

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

CHIEN-MIN SUNG,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO. LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC., SAMSUNG SEMICONDUCTOR,
INC., and SAMSUNG AUSTIN
SEMICONDUCTOR LLC,

Defendants.

Case No. 4:23-cv-752
JURY TRIAL DEMANDED

**DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE,
MOTION FOR A MORE DEFINITE STATEMENT**

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I. INTRODUCTION

Defendants Samsung Electronics Co., Ltd. (“SEC”), Samsung Electronics America, Inc. (“SEA”), Samsung Semiconductor, Inc. (“SSI”), and Samsung Austin Semiconductor LLC (“SAS”) move under Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff Chien-Min Sung’s claims for: (1) direct infringement under 35 U.S.C. §§ 271(a) and 271(g); (2) induced infringement under 35 U.S.C. § 271(b); and (3) willful infringement. In the alternative, because the Complaint improperly groups all four Defendants together and makes generic allegations as to the whole group (rather than each Defendant individually), Defendants request that the Court order Sung to provide a more definite statement pursuant to Federal Rule of Civil Procedure 12(e) that specifically identifies which Defendant or Defendants performed the allegedly infringing acts.

II. BACKGROUND

On August 21, 2023, Sung filed a patent infringement action against SEC, SEA, SSI, and SAS. The Complaint asserts three patents—U.S. Patent Nos. 9,138,862 (the “’862 patent”), 9,724,802 (the “’802 patent”), and 8,974,270 (the “’270 patent”) (collectively, the “Asserted Patents”). The Asserted Patents are directed to a “common” semiconductor manufacturing technique known as “Chemical Mechanical Polishing (CMP),” which uses a “polishing pad in combination with an abrasive slurry” to create smooth, polished wafers. *See, e.g.*, ’862 patent, 1:18–25; ’802 patent, 1:40–54; ’270 patent, 1:16–24; *see also* Compl. ¶¶ 29, 32. The asserted claims are generally directed to “CMP pad dressers,” which are used to condition the polishing pad by “removing dirt and debris” to prolong the polishing pad’s lifetime. *See, e.g.*, ’862 patent, 7:15–18; ’802 patent, 9:50–64.

The Complaint does not set forth how each of the four Defendants allegedly infringe any claim of the Asserted Patents. Rather, the Complaint groups the four Defendants together and generically alleges that the *collective* “Defendant Samsung, directly or indirectly, has a contractual

relationship with certain pad conditioner manufacturers that design, develop, or manufacture [CMP] pad conditioners implicated in this Action,” including “at least one of 3M’s Trizact and Diamond pad conditioners; Saesol’s Standard/Hive pad conditioners; Shinhan’s Diamond pad conditioners; AT’s Infinity II pad conditioners; or EHWA’s pad conditioners.” Compl. ¶¶ 10, 11. Sung further alleges that the collective “Defendant Samsung uses or employs at least one of” these third-party pad conditioners “to manufacture or fabricate the Accused Products (or integrated circuits contained therein) either domestically or for importation into the United States for use, sale, and/or offer for sale in this district and throughout the United States.”¹ *Id.* ¶ 13. On that basis, Sung alleges that “Defendant Samsung” directly infringes the Asserted Patents. *Id.* ¶¶ 35, 38, 59, 82.

Specifically, Sung alleges that the collective “Defendant Samsung” directly infringes at least claim 1 of the ’802 patent and claim 1 of the ’270 patent “by using in the United States, or importing into the United States, without authority or license,” those third-party CMP pad conditioners “and/or similar pad conditioners (e.g., pad conditioners with the same claimed structural characteristics and manufactured by other pad conditioner manufacturers) . . . to design, develop, manufacture[,] or fabricate semiconductor devices and/or integrated circuits, and systems, products, and/or devices containing these semiconductor devices and/or integrated circuits, including at least the Accused Products, in violation of 35 U.S.C. § 271(a).” *Id.* ¶¶ 59, 82. In addition, Sung asserts that the collective “Defendant Samsung” directly infringes at least

