual allegations as true and drawing reasonable inferences,  
28 Plaintiff has plausibly alleged pre-suit knowledge of the patents-in-suit. It is plausible

1 that *Ibiden* learned of the technology from Jeff Long in 1997, learned from the 2005  
2 communications that two patents had been issued on the technology and a continuation  
3 application was pending, was therefore aware that the technology it acquired from Long  
4 was being patented by the inventors, and then confirmed in 2014 that it was still using the  
5 technology that had been patented. Certainly there are other interpretations of the alleged  
6 facts, but this interpretation is plausible and Rule 8 requires nothing more. As the  
7 Supreme Court has instructed, the plausibility standard “is not akin to a ‘probability  
8 requirement.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556).<sup>12</sup>

9 Whether Plaintiff has pled sufficient facts to establish Intel’s pre-suit knowledge is  
10 a closer question. The amended complaint presents three relevant factual allegations:  
11 (1) meetings occurred between Continental Circuits and Intel in the late 1990s regarding  
12 the design and manufacture of circuit boards; (2) in 2005, correspondence was exchanged  
13 between Continental Circuits’ representative and Intel regarding the related patents and  
14 continuation application; and (3) Intel is sophisticated and familiar with the patent  
15 system. Similar allegations were found insufficient in *Vasudevan*, where the plaintiff  
16 gave an informational presentation to the defendants before the patent-in-suit was issued.  
17 2012 U.S. Dist. LEXIS 69952, at \*7-8. The court held that knowledge was not  
18 reasonably inferable as, absent more, “knowledge of the patent allegedly infringed simply  
19 cannot be inferred from mere knowledge of *other* patents, even if somewhat similar.” *Id.*  
20 at \*9 (emphasis in original). The Court reaches the same conclusion with respect to Intel.  
21 Plaintiff’s allegations suggest that Intel had reason to know of the patent application, but  
22 nothing to show that Intel knew of the actual patents or that the technology had been  
23 invented by the patent applicants. And the Court cannot conclude that sophistication in  
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<sup>12</sup> *Ibiden* argues that a number of these allegations are factually inaccurate. Doc. 49 at 11-14. The Court does not resolve factual disputes in a Rule 12(b)(6) motion to dismiss, but instead takes Plaintiff’s allegations as true.



1 patent matters provides the missing link. Because Plaintiff has failed to allege knowledge  
2 sufficiently, Intel’s motion to dismiss the induced infringement claim will be granted.<sup>13</sup>

3 **b. Specific Intent.**

4 The second element of induced infringement is specific intent, which “can be  
5 demonstrated by circumstantial evidence, but mere knowledge of possible infringement  
6 does not suffice.” *DRG-Int’l, Inc. v. Bachem Ams., Inc.*, No. 15-7276, 2016 WL  
7 3460791, at \*5 (C.D. Cal. Jan. 5, 2016) (quoting *Vita-Mix Corp. v. Basic Holding, Inc.*,  
8 581 F.3d 1317, 1328 (Fed. Cir. 2009)). An allegation “that the defendant is . . .  
9 instructing customers how to use the products in an infringing manner” will usually  
10 survive a motion to dismiss. *Unilin Beheer B.V. v. Tropical Flooring*, No. 14-2209, 2014  
11 U.S. Dist. LEXIS 85955, at \*13-14 (C.D. Cal. June 13, 2014).

12 Plaintiff has sufficiently alleged intent with respect to Ividen. Plaintiff provides a  
13 sufficient factual basis for its assertion that Ividen knew of the patents, as discussed  
14 above, and there is no dispute that Ividen manufactured the accused products with full  
15 knowledge that they would be used in Intel products. This plausibly suggests that Ividen  
16 acted with a specific intent to encourage Intel’s infringement of the patents. *See DSU*  
17 *Med.*, 471 F.3d at 1304.

