

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

PLOTAGRAPH, INC., a Delaware
Corporation, Plaintiff;

TROY PLOTA, an individual Plaintiff;

and

SASCHA CONNELLY, an individual
Plaintiff

v.

LIGHTRICKS LTD., an Israeli Corporation,

Defendant.

Civil Action No. 4:21-cv-03873

JURY TRIAL DEMANDED

**DEFENDANT LIGHTRICKS LTD.'S MOTION TO DISMISS
UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6)**

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Plaintiffs Plotagraph, Inc. (“Plotagraph”), Troy Plota (“Plota”), and Sascha Connelly (“Connelly”) (collectively, “Plaintiffs”) accuse Defendant Lightricks Ltd. (“Lightricks” or “Defendant”) of directly, indirectly, and willfully infringing U.S. Patent Nos. 10,346,017 (the “’017 Patent”); 10,558,342 (the “’342 Patent”); and 10,621,469 (the “’469 Patent”) (collectively, “the Asserted Patents”). *See* Dkt. 2 (“Complaint”). Pursuant to Federal Rule of Civil Procedure 12(b)(6), Lightricks moves to dismiss the Complaint for failure to state a claim.

I. STATEMENT OF ISSUES

This Motion presents the following issues to be ruled upon:

1. whether the Asserted Patents’ claims are directed to ineligible subject matter under 35 U.S.C. § 101.
2. whether Plaintiffs plead sufficient facts to state a plausible claim for pre-issuance damages and/or injunctive relief;
3. whether Plota has standing to sue for infringement; and
4. whether Plaintiffs plead sufficient facts to state a plausible claim for direct, indirect, and/or willful patent infringement against Lightricks.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 8(a)(2) “generally requires only a plausible ‘short and plain’ statement of the plaintiff’s claim,” showing that the plaintiff is entitled to relief. *Skinner v. Switzer*, 562 U.S. 521, 530 (2011). To survive a motion to dismiss under Rule 12(b)(6), a complaint must “contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* (citing *Twombly*, 550 U.S. at 555).

The relevant inquiry under *Iqbal/Twombly* is whether the factual allegations in the complaint are sufficient to show that the plaintiff has a plausible claim for relief. *Iqbal*, 556 U.S. at 679. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* at 678. In other words, a plausible claim must do more than merely allege entitlement to relief; it must support the grounds for that entitlement with sufficient factual content. *Id.* “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555.

III. SUMMARY OF THE ARGUMENTS

First, Plaintiffs cannot state a claim for infringement because the Asserted Patents’ claims are directed to patent ineligible subject matter under 35 U.S.C. § 101.

Second, Plaintiffs have not plausibly alleged *any* facts supporting their requested relief for pre-issuance damages and an injunction. Plaintiffs cannot recover any pre-issuance damages related to Lightricks’ alleged infringement because the ’342 Patent’s claims are not “substantially identical” to those included in the corresponding published patent application. 35 U.S.C. § 154(d). And with respect to an injunction, Plaintiffs have not alleged facts that satisfy the requisite *eBay* factors.

Third, Plota lacks standing to sue for infringement because he had no ownership interest in the Asserted Patents when the Complaint was filed. The Patent Act requires that a “suit for infringement of patent rights ordinarily be brought by a party holding legal title to the patent.” *Propat Int’l Corp. v. Rpost, Inc.*, 473 F.3d 1187, 1189 (Fed. Cir. 2007) (citing 35 U.S.C. §§ 100, 281). Since Mr. Plota assigned *all* right, title, and interest in the Asserted Patents to Plotagraph, his allegations should be dismissed with prejudice.

Fourth, none of Plaintiffs' infringement allegations satisfy the *Twombly* and *Iqbal* standard. Plaintiffs fail to identify *any* allegedly infringed claims, which is fatal to their allegations of direct, indirect, and willful infringement. Further, Plaintiffs fail to sufficiently allege pre-suit knowledge of the Asserted Patents as well as other requisite elements of indirect and willful infringement. Therefore, Plaintiffs' claims of direct, indirect, and willful infringement should be dismissed under Federal Rule of Civil Procedure 12(b)(6).

IV. ARGUMENT

A. **Plaintiff Cannot State a Claim for Infringement Because the Claims Include Unpatentable Subject Matter.**

The patent statute provides that “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor.” 35 U.S.C. § 101. But Section 101 “contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (internal quotation mark and citation omitted). A claim is invalid under Section 101 where: (1) it is “directed to” a patent-ineligible concept, such as an abstract idea, and (2) the particular elements of the claim, considered “both individually and as an ordered combination,” do not add enough to “transform the nature of the claim into a patent-eligible application,” i.e., do not set forth an “inventive concept.” *Alice*, 573 U.S. at 217 (internal quotation marks and citation omitted); *SAP America, Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1166-67 (Fed. Cir. 2018).

At *Alice* Step One, courts “must first determine whether the claims at issue are directed to a patent-ineligible concept.” *Alice*, 573 U.S. at 218. This requires “looking at the ‘focus’ of the claims, their ‘character as a whole,’” to determine if they are directed to excluded subject matter. *Electric Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (internal citation

omitted). With computer-related patents, the critical distinction is “whether the focus of the claims is on the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335-36 (Fed. Cir. 2016). “[A] claim that merely describes an ‘effect or result dissociated from any method by which [it] is accomplished’ is not directed to patent-eligible subject matter.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1244 (Fed. Cir. 2016) (internal citations omitted).

At *Alice* Step Two, courts search for an “inventive concept—i.e., an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself” by looking at “[w]hat else is . . . in the claims,” beyond the abstract idea to which the claims are directed. *Alice*, 573 U.S. at 217-18 (internal quotation mark and citation omitted). There is nothing inventive about applying an abstract idea using “well-understood, routine, conventional activit[ies] previously known to the industry.” *Id.* at 225. Nor does “[a] simple instruction to apply an abstract idea on a computer . . . provide a sufficient inventive concept.” *Intellectual Ventures I, LLC v. Capital One Bank (USA), N.A.*, 792 F.3d 1363, 1367 (Fed. Cir. 2015).