¹ The Complaint defines “Accused Products” to include “memory, mobile devices (e.g., mobile phones), smart devices (e.g., smart watches), LED panels, solid-state drives, processors, image sensors, virtual reality headsets, computing devices and tablets, security/monitoring systems, TVs and displays, home appliances, audio systems and devices, and other semiconductor system, products, devices, and integrated circuits” that are “design[ed], develop[ed], or manufacture[d]” by “us[ing] or employ[ing]” the identified third-party CMP pad conditioners. Compl. ¶¶ 11, 12.

claim 1 of the '862 patent under § 271(a) “by importing into the United States, and/or making, using, and/or selling, and/or offering for sale in the United States” (1) “semiconductor devices and/or integrated circuits that are/were fabricated and/or manufactured using” those third-party CMP pad conditioners and (2) “systems, products, and/or devices containing these semiconductor devices and/or integrated circuits including at least the Accused Products”; and under § 271(g) “by importing into the United States, and/or making, using, and/or selling, and/or offering for sale in the United States, without authority or license, the Accused Products[.]” *Id.* ¶¶ 35, 38.

Sung also alleges that “Defendant Samsung” indirectly infringes the Asserted Patents under 35 U.S.C. § 271(b) by allegedly inducing others to infringe the Asserted Patents. *Id.* ¶¶ 42, 43, 65, 66, 88, 89.

Finally, Sung asserts that the alleged infringement is willful. *Id.* ¶¶ 55, 78, 101.

III. LEGAL STANDARDS

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 Atl. Corp. 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.*; *see also Melendez v. McAleenan*, 928 F.3d 425, 427 (5th Cir. 2019) (“We do not give any weight to either party’s legal conclusions.”).

A. Direct Infringement

To state a claim for direct infringement, the plaintiff must “give the defendant ‘fair notice’ of the infringement claim and ‘the grounds upon which it rests.’” *Qwikcash, LLC v. Blackhawk Network Holdings, Inc.*, No. 4:19-CV-876, 2020 WL 6781566, at *3 (E.D. Tex. Nov. 17, 2020)

(quoting *Disc Disease Sols. Inc. v. VGH Sols., Inc.*, 888 F.3d 1256, 1260 (Fed. Cir. 2018)); *see also K-Tech Telecomms., Inc. v. Time Warner Cable Inc.*, 714 F.3d 1277, 1284 (Fed. Cir. 2013) (“[T]he clear principle of Rule 8 [is] that a potential infringer be placed on notice of what activity or device is being accused of infringement.”).

B. Willful Infringement

Willful infringement is reserved for “egregious infringement behavior” that is typically described as conduct that is “willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or—indeed—characteristic of a pirate.” *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 579 U.S. 93, 103–04 (2016). The complaint must allege at least some “culpable conduct or any set of facts supporting an inference of culpable conduct.” *Fractus, S.A. v. TCL Corp.*, No. 2:20-CV-00097, 2021 WL 2483155, at *4 (E.D. Tex. June 2, 2021).

C. Induced Infringement

To support a claim for induced infringement, a complaint must plead facts that demonstrate that the “defendant knew of the patent and that ‘the induced acts constitute patent infringement.’” *Commil USA, LLC v. Cisco Sys., Inc.*, 575 U.S. 632, 639 (2015) (quoting *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 766 (2011)); *see also Vita-Mix Corp. v. Basic Holding, Inc.*, 581 F.3d 1317, 1328 (Fed. Cir. 2009) (“Inducement requires 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.”). A plaintiff must allege specific facts to infer a defendant’s specific intent to induce infringement, requiring “culpable conduct, directed to encouraging another’s infringement, not merely that the inducer had knowledge of the direct infringer’s activities.” *epicRealm, Licensing, LLC v. Autoflex Leasing, Inc.*, 492 F. Supp. 2d 608, 616 (E.D. Tex. 2007) (quoting *DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1306 (Fed. Cir. 2006)).

IV. ARGUMENT

A. Sung's Infringement Claims Should Be Dismissed In Their Entirety Because Sung Fails To Identify A Particular Defendant Or Defendants Responsible For Any Allegedly Infringing Act.

To adequately plead a claim of direct infringement, a complaint must contain sufficient allegations of underlying facts to provide defendants with “notice of what activity or device is being accused of infringement.” *K-Tech Telecomms.*, 714 F.3d at 1284; *see also Disc Disease Sols.*, 888 F.3d at 1260; *Landmark Tech. LLC v. Aeropostale*, No. 6:09-CV-00262, 2010 WL 5174954, at *4 (E.D. Tex. Mar. 29, 2010) (granting defendant’s motion to dismiss because “[t]he complaint simply fails to inform AutoZone as to what it must defend”). Sung, however, falls far short of providing the requisite notice, because Sung fails to identify which entity is responsible for which allegedly infringing act.

