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14  
15 **UNITED STATES DISTRICT COURT**  
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
17 **OAKLAND DIVISION**

18  
19 EMBLAZE LTD.,

20 Plaintiff;

21 v.

22 APPLE INC., a California Corporation,  
23 Defendant.

CASE NO.4:11-CV-01079 SBA

**NOTICE OF MOTION AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF APPLE'S  
MOTION UNDER FED. R. CIV. P. 12(B)(6)  
TO DISMISS EMBLAZE'S AMENDED  
COMPLAINT FOR FAILURE TO STATE A  
CLAIM UPON WHICH RELIEF CAN BE  
GRANTED**

**HON. SAUNDRA BROWN ARMSTRONG**

Requested Hearing Date: July 17, 2012  
Time: 1:00PM

1 **NOTICE OF MOTION**

2 PLEASE TAKE NOTICE that on July 17, 2012 at 1:00 p.m., or as soon thereafter as counsel  
3 may be heard, Defendant Apple Inc. (“Apple”) will, and hereby does, move for an order dismissing  
4 with prejudice the First Amended Complaint (“Amended Complaint”) of Plaintiff Emblaze, Ltd.  
5 (“Emblaze”) under Fed. R. Civ. P. 12(b)(6), for failure to meet the minimum pleading requirements  
6 for claims of patent infringement under Fed. R. Civ. P. 8(a). The grounds for this motion are set out  
7 in detail in Apple’s accompanying Memorandum of Points and Authorities below.

8  
9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. INTRODUCTION**

11 Emblaze’s Amended Complaint accuses essentially every product Apple makes of  
12 infringement. Fatally, however, Emblaze fails to state with particularity: (i) how or why Apple’s  
13 accused products infringe U.S. Patent No. 6,389,473 (the “’473 patent”); (ii) *any* facts to support its  
14 claim that Apple indirectly infringes the ‘473 patent; or (iii) how Apple allegedly willfully infringes  
15 that patent. Emblaze’s uninformative and non-specific allegations are essentially carbon-copies of  
16 the defective infringement allegations of Emblaze’s original complaint filed twenty-one months ago,  
17 despite Emblaze’s representation that the allegations of its amended complaint were designed to  
18 “conform” to its Infringement Contentions. (*See* Dkt. No. 75, p. 7 (“Thus, proceeding in good faith,  
19 Emblaze seeks to conform the amended pleading to the allegations Emblaze set forth in its  
20 Infringement Contentions.”).) Given the amount of time Emblaze has had to articulate its  
21 infringement theories against Apple, there is no excuse now for Emblaze’s failure to meet the  
22 pleading requirements of the Federal Rules.

23 **II. ARGUMENT**

24 **A. Pleading Standards Under *Twombly* And *Iqbal***

25 Under Rule 12(b)(6), this Court may dismiss a complaint if it fails to “state a claim upon  
26 which relief can be granted.” *See* Fed. R. Civ. P. 12(b)(6). The Supreme Court in *Twombly* held  
27 that the often “questioned, criticized, and explained away” language from its prior decision in  
28 *Conley v. Gibson*, 255 U.S. 41 (1957), that motions to dismiss under Rule 12(b)(6) should only be

1 granted if there are “no set of facts” that could be proven to support relief, “has earned its  
2 retirement” “after puzzling the profession for 50 years.” *Bell Atlantic Corp. v. Twombly*, 550 U.S.  
3 544, 561-63 (2007) (“*Twombly*”). Instead, the Supreme Court has made it clear that a complaint  
4 must include “enough facts to state a claim to relief that is plausible on its face” in order to satisfy  
5 Rule 8. *Twombly*, 550 U.S. at 570. Without requiring at least facial plausibility, “claim[s] would  
6 survive a motion to dismiss whenever the pleadings left open the *possibility* that a plaintiff might  
7 later establish some ‘set of [undisclosed] facts’ to support recovery.” *Id.* at 561 (emphasis added).  
8 Such a minimal pleadings standard would render meaningless a court’s “power to insist upon some  
9 specificity in pleading before allowing a potentially massive factual controversy to proceed.” *Id.* at  
10 558.

