

1
2
3 UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5 OAKLAND DIVISION

6 EMBLAZE LTD,

7 Plaintiff,

8 vs.

9 APPLE INC., a California Corporation,

10 Defendant.
11

Case No: C 11-01079 SBA

ORDER

Docket 105, 124

12 Emblaze, Ltd. ("Emblaze" or "Plaintiff") brings the instant patent infringement
13 action against Apple, Inc. ("Apple" or "Defendant"). The parties are presently before the
14 Court on Apple's motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil
15 Procedure and motion to strike objection to reply evidence under Civil Local Rule 7-3(d).
16 Dkt. 105, 124. Having read and considered the papers filed in connection with these
17 matters and being fully informed, the Court hereby DENIES Apple's motion to strike
18 objection to reply evidence and GRANTS IN PART AND DENIES IN PART Apple's
19 motion to dismiss, for the reasons stated below. The Court, in its discretion, finds these
20 matters suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal.
21 Civ. L.R. 7-1(b).

22 **I. BACKGROUND**

23 **A. Factual Summary**

24 Emblaze is an Israeli corporation doing business world-wide in the "development
25 and marketing of innovative high-tech technologies and products." First Am. Compl.
26 ("FAC") ¶ 1, Dkt. 100. It is the owner of United States Patent No. 6,389,473 (the "'473
27 patent"), which "claims methods for real-time broadcasting over a network, such as over
28 the Internet." Id. ¶¶ 6-7.

1 Emblaze "developed the technology described and claimed in the '473 patent and has
2 used this technology in its products." FAC ¶ 8. The technology is live streaming and
3 allows transmission of live audio and video to multiple devices, saves on data traffic, does
4 not require devoted streaming servers, and allows reliable streaming even through firewalls.
5 Id. ¶ 9. Though the '473 patent was issued on May 14, 2002, Emblaze first unveiled the
6 technology in a live video streaming broadcast from the White House in April 1998. Id. ¶
7 9, Exh. A at 1.

8 On or about mid-2009, Apple announced that its "HTTP Live Streaming Standard
9 technology" is incorporated into various products, including, among others, Macbook,
10 Macbook Air, Safari browser version 5 and later for Mac OS, iPod touch 3rd and 4th
11 generations, iPhone 3GS, 4, and 4S, iPad 1 and 2, and Apple TV 4.0, 4.3 and 4.4, and all
12 Apple devices including iTunes 10.1 and later. See FAC ¶ 11. According to Emblaze,
13 Apple has "used and continues to use, sold and/or offer[s] to sell in New York and
14 elsewhere and/or imported into New York and elsewhere products incorporating 'HTTP
15 Live Streaming Standard technology' that have been and can be used for realtime
16 broadcasting and that infringe at least claims 1, 2, 8, 9, 10, 11, 12, 13, 14, 21, 23, 24, 25,
17 26, 27, 28, 29, 36, 37, 38, 40, and 41 of the '473 patent in violation of 35 U.S.C. § 271." Id.
18 ¶ 10.

19 Shortly after Apple announced the incorporation of its "HTTP Live Streaming
20 Standard technology" into its products, Emblaze informed Apple that this technology
21 infringes the '473 patent and offered Apple a license to practice under the '473 patent. FAC
22 ¶ 13. To date, Apple has declined to take a license under the '473 patent. Id. ¶ 14.

23 Emblaze alleges that "the acts of infringement by Apple are willful, intentional and
24 in conscious disregard of Emblaze's rights under the '473 patent." FAC ¶ 12. Emblaze
25 further alleges that as a result of Apple's infringement of the '473 patent, Apple has made
26 and will continue to make unlawful gains and profits, and that Emblaze has been and will
27 continue to be deprived of revenue that it would otherwise have generated but for such
28

1 infringement. Id. ¶ 15. According to Emblaze, it "has been and will continue to be
2 irreparably harmed by Apple's infringement of the '473 patent." Id. ¶ 16.