Sung names four different Samsung entities as defendants: (1) SEC (a Korean entity); (2) SEA (a New York entity); (3) SSI (a California entity); and (4) SAS (a Delaware entity). Compl. ¶¶ 3–7. After initially describing the four defendants individually, *id.*, Plaintiff goes on to ascribe actions only to the collective “Defendants” or “Samsung,” *see id. passim*. Failing to differentiate between the four entities frustrates the requisite “fair notice” regarding which entity is responsible for the allegedly infringing acts. *See Qwikcash*, 2020 WL 6781566, at *3. Indeed, Sung generically alleges infringement under both 35 U.S.C. §§ 271(a)—which relates to actions within the United States—and 271(g)—which relates to importation of products made by a patented process abroad—but fails to factually support how, for example, the Korean entity (SEC) is liable under § 271(a) or how the U.S. entities (SEA, SSI, and SAS) are liable under § 271(g). *See* Compl. ¶¶ 35, 38, 59, 60, 82.

That “shotgun” approach to pleadings is discouraged and supports dismissal. *Compare Mayne Pharma Int’l PTY Ltd. v. Merck & Co.*, No. 15-CV-00438, 2015 WL 7833206, at *4 (D.

Del. Dec. 3, 2015) (dismissing direct infringement claims, noting that the “[p]laintiff’s direct infringement allegation . . . does not clear up the matter of which defendant(s) engage in the importation of [the accused product]” because it “simply alleges that ‘Defendants have infringed and continue to infringe the [asserted patent] by making . . . and/or importing into the United States products that infringe’”), *with* Compl. ¶ 59 (“On information and belief, [the collective] Defendant Samsung has directly infringed and continues to infringe least claim 1 of the ’802 patent . . . by using in the United States, or importing into the United States, without authority or license, certain CMP pad conditioners”); *see also Owens v. TransUnion, LLC*, No. 4:20-CV-00665, 2021 WL 5088686, at *9 (E.D. Tex. Aug. 30, 2021).

Sung’s failure to differentiate between the four Defendants is particularly problematic where, as here, Sung fails to identify the accused products with sufficient specificity. Sung defines the “Accused Products” using vague references to broad classes of products: “memory, mobile devices (e.g., mobile phones), smart devices (e.g., smart watches), LED panels, solid-state drives, processors, image sensors, virtual reality headsets, computing devices and tablets, security/monitoring systems, TVs and displays, home appliances, audio systems and devices, and other semiconductor system, products, devices, and integrated circuits” that are “design[ed], develop[ed], or manufacture[d] . . . us[ing] or employ[ing]” the identified third-party CMP pad conditioners. Compl. ¶¶ 11, 12. But such generic descriptions of accused products are inherently problematic because “Defendants have no notice of the claims they are required to meet and defend.” *See Acco Brands USA LLC v. Hewlett Packard Co.*, No. 11-CV-00275, 2011 WL 2516514, at *2 (N.D. Cal. June 23, 2011); *Winstron Corp. v. Phillip M. Adams & Assocs., LLC*, No. 10-CV-04458, 2011 WL 4079231, at *4 (N.D. Cal. Sept. 12, 2011) (rejecting “generic descriptions” of accused products such as “computer chips, motherboards, computers”).

That problem is compounded because Sung fails to tie the broad classes of Accused Products to any particular Defendant and thus fails to place Defendants on adequate notice as to what they must defend. Courts have routinely dismissed complaints that plead only such vague level of notice. *See, e.g., Landmark Tech.*, 2010 WL 5174954, at *3 (dismissing infringement claims against a group of defendants because “[w]hile Landmark accuses Defendants’ ‘electronic commerce systems,’ this is an extremely vague identification. Without further context, it is unclear as to what ‘electronic commerce systems’ refers. Additionally, the identification is not specific to any particular Defendant.”); *M2M Sols. LLC v. Telit Commc’ns PLC*, No. 14-CV-01103, 2015 WL 4640400, at *3 (D. Del. Aug. 5, 2015) (faulting plaintiff for “lump[ing]” two defendants in a parent-subsidary relationship “together in addressing its direct infringement claim” and failing to “identify which particular defendant or defendants are responsible for which allegedly infringing products, process[,] or method”).

