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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
8 AT SACRAMENTO  
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10 WATER CONSERVATION  
11 TECHNOLOGY INTERNATIONAL,  
12 INC., a Nevada corporation,  
13 Plaintiff,  
14 v.  
15 ROSEBURG FOREST PRODUCTS CO.,  
16 an Oregon corporation; and DOES 1-10,  
17 Defendant.  
18

No. 2:16-cv-02151-SB

**ORDER GRANTING, IN PART,  
AND DENYING, IN PART,  
DEFENDANT'S MOTION TO  
DISMISS**

19 Before the Court is Defendant's Rule 12(b)(6) Motion to Dismiss, ECF  
20 No. 8. On September 9, 2016, Plaintiff Water Conservation Technology  
21 International, Inc. (WCTI) filed a complaint for patent infringement against  
22 Defendants Roseburg Forest Products Co. (Roseburg) and Does 1-10. ECF No. 1.  
23 Roseburg filed a motion to dismiss on November 4, 2016 for failure to state a  
24 claim pursuant to Fed. R. Civ. P. 12(b)(6). ECF No. 8. For the reasons set forth  
25 herein, Roseburg's motion to dismiss is granted, in part, and denied, in part.  
26 Insofar as WCTI states a claim against Roseburg for direct infringement,  
27 Roseburg's motion to dismiss is denied. Insofar as WCTI states a claim against  
28 Doe Defendants 1-10, Roseburg's motion is granted.

**ORDER GRANTING, IN PART, AND DENYING, IN PART,  
DEFENDANT'S MOTION TO DISMISS + 1**

1 **Standard**

2 Rule 8(a)(2) provides that “[a] pleading that states a claim for relief must  
3 contain: a short and plain statement of the claim showing that the pleader is  
4 entitled to relief.” Rule 12(b)(6) permits dismissal for “failure to state a claim  
5 upon which relief can be granted.” Under ordinary liberal pleading standards, a  
6 plaintiff need only plead sufficient facts which, if taken as true, allow the Court to  
7 draw reasonable inferences that a plausible ground for relief exists. *Harris v. Cnty.*  
8 *of Orange*, 682 F.3d 1126, 1131 (9th Cir. 2012) (citing *Ashcroft v. Iqbal*, 556 U.S.  
9 662, 678 (2009)). Rule 12(b)(6) dismissal is “appropriate only where the  
10 complaint lacks a cognizable legal theory or sufficient facts to support a  
11 cognizable legal theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097,  
12 1104 (9th Cir. 2008).

13 To survive a Rule 12(b)(6) motion to dismiss, “a complaint must contain  
14 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible  
15 on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp.*  
16 *v. Twombly*, 550 U.S. 544, 557 (2007)). The complaint “does not need detailed  
17 factual allegations,” but it “requires more than labels and conclusions, and a  
18 formulaic recitation of a cause of action will not do.” *Twombly*, 550 U.S. at 555.  
19 The factual allegations must be enough to raise a right to relief above a speculative  
20 level. *Id.* “When there are well-pleaded factual allegations, a court should assume  
21 their veracity and then determine whether they plausibly give rise to an entitlement  
22 to relief.” *Iqbal*, 556 U.S. at 679. The *Twombly/Iqbal* plausibility pleading  
23 standard applies to this patent case. See *McAfee Enters., Inc. v. Yamaha Corp. of*  
24 *America*, No. 2:16-2562BRO(FFM), 2016 WL 6920675 at \*3 n.3 (C.D. Cal. June  
25 24, 2016).

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27  
28 **ORDER GRANTING, IN PART, AND DENYING, IN PART,  
DEFENDANT’S MOTION TO DISMISS + 2**

1 **Analysis**

2 WCTI's allegations arise under 35 U.S.C. § 271. Section 271(a) provides  
3 that "whoever without authority makes, uses, offers to sell, or sells any patented  
4 invention, within the United States or imports into the United States any patented  
5 invention during the term of the patent therefor, infringes the patent." Anyone who  
6 "actively induces infringement of a patent" is likewise liable as an infringer. *Id.*  
7 § 271(b). WCTI's patents are all method patents. "A patent for a method or  
8 process claim is not infringed unless all of the steps or stages of the process are  
9 used." *Engelhard Indus., Inc. v. Research Instrumental Corp.*, 324 F.2d 347, 351  
10 (9th Cir. 1963).