1. The Claims’ Focus is an Abstract Idea.

The Asserted Patents’ claims are directed to “automatically shifting pixels” in a digital image or a video file. Complaint at ¶ 6. According to the Complaint, the pixels are shifted to animate the image or file:

[t]his technology ***allows users to animate portions of a digital still photo or a frame of a video file.*** For example, a still photo showing an individual standing before a waterfall could be animated to have the waterfall in the still photo appear to be flowing.

Id. (emphasis added). The concept of “shifting pixels” in a digital file is abstract—and animation itself is nothing new—it has long been performed by humans using no more than a pen and pieces of paper, where, e.g., each piece of paper represents one image in a sequence of images and is viewed in rapid succession. This is commonly referred to as a “flip book” and multiple variations are easily envisioned. Here the Asserted Patents describe no more than a digital extension of that animation, where a user animates a digital image by tracing an animation path on a digital image and playing the animation in a loop.

The Asserted Patents share a common specification (while the ’469 Patent includes additional description relating to video). Because the asserted claims are constrained by a common specification and represent insignificant variations of one another (for purposes of patent eligibility), the reasons why one claim includes unpatentable subject matter largely applies to other asserted claims.

2. The ’342 Patent is Invalid Under 35 U.S.C. § 101.

The ’342 Patent includes three independent claims, i.e., claims 1, 7, and 15. Independent claim 7, which is representative, recites:

7. A method for automating a shifting of pixels within a digital image, comprising:

receiving a first indication of a first starting point through a user interface, wherein the first starting point is received through a user selection of a portion of the digital image;

receiving, through the user interface, an indication of a non-linear pathway extending away from the first starting point;

selecting a first set of pixels extending along a length of the non-linear pathway and away from the first starting point; and

shifting the first set of pixels along the non-linear pathway, wherein shifting the first set of pixels comprises rendering and re-rendering in a loop the first set of pixels being shifted.

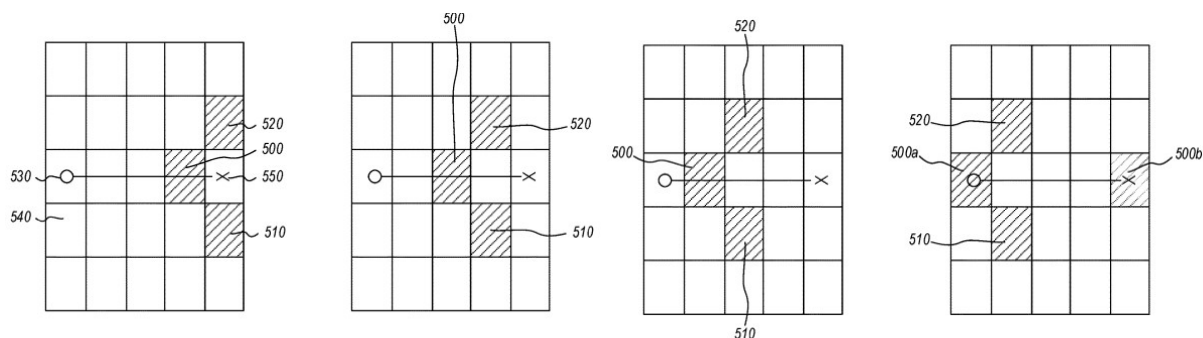
’342 Patent (Dkt. 8, Ex. C at 15:12-28).

a. *The '342 Patent's Claims Are Directed to an Abstract Idea Under Alice Step One.*

The '342 Patent's claims are directed to the abstract idea of animating an image. *Id.* at Abstract. The features of representative claim 7 involve no more than routine activity for animating an image, namely: picking a starting point, a direction, and a portion of the image to move, and then moving that portion. This fails *Alice* Step One under a number of cases in an area of well-developed case law.

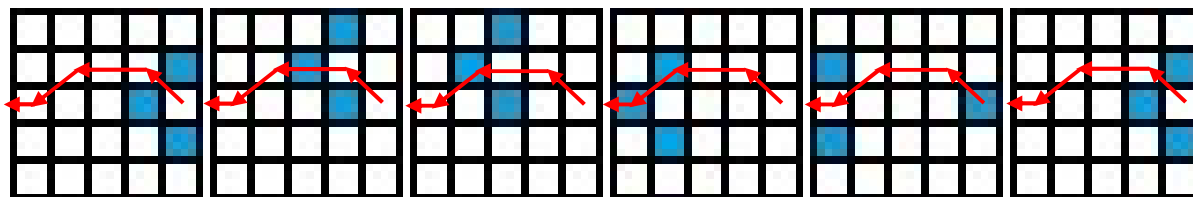
First, the Federal Circuit has repeatedly found actions that “can be performed in the human mind, or by a human using a pen and paper” to be unpatentable. *Ericsson Inc. v. TCL Commc'n Tech. Holdings Ltd.*, 955 F.3d 1317, 1327 (Fed. Cir. 2020) (internal citation omitted). Claim 7 fits in this category. It initially requires that a user “select” a starting point. This is akin to a user placing a pen on paper or a stylus on a digital screen. Next, “an indication of a non-linear pathway extending from the first starting point” is received. This is akin to a user drawing a line on paper with her pen or on a digital screen with her stylus. Such actions are performed by the user—according to her own creativity—and implemented using no more than basic tools.

The user has now picked where to start and how to get there. The claims next require selecting which pixels to move along the pathway, which is akin to a user deciding what portion of the image to move. Finally, the claims require shifting pixels and re-rendering them. This is akin to the user flipping through pieces of paper, each having a slightly different version of a figure, to watch how that figure moves as the user flips from one piece of paper to another. The user can, of course, do this over and over. The foregoing is illustrated at Fig. 5 of the '342 Patent, which demonstrates how claim 7's steps can be performed using a pen and paper.

**Fig. 5A****Fig. 5B****Fig. 5C****Fig. 5D**

“Fig. 5A depicts a starting point 550, an ending point 530, and an associated link 540. Additionally, FIG. 5A depicts exemplary pixels 500, 510, and 520.” ’342 Patent at 7:20-22. Thus, Fig. 5A shows a starting point selected by the user (550), a pathway extending from the starting point (the line between 550 and 530), and the selection of a set of pixels along the pathway. Figs. 5B–5D illustrate movement of along the pathway. The Asserted Patents expressly confirm that a “user can manually” choose both the starting point (*id.* at 5:58-62), and the pathway. *Id.* at 6:26-37.