Although not explicit in the Complaint, Sung’s grouping of all four entities into the umbrella term “Samsung” may be inferring that each Defendant is responsible for the actions of the other Defendants. That is equally problematic and insufficient to defeat a motion to dismiss. When a plaintiff alleges direct infringement against both a parent and its subsidiary without differentiating between the entities, the plaintiff must sufficiently plead “(1) the existence of a parent-subsidary relationship, and (2) facts that justify piercing the corporate veil.” *M2M Sols.*, 2015 WL 4640400, at *3 (quoting *Novo Nordisk v. Caraco Pharm. Lab’ys*, 450 F. Supp. 2d 757, 761 (E.D. Mich. 2006)); *see also BlackBerry Ltd. v. Nokia Corp.*, No. 17-CV-00155, 2018 WL 1401330, at *2 (D. Del. Mar. 20, 2018) (granting motion to dismiss direct infringement claims where the complaint failed to allege both the existence of a parent-subsidary relationship and facts

justifying piercing the corporate veil). Sung fails to adequately allege any such relationship or any facts that would justify piercing the corporate veil.

Accordingly, because Sung does not identify which Defendant or Defendants are responsible for which allegedly infringing acts, Sung's infringement claims should be dismissed in their entirety.

B. Sung's Direct Infringement Claims Against SEC Under § 271(a) Are Legally Deficient Because The Complaint Is Devoid Of Allegations That SEC Performs The Allegedly Infringing Acts In The United States.

Even if the Court were to entertain monolithic infringement allegations against "Defendant Samsung," Sung's direct infringement claims under 35 U.S.C. § 271(a) *against SEC*—a Korean entity with locations only outside the United States—should be dismissed because the Complaint fails to plead sufficient facts to support the reasonable inference that SEC's alleged infringing activities occurred in the United States.

Infringement under § 271(a) is limited to making, using, offering to sell, or selling "any patented invention *within the United States*," or importing "*into the United States* any patented invention." 35 U.S.C. § 271(a)². To survive a motion to dismiss, the plaintiff must allege sufficient facts that the accused infringement occurred in the United States. *See Mayne Pharma*, 2015 WL 7833206, at *4 ("In order to plead a sufficient claim of direct infringement against [a foreign defendant], Plaintiff must allege facts plausibly identifying sufficient infringing activity by that Defendant that took place *within the United States* such as the importation of the accused products into the United States." (citing *Cybiotronics, Ltd. v. Golden Source Elecs. Ltd.*, 130 F. Supp. 2d 1152, 1166–67 (C.D. Cal. 2001))).

² All emphases are added unless stated otherwise.

Sung fails to plead facts showing that SEC performs any of the allegedly infringing acts in the United States. Sung acknowledges that SEC is a foreign entity based in the Republic of Korea. Compl. ¶ 3 (“SEC is a Joint Stock Company organized and existing under the laws of the *Republic of Korea*, with a place of business at 129 Samsung-Ro, Yeongtong-gu, Suwon-si, Gyeonggi-do, 443-742, *Republic of Korea*.”). Yet nowhere does Sung allege that the Korean entity performed any accused acts of infringement in the United States. At most, Sung alleges that the generic “Defendant Samsung”—which includes entities other than SEC—infringes the Asserted Patents under § 271(a) for “using in the United States, or importing into the United States, without authority or license, certain CMP pad conditioners.” *See, e.g.*, Compl. ¶ 59. But that generic and conclusory assertion fails to support, with any facts, that *SEC* performed any infringing acts in the United States. Thus, Sung’s direct infringement claims against SEC under § 271(a) should be dismissed.

C. Sung’s Direct Infringement Claims Of The ’270 Patent Are Legally Deficient Because Sung Fails To Allege Sufficient Facts Showing That Defendants Use Or Import 3M’s Pad Conditioners.