3 Emblaze's prayer for relief requests, among other things, a judgment that Apple has
4 infringed the '473 patent in violation of § 271(a)-(c). See FAC. In other words, Emblaze
5 claims that Apple is liable as a direct infringer, as an entity that induced infringement, and
6 as a contributory infringer. 35 U.S.C. § 271(a)-(c). Emblaze also requests a judgment that
7 Apple's infringement has been willful, knowing, and in deliberate disregard of Emblaze's
8 patent rights. See id.

9
10 **B. Procedural History**

11 On July 28, 2010, Emblaze commenced the instant action in the Southern District of
12 New York. Compl., Dkt 1. On November 18, 2010, Apple moved to transfer the case to
13 the Northern District of California. Dkt. 13. On February 25, 2011, the case was
14 transferred to this District. Dkt. 24. The case was assigned to the undersigned on April 26,
15 2011. Dkt. 31.

16 On April 27, 2012, Emblaze filed a FAC. FAC, Dkt. 100. On May 14, 2012, Apple
17 filed a motion to dismiss the FAC under Rule 12(b)(6). Dkt. 105. Emblaze filed an
18 opposition on June 5, 2012. Dkt. 114. On June 14, 2012, Apple filed a reply brief. Dkt.
19 116.

20 On July 16, 2012, Emblaze filed an objection to reply evidence under Local Rule 7-
21 3(d)(1). Dkt. 122. On July 17, 2012, Apple filed a motion to strike Emblaze's objection to
22 reply evidence. Dkt. 124. Emblaze filed an opposition to Apple's motion on July 20, 2012.
23 Dkt. 126. Apple did not file a reply brief.

24 **II. DISCUSSION**

25 **A. Motion to Strike Objection to Reply Evidence**

26 Apple moves to strike Emblaze's objection to reply evidence on the ground that
27 Emblaze does not object to "new evidence" submitted by Apple in its reply brief. Def.'s
28 Mtn. at 2. Instead, Apple argues that Emblaze's objection is a "thinly veiled attempt at a

1 sur-reply that plainly violates Civil L.R. 7-3(d)." Id. In addition, Apple moves to strike the
2 objection on the ground that it is untimely. Id.

3 The Civil Local Rules preclude parties from submitting any memoranda, papers or
4 letters to the Court in connection with a pending motion after the reply has been filed,
5 except in two narrow circumstances: (1) if new evidence has been submitted in the reply; or
6 (2) if the additional memoranda, paper or letter brings to the Court's attention a relevant
7 judicial opinion published after the date the opposition or reply was filed. Civ. L.R. 7-3(d).
8 Any objection to reply evidence "must be filed and served not more than 7 days after the
9 reply was filed." Civ. L.R. 7-3(d)(1).

10 Apple's reply brief in support of its motion to dismiss was filed on June 14, 2012.
11 Emblaze, however, did not file its objection to reply evidence until over a month later on
12 July 16, 2012. Thus, Emblaze's objection is untimely. Moreover, as Apple correctly points
13 out, Emblaze has not objected to evidence. Instead, Emblaze objects to an argument Apple
14 made in its reply brief. Specifically, Emblaze objects to Apple's contention that "Emblaze
15 concedes that it does not accuse Apple of direct infringement," Pl.'s Obj. Reply Evid. at 2,
16 which is based on Emblaze's statement in its opposition brief that "Apple is well aware that
17 Emblaze's infringement contentions do not accuse Apple's devices of direct infringement,
18 but rather accuses Apple of inducing direct infringement . . ." Def.'s Opp. at 9.

19 While it is clear that Emblaze's objection to reply evidence violates the Civil Local
20 Rules because it is untimely and does not object to evidence submitted by Apple in
21 connection with its reply brief, the Court DENIES Apple's motion to strike. The Court
22 finds that the supplemental memorandum submitted by Emblaze is helpful to resolving the
23 instant motion insofar as it clarifies Emblaze's position with respect to its direct
24 infringement claim. The Court also finds that consideration of the supplemental
25 memorandum will not cause any prejudice to Apple. In the future, however, Emblaze is
26 advised to comply with the Local Rules before filing supplemental material. Under the
27 circumstances, Emblaze should have requested leave of Court before filing supplemental
28 material.