11 In *Iqbal*, the Supreme Court clarified that the *Twombly* plausibility pleadings standard  
12 applies to “all civil actions.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1953 (2009) (“*Iqbal*”). “A claim  
13 has facial plausibility when the plaintiff pleads factual content that allows the court to draw the  
14 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* Thus, “[a]  
15 pleading that offers ‘labels and conclusions’ or a ‘formulaic recitation of the elements of a cause of  
16 action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further  
17 factual enhancement.’” *Id.* (quoting *Twombly*, 550 U.S. at 555, 557). In short, Rule 8 “does not  
18 unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.” *Id.* at  
19 1950.

20 **B. Emblaze’s Direct Infringement Allegations Are Facially Implausible Because**  
21 **They Fail to Set Forth Any Facts Showing How or Why Apple Infringes**

22 This Court and the Central District of California have recognized that in order for allegations  
23 of direct patent infringement to satisfy the *Twombly* and *Iqbal* pleading standard, the complaint must  
24 identify “*how* or *why*” the accused products infringe. *PageMelding, Inc. v. ESPN, Inc.*, C 11-06263  
25 WHA, 2012 WL 851574, at \*2 (N.D. Cal. Mar. 13, 2012). *See also California Inst. of Computer*  
26 *Assisted Surgery, Inc. v. Med-Surgical Services, Inc.*, 10-02042 CW, 2010 WL 3063132, at \*2 (N.D.  
27 Cal. Aug. 3, 2010) (dismissing direct infringement allegations for “fail[ing] to allege with any  
28 specificity ... how [the accused product] infringes upon any of its ... patents”); *Ziptronix, Inc. v.*

1 *Omnivision Technologies, Inc.*, C 10-5525 SBA, 2011 WL 5416187, at \*4 (N.D. Cal. Nov. 8, 2011)  
2 (dismissing direct infringement allegations because none of the steps of plaintiff’s allegedly  
3 infringing method were set forth). The mere identification of an accused product combined with  
4 boilerplate language that such product infringes fails to provide a plausible claim for relief. *See*  
5 *PageMelding, Inc.*, 2012 WL 851574, at \*2 (dismissing allegations that defendant’s websites  
6 infringe by creating “dynamically form[ed] web pages” because such statements are “nothing more  
7 than legal conclusions couched as factual allegations”); *Medsquire LLC v. Spring Med. Sys. Inc.*,  
8 2:11-CV-04504-JHN, 2011 WL 4101093, at \*3 (C.D. Cal. Aug. 31, 2011) (“Merely naming a  
9 product and providing a conclusory statement that it infringes a patent is insufficient to meet the  
10 ‘plausibility’ standard set forth in *Twombly* and *Iqbal*.”).

11 In like manner to the complaints dismissed in the cases cited above, Emblaze’s amended  
12 complaint sets forth little more than the conclusory statement that “products incorporating ‘HTTP  
13 Live Streaming Standard technology’ that have been and can be used for real-time broadcasting ...  
14 infringe.” (Dkt. No. 100, ¶ 10.)

15 Specifically, the entirety of the infringement allegations set forth in Emblaze’s amended  
16 complaint are as follows:

17  
18 7. The ’473 patent claims methods for real-time broadcasting over a network,  
such as over the Internet.<sup>1</sup>

19  
20 10. Upon information and belief, Apple has used and continues to use, sold  
and/or offered to sell in New York (sic) and elsewhere and/or imported into New  
21 York (sic)<sup>2</sup> and elsewhere products incorporating "HTTP Live Streaming  
Standard technology" that have been and can be used for realtime broadcasting  
22 and that infringe at least claims 1, 2, 8, 9, 10, 11, 12, 13, 14, 21, 23, 24, 25, 26,  
27 27, 28, 29, 36, 37, 38, 40, and 41 of the ’473 patent in violation of 35 U.S.C. §  
23 271.<sup>3</sup>

24 11. Apple announced the introduction of its HTTP Live Streaming Standard  
25 technology into its products on or about mid-2009, and such technology is

26 <sup>1</sup> The ’473 patent in fact recites both method and system claims.

27 <sup>2</sup> Emblaze has not changed this language since the case was transferred from the Southern District of New York.

28 <sup>3</sup> Independent Claim 1 of the ’473 patent is a method claim, and claims 2, 8, 9, 10, 11, 12, 13, 14, 21, 23 and 24 all depend from claim 1. Independent Claim 25 is a system claim, and claims 26, 27, 28, 29, 36, 37, 38, 40 and 41 all depend from claim 25.