Sung alleges that “Defendant Samsung” infringes at least claim 1 of the ’270 patent because “Defendant Samsung” allegedly uses or imports “certain CMP pad conditioners, including 3M’s pad conditioners (e.g., Diamond pad conditioners and pad conditioners with the same claimed structural characteristics and manufactured by other pad conditioner manufacturers not presently known)” Compl. ¶ 82. The sole basis for Sung’s assertion is that the “3M™ Diamond Pad Conditioner” satisfies the requirements of the claimed “CMP pad dresser” in claim 1 of the ’270 patent. *See id.*, Ex. 14.

But Sung’s infringement claims concerning the ’270 patent are inadequate on their face because Sung fails to allege sufficient facts to support the reasonable inference that “Defendant Samsung” uses or imports the “3M™ Diamond Pad Conditioner.” All that Sung alleges is that

“Samsung was publicly disclosed as one of ‘3M’s clients,’” and that “Samsung formed a strategic collaboration alliance with GlobalFoundries (which contracts Shinhan and 3M for the use of some of the accused instrumentalities[.]” *Id.* ¶ 10. But even taking those allegations as true, they fail to support the inference that “Defendant Samsung” actually *uses* the 3M pad conditioner that forms the basis for Sung’s claim—*i.e.*, that any Samsung entity uses the 3M™ Diamond Pad Conditioner that allegedly satisfies the limitations in claim 1 of the ’270 patent. Because Sung’s infringement claims are predicated on the use of 3M™ Diamond Pad Conditioner that cannot be reasonably inferred from the alleged facts pleaded in the Complaint, Sung’s infringement claims concerning the ’270 patent should be dismissed.

D. Sung’s Willfulness Claims Should Be Dismissed Because Sung Pleads No Facts That Support The Requisite Specific Intent Or Egregious Conduct.

Sung pleads no facts that demonstrate the specific intent or egregious conduct required to impose enhanced damages. Sung’s willfulness claims hinge on a single conclusory allegation: that “[a]t least as of September 7, 2022, Dr. Sung placed Samsung on actual notice of the [Asserted Patents] and actual notice that its actions constituted and continued to constitute infringement of the [Asserted Patents].” Compl. ¶¶ 34, 58, 81. Sung alleges no *facts* that indicate how or why any of the Defendants would have known that their conduct amounted to infringement. *See Amsted Indus. Inc. v. Buckeye Steel Castings Co.*, 24 F.3d 178, 187 (Fed. Cir. 1994) (“Actual notice requires the affirmative communication of a specific charge of infringement by a specific accused product or device.”). Such threadbare allegations, without more, amount to mere conclusory statements and therefore must be disregarded. *See Chhim v. Univ. of Tex. at Austin*, 836 F.3d 467, 469 (5th Cir. 2016) (“[W]e do not credit conclusory allegations or allegations that merely restate the legal elements of a claim.”).

Moreover, willfulness requires, among other things, “circumstances that transform simple ‘intentional or knowing’ infringement into egregious, sanctionable behavior.” *SRI Int’l, Inc. v. Cisco Sys., Inc.*, 930 F.3d 1295, 1308 (Fed. Cir. 2019) (emphasis omitted). In other words, Sung must also allege “culpable conduct or any set of facts supporting an inference of the requisite culpable conduct.” *See Fractus*, 2021 WL 2483155, at *4. But neither the pre-suit nor post-suit willfulness allegations demonstrate the requisite culpable conduct.

For pre-suit willfulness, all that the Complaint alleges is that “Samsung has continued to infringe the [patents] since at least September 7, 2022, despite being on notice of the [patents] and its infringement.” Compl. ¶¶ 55, 78, 101. But mere notice of the patents and alleged infringement—which, to be clear, was not pleaded with any supporting facts—is insufficient to establish willfulness. *Bayer Healthcare LLC v. Baxalta Inc.*, 989 F.3d 964, 988 (Fed. Cir. 2021) (“Knowledge of the asserted patent and evidence of infringement is necessary, but not sufficient, for a finding of willfulness.”); *Sonos, Inc. v. Google LLC*, 591 F. Supp. 3d 638, 644 (N.D. Cal. 2022) (same, granting motion to dismiss). Without any specific allegations that the Samsung Defendants’ conduct post-notice was “egregious” or “sanctionable,” the pre-suit willfulness cannot stand. *See SRL Int’l*, 930 F.3d at 1308.