1 **B. Motion to Dismiss**

2 **1. Legal Standard**

3 A complaint may be dismissed under Rule 12(b)(6) for failure to state a claim if the
4 plaintiff fails to state a cognizable legal theory, or has not alleged sufficient facts to support
5 a cognizable legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
6 1988). A complaint must allege "enough facts to state a claim to relief that is plausible on
7 its face," Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007), and "give the defendant
8 fair notice of what . . . the claim is and the grounds upon which it rests," Erickson v.
9 Pardus, 551 U.S. 89, 93 (2007) (internal quotation marks omitted). "[A] plaintiff's
10 obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and
11 conclusions, and a formulaic recitation of the elements of a cause of action will not do."
12 Twombly, 550 U.S. at 555.

13 When considering a motion to dismiss under Rule 12(b)(6), the Court "accept[s] as
14 true all well-pleaded allegations of material fact, and construe[s] them in the light most
15 favorable to the non-moving party." Daniels–Hall v. Nat'l Educ. Ass'n, 629 F.3d 992, 998
16 (9th Cir. 2010). However, "the tenet that a court must accept as true all of the allegations
17 contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the
18 elements of a cause of action, supported by mere conclusory statements, do not suffice."
19 Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949-1950 (2009). "While legal conclusions can provide
20 the complaint's framework, they must be supported by factual allegations." Id. at 1950.
21 Those facts must be sufficient to push the claims "across the line from conceivable to
22 plausible[.]" Id. at 1951 (quoting Twombly, 550 U.S. at 557). In the event dismissal is
23 warranted, it is generally with leave to amend, unless it is clear the complaint cannot be
24 saved by any amendment. See Sparling v. Daou, 411 F.3d 1006, 1013 (9th Cir. 2005);
25 Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002).

26 **2. Patent Infringement Claims**

27 Apple moves to dismiss Emblaze's claims for direct infringement, indirect
28 infringement, and willful infringement. Apple contends that Emblaze has failed to plead

1 sufficient facts to state a cognizable claim for relief. Apple's arguments are discussed in
2 turn below.¹

3 **a. Direct Infringement**

4 Direct infringement claims are governed by § 271(a), which states, "whoever
5 without authority makes, uses, offers to sell, or sells any patented invention . . . during the
6 term of the patent therefor, infringes the patent." Whether a complaint adequately pleads
7 direct infringement is to be measured by the specificity required by Form 18. In re Bill of
8 Lading Transmission and Processing System Patent Litigation, 681 F.3d 1323, 1331 (Fed.
9 Cir. 2012). Form 18 in the Appendix to the Federal Rules of Civil Procedure provides a
10 sample complaint for direct patent infringement. See also Fed.R.Civ.P. 84 ("The forms in
11 the Appendix suffice under these rules and illustrate the simplicity and brevity that these
12 rules contemplate.").

13 To state a claim for direct infringement, the FAC must include:

14 (1) an allegation of jurisdiction; (2) a statement that the plaintiff owns the
15 patent; (3) a statement that defendant has been infringing the patent 'by
16 making, selling, and using [the device] embodying the patent'; (4) a statement
17 that the plaintiff has given the defendant notice of its infringement; and (5) a
demand for an injunction and damages.

18 In re Bill of Lading, 681 F.3d at 1334; see also Athena Feminine Technologies Inc. v.
19 Wilkes, 2011 WL 4079927, at *5 (N.D. Cal. 2011) (Armstrong, J.) (citing McZeal v. Sprint
20 Nextel Corp., 501 F.3d 1354, 1357 (Fed. Cir. 2007)).

21 In the instant motion, Apple moves to dismiss Emblaze's direct patent infringement
22 claim on the ground that the allegations of direct infringement fail to satisfy the minimum
23 pleading requirements of Twombly and Iqbal. Def.'s Mtn. at 6. Emblaze counters by

24 _____
25 ¹ Preliminarily, the Court notes that at the end of its opposition, Emblaze argues that
26 Apple's motion to dismiss should be denied in its entirety because Apple did not assert the
27 defense of failure to state a claim in response to Emblaze's original complaint. Pl.'s Opp. at
28 13-14. According to Emblaze, by answering the original complaint and not asserting a
Rule 12(b)(6) defense, Apple has taken inconsistent positions by filing a motion to dismiss
the FAC, which it should not be permitted to do. Id. The Court rejects this argument.
Emblaze failed to cite any controlling authority holding that it is improper for Apple to file
a motion to dismiss in response to the filing of the FAC.