11 WCTI states claims for direct single infringement and direct joint  
12 infringement. Specifically, WCTI states claims under a theory of direct single  
13 infringement against Defendant Roseburg, and under a theory of direct joint  
14 infringement against Defendant Roseburg and Doe Defendants 1-10, jointly. ECF  
15 No. 1. The Federal Circuit noted the distinction in *Lyda v. CBS Corp.*, 838 F.3d  
16 1131 (Fed. Cir. 2016):

17 "Direct infringement under § 271(a) occurs where all steps of a  
18 claimed method are performed by or attributable to a single entity." *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 797 F.3d 1020, 1022  
19 (Fed. Cir. 2015) (en banc). While a typical claim of direct  
20 infringement requires proof that a defendant performs each step of the  
21 claimed method, joint infringement requires more. To prove joint  
22 infringement, where multiple actors are involved in practicing the  
23 claim steps, the patent owner must show that the acts of one party are  
24 attributable to the other such that a single entity is responsible for the  
25 infringement. This court has held that an entity will be responsible for  
26 others' performance of method steps in two circumstances: "(1)  
27 where that entity directs or controls others' performance, and (2)  
28 where the actors form a joint enterprise." *Id.* Therefore, like claims of  
induced or contributory infringement, allegations of joint  
infringement require elements beyond those for the more typical act  
of direct infringement to which Form 18 is directed.

1 Id. at 1338-39.

2 **Defendant Roseburg**

3 To state a claim for direct single infringement of a method patent, a plaintiff  
4 must demonstrate that “defendant performs each step of the claimed method,” and  
5 that “all steps of a claimed method are performed by or attributable to a single  
6 entity.” Id. Roseburg asserts two primary arguments as to why WCTI’s Complaint  
7 does not state a plausible claim for relief under this theory: (1) that Twombly/Iqbal  
8 requires WCTI to plead what Roseburg is allegedly doing that infringes any of the  
9 claims in WCTI’s five asserted patents, and how its equipment and process  
10 allegedly infringe the five asserted patents; and (2) that WCTI has failed to allege  
11 the control of specific parameters required by Claim 1 of each asserted patent.

12 How Roseburg Infringes. Roseburg cites multiple district court cases for the  
13 proposition that WCTI must provide facts as to how Roseburg is allegedly  
14 infringing on each of the asserted patent claims. *See Mike Murphy’s Enters., Inc.*  
15 *v. Fineline Indus., LLC.*, No. 1:16-cv-784-LJO-SAB, 2016 WL 4160756 (E.D.  
16 Cal. Aug. 5, 2016); *TeleSign Corp. v. Twilio, Inc.*, No. CV16-2106PSG(SSx),  
17 2016 WL 4703874 (C.D. Cal. Aug. 3, 2016). Neither of the cited cases are on  
18 point. In *Mike Murphy’s Enterprises*, Plaintiff Mike Murphy’s Enterprises claimed  
19 that Defendant Fineline Industries (Fineline) infringed on its patented boat  
20 technology. *Mike Murphy’s Enters., Inc.*, 2016 WL 4160756 at \*1. Plaintiff  
21 merely alleged that defendant makes boats that “come within the scope of at least  
22 one claim of the ‘099 Patent, and/or that comes within a range of equivalents of at  
23 least one claim of the ‘099 Patent, and/or contribut[e] to the infringing activities of  
24 others in the form of their use of the [boats] having systems within the scope of at  
25 least one claim of the ‘099 Patent.” Id. This was the extent of the allegations. The  
26 court held that Plaintiff’s “complaint is woefully insufficient to state a claim for  
27 patent infringement.” Id. at \*2. The court further stated that Plaintiff “provides no  
28 facts to explain in any detail how Fineline allegedly infringed the ‘099 Patent.” Id.

1 It concluded that “[m]erely naming a product and providing a conclusory  
2 statement that it infringes a patent is insufficient to meet the ‘plausibility’ standard  
3 set forth in *Twombly* and *Iqbal*.” *Id.* (citing *Medsquire LLC v. Spring Med. Sys.,*  
4 *Inc.*, No. 2:11-cv-4504-JHN-PLA, 2011 WL 4101093, at \*3 (C.D. Cal. Aug. 31,  
5 2011)).

6 Here, WCTI’s allegations are substantial, and include how Roseburg is  
7 using WCTI’s patented technology for its own benefit and how Roseburg obtained  
8 access to WCTI’s patented technology. ECF No. 1. Moreover, WCTI has  
9 specifically alleged that each step of Claim 1 of each of the five asserted patents  
10 has been infringed. In contrast, in *Mike Murphy’s Enterprises*, Plaintiff asserted  
11 that Defendant was infringing on “at least one claim” of the patent, but did not  
12 point to any specific claim. The Complaint details each step of Claim 1 of the five  
13 asserted patents and describes the opportunity that Roseburg had to obtain the  
14 technology. This is not a case where the patentee simply named a product and  
15 alleged, in conclusory fashion, that the defendant was infringing. Here, WCTI and  
16 Roseburg previously had licensor/licensee relationship and WCTI has identified  
17 Roseburg as infringing Claim 1 of each patent.