As shown below, the claims’ inclusion of a “non-linear pathway” and “loop” does not alter the analysis. For example, the pathway illustrated at Fig. 5 could easily be configured as follows:



This tracks Fig. 5, except the path now follows a curve as the pixels shift from left to right—only to re-appear in loop fashion at their starting point—akin to a user going through her flip book over and over. Therefore, the entirety of claim 7 can be performed by hand, using nothing but pen and paper.

In *Yu v. Apple Inc.*, the Federal Circuit confirmed that claims directed to “the abstract idea of taking two pictures and using those pictures to enhance each other in some way,” failed to recite any “inventive concept” beyond that idea. 1 F.4th 1040, 1045 (Fed. Cir. 2021), *cert. denied*, 142

S. Ct. 1113 (2022). There, the claims at issue involved “an improved digital camera” comprising sensors, lenses, and a processor to “produc[e] a resultant digital image from [a] first digital image enhanced with [a] second digital image.” *Id.* at 1042. And in *Electric Power*, the Federal Circuit held that claims “focus[ed]” on “collecting information, analyzing it, and displaying certain results” were not patent eligible. 830 F.3d at 1353. There, the claims at issue involved receiving data streams from multiple sources, analyzing the data streams, and displaying the results to detect events in an electrical grid to provide an “indicator of reliability.” *Id.* at 1351-52. Claim 7 requires even less—only receiving a user input, analyzing the input, and displaying results of the analysis in the form of moving pixels. Such “generalized steps” are abstract, even when “performed on a computer.” *Enfish*, 822 F.3d at 1338 (internal citation omitted).

b. *The '342 Patent Does Not Contain an Inventive Concept Under Alice Step Two.*

The '342 Patent's claims do not recite an inventive concept that provides “something more,” either individually or as an ordered combination, to transform the claim to include patentable subject matter. For example, the '342 Patent only contemplates generic hardware and confirms that the '342 Patent's claims can “utilize a . . . general-purpose computer.” '342 Patent at 11:60. Even if the claims did not cover an abstract idea (which they do), their features involve only well-known, routine, and conventional hardware and software, such as the “many digital image editing tools and digital image sharing tools [that] include filters that can be applied to images to generate desired effects and appearances within an image.” *Id.* at 1:34-37. The '342 Patent admits it was well known to manipulate digital images, including with movement. *Id.* at 1:38-49. And to the extent the Asserted Patents indicate that a novel feature is “shifting pixels,” it is admittedly performed using well-known and routine hardware and software. *Id.* at 11:37-38.

In *Electric Power*, the Federal Circuit held under Step Two that “merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes.” 830 F.3d at 1355. Similarly, in *Univ. of Fla. Research Found., Inc. v. GE Co.*, the Federal Circuit held that the claims failed Step Two because they were not “a technical improvement over prior art.” 916 F.3d 1363, 1369 (Fed. Cir. 2019). Instead, they merely “recite[d] the abstract idea of ‘collecting, analyzing, manipulating, and displaying data,’ and propose[d] using ‘a general-purpose computer to carry it out.’” *Id.*

Here, claim 7 does not include any specialized hardware or a new animation technique. It requires nothing more than what animators have been doing since the dawn of animation—moving one portion of an image (e.g., a set of pixels or a piece of paper) while other parts of that image (e.g., other pixels or other pieces of paper) remain stationary. This animation can simply be repeated or “looped.” That Plaintiffs claim to automate the process using a computer is irrelevant—the “claims here do not propose a solution or overcome a problem ‘specifically arising in the realm of computer [technology],’” and therefore are not “transform[ed] into a patent-eligible application.” *FairWarning IP, LLC v. Iatric Sys.*, 839 F.3d 1089, 1097 (Fed. Cir. 2016).

c. *Claim 7 is Representative of the '342 Patent.*

Claim 7 is representative of the '342 Patent's other claims. Its dependent claims include minor variations of the same subject matter, such as, e.g., receiving an indication of an end-point (claim 8), shifting a pixel from the end to the beginning (Claim 9), preventing certain pixels identified by the user from moving (claims 10-12), and moving a second set of pixels (claims 13-14). The forgoing features are illustrated at Fig. 5 or are an extension of its abstract process. The other independent claims, i.e., claims 1 and 15, as well as claims depending therefrom, include variations or insignificant additional steps that are based on the underlying process illustrated in Fig. 5. Accordingly, the claims of the '342 Patent are directed to ineligible subject matter.

3. The '469 Patent is Invalid Under 35 U.S.C. § 101.

The '469 Patent's claims significantly overlap the '342 Patent's claims, and therefore, are also directed to ineligible subject matter:

'342 Patent Claim 7	'469 Patent Claim 11
7. A method for automating a shifting of pixels within a digital image, comprising:	11. A method for automating a shifting of pixels within a video file, comprising:
receiving a first indication of a first starting point through a user interface, wherein the first starting point is received through a user selection of a portion of the digital image;	receiving a first indication of a first starting point through a user interface, wherein the first starting point is received through a user selection of a first portion of a first video frame in the video file;
receiving, through the user interface, an indication of a non-linear pathway extending away from the first starting point;	receiving, through the user interface, a first direction associated with the first starting point;
	create a first digital link extending in the first direction from the first starting point;
selecting a first set of pixels extending along a length of the non-linear pathway and away from the first starting point; and	selecting a first set of pixels that are: parallel to the first digital link, within a user-defined threshold distance from the first digital link, and extending from the first starting point to a first ending point; and
shifting the first set of pixels along the non-linear pathway, wherein shifting the first set of pixels comprises rendering and re-rendering in a loop the first set of pixels being shifted.	shifting the first set of pixels, in the first video frame, in the first direction.

a. *The '469 Patent's Claims Are Directed to an Abstract Idea Under Alice Step One.*

Similar to the '342 Patent's claims, the '469 Patent's claim 11 is directed to the abstract idea of animating an image. The only differences between the '342 Patent's claim 7 and the '469 Patent's claim 11 are: (1) the image is in a video file; (2) a link extends from a starting point rather than a non-linear pathway, and (3) a user-defined threshold distance is specified. Aside from the use of video, each element is described in the same Fig. 5 as the '342 Patent. *Compare* '469 Patent (Dkt. 8, Ex. D), Fig. 5 *with* '342 Patent, Fig. 5 (showing a start point (550), end point (530), and line (the "first direction") between them). Fig. 5 also shows a set of pixels parallel to the link and within a user-defined distance (510 and 520), then illustrates shifting those pixels along the line.