18 Plaintiff argues that Intel’s specific intent is shown by its collaboration with Ividen  
19 to develop product specifications, and an implicit threat that Intel would end its business  
20 relationship with Ividen if those specifications were not met. Doc. 54, at 18-19; *see also*  
21 Doc. 95, ¶¶ 45-47. Although this might be sufficient if Plaintiff had alleged sufficient  
22 facts to show that Intel knew of the patents, it has not. In the absence of such knowledge,  
23 the Court cannot conclude that mere collaboration with Ividen, or a common-sense

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25 <sup>13</sup> Plaintiff noted at oral argument that the knowledge element can also be satisfied  
26 through willful blindness. *See Glob.-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754,  
27 768 (2011). Willfully blind infringers “deliberately shield[] themselves from clear  
28 evidence of critical facts that are strongly suggested by the circumstances.” *Id.* at 766.  
One who is willfully blind “can almost be said to have actually known the critical facts” –  
“a ‘known risk’ that the induced acts are infringing” and “‘deliberate indifference’ to that  
risk” are not enough.” *Id.* at 769-70. Because this issue was not briefed, and the Court  
cannot see sufficient facts in the amended complaint to support this theory, willful  
blindness does not save Plaintiff’s induced infringement claim against Intel.

1 requirement that Ividen abide by Intel's product specifications, constitutes a sufficient  
2 showing of specific intent to induce infringement.

### 3 **2. Contributory Infringement.**

4 A contributory infringer sells a component knowing that it is especially designed  
5 for use in a patented invention and is not suitable for a substantial noninfringing use.  
6 *Wordtech Sys., Inc. v. Integrated Networks Sols., Inc.*, 609 F.3d 1308, 1316 (Fed. Cir.  
7 2010); *see Ricoh*, 550 F.3d at 1337. Contributory infringement requires that (1) the  
8 accused infringer had knowledge of the infringing nature of the patent, (2) the product  
9 has no substantial noninfringing use, and (3) the product is a material part of the  
10 invention. *Fujitsu Ltd. v. Netgear Inc.*, 620 F.3d 1321, 1326 (Fed. Cir. 2010). "Like  
11 induced infringement, contributory infringement requires knowledge of the [patent-in-  
12 suit] and knowledge of patent infringement." *Commil*, 135 S. Ct. at 1926 (citing *Aro*  
13 *Mfg. Co. v. Convertible Top Replacement Co. (Aro II)*, 377 U.S. 476, 488 (1964)).

14 As discussed above, Plaintiff has sufficiently alleged Ividen's knowledge of the  
15 patents-in-suit. The amended complaint also contains factual allegations to support an  
16 inference that accused products were known by Ividen "to be especially made . . . for use  
17 in an infringement." *See* 35 U.S.C. § 271(c). As noted above, Ividen fully understood  
18 that its products would be used in Intel products for purposes that would infringe if the  
19 patents-in-suit are valid and infringed. Doc. 95, ¶¶ 45-47. Ividen's motion to dismiss the  
20 contributory infringement claims will be denied.

21 Plaintiff has failed to plead sufficient facts to show that Intel knew of the patents-  
22 in-suit. Accordingly, Intel's motion to dismiss the contributory infringement claims will  
23 be granted.

### 24 **C. Willfulness.**

25 Ividen and Intel both rely on *Vasudevan* to support their arguments that because  
26 Plaintiff's allegations of knowledge of the patents-in-suit are insufficient, its willfulness  
27 claims must fail as well. *See* Doc. 49, at 14-15; Doc. 52, at 20; Doc. 58, at 13-14;

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1 Doc. 60, at 11. Plaintiff responds that it “adequately pled [the] knowledge and intent  
2 required for willfulness” in its induced infringement analysis. Doc. 54, at 21.

3 Although the topic was briefly addressed at oral argument, neither party has  
4 briefed the effect of the 2016 abrogation of the “objective recklessness” test for  
5 willfulness. That test required a party alleging willful infringement to demonstrate “by  
6 clear and convincing evidence that the infringer acted despite an objectively high  
7 likelihood that its actions constituted infringement” and that “this objectively-defined risk  
8 . . . was either known or so obvious that it should have been known to the accused  
9 infringer.” *In re Seagate Tech., LLC*, 497 F.3d 1360, 1371 (Fed. Cir. 2007). In *Halo*  
10 *Electronics, Inc. v. Pulse Electronics, Inc.*, 136 S. Ct. 1923 (2016), the Supreme Court  
11 found the test inconsistent with the enhanced damages provisions of 35 U.S.C. § 284, for  
12 which willfulness is a prerequisite. *Id.* at 1928. The Court did away with the “unduly  
13 rigid” requirement that “objective recklessness” be shown in every case, instead “limiting  
14 the award of enhanced damages to egregious cases of misconduct beyond typical  
15 infringement.” *Id.* at 1232, 1235. After *Halo*, egregiousness is the touchstone of the  
16 willfulness inquiry. *See id.* at 1934 (“[S]uch punishment should generally be reserved for  
17 egregious cases typified by willful misconduct.”).