18 Control Allegations. Although the language of the Complaint does not  
19 mirror the patent language exactly, WCTI has sufficiently alleged that each step of  
20 Claim 1 of the five asserted patents is being infringed. WCTI claims that Roseburg  
21 has and continues to infringe the asserted patent “within this district at least by  
22 practicing each and every step of Claim 1” of the asserted patent without WCTI’s  
23 authorization. See ECF No. 1 ¶¶35, 48, 61, 74, 87. Moreover, WCTI recites each  
24 step of Claim 1 of each of the five asserted patents that Roseburg is allegedly  
25 infringing; this includes the control allegations at issue.

26 Accordingly, because Roseburg has plead sufficient facts which, if taken as  
27 true, allow the Court to draw reasonable inferences that a plausible ground for  
28 relief exists, Roseburg’s Motion to Dismiss, ECF No. 8, is DENIED, in part. See  
**ORDER GRANTING, IN PART, AND DENYING, IN PART,**  
**DEFENDANT’S MOTION TO DISMISS + 5**

1 Harris v. Cnty. of Orange, 682 F.3d 1126, 1131 (9th Cir. 2012) (citing Ashcroft v.  
2 Iqbal, 556 U.S. 662, 678 (2009)).

3 **Doe Defendants 1-10**

4 In order to state a claim for joint infringement, a plaintiff must allege  
5 additional elements not required of direct infringement cases. See Lyda, 838 F.3d  
6 at 1338-39. “To prove joint infringement, where multiple actors are involved in  
7 practicing the claim steps, the patent owner must show that the acts of one party  
8 are attributable to the other such that a single entity is responsible for the  
9 infringement.” Id. at 1338. “A claim of joint infringement thus requires pleading  
10 facts sufficient to allow a reasonable inference that all steps of the claimed method  
11 are performed and either (1) one party exercises the requisite ‘direction or control’  
12 over the others’ performance or (2) the actors form a joint enterprise such that  
13 performance of every step is attributable to the controlling party.” Id. at 1339  
14 (citing Akamai Tech., Inc. v. Limelight Networks, Inc., 797 F.3d 1020, 1022 (Fed.  
15 Cir. 2015)).

16 WCTI’s allegations fail to state a plausible claim for relief against Doe  
17 Defendants 1-10 under a theory of direct joint infringement. WCTI has alleged no  
18 facts demonstrating that either that (1) one party exercises direction or control  
19 over the others’ performance or (2) that the actors form a joint enterprise. See  
20 Lyda, 838 F.3d at 1339. Moreover, WCTI’s allegations that Doe Defendants 1-10  
21 “acted in concert” with Roseburg and that each Doe Defendant was “empowered  
22 to act as the agent, servant and/or employees of each of the other Defendants, and  
23 that all of the acts alleged to have been done by each of them were authorized,  
24 approved and/or ratified by each of the other Defendants,” ECF No. 1. at 2, are  
25 insufficient to support a cognizable legal theory of direct joint infringement. See  
26 Mendiondo, 521 F.3d at 1104. Because WCTI has not alleged facts sufficient to  
27 survive a Rule 12(b)(6) motion to dismiss, Roseburg’s Motion to Dismiss, ECF  
28 No. 8, is GRANTED, in part.

**ORDER GRANTING, IN PART, AND DENYING, IN PART,  
DEFENDANT’S MOTION TO DISMISS + 6**

1 Accordingly, **IT IS HEREBY ORDERED THAT:**

2 1. Defendant's Motion to Dismiss, ECF No. 8, is **DENIED, in part, and**  
3 **GRANTED, in part.**

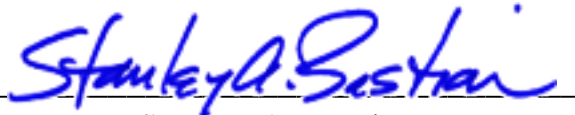
4 2. Insofar as WCTI states causes of action against Defendant Roseburg for  
5 patent infringement, Defendant's Motion to Dismiss, ECF No. 8, is **DENIED, in**  
6 **part.**

7 3. Insofar as WCTI states a causes of action against Doe Defendants 1-10,  
8 Defendant's Motion to Dismiss, ECF No. 8, is **GRANTED, in part.**

9 4. Doe Defendants 1-10 are **DISMISSED** from this action.

10 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order  
11 and forward copies to counsel.

12 **DATED** this 10th day of January, 2017.

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15 Stanley A. Bastian  
16 United States District Judge  
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