See '469 Patent at 7:55-8:56 (discussing shifting pixels in the context of a video loop). The '469 Patent's claim 11 fails the same pen and paper test and functional language tests for the same reasons set forth with respect to the '342 Patent's claims.

b. *The '469 Patent Does Not Contain an Inventive Concept Under Alice Step Two.*

Claim 11 also fails *Alice* Step Two for the same reasons as the '342 Patent's claims. The '469 Patent does not purport to include a novel use of creating or editing a video (*see id.* at 1:39-53) and, like the other Asserted Patents, only uses a generic computer. *Id.* at 13:57. And regardless of whether the claims involve moving pixels in an image or a video, they still only involve, *at most*, the collection, analysis, manipulation, and display of data. *Univ. of Fla. Research Found.*, 916 F.3d at 1368-69 (holding such did not include an inventive concept). Accordingly, claim 11 is directed to ineligible subject matter under Section 101.

c. *Claim 11 is Representative of the '469 Patent.*

Claim 11 is representative of the '469 Patent's other claims. Its dependent claims include minor variations of the same subject matter, such as, e.g., preventing certain pixels from moving at the behest of the user and continuing to shift pixels. Such minor extension of what is shown in Fig. 5 are necessarily abstract and lack an inventive concept. The '469 Patent's other independent claims, i.e., claims 1 and 18, as well as claims depending therefrom, merely apply the use of generic computers to, e.g., access a file and perform an abstract method. Each provides nothing new or unique, and each fails to recite an inventive concept that would lift the claims into subject matter eligibility. Accordingly, the Court should find that each claim of the '469 Patent is invalid as directed to ineligible subject matter.

4. The '017 Patent is Invalid Under 35 U.S.C. § 101.

For the sake of brevity, Lightricks points out that the '017 Patent's claims are invalid for the same reasons set forth with respect to the '342 Patent's claims. Like the '342 Patent, the '017 Patent's claims are directed to the abstract idea of animating an image. *See, e.g.*, '017 Patent at Abstract. For example, according to independent claim 8, a user provides a starting point and an ending point, creates a line between them, and moves selected pixels along the line. However, here, the action is performed twice and the claim explicitly states that the pixels are displayed at every step. But, as before, each step can be illustrated by the pen-and-paper illustration in Fig. 5. And the '017 Patent's claims fail *Alice* Step Two for the same reasons set forth with respect to the '342 Patent.

The dependent claims include minor variations, such as, e.g., preventing certain pixels chosen by the user from moving (claims 10-13) and looping the pixels back to the beginning (claim 9). Again, such features are minor extensions of what is shown in Fig. 5, and therefore, are abstract and lack an inventive concept. Independent claims 1 and 14 and their dependent claims merely apply the use of generic computers to access the file and perform the abstract method. Each provides nothing new or unique, and therefore each fails to recite an inventive concept that would lift the claims into subject matter eligibility.

B. Plaintiffs Have Not and Cannot State a Claim for Pre-Issuance Damages.

The Court should dismiss Plaintiffs' claim for pre-issuance damages under 35 U.S.C. § 154(d) because, taking the Complaint's allegations as true, the claims of U.S. Patent Publication No. 2018/0032236 (the "'236 Publication") and the '342 Patent are not "substantially identical." A claim for reasonable royalties based upon provisional rights under 35 U.S.C. § 154 only arises where "the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application." 35 U.S.C. § 154(d)(2). Whether the patent and published

application are substantially identical is a question of law. *Laitram Corp. v. NEC Corp.*, 163 F.3d 1342, 1347 (Fed. Cir. 1998).

According to the Complaint, Plotagraph first informed Lightricks that it owned the '236 Publication on September 24, 2018, which "ultimately issued as the '342 Patent." Complaint at ¶ 14; Dkt. 8, Ex. A. From any reasonable viewpoint, the '236 Publication's claims and the '342 Patent's claims are not "substantially identical." A simple comparison shows that *every claim* of the '236 Publication was significantly revised (by amendment) before the '342 Patent issued. For example, claim 7 was amended as follows:

7. A method for automating ~~the~~a shifting of pixels within a digital image, comprising:

- receiving a first indication of a first starting point through a user interface, wherein the first starting point is received through a user selection of a portion of the digital image;
- receiving, through the user interface, ~~a first direction associated with an~~indication of a non-linear pathway extending away from the first starting point;
- selecting a first set of pixels extending ~~in along a length of the first~~directionnon-linear pathway and away from the first starting point; and
- shifting the first set of pixels ~~in along the first directionnon-linear pathway~~, wherein shifting the first set of pixels comprises rendering and re-rendering in a loop the first set of pixels being shifted.

See generally Ex. A (comparing the '236 Publication's claims to the '342 Patent's claims). Further review shows other significant changes to the claims. Courts have held that pre-issuance recovery is barred under 35 U.S.C. § 154 when claim amendments made prior to issuance were less significant.¹ Therefore, the Court should dismiss Plaintiffs' claim for pre-issuance damages.

C. Plaintiffs Fail to State a Claim for Injunctive Relief.

¹ *Pandora Jewelry, LLC v. Chamilia, LLC*, No. CIVIL CCB-06-600, 2008 WL 3307156, at *9-10 (D. Md. Aug. 8, 2008) (a change from a reversible band to a permanent "fixedly attached band" in a claim describing a necklace violated the "substantially identical" standard of § 154(d)); *Icon Outdoors, LLC v. Core Res., Inc.*, No. CIV.A RDB-11-2967, 2013 WL 2476392, at *14-15 (D. Md. June 7, 2013) (a change from "waterproof or windproof" to "waterproof and windproof" in a claim describing the material of "the upper portion of [a] hunting garment" precluded application of § 154(d)); *Classen Immunotherapies, Inc. v. Shionogi, Inc.*, 993 F. Supp. 2d 569, 580 (D. Md. Jan. 29, 2014) (where the published patent application lacked claim language "tying the patented process to a regulatory process[,] the application was not "substantially identical" to the issued patent).