1 arguing that it has sufficiently pled that Apple is infringing the '473 patent by using,
2 offering to sell, and selling products that incorporate HTTP Live Streaming Standard
3 technology. Pl.'s Opp. at 7. According to Emblaze, it has exceeded the requirements for
4 pleading a claim of infringement because the FAC sets forth the nature of its patent,
5 identifies the specific patent claims alleged to be infringed, identifies when Apple started
6 infringing, and lists the specific Apple products that are alleged to be infringing. Id.

7 As an initial matter, the Court notes that in response to Apple's claim that it does not
8 understand how or why each of the many disparate accused Apple products directly
9 infringe Emblaze's asserted method and system claims, Emblaze states that "Apple is well
10 aware that Emblaze's infringement contentions do not accuse Apple's devices of direct
11 infringement, but rather accuse Apple of inducing direct infringement by requiring
12 companies . . . to directly infringe by using Emblaze's patented technology for live
13 streaming of content over the internet if such companies want to stream live broadcasts to
14 Apple devices." Pl.'s Opp. at 8-9. As discussed above, in a supplemental filing, Emblaze
15 clarified that "Apple is directly infringing both by practicing the methods claims in the suit
16 patent and by operating systems that infringe the system claims of the suit patent." Dkt.
17 122.

18 In light of Emblaze's supplemental filing, the Court rejects Apple's contention that
19 Emblaze has conceded it does not accuse Apple of direct infringement. To the contrary, the
20 supplemental memorandum filed by Emblaze expressly states that it accuses Apple
21 products of direct infringement. See id. Moreover, the position taken by Emblaze in its
22 supplemental memorandum is consistent with the allegations set forth in the FAC.

23 As for the sufficiency of the allegations regarding direct infringement, the Court
24 finds that Emblaze has satisfied the pleading requirements established by In re Bill of
25 Lading. The FAC includes each of the five elements required under Form 18. The FAC
26 contains: (1) an allegation of jurisdiction, FAC ¶ 4; (2) a statement that Emblaze owns the
27 '473 patent, id. ¶ 6; (3) a statement that Apple has infringed the '473 patent because it has
28 "used and continues to use, sold and/or offered to sell . . . products incorporating 'HTTP

1 Live Streaming Standard technology" that have been and can be used for real-time
2 broadcasting," id. ¶ 10; (4) a statement that Emblaze has given Apple notice of its
3 infringement, id. ¶ 13; and (5) a demand for an injunction and damages, id. at 4. To the
4 extent Apple contends that the pleading standard articulated in Iqbal and Twombly applies
5 to direct infringement claims, the Court disagrees. The Federal Circuit recently held that to
6 the extent that [a party argues] that Twombly and its progeny conflict with the Forms and
7 create differing pleading requirements, the Forms control." In re Bill of Lading, 681 F.3d
8 at 1334. Accordingly, for the reasons stated above, Apple's motion to dismiss Emblaze's
9 direct infringement claim is DENIED.

10 **b. Indirect Infringement**

11 There are two theories under which a party may be held liable for indirect
12 infringement: (1) induced infringement under § 271(b); and (2) contributory infringement
13 under § 271(c). According to Emblaze, the FAC alleges claims under both theories. Pl.'s
14 Opp. at 7.

15 Under § 271(b), "[w]hoever actively induces infringement of a patent shall be liable
16 as an infringer." Liability under § 271(b) "requires knowledge that the induced acts
17 constitute patent infringement." Global-Tech Appliances, Inc. v. SEB S.A., 131 S.Ct.
18 2060, 2068 (2011); In re Bill of Lading, 681 F.3d at 1339; see also DSU Med. Corp. v.
19 JMS Co., 471 F.3d 1293, 1306 (Fed. Cir. 2006) ("[I]nducement requires that the alleged
20 infringer knowingly induced infringement and possessed specific intent to encourage
21 another's infringement."). To induce infringement, a defendant must have " 'actively and
22 knowingly aided and abetted another's direct infringement.' " DSU Med., 471 F.3d at 1305
23 (alterations omitted).