1 embedded into Apple's best selling products in this district and world wide (e.g.,  
2 all Apple devices including Apple Stream Segmenter software or Apple File  
3 Segmenter software (components of HTTP Live Streaming included with MAC  
4 OS X version 10.6 and later, and available for download on the internet),  
5 including Macbook Air, Macbook, Macbook Pro, Mac mini, iMac and Mac Pro;  
6 all Apple devices including Apple's Safari browser version 5 and later for Mac  
7 OS, and available for download on the internet, included in Macbook Air,  
8 Macbook, Macbook Pro, Mac mini, iMac and Mac Pro; all Apple devices  
9 including Apple's Quicktime X and later, and available for download on the  
10 internet, included in Macbook Air, Macbook, Macbook Pro, Mac mini, iMac and  
11 Mac Pro; all Apple devices including Apple iOS 3.0 and later, included in iPod  
12 touch 3rd and 4th generations (1st and 2nd generations of iPod touch software  
13 upgradable to support HTTP Live Streaming), iPhone 3GS, 4 and 4S (iPhone  
14 and iPhone 3G software upgradable to support HTTP Live Streaming), iPad 1  
15 and 2, and Apple TV 4.0, 4.3 and 4.4); all devices including iTunes 10.1 and  
16 later.

(Dkt. No. 100, ¶¶ 7, 10 and 11.)

17 Virtually every product Apple offers is accused of infringing both method and system claims  
18 of the '473 patent, with no factual basis whatsoever, and no distinction made between how a  
19 computer (Mac), a browser (Safari), a smart phone or tablet (iPhone and iPad), or a free software  
20 tool (Stream Segmenter) each supposedly infringe claims that Emblaze describes as directed to real  
21 time broadcasting.

22 The defects here are not simply technical. As noted in paragraph 7 of Emblaze's own  
23 amended complaint, the claims in suit purport to cover methods and systems for "real-time  
24 *broadcasting* over a network." Many of the accused products (the Safari web browser, the iPhone,  
25 etc.) might be said to *receive* video content over a network. But that is not what the claims in suit  
26 are directed toward. These products do not *broadcast* video content over a network. Apple is  
27 therefore at a loss to understand "how or why" each of the many, disparate accused Apple products  
28 *directly* infringes the asserted method and system claims.<sup>4</sup> Emblaze's amended complaint merely  
recites a mishmash laundry list of products without specifying a single fact to tie the features and  
functions of the accused products to the limitations of the asserted claims – even twenty-one months

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<sup>4</sup> Apple recognizes that the Court's docket is busy, and does not make this motion lightly. This motion does not present a merely technical pleading deficiency. Rather, our belief is that this case is among the few that should be disposed of at the pleading stage – put otherwise, we believe that the reason Emblaze has not alleged sufficient facts to support its extraordinarily broad accusations is because *it cannot*.

1 after filing the original complaint, with the benefit now of discovery from Apple. Merely alleging  
2 that “I own a patent” and “you sell products that infringe it” is not enough to meet legal  
3 requirements of a facially plausible complaint. The Supreme Court has so ruled, and this Court and  
4 others in this Circuit have so held.

5 Emblaze’s direct infringement allegations in its amended complaint must be dismissed for  
6 failing to “plead factual content that allows the court to draw the reasonable inference” that Apple  
7 directly infringes the patent-in-suit. *Iqbal*, 129 S. Ct. at 1949. As shown by the allegations above,  
8 Emblaze merely states that “products incorporating ‘HTTP Live Streaming Standard technology’  
9 that have been and can be used for real-time broadcasting ... infringe.” (Dkt. No. 100, ¶ 10.) There  
10 are *no* asserted facts to support this naked allegation, rendering it *per se* facially implausible. Given  
11 the significant period of time Emblaze has had to formulate its infringement allegations, and the  
12 public availability of the accused products, Emblaze should not be excused at this stage of the case  
13 for its failure to satisfy the pleading requirements of set down in *Twombly* and *Iqbal*.