The Court should also dismiss Plaintiffs' request for a preliminary and permanent injunction because Plaintiffs' cursory allegations of irreparable harm cannot state a claim for injunctive relief. Under the *eBay* standard, a patentee seeking an injunction must demonstrate:

(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006). As with the Complaint's other allegations, Plaintiffs provide a single bare-bones, boilerplate paragraph for each Asserted Patent alleging that "[i]n addition, Lightricks's infringing acts and practices have caused and are causing immediate and irreparable harm to Plaintiffs." Complaint at ¶ 28; *see also id.* at ¶¶ 39, 49.

The foregoing paragraph and others like it do not include meaningful factual content. Plaintiffs' conclusory statement that Lightricks' "infringing acts and practices" are causing Plaintiffs "immediate and irreparable harm" provides no factual support. Further, the Complaint is devoid of any factual allegations in support of the above *eBay* factors required for injunctive relief. And the Complaint's bare request for a preliminary and permanent injunction in its Prayer for Relief does not add anything more. *See id.* at 12. Such unsupported legal conclusions are not entitled to any deference. *See Iqbal*, 556 U.S. at 678. Since Plaintiffs have not plausibly alleged *any* supporting facts, the Court should dismiss Plaintiffs' request for injunctive relief.

D. Plaintiff Troy Plota Fails to Assert Standing.

Plota's allegations should be dismissed with prejudice because, taking the Complaint's allegations as true, he has *no ownership* in the Asserted Patents. "The essential issue regarding the right to sue on a patent is who owns the patent." *Aspex Eyewear, Inc. v. Miracle Optics, Inc.*, 434 F.3d 1336, 1341 (Fed. Cir. 2006). The Patent Act requires that "a suit for infringement of patent rights ordinarily be brought by a party holding legal title to the patent." *Propat Int'l Corp.*, 473

F.3d at 1189 (citing 35 U.S.C. §§ 100, 281). According to the Complaint, Plota “assigned his portion of the right, title and interest in the Patents-in-Suit to Plotagraph” before the Complaint was filed. *See, e.g.*, Complaint at ¶¶ 3, 23, 33, and 44. This is confirmed by the aforementioned assignment. Ex. B (“Plota Assignment”).^{2,3} To be clear, *there are only two owners of the Asserted Patents*: Plotagraph and Connelly. Therefore, Plota has not and cannot state a claim—and his allegations should be dismissed with prejudice.

E. Plaintiffs Fail to State a Claim for Direct Infringement.

Plaintiffs fail to plead any factual allegations that are sufficient to support a plausible claim for direct infringement. It is well known that “[a]llegations of direct infringement are subject to the pleading standards established by [*Twombly* and *Iqbal*].” *Golden v. Apple Inc.*, 819 F. App’x 930, 931 (Fed. Cir. 2020). Direct patent infringement only exists where “an accused product embodies all limitations of the claim,” or “where all steps of a claimed method are performed by or attributable to a single entity.” *Amgen Inc. v. F. Hoffmann-La Roche, Ltd.*, 580 F.3d 1340, 1374 (Fed. Cir. 2009); *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 797 F.3d 1020, 1022 (Fed. Cir. 2015) (en banc). Here, Plaintiffs simply fail to identify *any* allegedly infringed claim, much less a recitation of *how* the Accused Products include every feature of a claim. This requires dismissal.

While “[a] plaintiff is not required to plead infringement on an element-by-element basis . . . a complaint [must] place the alleged infringer ‘on notice of what activity . . . is being accused of infringement.’” *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1352 (Fed. Cir. 2021). “Accordingly, a plaintiff cannot assert a plausible claim for infringement under the *Iqbal/Twombly*

² The Plota Assignment states in part “Troy Plota hereby assign[s] . . . The **entire right, title and interest** in said invention and in the applications and patents . . . All claims for damages and all of the remedies arising out of any infringement of the invention or the applications or patents . . . **including**, but not limited to, **the right to sue and collect and retain damages for past infringements of the invention or the applications or patents** . . .” *See* Ex. B, pg. 1 of 3. (emphasis added).

³ The Plota Assignment was recorded at the U.S.P.T.O on November 30, 2021. *See* Ex. B, pg. 2 of 3.

standard by reciting the claim elements and merely concluding that the accused product has those elements. There must be some factual allegations that, when taken as true, articulate why it is plausible that the accused product infringes the patent claim.” *Id.* at 1353. Here, the Complaint fails to identify *any* allegedly infringed claim, or *any* specific claim features allegedly included in the Accused Products. The entirety of the Complaint’s direct infringement allegations are set forth in three paragraphs—one for each Asserted Patent. *See* Complaint at ¶¶ 24, 34, and 45. With respect to the ’017 and ’342 Patents, the Complaint includes only the following allegations regarding direct infringement:

24. On information and belief, Lightricks has committed and continues to commit acts of direct infringement of the ’017 Patent by making, selling, offering to sell and/or importing the Accused Program into the United States. Claims drawn to a “computer system” in the ’017 Patent are directly infringed under 35 U.S.C. § 271(a) when a user downloads the Accused Program to a smartphone, tablet, computer or similar device.

Id. at ¶ 24; *id.* at ¶ 34 (same allegations regarding the ’342 Patent). And the Complaint fails to allege *any* direct infringement of the ’469 Patent, merely stating that “Lightricks has sold, offered to sell and/or imported the Accused Program into the United States.” *Id.* at ¶ 45.

Even when read in the light most favorable to Plaintiffs, the allegations regarding the ’017 and ’342 Patents at best mention the *type* of claims that are alleged to be directly infringed. *See id.* at ¶ 24 (“Claims drawn to a ‘computer system’ are directly infringed”); *see also id.* at ¶ 34 (same allegation). Direct infringement allegations regarding the ’469 Patent are simply non-existent. *See id.* at ¶ 45. Plaintiffs’ sparse allegations are “naked assertions devoid of ‘further factual enhancement,’” which are insufficient to state a claim. *See Iqbal*, 556 U.S. at 678. While Plaintiffs were not required to analyze each claim on an element-by-element basis, the failure to identify *any* claim that is purportedly directly infringed clearly evidences their failure to “articulate why it is plausible that the accused product infringes the patent claim.” *Bot M8*, 4 F.4th at 1353.