Sung’s claims for post-suit willfulness fare no better. Sung’s assertions regarding Defendant Samsung’s conduct amount to nothing more than the type of conduct alleged in “typical” or “garden-variety” patent infringement cases where claims for enhanced damages based on willful infringement are routinely dismissed. *See Halo Elecs.*, 579 U.S. at 110 (noting that the award of enhanced damages are limited “to egregious cases of misconduct **beyond typical infringement**”); *M & C Innovations, LLC v. Igloo Prod. Corp.*, No. 4:17-CV-02372, 2018 WL 4620713, at *5 (S.D. Tex. July 31, 2018) (dismissing willful infringement claim in “the kind of

‘garden variety’ patent case that *Halo* affirms is ill-suited for a finding of willfulness” in which the “post-suit fact pattern characterizes every infringement action except for those in which an alleged infringer immediately ceases production following service of the complaint”). Such post-suit conduct and knowledge alone cannot support a post-suit willfulness claim. *See Opticurrent, LLC v. Power Integrations, Inc.*, No. 2:16-CV-00325, 2016 WL 9275395, at *2 (E.D. Tex. Oct. 19, 2016) (“[P]re-suit knowledge of the asserted patent is generally required to maintain a claim of willfulness.”); *Blue Spike, LLC v. Texas Instruments, Inc.*, No. 6:12-CV-00499, 2014 WL 11621684, at *4 (E.D. Tex. July 22, 2014) (“Absent additional allegations, the filing of an infringement suit alone is insufficient to give rise to a post-filing willful infringement claim.”). “Willful infringement is the exception, not the rule.” *Sonos*, 591 F. Supp. 3d at 644.

Accordingly, Sung’s willfulness claims should be dismissed.

E. Sung’s Inducement Claims Should Be Dismissed Because Sung Fails to Adequately Plead Induced Infringement.

Sung fails to plead induced infringement because Sung fails to: (1) plead an underlying act of direct infringement by any Defendant or others; (2) plead facts that demonstrate a specific intent to induce infringement; and (3) identify which entity is responsible for indirect infringement.

First, a claim for induced infringement requires “an underlying act of direct infringement.” *In re Bill of Lading Transmission & Processing Sys. Pat. Litig.*, 681 F.3d 1323, 1333 (Fed. Cir. 2012) (“It is axiomatic that ‘[t]here can be no inducement or contributory infringement without an underlying act of direct infringement.’” (alteration in original) (citation omitted)). Thus, “[t]o state a claim for indirect infringement,” a plaintiff must plead “facts sufficient to allow an inference that at least one direct infringer exists.” *Id.* at 1336; *see also Golden v. Qualcomm Inc.*, No. 2023-1818, 2023 WL 6561044, at *3 (Fed. Cir. Oct. 10, 2023) (“Because [plaintiff] has failed to adequately plead direct infringement by [defendant] or its customers in this case, his complaint

also fails to sufficiently plead contributory or induced infringement.” (citing *Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518, 526 (1972))). Sung has failed to do so.

As explained in Section IV.A., Sung has not adequately pled direct infringement of the Asserted Patents by any of the Defendants individually. Sung likewise fails to plead any factual allegations supporting an inference of direct infringement by any other third party; instead, Sung provides only the vague and conclusory statement that some *unspecified* “others” infringe. *See, e.g.*, Compl. ¶ 66 (alleging “Defendant Samsung[’s]” inducement “by actively encouraging others to import into the United States, and/or make, use, sell, and/or offer to sell in the United States, the Accused Products or systems, devices, or products containing the Accused Products, by actively inducing others to infringe the ’802 patent by making, using, selling, offering for sale, marketing, advertising, and/or importing the Accused Products to their customers for use in downstream products that infringe, or were manufactured using processes that infringe, the ’802 patent, and by instructing others to infringe the ’802 patent.”). Because such threadbare allegations must be disregarded, *see Chhim*, 836 F.3d at 469, Sung’s induced infringement claims cannot survive. *See Golden*, 2023 WL 6561044, at *3; *Qwikcash*, 2020 WL 6781566, at *5.

