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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 APPLE INC.,
8 Plaintiff,
9 v.
10 ALIVECOR, INC.,
11 Defendant.

Case No. 22-cv-07608-HSG

**ORDER DENYING MOTION TO
DISMISS**

Re: Dkt. No. 23

12 Pending before the Court is the partial motion to dismiss, Dkt. No. 23, filed by Defendant
13 AliveCor, Inc. (“AliveCor”). For the reasons discussed below, the Court **DENIES** AliveCor’s
14 motion.

15 **I. BACKGROUND**

16 Apple filed this action for patent infringement on December 12, 2022. Dkt. No. 1
17 (“Compl.”). In the Complaint, Apple alleges infringement of four patents, all related to
18 electrocardiogram (“EKG”) technology and related applications. *See id.* ¶ 3. Plaintiff Apple Inc.
19 (“Apple”) is the owner of the asserted patents: U.S. Patent Nos. 10,076,257 (“the ’257”);
20 10,270,898 (“the ’898”); 10,866,619 (“the ’619”); 10,568,533 (“the ’533”) (collectively “Asserted
21 Patents”). *See id.* ¶¶ 13, 16, 19, 22. Apple asserts at least claim 1 of the ’257 (*id.* ¶ 30); at least
22 claim 1 of the ’619 (*id.* ¶ 57); at least claim 1 of the ’898 (*id.* ¶ 86); and at least claim 20 of the
23 ’533 (*id.* ¶ 119). The ’257 is titled “Seamlessly Embedded Heart Rate Monitor.” *Id.* ¶ 12. The
24 ’898 is titled “Wellness Aggregator.” *Id.* ¶ 15. The ’619 is titled “Electronic Device Having
25 Sealed Button Biometric Sensing System.” *Id.* ¶ 18. The ’533 is titled “User Interfaces for Health
26 Monitoring.” *Id.* ¶ 21. The accused products are AliveCor’s KardiaMobile Card, KardiaMobile,
27 KardiaMobile 6L, Kardia App, KardiaPro (and related products) and Kardia care (and related
28 products) (collectively, “Accused Products”). *Id.*, ¶ 24.

1 Apple brings allegations of induced and contributory infringement, as well as direct
2 infringement, for each of the Asserted Patents. Specifically, Apple alleges that the Accused
3 Products read onto claim 1 of the '257. *See id.* ¶¶ 32-37. Apple further alleges that AliveCor
4 induces its customers to infringe by instructing its users to utilize features of the Accused Products
5 “to detect electrical signals using the processor of the devices.” *Id.* ¶ 43. Moreover, Apple alleges
6 that the Accused Products and associated applications are specifically made to be used in an
7 infringing way and have no substantial non-infringing use. *See id.* ¶¶ 47, 48. Apple brings claims
8 of direct infringement of the '619 in paragraphs 60-66 of the Complaint, and Apple alleges that
9 AliveCor instructs its customers to use the Accused Products in an infringing manner through
10 marketing and other promotional materials. *See id.* ¶ 72. Apple accuses AliveCor of contributory
11 infringement with regard to the '619 on a theory similar to that advanced as to the '257. *See id.* ¶¶
12 76-77. The Complaint follows the same pattern for the '898 patent, laying out element-by-
13 element allegations of direct infringement with respect to claim 1 (*see id.* ¶¶ 88-99); alleging
14 inducement of infringement in the form of marketing and other promotional materials that provide
15 instructions to use the Accused Products in an infringing way (*see id.* ¶¶ 105, 106); and
16 contributory infringement because the Accused Products have no substantial non-infringing uses
17 and are made to be used in an infringing way (*see id.* ¶¶ 109, 110). Finally, Apple similarly
18 alleges direct infringement of the '533 (*see id.* ¶¶ 121-128); inducement of infringement via
19 instructional materials (*see id.* ¶¶ 134, 135); and contributory infringement on the ground that the
20 Accused Products have no substantial non-infringing use and are made in such a way that they
21 will infringe (*see id.* ¶¶ 138, 139).

22 In view of these facts, Plaintiff seeks damages, injunctive relief, and attorneys' fees based
23 on a finding that this case is “exceptional.” *Id.* ¶ 145. Defendant filed this partial motion to
24 dismiss only Plaintiff's claims for indirect infringement on January 30, 2023. *See* Dkt. No. 23
25 (“Mot.”).