F. Plaintiffs Fail to State a Claim for Indirect Infringement.

A claim for induced infringement under 35 U.S.C. § 271(b) must include “a showing that the alleged inducer knew of the patent, knowingly induced the infringing acts, and possessed a specific intent to encourage another’s infringement of the patent.” *Vita-Mix Corp. v. Basic Holding, Inc.*, 581 F.3d 1317, 1328 (Fed. Cir. 2009). To be liable for induced infringement, the defendant must “[know] that the induced acts constitute patent infringement.” *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 766 (2011). To survive a motion to dismiss, the complaint must: (1) adequately plead direct infringement by defendant’s customers; (2) contain facts plausibly showing that defendant specifically intended for its customers to infringe the asserted patent; and (3) contain facts plausibly showing that defendant knew that the customer’s acts constituted infringement. *In re Bill of Lading Transmission & Processing Sys. Patent Litig.*, 681 F.3d 1323, 1339 (Fed. Cir. 2012).

Similarly, a plaintiff claiming contributory infringement under 35 U.S.C. § 271(c) must prove (1) an act of direct infringement, (2) that the defendant “knew that the combination for which its components were especially made was both patented and infringing,” and (3) that the components have “no substantial non-infringing uses.” *Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1312 (Fed. Cir. 2005).

Plaintiffs fail to sufficiently plead elements that are common to induced and contributory infringement, including (1) direct infringement of the Asserted Patents and (2) pre-suit knowledge of the Asserted Patents. Plaintiffs also fail to sufficiently plead other elements of induced and contributory infringement, as discussed herein.

1. Because Plaintiffs Fail to Plausibly Allege Direct Infringement, They Necessarily Fail to Plead Indirect Infringement.

Plaintiffs' indirect infringement allegations fail because, as shown, they have not plausibly plead direct infringement. "Indirect infringement, whether inducement to infringe or contributory infringement, can only arise in the presence of direct infringement[.]" *Dynacore Holdings Corp. v. U.S. Philips Corp.*, 363 F.3d 1263, 1272 (Fed. Cir. 2004). "It is axiomatic that there can be no inducement or contributory infringement without an underlying act of direct infringement." *In re Bill of Lading*, 681 F.3d at 1333 (internal quotation marks and citations omitted). Because Plaintiffs fail to plausibly allege direct infringement of any of the Asserted Patents' claims, their allegations regarding indirect infringement should also be dismissed.

2. Plaintiffs Fail to Plausibly Allege Pre-Suit Knowledge of the Asserted Patents, which Forecloses Any Pre-Suit Indirect Infringement.

Indirect infringement (induced or contributory) requires awareness of the Asserted Patents. *See Commil USA, LLC v. Cisco Sys.*, 575 U.S. 632, 639 (2015) ("Like induced infringement, contributory infringement requires knowledge of the patent in suit and knowledge of patent infringement."). Therefore, any claim of pre-suit indirect infringement requires a plausible showing of pre-suit knowledge of the Asserted Patents. However, the Complaint does not plausibly allege that Lightricks knew of the Asserted Patents before it was filed. Instead, it states:

14. On September 24, 2018, Lightricks was provided specific notice that the '342 Patent was pending. Plaintiff Plotagraph made Lightricks aware of U.S. Patent Publication No. 2018/0032236 (which ultimately issued as the '342 Patent) and the fact that 'Plotagraph believes [the Pixaloop program] is covered by its pending patent applications.' Defendant Lightricks was asked to cease and desist offering the Pixaloop program for downloading. Attached as Exhibit A hereto is the 2018 cease and desist letter.

Complaint at ¶ 14. Plaintiffs' reliance on the September 24, 2018 Letter ("Letter") to provide the requisite notice is not plausible because the '342 Patent did not issue until February 11, 2020—approximately seventeen months after the Letter. *See id.* at ¶ 31 ("The '342 Patent . . . was duly and legally issued on February 11, 2020"); Dkt. 8, Exs. A (Letter) and C ('342 Patent showing issue date of February 11, 2020). Lightricks could not have knowledge of the '342 Patent almost

a year and a half before it issued. Therefore, Plaintiffs’ allegation of pre-suit notice of the ’342 Patent is not “plausible on its face.” *Iqbal*, 556 U.S. at 678; *see also Smit v. SXSX Holdings, Inc.*, 903 F.3d 522, 528 (5th Cir. 2018) (“[W]hen an ‘allegation is contradicted by the contents of an exhibit attached to the pleading, then indeed the exhibit and not the allegation controls.’”). Also, the Complaint does not allege that Lightricks had notice of the ’017 or ’469 Patents—based on the Letter or otherwise. Nor could it. Lightricks’ lack of pre-suit knowledge of the Asserted Patents precludes Plaintiffs’ claims for pre-suit induced and contributory infringement.

Plaintiffs cannot avoid this deficiency by arguing they provided Lightricks notice of the published application that later issued as the ’342 Patent. *See* Complaint at ¶ 14. Notification of a pending application is insufficient to establish pre-suit notice of an issued patent. For example, in the context of willful infringement (further discussed in Section IV.G.1), courts in the 5th Circuit recognize that “[t]he Federal Circuit has held that mere notice of the pendency of a patent application is not sufficient to support a finding of willful infringement of a subsequently-issued patent” because “[f]iling an application is no guarantee any patent will issue and a very substantial percentage of applications never result in patents.” *Diamond Grading Techs. Inc. v. Am. Gem Soc’y*, No. 2:14-CV-1161-RWS-RSP, 2016 WL 3902482, at *2 (E.D. Tex. Mar. 30, 2016). Accordingly, *Diamond Grading* expressly acknowledged the precedent of disallowing patent applications to serve as the basis of notice of a later-issued patent. *Id.* Accordingly, any supposed notice of an published application that later became a patent cannot impute pre-suit knowledge.

