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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BLUESTONE INNOVATIONS LLC,  
Plaintiff,  
v.  
BULBRITE INDUSTRIES, INC.,  
Defendant.

Case No. 15-cv-5478-PJH

**ORDER GRANTING MOTION TO  
DISMISS**

Before the court is the motion of defendant Bulbrite Industries, Inc. ("Bulbrite") to dismiss the complaint in the above-entitled action. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, the court hereby GRANTS the motion.

**BACKGROUND**

This is one of 13 cases filed by plaintiff Bluestone Innovations LLC ("Bluestone") alleging infringement of U.S. Patent No. 6,163,557 ('557 Patent), which is directed at the fabrication of Group III-V nitride semiconductor films for use in visible LED optoelectronic devices. The patent was issued December 19, 2000, and at the time it was assigned to Xerox Corporation. In the complaint, Bluestone alleges that it is "the owner by assignment" of the '557 patent. The complaint asserts a single cause of action against Bulbrite for patent infringement.

Bluestone asserts that Bulbrite has infringed "at least" Claim 1 of the '557 patent by,  
among other things, directly or through intermediaries, making, using,

1 importing, providing, supplying, distributing, selling, and/or offering for sale  
2 LED Lightbulbs with epitaxial film (including, without limitation, at least the  
3 Bulbrite LED11A19 Dimmable Warm Light Bulb) which include; a substrate  
4 including at least one upstanding mesa, each mesa having a top surface;  
and a group III-V nitride epitaxial film on the top surface of at least one  
mesa; wherein the at least one mesa including surfaces oriented along  
crack planes of the epitaxial film, covered by one or more claims of the '557  
Patent to the injury of [p]laintiff.

5 Cplt ¶ 9. Bluestone also asserts that Bulbrite is "directly infringing, literally infringing,  
6 and/or infringing the '557 Patent under the doctrine of equivalents" and that Bulbrite is  
7 "thus liable for infringement of the '557 Patent pursuant to 35 U.S.C. § 271." Cplt ¶ 9.  
8 Bluestone seeks compensatory damages and injunctive relief.

9 Bulbrite now seeks an order dismissing the complaint for failure to state a claim,  
10 pursuant to Federal Rule of Civil Procedure 12(b)(6), or in the alternative, an order  
11 requiring Bluestone to file a more definite statement.

## 12 DISCUSSION

### 13 A. Legal Standard

14 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests for the  
15 legal sufficiency of the claims alleged in the complaint. Ileto v. Glock, Inc., 349 F.3d  
16 1191, 1199-1200 (9th Cir. 2003). Review is generally limited to the contents of the  
17 complaint, although the court can also consider a document on which the complaint relies  
18 if the document is central to the claims asserted in the complaint, and no party questions  
19 the authenticity of the document. See Sanders v. Brown, 504 F.3d 903, 910 (9th Cir.  
20 2007).

21 To survive a motion to dismiss for failure to state a claim, a complaint generally  
22 must satisfy only the minimal notice pleading requirements of Federal Rule of Civil  
23 Procedure 8, which requires that a complaint include a "short and plain statement of the  
24 claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2)

25 A complaint may be dismissed under Rule 12(b)(6) for failure to state a claim if the  
26 plaintiff fails to state a cognizable legal theory, or has not alleged sufficient facts to  
27 support a cognizable legal theory. Somers v. Apple, Inc., 729 F.3d 953, 959 (9th Cir.  
28 2013). While the court is to accept as true all the factual allegations in the complaint,

1 legally conclusory statements, not supported by actual factual allegations, need not be  
2 accepted. Ashcroft v. Iqbal, 556 U.S. 662, 678–79 (2009); see also In re Gilead Scis.  
3 Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008).

4 The allegations in the complaint "must be enough to raise a right to relief above  
5 the speculative level[,]" and a motion to dismiss should be granted if the complaint does  
6 not proffer enough facts to state a claim for relief that is plausible on its face. Bell Atlantic  
7 Corp. v. Twombly, 550 U.S. 544, 555, 558-59 (2007) (citations and quotations omitted).  
8 A claim has facial plausibility when the plaintiff pleads factual content that allows the  
9 court to draw the reasonable inference that the defendant is liable for the misconduct  
10 alleged." Iqbal, 556 U.S. at 678 (citation omitted). "[W]here the well-pleaded facts do not  
11 permit the court to infer more than the mere possibility of misconduct, the complaint has  
12 alleged – but it has not ‘show[n]’ – ‘that the pleader is entitled to relief.’" Id. at 679.  
13 Where dismissal is warranted, it is generally without prejudice, unless it is clear the  
14 complaint cannot be saved by any amendment. Sparling v. Daou, 411 F.3d 1006, 1013  
15 (9th Cir. 2005).

16 B. Bulbrite's Motion

17 Bulbrite argues that the allegations in the complaint are inadequate to put it on  
18 notice as to the nature of the alleged infringement. Bulbrite asserts that the complaint  
19 should be dismissed because the allegations are insufficient under Twombly/Iqbal, or in  
20 the alternative, that Bluestone should be required to provide a more definite statement  
21 pursuant to Federal Rule of Civil Procedure 12(e).