26 **II. LEGAL STANDARD**

27 At the outset, the parties do not dispute the appropriate standard for this motion, despite
28 some jousting regarding its application. Rule 8(a) requires that a complaint contain “a short and

1 plain statement of the claim showing that the pleader is entitled to relief[.]” Fed. R. Civ. P.
2 8(a)(2). A defendant may move to dismiss a complaint for failing to state a claim upon which
3 relief can be granted under Rule 12(b)(6). “Dismissal under Rule 12(b)(6) is appropriate only
4 where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable
5 legal theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To
6 survive a Rule 12(b)(6) motion, a plaintiff must plead “enough facts to state a claim to relief that is
7 plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially
8 plausible when a plaintiff pleads “factual content that allows the court to draw the reasonable
9 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662,
10 678 (2009). In reviewing the plausibility of a complaint, courts “accept factual allegations in the
11 complaint as true and construe the pleadings in the light most favorable to the nonmoving party.”
12 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Nonetheless,
13 courts do not “accept as true allegations that are merely conclusory, unwarranted deductions of
14 fact, or unreasonable inferences.” *In re Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
15 2008).

16 **III. DISCUSSION**

17 **A. The Knowledge Requirement**

18 A plaintiff must plead plausible facts showing that the defendant “knew of the patent and
19 [knew] that the induced acts constitute patent infringement.” *Commil USA, LLC v. Cisco Sys.,*
20 *Inc.*, 575 U.S. 632, 639 (2015) (internal citations and quotations omitted). The parties
21 acknowledge that courts are split on whether service of a complaint is sufficient to meet the
22 knowledge requirement for indirect infringement claims. *Compare Windy City Innovations, LLC*
23 *v. Microsoft Corp.*, 193 F. Supp. 3d 1109, 1116 (N.D. Cal. 2016) (finding allegations in the
24 complaint sufficiently detailed to sustain an allegation of post-suit indirect infringement) *with*
25 *Sonos, Inc. v. Google LLC*, 591 F. Supp. 3d 638, 648 (N.D. Cal. 2022) (holding that the patentee
26 did not sufficiently plead knowledge of the patent with respect to indirect infringement claim, on
27 the ground that the complaint lacked sufficient detail, while acknowledging that district courts
28 have split on this issue), *leave to appeal denied*, No. 2022-134, 2022 WL 1486359 (Fed. Cir. May

1 11, 2022). While both willful and indirect infringement require knowledge of the patent, *Sonos*
2 involved a willful infringement claim, which has distinctive pleading requirements. *See Sonos*,
3 591 F. Supp. 3d at 642 (discussing differing views of the requirements for pleading willful
4 infringement).

5 The substantial weight of authority in this District allows a patentee to bring a claim of
6 post-suit infringement on the basis that the alleged infringer received notice of the patent, and
7 therefore had knowledge of it, at least as early as service of the complaint. *See, e.g., Traxcell*
8 *Techs. LLC v. Google LLC*, No. 22-CV-04807-JSC, 2022 WL 17072015, at *6 (N.D. Cal. Nov.
9 17, 2022) (allowing a claim for post-suit indirect infringement); *Bascom Rsch. LLC v. Facebook,*
10 *Inc.*, No. C 12-6293 SI, 2013 WL 968210, at *4 (N.D. Cal. Mar. 12, 2013) (permitting the plaintiff
11 leave to amend its complaint to add specificity regarding “when and how” the defendants were
12 made aware of the patents-in-suit, but allowing claim for post-suit infringement from the date of
13 the complaint in any event). The Court will follow the reasoning of the majority view, and finds
14 that to the extent that the inquiry hinges on the degree of detail in the complaint, Apple has cleared
15 that hurdle. *See, e.g.,* Dkt. No. 1-15, Ex. 15 to Compl. (instructing users on how to set up the
16 KardiaMobile 6L IFU in such a way as to measure heart rhythms and process that information
17 using the device).

18 **B. Adequacy of Pleading**

19 Defendant argues that the Court should dismiss Plaintiff’s indirect infringement claims
20 because they are insufficiently pled.

21 **1. Induced Infringement**

22 Pleading a claim for induced infringement, which cannot be sustained by conclusory
23 allegations alone, requires alleging specific intent. *See In re Bill of Lading Transmission &*
24 *Processing Sys. Pat. Litig.*, 681 F.3d 1323, 1339 (Fed. Cir. 2012) (requiring the plaintiff to plead
25 both i) knowing inducement and ii) specific intent to induce infringement); *DSU Med. Corp. v.*
26 *JMS Co.*, 471 F.3d 1293, 1305 (Fed. Cir. 2006) (holding that specific intent is an element of an
27 induced infringement claim). Here, Plaintiff plausibly pleads that the promotional and other
28 materials that Defendant distributes with the Accused Products specifically instruct customers to