While the Complaint fails to allege that the Letter’s mention of other “pending patent applications,” imputes pre-suit knowledge of the other Asserted Patents, it is also important to note that these alleged “pending patent applications” were not listed in the Letter. *See* Dkt. 8, Ex. A (Letter). Indeed, there is no plausible argument that the alleged “pending patent applications” could

include the '017 and '469 Patents. For example, the application that led to the '017 Patent was filed on August 13, 2018, only one month before the Letter, and the application that became the '469 Patent was not filed until October 16, 2018, roughly one month after the Letter. *See id.*, Exs. B ('017 Patent), D ('469 Patent). Moreover, the '017 and '469 Patents did not issue until well after the September 24, 2018 Letter. *Id.* at ¶ 21 (“The '017 Patent . . . was duly and legally issued on July 9, 2019.”); *id.* at ¶ 42 (“The '469 Patent . . . was duly and legally issued on April 14, 2020.”). Taking the Complaint’s allegations as true, Lightricks was not on notice of the Asserted Patents prior to being served with the Complaint. Accordingly, Plaintiffs’ indirect infringement claims (including claims of pre-suit induced or contributory infringement) should be dismissed.

3. Plaintiffs Fail to Plausibly Allege Induced Infringement.

The Court should dismiss Plaintiffs’ inducement claims because they fail to plead facts plausibly showing that Lightricks had the required “specific intent” to induce infringement. *See* 35 U.S.C. § 271(b); *In re Bill of Lading*, 681 F.3d at 1339. For an “allegation of induced infringement to survive a motion to dismiss, a complaint must plead facts plausibly showing that the accused infringer specifically intended [another party] to infringe [the patent] and knew that the [other party]’s acts constituted infringement.” *Lifetime Indus., Inc. v. Trim-Lok, Inc.*, 869 F.3d 1372, 1379 (Fed. Cir. 2017) (alterations in original).

The entirety of Plaintiffs’ induced infringement allegations rests on boilerplate and lack any factual support. Regarding the '017 and '342 Patents, the Complaint alleges:

24. . . . Lightricks further actively induces infringement of the ‘computer system’ claims by offering the Accused Program for download at least via the Apple App Store and Google Play Store.

25. Plaintiffs allege that Lightricks also actively induces infringement of claims in the '017 Patent to methods for automating the shifting pixels within a digital image pursuant to 35 U.S.C. §271(b). Lightricks’s Accused Program includes instructions which teach and advise users how to use the Accused Program to automatically shift pixels according to the steps of the claims in the '017 Patent. Further, Lightricks has

published a number of tutorial videos which also teach users how to use the Accused Program to perform the steps of the method claims of the '017 Patent.

Complaint at ¶¶ 24-25; *see also id.* at ¶¶ 34-35 (same allegations regarding the '342 Patent). With respect to the '469 Patent, the Complaint includes even sparser allegations, omitting any allegation of inducing infringement of “computer system” claims. *See id.* at ¶ 46

Plaintiffs do not allege any facts or cite to any evidence to support their allegations. Regarding the alleged “instructions which teach and advise users” (*id.* at ¶¶ 25, 35, 46), the Complaint neither identifies the “instructions,” nor indicates how they allegedly demonstrate an intent to infringe or otherwise support Plaintiffs’ infringement claims. The Complaint merely repeats the same boilerplate statement for all counts of alleged inducement, stating that “Lightricks’ Accused Program includes instructions which teach and advise users how to use the Accused Program to automatically shift pixels according to the steps of the claims in the [Asserted Patents].” *See id.* The Complaint merely adds that “[s]uch instructions in the current version of Motionleap include instructions to ‘Animate,’ ‘Select’ and choose a ‘Direction’ for pixel shifting.” *Id.* at ¶ 12. Plaintiffs make no effort to identify, e.g., which users it believes Lightricks induces or which uses of Motionleap it believes Lightricks’ users practice that infringe.

And while the Complaint alleges that Lightricks induces infringement by “offering the Accused Program for download” (*id.* at ¶¶ 24, 34) and “publish[ing] a number of tutorial videos which also teach users how to use the Accused Program” (*id.* at ¶¶ 25, 35), it provides no indication of how offering the Accused Products for download constitutes an intent to infringe, or what parts of the alleged tutorial videos specifically direct customers to use the Accused Products in an infringing manner. The Complaint merely alleges that certain YouTube videos “instruct users of Pixaloop how to use the Accused Program in manners which would infringe method claims of the

Patents in-Suit.” *Id.* at ¶ 13 (providing links to YouTube videos). These broad-brush citations do not lend plausibility to Plaintiffs’ inducement allegations.

Courts in the 5th Circuit routinely dismiss inducement claims premised on similar generic citations to instructions and tutorials. For example, in *Core Wireless Licensing S.A.R.L. v. Apple Inc.*, the Court held that citations to “instructive materials and information concerning operation and use of the accused products” did not satisfy the specific intent element of inducement because the plaintiff failed “to allege any facts identifying, even at a basic level, which functionalities of the accused products [were] at issue, or how the instructions direct[ed] customers to use those products in an infringing manner.” No. 6:14-cv-752-JRG-JDL, 2015 WL 4910427, at *4 (E.D. Tex. Aug. 14, 2015). General citations to user guides “fail[ed] to provide [defendant] with adequate notice as to [plaintiff’s] induced infringement allegations.” *Id.*; *see also Stragent, LLC v. BMW of N. Am., LLC*, No. 6:16-CV-446-RWS-KNM, 2017 WL 2821697, at *9 (E.D. Tex. Mar. 3, 2017) (dismissing induced infringement allegations where the plaintiff “only allege[d] generic statements that the Defendants provide customers with infringing devices along with instructions” but “faile[d] to allege ‘how the instructions direct[ed] customers to use those products in an infringing manner.’”). Here, Plaintiffs’ inducement claims fail for the same reasons. The Complaint includes only generic reference to “instructions” and “tutorials” without alleging how any of the “instructions” or “tutorials” directed Lightricks’ customers to use products in an infringing manner. Therefore, the Court should dismiss Plaintiffs’ induced infringement claims.