22 Bulbrite asserts that the complaint pleads no facts sufficient to show whether or  
23 how Bulbrite has engaged in "directly infringing, literally infringing, and/or infringing under  
24 the doctrine of equivalents." Bulbrite asserts that the complaint makes a "bare-bones  
25 assertion" that Bulbrite is liable for infringement, but pleads no specific facts showing  
26 "how the patent has been infringed or under which of the many subsections of a statute  
27 the claim lies" (referring to Cplt ¶ 9). Bulbrite also contends that there are no facts pled  
28 that are sufficient to state a claim for induced or contributory infringement, apart from the

1 conclusory assertion that Bulbrite acted "directly or through intermediaries."

2 In opposition, Bluestone asserts that until the abrogation of the forms attached as  
3 an appendix to Rule 84 effective December 1, 2015, the allegations in the complaint  
4 properly complied with Form 18, and, Bluestone asserts, the Federal Circuit has  
5 confirmed that the bare-bones allegations in Form 18 are all that are required to state a  
6 claim for patent infringement.

7 In In re Bill of Lading Transmission & Processing Sys. Patent Lit., 681 F.3d 1323,  
8 1334-35 (Fed. Cir. 2012), the Federal Circuit held that Form 18 is sufficient to state a  
9 claim for patent infringement, and that to the extent that there is a conflict between  
10 Twombly and the Forms with regard to pleading requirements, "the Forms control"); and  
11 that Form 18 and the Federal Rules of Civil Procedure "do not require a plaintiff to plead  
12 facts establishing that each element of an asserted claim is met . . . Indeed, a plaintiff  
13 need not even identify which claims it asserts are being infringed."

14 Former Form 18 (applicable at the time the complaint in the present action was  
15 filed) required "(1) an allegation of jurisdiction; (2) a statement that the plaintiff owns the  
16 patent; (3) a statement that the defendant has been infringing the patent 'by making,  
17 selling, and using [the device] embodying' the patent; (4) a statement that the plaintiff has  
18 given the defendant notice of its infringement; and (5) a demand for an injunction and  
19 damages." McZeal v. Sprint Nextel Corp., 501 F.3d 1354, 1357 (Fed. Cir. 2007),  
20 Bluestone argues that the complaint includes all the allegations required by Form 18  
21 (citing Cplt ¶¶ 3, 5, 6, 9, 10, 11).

22 Bluestone asserts that the complaint also meets the requirements of Rule 8 and  
23 Twombly/Iqbal, as it provides a brief description of what the patent does, and an  
24 allegation that certain specifically identified products also do what the patent does (citing  
25 Bender v. L.G. Elecs. U.S.A. Inc., 2010 WL 889421 at \*3-4 (N.D. Cal. March 11, 2010)  
26 (setting forth description of factual allegations that are sufficient to state "a plausible claim  
27 for relief" in patent infringement claim).

28 Bluestone contends that the complaint clearly accuses Bulbrite of direct

1 infringement, as it alleges that Bulbrite has "directly" infringed the patent, and is thus  
2 "liable for infringement of the '557 Patent pursuant to 35 U.S.C. § 271." Bluestone  
3 argues that the use of the word "directly" in the complaint makes it clear that Bulbrite is  
4 being accused of direct infringement.

5 In reply, Bulbrite argues that the complaint should be dismissed because it fails to  
6 plead enough facts to state a claim that is plausible on its face. For example, Bulbrite  
7 contends that the complaint recites language from Claim 1 of the '557 patent, but alleges  
8 no facts showing how Bulbrite's product or conduct relates to Claim 1 (asserting that the  
9 allegations are "conclusory"); that the complaint simply announces infringement, but  
10 includes no supporting facts, which results in a claim that is not "plausible" in Bulbrite's  
11 view; that apart from the above, the complaint does not meet all the requirements of  
12 Form 18, because it does not include "a statement that the plaintiff has given the  
13 defendant notice of its infringement" as specified by McZeal; and most importantly, that  
14 the complaint does not clearly identify plaintiff's theory of infringement – that is, is it only  
15 direct infringement, or does it also include induced or contributory infringement.

16 The motion is GRANTED. At the time that Bluestone filed the complaint, Form 18  
17 was still operative and controlling. With regard to the allegations of direct infringement,  
18 the complaint includes all the allegations required by Form 18, with the possible  
19 exception of the "giving notice" requirement. Bluestone contends that it gave notice by  
20 alleging in the complaint that Bulbrite had infringed its patent. However, if giving notice  
21 by filing the complaint were adequate, the inclusion of that requirement in a list of what is  
22 necessary to state a claim in the complaint would be nonsensical.

23 If, on the other hand, what is meant is that the complaint must "give notice" of what  
24 products or combinations of products are accused of infringement, then the court finds  
25 that the allegations are sufficient, as they clearly provide Bulbrite with notice that  
26 Bluestone is asserting that Bulbrite has been making and offering for sale "LED lightbulbs  
27 with epitaxial film (including . . . at least the G7 power Sutcliffe 10W A19 Light Bulb)  
28 which include the elements claimed in Claim 1 of the '557 patent.