24 Under § 271(c), "[w]hoever offers to sell or sells within the United States or imports
25 into the United States a component of a patented machine, manufacture, combination or
26 composition, or a material or apparatus for use in practicing a patented process, constituting
27 a material part of the invention, knowing the same to be especially made or especially
28 adapted for use in an infringement of such patent, and not a staple article or commodity of

1 commerce suitable for substantial noninfringing use, shall be liable as a contributory
2 infringer." 35 U.S.C. § 271(c). "Contributory infringement imposes liability on one who
3 embodies in a non-staple device the heart of a patented process and supplies the device to
4 others to complete the process and appropriate the benefit of the patented invention." Vita-
5 Mix Corp. v. Basic Holding, Inc., 581 F.3d 1317, 1327 (Fed. Cir. 2009). To establish
6 contributory infringement, a plaintiff must show the following elements: "1) that there is
7 direct infringement, 2) that the accused infringer had knowledge of the patent, 3) that the
8 component has no substantial noninfringing uses, and 4) that the component is a material
9 part of the invention." Fujitsu Ltd. v. Netgear Inc., 620 F.3d 1321, 1326 (Fed. Cir. 2010).

10 The FAC alleges that the '473 patent claims methods for real-time broadcasting over
11 a network such as the Internet, and that this "live streaming technology allows transmission
12 of live audio and video to multiple devices, saves on data traffic, does not require devoted
13 streaming servers, and allows reliable streaming even through firewalls." FAC ¶¶ 7, 9.
14 The FAC also alleges that shortly after Apple announced the incorporation of its "HTTP
15 Live Streaming Standard technology" into its products in about mid-2009, Emblaze
16 informed Apple that its technology infringes the '473 patent. Id. ¶¶ 11, 13. The FAC
17 further alleges that "Apple has used and continues to use, sold and/or offer[s] to sell in New
18 York and elsewhere . . . products incorporating 'HTTP Live Streaming Standard
19 technology' that have been and can be used for real-time broadcasting and infringe
20 [numerous] claims . . . of the '473 patent in violation of 35 U.S.C. § 271." Id. ¶ 10.
21 Emblaze's prayer for relief requests a "judgment that Apple has infringed the '473 Patent in
22 violation of 35 U.S.C. §§ 271(a)-(c)." See FAC. In other words, Emblaze claims that
23 Apple is liable as a direct infringer, as an entity that induced infringement, and as a
24 contributory infringer. 35 U.S.C. § 271(a)-(c).

25 In the instant motion, Apple moves to dismiss Emblaze's indirect patent
26 infringement claims on the ground that Emblaze has failed to plead any facts to support its
27 claims for inducement of infringement and contributory infringement. See Def.'s Mtn. at 6-
28 8. Specifically, Apple argues that Emblaze has failed to allege facts establishing indirect

1 infringement because the FAC does not contain allegations accusing a third party of direct
2 infringement. Id. at 8. In addition, Apple argues that Emblaze did not properly plead
3 inducement because the FAC does not allege that Apple had the "specific intent" to
4 encourage any third party's direct infringement. Id. Finally, Apple argues that Emblaze has
5 failed to allege facts establishing contributory infringement because the FAC does not
6 allege that the "accused Apple products constitute a 'material' part of the claimed invention,
7 and do not have any substantial non-infringing uses." Id.

8 In response, Emblaze does not contend that the allegations in the FAC satisfy the
9 pleading standard articulated by the Supreme Court in Iqbal and Twombly. See In re Bill
10 of Lading, 681 F.3d at 1336-1337 (unlike direct infringement, claims for indirect for
11 infringement are evaluated under the standard of Iqbal and Twombly). Instead, Emblaze
12 argues that dismissal is not warranted because its *infringement contentions* identify the
13 direct infringement and describe the acts of the alleged indirect infringer that contribute to
14 or are inducing that direct infringement. Pl.'s Opp. at 7 (emphasis added). Emblaze,
15 however, does not cite any authority supporting the proposition that the Court may consider
16 its infringement contentions, which are not set forth in the FAC, in deciding whether it has
17 pled cognizable claims for relief. See Van Buskirk v. Cable News Network, Inc., 284 F.3d
18 977, 980 (9th Cir. 2002) ("Ordinarily, a court may look only at the face of the complaint to
19 decide a motion to dismiss.").