Second, Sung’s allegations fail to plead the requisite specific intent for inducement. Sung’s induced infringement claims consist of generic allegations about routine business activities, such as providing “data sheets” and “training tools” for the Accused Products generally. *See, e.g.*, Compl. ¶ 44 (“Samsung actively promotes the sale and importation of the Accused Products in marketing materials” and “provides a wide range of technical support to its customers and businesses in connection with the Accused Products . . .”). However, the specific intent element demands more than unsubstantiated and generalized allegations that the accused infringer induced infringement via marketing and sales methods. *See, e.g., DSU Med.*, 471 F.3d at 1305 (“The ‘mere

knowledge of possible infringement by others does not amount to inducement” (quoting *Warner-Lambert Co. v. Apotex Corp.*, 316 F.3d 1348, 1363 (Fed. Cir. 2003)); *Vita-Mix*, 581 F.3d at 1328; *see also id.* at 1329 (explaining that the defendant’s “product instructions provide no basis on which Vita-Mix can rely to infer specific intent to encourage infringement”); *Takeda Pharms. U.S.A., Inc. v. W.-Ward Pharm. Corp.*, 785 F.3d 625, 631 (Fed. Cir. 2015) (“The question is not just whether instructions ‘describ[e] the infringing mode’ but whether the ‘instructions teach an infringing use of the device **such that** we are willing to infer from those instructions an affirmative intent to infringe the patent’” (emphasis in original) (quoting *Toshiba Corp. v. Imation Corp.*, 681 F.3d 1358, 1365 (Fed. Cir. 2012); *Vita-Mix*, 581 F.3d at 1329 n.2)); *MONEC Holding AG v. Motorola Mobility, Inc.*, 897 F. Supp. 2d 225, 234 (D. Del. 2012) (“Allegations of the marketing activities of the Defendants do not, on their own, demonstrate that Defendants knew such activities were infringement or that the Defendants possessed the specific intent to encourage another’s infringement.”); *Memory Integrity, LLC v. Intel Corp.*, 144 F. Supp. 3d 1185, 1193 (D. Or. 2015) (holding that, to plead an affirmative intent to induce, advertising must “tout[] the benefits of the accused products in ways that track the asserted patents”). Moreover, the patent claims that Sung identifies in his Complaint are directed to CMP pad dressers—not downstream products like smartphones. *See, e.g.*, Compl. ¶ 42 (“claim 1”). Thus, any allegations of inducement as to the consumer’s use of end products cannot demonstrate an intent to induce infringement involving CMP pad dressers.

Third, even if the specific intent requirement were satisfied, the Complaint fails to identify any particular Defendant that is allegedly responsible for inducing others’ infringement. “Treating the Defendants as one big group for purpose of articulating how each has encouraged the induced infringement at issue says nothing plausible as to what any particular one of them might have

done.” *Neology, Inc. v. Kapsch Trafficcom IVHS, Inc.*, No. 13-CV-02052, 2014 WL 4675316, at *7 (D. Del. Sept. 19, 2014). Thus, because Sung’s inducement allegations are generically directed to the collective “Defendant Samsung,” the Complaint “says nothing plausible as to what any particular [defendant] might have done.” *See* Compl. *passim*; *Neology*, 2014 WL 4675316, at *7.

Accordingly, Sung’s inducement claims should be dismissed.

F. In The Alternative, Defendants Move For A More Definite Statement On Sung’s Allegations Under Rule 12(e).

Where a complaint is “so vague or ambiguous that the [defendant] cannot reasonably prepare a response[,]” a defendant can move for a more definite statement. FED. R. CIV. P. 12(e); *see Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002) (“If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement . . . before responding.”). Here, Sung has made no attempt to articulate which particular Defendant or Defendants are responsible for the allegedly infringing acts, or how the specific requirements of willful infringement and induced infringement are satisfied by any particular Defendant or Defendants. *See supra* Secs. IV.A–IV.E. To the extent the Court decides not to dismiss the Complaint, Defendants respectfully request that the Court order Sung to provide a more definite statement of its allegations as to how each particular Defendant is responsible for the allegedly infringing acts, and how each Defendant allegedly satisfies the requirements for willful infringement and induced infringement.

CONCLUSION

For at least the foregoing reasons, Samsung respectfully requests that the Court grant the motion to dismiss Dr. Chien-Min Sung’s claims, or in the alternative, grant the motion for a more definite statement.

Dated: November 27, 2023

By: /s/ Cosmin Maier (with permission by Collin M. Maloney)

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CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Collin M. Maloney