14 Nor can Emblaze hide behind the sample pleading style of Form 18 of the Appendix to the  
15 Federal Rules of Civil Procedure. This Court has rightly dismissed such naked pleadings in the  
16 wake of *Iqbal* and *Twombly*. *E.g.*, *Avocet Sports Tech., Inc. v. Garmin Int’l, Inc.*, C 11-04049 JW,  
17 2012 WL 1030031, at \*3 (N.D. Cal. Mar. 22, 2012) (“Plaintiff’s reliance on the conformity of its  
18 Complaint with Form 18 is misguided. In the aftermath of *Twombly* and *Iqbal*, a number of district  
19 courts in the Ninth Circuit have addressed this very argument, and have concluded that Form 18  
20 does not provide adequate notice under the heightened pleading standards articulated in those  
21 cases.”) (citing cases); *PageMelding, Inc.*, 2012 WL 851574, at \*2 (“Form 18 provides for nothing  
22 more than the type of ‘defendant-unlawfully-harmed-me accusation’ expressly rejected in *Iqbal*.”);  
23 *Bender v. LG Electronics U.S.A., Inc.*, C 09-02114 JF (PVT), 2010 WL 889541, at \*5 (N.D. Cal.  
24 Mar. 11, 2010) (rejecting reliance on Form 18 to satisfy pleading requirements because it fails to  
25 provide enough specificity to give notice of how or why the accused products infringe).

26 The Federal Circuit has also recently expressed doubt regarding Form 18’s relevance in view  
27 of *Iqbal* and *Twombly*. *See Yip v. Hugs to Go LLC*, 377 F. App’x 973, 978 (Fed. Cir. 2010) (“We  
28 agree with the district court that, as twice amended, Yip’s complaint still did not meet the pleading

1 requirements of Rule 8(a)(2) as explained in *Twombly*.”) *cert. denied*, 131 S. Ct. 1491, 179 L. Ed.  
2 2d 304 (U.S. 2011); *Colida v. Nokia, Inc.*, 347 F. App’x 568, 569-70, 571 n.2 (Fed. Cir. 2009)  
3 (rejecting plaintiff’s reliance on Form 18 which “was last updated before the Supreme Court’s *Iqbal*  
4 decision” and affirming dismissal of the complaint because “as the Supreme Court recently  
5 clarified, the complaint must have sufficient ‘facial plausibility’ to ‘allow[ ] the court to draw the  
6 reasonable inference that the defendant is liable.’”) (citing *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949  
7 (2009)).

8 Thus for Emblaze’s amended complaint to survive this Court must necessarily believe that  
9 the Supreme Court intended to carve out an exception to the “plausibility” pleading standard solely  
10 and exclusively for allegations of direct infringement in patent cases. This is not so. *See Medsquire*  
11 *LLC*, 2011 WL 4101093, at \*2 (holding reliance on Form 18 insufficient to withstand motion to  
12 dismiss because “there is no reason to believe that the Supreme Court intended to exclude patent  
13 infringement claims from the ‘plausibility’ requirement of Rule 8(a)”). As one Court put it, to do so  
14 “would require blatant disregard for the Supreme Court’s holding.” *PageMelding, Inc.*, 2012 WL  
15 851574, at \*2.

16 In sum, because: (a) the allegations of direct infringement against Apple in Emblaze’s  
17 amended complaint fail to satisfy the minimum pleading requirements of *Twombly* and *Iqbal*; (b)  
18 Emblaze has not articulated a single fact to set forth how the accused products infringe the patent-  
19 in-suit despite the many months it has had to do so; and (c) a Form 18 pleading style is rejected as a  
20 template for pleading direct infringement by courts in this District, the Ninth Circuit and the Federal  
21 Circuit, Emblaze’s claim for direct infringement against Apple should be dismissed with prejudice  
22 under Rule 12 (b)(6) for failure to state a claim upon which relief can be granted.