20 The Court construes Emblaze's failure to specifically argue that it has alleged facts
21 satisfying Twombly and Iqbal's plausibility standard as a concession that the FAC fails to
22 state cognizable claims for relief premised upon induced infringement and contributory
23 infringement. Moreover, the Court finds that the allegations in the FAC do not meet the
24 pleading standard set forth in Twombly and Iqbal. The FAC does not allege facts giving
25 rise to a plausible claim for relief premised upon induced infringement or contributory
26 infringement. Specifically, as for induced infringement, Emblaze has failed to allege any
27 facts plausibly showing that Apple knowingly induced any third party to engage in direct
28 infringement of the '473 patent with the specific intent of encouraging the infringement.

1 The FAC is devoid of allegations alleging how Apple actively induced infringement with
2 the knowledge that the induced acts constitute patent infringement.² As for contributory
3 infringement, Emblaze has failed to allege facts plausibly showing direct infringement by
4 any third party. Nor has Emblaze alleged that the component of the accused Apple
5 products that practices the patented method has no substantial non-infringing uses,³ or that
6 the component constitutes a material part of the invention.

7 In short, the allegations in support of Emblaze's indirect infringement claims provide
8 nothing more than "naked assertions devoid of further factual enhancement." Iqbal at 1949.
9 Emblaze is required to do more than state in a conclusory manner that Apple has infringed
10 the '473 patent in violation of § 271(b)-(c). Accordingly, Apple's motion to dismiss
11 Emblaze's indirect infringement claims is GRANTED. These claims are DISMISSED with
12 leave to amend.

13 c. Willful Infringement

14 To "willfully infringe a patent, the patent must exist, and one must have knowledge
15 of it." State Indus., Inc. v. A.O. Smith Corp., 751 F.2d 1226, 1236 (Fed. Cir. 1985)
16 (emphasis omitted). The Federal Circuit has found that willful infringement was
17 sufficiently pled where the plaintiff alleged that the "infringements have been willful and
18 with full knowledge of the [patents at issue]." See Sentry Protection Prods., Inc. v. Eagle
19 Mfg. Co., 400 F.3d 910, 918 (Fed. Cir. 2005) (citing Dunlap v. Schofield, 152 U.S. 244,
20

21 _____
22 ² According to Emblaze, it has explained in its infringement contentions that "Apple
23 induces third parties to directly infringe the '473 patent by requiring them to use HTTP Live
24 Streaming to communicate real-time broadcasts to Apple's devices, such as iPhone, iPad,
25 iPod Touch, Apple TV, and Mac OS X computers." Pl.'s Opp. at 7. Emblaze also states
26 that its infringement contentions "identify Akamai Technologies, Inc., Brightcove, Inc.,
27 Limelight Networks, Inc., and other parties unknown to Emblaze at this time, as third
28 parties induced by Apple to directly infringe the '473 patent. Id. at 7-8. The FAC,
however, does not allege these facts. Therefore, the FAC does not allege enough facts to
survive a motion to dismiss under the fair notice standard.

³ In cases where, as here, the alleged method is embodied in a larger product, the
Court must examine whether the particular component that allegedly practices the patented
method has substantial non-infringing uses, and not the entire product as a whole. See
Fujitsu, 620 F.3d at 1330-1331.

1 249 (1894) (requiring a pleading equivalent to "with a knowledge of the patent and of his
2 infringement").

