

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MEDTRICA SOLUTIONS, LTD.,
Plaintiffs,
v.
CYGNUS MEDICAL, LLC, a Connecticut
limited liability company,
Defendant.

Case No. C12-538RSL

ORDER GRANTING IN PART
AND DENYING IN PART
MOTION TO DISMISS WITH
LEAVE TO AMEND

I. INTRODUCTION

This matter comes before the Court on Plaintiff’s “Motion to Dismiss with Prejudice First Amended Counterclaims for Willful, Inducing, and Contributory Patent Infringement” (Dkt. # 42).¹ Plaintiff Medtrica Solutions, Ltd. (“Medtrica”) argues that Defendant Cygnus Medical, LLC’s (“Cygnus”) counterclaims of willful infringement, contributory infringement, and induced infringement should be dismissed because they do not meet the pleading standards of Federal Rule of Civil Procedure (“Rule”) 8 as construed by the Supreme Court in Ashcroft v. Iqbal, 556 U.S. 662 (2009) and Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007). For the reasons set forth below, the Court GRANTS in part and DENIES in part Medtrica’s motion.

¹The Court finds that this matter can be decided on the papers submitted by the parties. Plaintiff’s request for oral argument is, therefore, DENIED.

1
2 **II. ANALYSIS**

3 **A. Standard**

4 To survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain
5 sufficient factual matter, accepted as true, ‘to state a claim to relief that is plausible on
6 its face.’ ” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570). A claim has
7 facial plausibility when a plaintiff alleges facts that “allow[] the court to draw the
8 reasonable inference that the defendant is liable for the misconduct alleged.” Id.
9 (quoting Twombly, 550 U.S. at 556). Pleading facts that are merely consistent with a
10 defendant’s liability is insufficient to establish plausibility. Id. “[A] formulaic
11 recitation of the elements of a cause of action will not do.” Twombly, 550 U.S. at 555.

12 **B. Willful Infringement**

13 Medtrica argues that Cygnus’s counterclaim of willful infringement must be
14 dismissed because Cygnus fails to allege factual content to support the three elements of
15 a willful infringement claim. Motion (Dkt. # 42) at 3. Specifically, Medtrica contends
16 that Cygnus’s claim should be dismissed because Cygnus fails to allege facts from
17 which the Court could infer that Medtrica acted recklessly. Reply (Dkt. # 64) at 3. In
18 response to Medtrica’s argument, Cygnus argues that it has met the pleading
19 requirements of willful infringement by alleging that Medtrica had notice of the ‘023
20 Patent and has continued to make and sell the Appli-Kit and Revital-Ox. Response
21 (Dkt. # 61) at 3-4.

22 As the parties’ arguments demonstrate, “there is a lack of complete uniformity in
23 recent district court authority addressing wilful (sic) infringement claims in light of
24 Twombly and Iqbal.” Sony Corp. V. LG Elecs. U.S.A., Inc., 768 F. Supp. 2d 1058,
25 1064 (C.D. Cal. 2011) (internal quotation marks omitted). To survive a motion to
26 dismiss under Rule 12(b)(6), the Court finds that Cygnus is not required to allege

1 specific facts establishing that Medtrica acted with objective recklessness. The
2 allegations that Medtrica has had notice of the '023 Patent since 2011 and has continued
3 to make and sell the Appli-Kit and Revital-Ox, First Amended Answer (Dkt. # 36) at 6,
4 ¶6, are sufficient to “make out the barest factual assertion” to state a claim for willful
5 infringement,” IpVenture, Inc. v. Cellco P’ship., 2011 WL 207978, at *2 (N.D. Cal. Jan.
6 21, 2011). The Court DENIES Medtrica’s motion to dismiss Cygnus’s willful
7 infringement claim.

8 **C. Indirect Infringement**

9 Indirect infringement includes contributory infringement and inducing
10 infringement. Elan Microelectronics Corp. v. Apple, Inc., 2009 WL 2972374, at *2
11 (N.D. Cal. Sept. 14, 2009). To establish liability for induced infringement, a patent
12 holder must show “first that there has been direct infringement, and second that the
13 alleged infringer knowingly induced infringement and possessed specific intent to
14 encourage another’s infringement.” Kyocera Wireless Corp. v. Int’l Trade Comm’n,
15 545 F.3d 1340, 1353-54 (Fed. Cir. 2008). Medtrica contends that Cygnus’s induced
16 infringement counterclaim should be dismissed because Cygnus has failed to allege facts
17 indicating that Medtrica had the specific intent to induce a third-party to infringe the
18 '023 Patent. Motion at 5. However, the Court may infer specific intent here from the
19 allegations regarding Medtrica’s website and marketing materials, as well as the
20 instructions for using the Appli-Kit. Symantec Corp. v. Veeam Software Corp., 2012
21 WL 1965832, at *5 (N.D. Cal. May 31, 2012). Medtrica’s motion to dismiss Cygnus’s
22 claim for induced infringement is DENIED.

23 To state a claim for contributory infringement, Medtrica argues that Cygnus must
24 allege that a third-party directly infringed the '023 Patent using a component supplied
25 by Medtrica, Medtrica knew of the '023 Patent, and the component was especially made

1 for infringing use and had no substantial non-infringing uses. Motion at 4 (citing Lucent
2 Techs., Inc. v. Gateway, Inc., 580 F.3d 1301, 1320 (Fed. Cir. 2009)). While the Court
3 may infer specific intent required for a claim for induced infringement, the Court cannot,
4 in the complete absence of allegations, infer that Appli-Kit or the Revital-Ox is a
5 component of a patented invention, or that the component has no substantial non-
6 infringing use. See Halton Co. v. Streivor, Inc., 2010 WL 2077203, at *2 (N.D. Cal.
7 May 21, 2010). Cygnus's First Amended Answer is devoid of factual allegations about
8 Medtrica's sale or importing of any component of a patented invention and the
9 component's potential uses. See First Amended Answer at 5-6, ¶ 4. The Court
10 GRANTS Medtrica's motion to dismiss Cygnus's claim of contributory infringement.

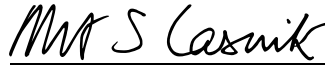
11 Contrary to Medtrica's arguments, the Court finds that the deficiencies in
12 Cygnus's contributory infringement claim may be resolved by pleading additional facts.
13 Based on that finding, the Court dismisses Cygnus's contributory infringement claim
14 with leave to amend. Cook, Perkiss & Liehe, Inc. v. Northern Cal. Collection Serv. Inc.,
15 911 F.2d 242, 247 (9th Cir. 1990) ("in dismissals for failure to state a claim, a district
16 court should grant leave to amend even if no request to amend the pleading was made,
17 unless it determines that the pleading could not possibly be cured by the allegation of
18 other facts.").

18 III. CONCLUSION

19 For all the foregoing reasons, the Court GRANTS Medtrica's motion to dismiss
20 Cygnus's contributory infringement counterclaim and DENIES Medtrica's motion to
21 dismiss Cygnus's counterclaims of willful and induced infringement (Dkt. # 42).
22 Within 30 days of the date of this Order, Cygnus may file an amended answer with facts
23 sufficient to assert a claim of contributory infringement. If Cygnus does not file an
24

1 amended answer, the Court will proceed on Cygnus's counterclaims of willful and
2 induced infringement.

3
4 DATED this 15th day of November, 2012.

5
6 
7 Robert S. Lasnik
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24