18 Knowledge remains a key factor in determining willfulness. *See id.* at 1933  
19 (“[C]ulpability is generally measured against the knowledge of the actor at the time of the  
20 challenged conduct.”); *see also id.* (“[A] person is reckless if he acts ‘*knowing or having*  
21 *reason to know* of facts which would lead a reasonable man to realize’ his actions are  
22 unreasonably risky.” (emphasis in original) (quoting *Safeco Ins. Co. of Am. v. Burr*, 551  
23 U.S. 47, 69 (2007))). For this reason, Plaintiff’s failure to plead sufficient facts to show  
24 Intel’s knowledge of the patents is fatal to its willfulness claim.

25 The sufficiency of Plaintiff’s willfulness claims against *Ibiden* is less certain.  
26 Under *Halo*, knowledge is a necessary condition of willfulness, but not a sufficient one.  
27 *See* 136 S. Ct. at 1936 (Breyer, J., concurring) (knowledge of the patent “*and nothing*  
28 *more*” does not necessitate enhanced damages (emphasis in original)). Courts in this

1 Circuit have held, after *Halo*, that awareness of the patent and continued use of the  
2 infringing product despite “an objectively high likelihood” of infringement or “reckless  
3 disregard” of that risk no longer compel a finding of willfulness. *See CG Tech. Dev.,*  
4 *LLC v. Big Fish Games, Inc.*, No. 16-857, 2016 U.S. Dist. LEXIS 115594, at \*42-44 (D.  
5 Nev. Aug. 29, 2016) (granting motion to dismiss where plaintiffs “fail[ed] to allege any  
6 facts suggesting that Defendant’s conduct is ‘egregious . . . beyond typical infringement’”  
7 (second alteration in original) (quoting *Halo*, 136 S. Ct. at 1936)). Plaintiff has alleged  
8 sufficient facts to show knowledge, but not to show the additional element of  
9 egregiousness. *Ibiden*’s motion to dismiss as to willfulness will be granted.

10 **IT IS ORDERED:**

- 11 1. *Ibiden*’s motion to dismiss (Doc. 49) is **granted in part and denied in**  
12 **part**. The motion is granted with respect to (a) Itanium series processors,  
13 chipsets, and wireless network adapters; (b) method claims brought under  
14 § 271(a); (c) unidentified *Ibiden* products produced for unidentified users  
15 other than Intel; and (d) willfulness. The motion is otherwise denied.
- 16 2. Intel’s motion to dismiss (Doc. 52) is **granted in part and denied in part**.  
17 The motion is granted with respect to (a) Itanium series processors,  
18 chipsets, and wireless network adapters; (b) induced infringement;  
19 (c) contributory infringement; and (d) willfulness. The motion is otherwise  
20 denied.
- 21 3. Continental Circuits, LLC shall file a second amended complaint **within 20**  
22 **days of the filing of this order**. The amended complaint need not include  
23 or attach all 184 claim charts provided to Defendants, but should reference  
24 those charts. The amended complaint shall include sufficient factual  
25 allegations to address all limitations of at least one claim of each of the four  
26 patents-in-suit.
- 27 4. Counsel shall notify the Court if, after amendment in accordance with the  
28 foregoing discussion, Defendants still view Plaintiff’s amended complaint

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as insufficient, in which case the Court will schedule a telephone conference to discuss whether another motion to dismiss is warranted.<sup>14</sup>

Dated this 21st day of February, 2017.



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David G. Campbell  
United States District Judge

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<sup>14</sup> The Court has used Lexis cites throughout this order because the parties used many such cites in their briefing. In future briefing, the Court prefers Westlaw cites where possible.