3 In the instant motion, Apple contends that dismissal of Emblaze's claim for willful
4 infringement is warranted because, although the FAC alleges pre-suit knowledge of the
5 patent in suit, there are no facts supporting a plausible inference that "Apple acted with an
6 objectively high likelihood, much less 'objective recklessness,' that its actions would
7 constitute infringement" of a valid patent. See Def.'s Mtn. at 8-9 (citing In re Seagate
8 Tech., LLC, 497 F.3d 1360, 1371 (Fed Cir. 2007) ("to establish willful infringement, a
9 patentee must show by clear and convincing evidence that the infringer acted despite an
10 objectively high likelihood that its actions constituted infringement of a valid patent.")). In
11 response, Emblaze argues that it has sufficiently alleged facts to state a willful infringement
12 claim, and that Seagate is inapposite because it only addresses what is necessary to prove a
13 claim of willfulness, and not whether the operative complaint is sufficiently pled. Pl.'s
14 Opp. at 11-13.

15 The FAC alleges that shortly after Apple announced the incorporation of its "HTTP
16 Live Streaming Standard technology into its products, Emblaze informed Apple that
17 Apple's HTTP Live Streaming Standard technology infringes the '473 patent and offered
18 Apple a license to practice under the '473 patent. . . . To date, Apple has declined to take a
19 license under the '473 patent." FAC ¶¶ 13-14. The FAC also alleges that "the acts of
20 infringement by Apple are willful, intentional and in conscious disregard of Emblaze's
21 rights under the '473 patent." Id. ¶ 12.

22 The Court finds that Apple has failed to demonstrate that dismissal of Emblaze's
23 willful infringement claim is appropriate. Here, the FAC identifies the specific accused
24 products, FAC ¶ 11, alleges that Apple received pre-suit notice that its HTTP Live
25 Streaming Standard technology infringes the '473 patent, id. ¶¶ 11, 13, alleges that "the acts
26 of infringement by Apple are willful, intentional and in conscious disregard of Emblaze's
27 rights under the '473 patent," id. ¶ 12, and alleges that "Emblaze has been and will continue
28 to be irreparably harmed by Apple's infringement of the '473 patent." Id. ¶ 16. These

1 allegations are sufficient to state a claim for willful infringement. See Oracle Corp. v.
2 DrugLogic, Inc., 807 F.Supp.2d 885, 902-903 (N.D. Cal. 2011) (finding that plaintiff
3 stated sufficient facts to support a claim for willful infringement by alleging that the
4 defendant was aware of the patent in suit, had "actual notice" of plaintiff's infringement
5 claims, and "continued their actions"); Cloud Farm Associates, L.P. v. Volkswagen Group
6 of America, Inc., 2012 WL 3069390, at *3-4 (D. Del. 2012) (finding that proposed
7 amended complaint sufficiently pled claim for willful infringement where it alleged that
8 defendants had actual knowledge of the patent in suit before the filing of the lawsuit, and
9 that defendants' infringement "has been and continues to be willful and deliberate"); see
10 also Sentry, 400 F.3d at 918 (finding willful infringement sufficiently pled where plaintiff
11 alleged that the "infringements have been willful and with full knowledge of the [patents at
12 issue]").

13 The Court finds that Emblaze has alleged sufficient facts to state a plausible claim
14 for willful infringement. The Court also finds that Apple's reliance on Seagate is
15 misplaced. Seagate is distinguishable because it addresses what is necessary to prove a
16 claim of willfulness, not whether a plaintiff has sufficiently alleged willful infringement as
17 a pleading matter. See Oracle, 807 F.Supp.2d at 903 (citing cases). Accordingly, Apple's
18 motion to dismiss Emblaze's willful infringement claim is DENIED.

19 **III. CONCLUSION**

20 For the reasons stated above, IT IS HEREBY ORDERED THAT:

- 21 1. Apple's motion to strike objection to reply evidence is DENIED.
22 2. Apple's motion to dismiss is GRANTED IN PART AND DENIED IN PART.

23 Emblaze shall have twenty-one (21) days from the date this Order is filed to file a second
24 amended complaint that cures the deficiencies discussed above.

- 25 3. This Order terminates Docket 105 and Docket 124.

26 IT IS SO ORDERED.

27 Dated: 11/27/12

28 
SAUNDRA BROWN ARMSTRONG
United States District Judge