4. Plaintiffs Fail to Plausibly Allege Contributory Infringement.

a. *The Complaint Does Not Plausibly Allege that Lightricks had Knowledge the Accused Products were Patented and Infringing.*

Contributory infringement, similar to induced infringement, requires that the defendant “knew that the combination for which its components were especially made was both patented and

infringing.” *Cross Med. Prods.*, 424 F.3d at 1312. Instead of pleading facts that plausibly show Lightricks had the required knowledge that “the combination for which its components were especially made was both patented and infringing,” the Complaint merely states:

26. Lightricks contributed to the infringement of at least one claim of the ‘017 Patent, in violation of 35 U.S.C. §271(c), by among other things, making, using offering to sell, selling, and/or importing into the United States, without authority or license, said Accused Program, which embodies a material part of the claimed inventions of the ‘017 Patent, knowing that such products and/or components were specially made or specially adapted for use in an infringement of these claims, and that they were not staple articles or commodities or commerce suitable for substantial non-infringing use.

Complaint at ¶ 26; *see also id.* at ¶¶ 36, 47. These allegations, however, are mere “labels and conclusions” and pure, unsupported speculation. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 545). The Complaint’s contributory infringement allegations fail to allege how Lightricks knew that the Accused Products had features specially designed to be used in an allegedly infringing way, but this is a necessary element of contributory infringement. Accordingly, Plaintiffs have not alleged plausible contributory infringement claims.

b. *The Complaint Does Not Sufficiently Allege that There are No Non-Infringing Uses for the Accused Products.*

“To state a claim for contributory infringement, . . . a plaintiff must, among other things, plead facts that allow an inference that the components sold or offered for sale have no substantial non-infringing uses.” *In re Bill of Lading*, 681 F.3d at 1337. The Complaint alleges, without *any* factual support, that the Accused Products are “not staple articles or commodities or commerce suitable for substantial non-infringing use.” Complaint at ¶ 26; *see also id.* at ¶¶ 36, 47. Nowhere in the Complaint, however, do Plaintiffs allege facts supporting these bare conclusions. As Plaintiffs’ allegations of no non-infringing uses are merely “labels and conclusions” and “a formulaic recitation of the elements of a cause of action,” Plaintiffs have failed to adequately plead contributory infringement, and, as a result, these claims must be dismissed. *Iqbal*, 556 U.S. at 678;

see also Monolithic Power Sys., Inc. v. Meraki Integrated Cir. (Shenzhen) Tech., Ltd., No. 6:20-CV-008876-ADA, 2021 WL 3931910, at *5 (W.D. Tex. Sept. 1, 2021) (dismissing similar unsupported allegations of contributory infringement as alleged here because “they do not contain any facts, other than mere recitations of the elements [of contributory infringement], to lead to a plausible inference of any substantial non-infringing use”).

G. Plaintiffs Fail to State a Claim for Willful Infringement.

The Court should dismiss Plaintiffs’ claims for willful infringement and enhanced damages for failure to plead (1) pre-suit knowledge of the Asserted Patents, and (2) egregious conduct. A claim for willful patent infringement must allege that infringement was “intentional or knowing.” *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 579 U.S. 93, 94 (2016). “The sort of conduct warranting enhanced damages has been variously described . . . as willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or—indeed—characteristic of a pirate.” *Id.* at 103-04. Further, willful infringement requires knowledge of the allegedly infringed patent. *Id.* at 105 (“culpability is generally measured against the knowledge of the actor”). However, Plaintiffs merely provide the following bare bones, conclusory allegations for each of the Asserted Patents:

29. Plaintiffs allege that Defendant Lightricks’s infringement, induced infringement and contributory infringement of the ‘017 Patent has been and continues to be deliberate and willful, and therefore, this is an exceptional case warranting an award of enhanced damages for up to three times the actual damages awarded and attorney’s fees to Plaintiff pursuant to 35 U.S.C. §§ 284-285.

Complaint at ¶ 29; *see also id.* at ¶¶ 40, 50.

1. Plaintiffs Fail to Plausibly Allege Pre-Suit Knowledge of the Asserted Patents.

The Court should dismiss Plaintiffs’ claims for willful infringement and enhanced damages for failure to plead pre-suit knowledge of the Asserted Patents. Like indirect infringement, willful infringement requires an awareness of the Asserted Patents. *Halo*, 579 U.S. at 105 (willful

infringement requires “[t]he subjective willfulness of a patent infringer, intentional or knowing”); *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1341 (Fed. Cir. 2016) (“Knowledge of the patent alleged to be willfully infringed continues to be a prerequisite to enhanced damages.”). But, as discussed in Section IV.F.2, the Complaint fails to sufficiently plead that there was pre-suit knowledge of the Asserted Patents (because any alleged knowledge of patent applications that led to the Asserted Patents cannot constitute pre-suit knowledge of the Asserted Patents). *See* Section IV.F.2; *see also M & C Innovations, LLC v. Igloo Prod. Corp.*, No. 4:17-CV-2372, 2018 WL 4620713, at *3-4 (S.D. Tex. July 31, 2018) (finding that where plaintiff’s “patent did not even come into existence until three years after the last alleged communication between the parties,” plaintiff “failed to state a claim that [defendant] willfully infringed any of the Asserted Patents before th[e] suit was filed”). Accordingly, Plaintiffs’ willful infringement claims should be dismissed for failure to plead pre-suit knowledge of the Asserted Patents.

2. Plaintiffs Fail to Plausibly Allege any Egregious Conduct.

The Court should also dismiss Plaintiffs’ claims for willful infringement and enhanced damages for failure to plead egregious conduct. “The sort of conduct warranting enhanced damages has been variously described in our cases as willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or—indeed—characteristic of a pirate.” *Halo*, 579 U.S. at 103-04. And yet, Plaintiffs fail to adequately plead any of this behavior. The Complaint baselessly alleges that “infringement of the [Asserted Patent] has been and continues to be deliberate and willful, and therefore, this is an exceptional case warranting an award of enhanced damages.” Complaint at ¶ 29; *see also id.* at ¶¶ 40, 50. Plaintiffs allege no facts to support these claims. Beyond the bald statement that Lightricks’ alleged infringement has been “deliberate and willful,” there is not a single factual allegation in the Complaint regarding any conduct by Lightricks with regard to the Asserted Patents. Accordingly, as Plaintiffs have failed to adequately

plead willful infringement and enhanced damages, the Court should dismiss those claims from the Complaint.

V. CONCLUSION

For the foregoing reasons, Lightricks respectfully requests that the Court grant its motion and dismiss Plaintiffs' claims for failure to state a claim under Rule 12(b)(6).

April 7, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 7 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

By: /s/ Robert Greeson
Robert Greeson