1 use those products in an infringing manner. *See, e.g.*, Compl. ¶¶ 43, 72, 105, 134.¹ Plaintiff's
 2 Complaint does not simply parrot the applicable legal standards. Instead, it describes, element-by-
 3 element, why the Accused Products are infringing, and supports its allegations of inducement with
 4 citations to materials distributed with them by Defendant. For purposes of this motion, that is
 5 enough. The Court disagrees with Defendant's contention that Apple pleads only "general
 6 allegations" of inducement. *See Bill of Lading*, 681 F.3d at 1340 ("Nothing in *Twombly* or its
 7 progeny allows a court to choose among competing inferences as long as there are sufficient facts
 8 alleged to render the non-movant's asserted inferences plausible") (internal quotations omitted);
 9 *Windy City Innovations*, 193 F. Supp. 3d at 1116 (finding allegations of encouragement to infringe
 10 adequate to sustain induced infringement claim); *Software Rsch., Inc. v. Dynatrace LLC*, 316 F.
 11 Supp. 3d 1112, 1135 (N.D. Cal. 2018) (finding that "references to public material" may allow "an
 12 inference of specific intent"). And this case is unlike *Google LLC v. Princeps Interface Techs.*
 13 *LLC*, since there the court dismissed the complaint because the plaintiff made only very general
 14 allegations, which the court contrasted with allegations including specific "examples where the
 15 accused infringer advertised benefits that can be achieved only through use of the asserted patent."
 16 No. 19-cv-06566-EMC, 2020 WL 1478352 (N.D. Cal. Mar. 26, 2020).

17 2. Contributory Infringement

18 To adequately plead contributory infringement, a plaintiff must tie the specific infringing
 19 components of the allegedly infringing products to an infringing use and, relatedly, plausibly
 20 allege that the component has no substantial non-infringing uses. As stated in *Bill of Lading*:

21 Contributory infringement occurs if a party sells or offers to sell, a
 22 material or apparatus for use in practicing a patented process, and that
 23 material or apparatus is material to practicing the invention, has no
 24 substantial non-infringing uses, and is known by the party to be
 25 especially made or especially adapted for use in an infringement of
 26 such patent.

27 681 F.3d 1323, 1337 (Fed. Cir. 2012) (internal citations and quotations omitted); *see also Fortinet,*
 28 *Inc. v. Forescout Techs., Inc.*, 543 F. Supp. 3d 814, 839 (N.D. Cal. 2021) (finding allegations that

¹ Throughout these paragraphs of the Complaint, Plaintiff cites exhibits 15-20, 23-25, 29, and 30. These allegations adequately explain Plaintiff's theory that the exhibits are materials provided by AliveCor to its customers for the purpose of instructing them how to use the accused hardware and related applications in an infringing way.

1 allowed the “*inference*” that components of the accused product lacked substantial non-infringing
 2 uses sufficient) (emphasis in original); *Software Rsch., Inc.*, 316 F. Supp. 3d at 1136 (finding
 3 sufficient allegations that the accused product, “when used in its normal and intended” way,
 4 infringes). Apple alleges as much here. *See, e.g.*, Compl. ¶ 43; Dkt. No. 1-15, Ex. 15 to Compl.
 5 Moreover, unlike in *Bill of Lading*, Apple has not pled itself out of its contributory infringement
 6 claim by alleging substantial non-infringing uses of the Accused Products. *See* 681 F.3d at 1338
 7 (“For purposes of contributory infringement, the inquiry focuses on whether the accused products
 8 can be used for purposes *other than* infringement”) (emphasis in original). At this stage, the Court
 9 makes all inferences in favor of Plaintiff, and whether Apple eventually will be able to prove that
 10 the Accused Products have no substantial non-infringing uses is for another day.

11 **IV. CONCLUSION**

12 Accordingly, the Court **DENIES** Defendant’s partial motion to dismiss. The Court **SETS**
 13 a Case Management Conference for Tuesday, July 11, 2023 at 2:00 p.m. The Court **DIRECTS**
 14 the parties to file an updated joint case management statement, including any revised proposed
 15 schedule, by July 5, 2023. All counsel shall use the following dial-in information to access the
 16 call:


17 Dial-in: 888-808-6929

18 Passcode: 6064255

19 For call clarity, parties shall NOT use speaker phone or earpieces for these calls, and where
 20 at all possible, parties shall use landlines. All attorneys appearing for a telephonic case
 21 management conference are required to dial in at least 15 minutes before the hearing to check in
 22 with the CRD.

23 **IT IS SO ORDERED.**

24 Dated: 6/20/2023

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 26 
 27 HAYWOOD S. GILLIAM, JR.
 28 United States District Judge