23 **C. Emblaze Has Likewise Failed to Plead Any Facts to Support Its Claims Of**  
24 **Indirect Infringement Against Apple**

25 “Whoever actively induces infringement of a patent shall be liable as an infringer.” 35  
26 U.S.C. § 271(b). “To prevail on inducement, the patentee must show, first that there has been direct  
27 infringement, and second that the alleged infringer knowingly induced infringement and possessed  
28 specific intent to encourage another’s infringement.” *Kyocera Wireless Corp. v. Int’l Trade*

1 *Comm'n*, 545 F.3d 1340, 1353-54 (Fed. Cir. 2008) (internal quotation and citation omitted). “[T]he  
2 specific intent necessary to induce infringement ‘requires more than just intent to cause the acts that  
3 produce direct infringement. Beyond that threshold knowledge, the inducer must have an  
4 affirmative intent to cause direct infringement.’” *Id.* at 1354 (citing *DSU Med. Corp. v. JMS Co.*,  
5 471 F.3d 1293, 1306 (Fed. Cir. 2006) (en banc). Thus, to sufficiently plead a claim for inducement,  
6 the complaint must plead facts to support each of the above elements. *Avocet Sports Tech., Inc.*,  
7 2012 WL 1030031, at \*4. *See also PageMelding, Inc.*, 2012 WL 851574, at \*3 (dismissing  
8 inducement claims because plaintiff “made no allegation that any entity other than defendant  
9 directly infringed the [patent-in-suit]” and “alleged no facts to show a ‘specific intent to encourage  
10 another’s infringement’”).

11 As for contributory infringement under 35 U.S.C. § 271(c), a patentee must show “(1) that  
12 there is direct infringement, 2) that the accused infringer had knowledge of the patent, 3) that the  
13 component has no substantial noninfringing uses, and 4) that the component is a material part of the  
14 invention.” *Fujitsu Ltd. v. Netgear Inc.*, 620 F.3d 1321, 1326 (Fed. Cir. 2010). For example, a  
15 complaint that is devoid of facts accusing another party of direct infringement, or demonstrating the  
16 accused component/product has no substantial non-infringing uses, will be dismissed for failing to  
17 set forth a plausible inference of contributory infringement. *See, e.g., PageMelding, Inc.* 2012 WL  
18 851574, \*3 (granting motion to dismiss contributory infringement claim because plaintiff made no  
19 allegation that the accused websites are incapable of substantial noninfringing uses); *IpVenture, Inc.*  
20 *v. Celco P’ship*, C 10-04755 JSW, 2011 WL 207978, at \*3 (N.D. Cal. Jan. 21, 2011) (dismissing  
21 contributory infringement claims in part because plaintiff failed to accuse a third party of direct  
22 infringement).

23 Against the backdrop of the substantial legal requirements set forth above, see in stark  
24 contrast below the entirety of Apple’s notice in the amended complaint that Emblaze is alleging  
25 inducement and contributory infringement:

26  
27 A judgment that Apple has infringed the '473 Patent in violation of 35 U.S.C. §§  
28 271(a)-(c).



1 (Dkt. No. 100, Prayer for Relief, ¶ A.)

2 Thus, even more egregious than Emblaze’s conclusory direct infringement allegations is the  
3 complete absence of *any* asserted facts to support charges of inducement or contributory  
4 infringement. Emblaze merely amended its prayer for relief to include relief under 35 U.S.C. §§  
5 271(b) and (c). This cannot in any way satisfy even the most liberal of pleading standards. But the  
6 standards are not so liberal.

7 As discussed above, to sufficiently plead either inducement or contributory infringement  
8 under 35 U.S.C. §§ 271(b) and (c), Emblaze must set forth facts accusing a third party of direct  
9 infringement. It has not done so. To properly plead inducement, Emblaze was further required to  
10 allege that Apple had the “specific intent” to encourage that third party’s direct infringement. It has  
11 not done so. And, to properly plead contributory infringement, Emblaze was further required to  
12 allege that the accused Apple products constitute a “material” part of the claimed invention, and do  
13 not have any substantial non-infringing uses. It has not done so. Emblaze’s amended complaint is  
14 completely devoid of any such allegations against Apple – it merely contains a naked prayer for  
15 relief for alleged induced and contributory infringement.

16 Accordingly, because (a) the allegations of induced infringement and contributory  
17 infringement against Apple in Emblaze’s amended complaint are fatally defective; and (b) Emblaze  
18 has not articulated a single fact to support its prayer for relief under 35 U.S.C. §§ 271 (b) or (c),  
19 Emblaze’s claims for indirect infringement under 35 USC §§ 271(b) and (c) should be dismissed  
20 with prejudice under Rule 12 (b)(6) for failure to state a claim upon which relief can be granted.

21 **D. Emblaze’s Willful Infringement Claim Is Fatally Defective, Because It Fails to**  
22 **Assert Facts Demonstrating Objective Recklessness**

23 Emblaze’s willfulness allegations fare no better. In its *en banc* ruling *In re Seagate Tech.,*  
24 *LLC*, the Federal Circuit held that plaintiff’s allegations for willful infringement “must necessarily  
25 be grounded exclusively” in a defendant’s pre-filing conduct. 497 F.3d 1360, 1374 (Fed. Cir. 2007).  
26 Further, in order to demonstrate willfulness, a patentee must satisfy a critical and threshold element  
27 – *i.e.*, “a patentee must show by clear and convincing evidence that the infringer acted despite an  
28 objectively high likelihood that its actions constituted infringement of a valid patent.” *Id.* at 1371.

1 And as the Federal Circuit made clear, these standards apply equally to pleadings. *Id.* at 1374 (“It is  
2 certainly true that patent infringement is an ongoing offense that can continue after litigation has  
3 commenced. However, when a complaint is filed, a patentee must have a good faith basis for  
4 alleging willful infringement.”) (citing Fed. R. Civ. P. 8, 11(b)). Therefore, in addition to alleging  
5 pre-suit knowledge of the patent, a complaint pleading willful infringement must contain facts  
6 supporting a plausible inference that the defendant’s conduct rose to the level of “objective  
7 recklessness.” *See Solannex, Inc. v. MiaSole*, C 11-00171 PSG, 2011 WL 4021558, at \*3 (N.D. Cal.  
8 Sept. 9, 2011) (dismissing willful infringement allegation because *inter alia*, plaintiff failed to allege  
9 defendant’s “conduct rises to the level of ‘objective recklessness’ required to support an allegation  
10 of willful infringement”).

11 Emblaze’s willfulness allegations in its amended complaint are set forth below:

12  
13 12. Upon information and belief, the acts of infringement by Apple are willful,  
intentional and in conscious disregard of Emblaze's rights under the '473 patent.

14 13. Shortly after Apple announced Apple's adoption of the HTTP Live Streaming  
Standard technology into its products, Emblaze informed Apple that Apple's  
15 HTTP Live Streaming Standard technology infringes the '473 patent and offered  
Apple a license to practice under the '473 patent.

16 14. To date, Apple has declined to take a license under the '473 patent.

17 (Dkt. No. 100, ¶¶ 12-14.)

18 Although Emblaze’s amended complaint alleges pre-suit knowledge of the patent-in-suit,  
19 there is nothing to support a plausible inference that Apple acted with an objectively high  
20 likelihood, much less “objective recklessness,” that its actions would constitute infringement. The  
21 most Emblaze pleads is that Apple declined to take a license under the patent-in-suit after it was  
22 brought to Apple’s attention by Emblaze.

23 However, mere knowledge of a patent, without more, does not and clearly cannot support a  
24 claim for willful infringement. *See Abbott Laboratories v. Sandoz, Inc.*, 532 F. Supp. 2d 996, 999-  
25 1001 (N.D. Ill. 2007) (granting 12(b)(6) motion to dismiss willful infringement claim for failure to  
26 meet the objective recklessness standard); *Solannex, Inc.*, 2011 WL 4021558, at \*3 (citing failure to  
27 allege that defendant’s conduct “rises to the level of ‘objective recklessness’ required to support an  
28 allegation of willful infringement.”); *Norian Corp. v. Stryker Corp.*, 363 F.3d 1321, 1332 (Fed. Cir.

1 2004) (affirming JMOL on issue of willful infringement despite defendant's stipulation it had  
2 knowledge of the patents-in-suit).

3 Thus, once again lacking supportive facts, Emblaze has in no way set forth a claim for  
4 willful infringement by Apple that could satisfy the pleading standards of *Iqbal*, *Twombly* and their  
5 progeny cited above.

6 Because Emblaze's willful infringement claim fails to set forth any facts from which it could  
7 plausibly be concluded that Apple recklessly infringed the patents-in-suit, Emblaze's willfulness  
8 claim should be dismissed with prejudice for failure to state a claim upon which relief can be  
9 granted.

### 10 **III. CONCLUSION**

11 For all the above reasons, we respectfully submit that Apple's motion to dismiss  
12 Emblaze's amended complaint with prejudice should be granted in its entirety.

1  
2 Dated: May 14, 2012

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