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16 THE BOEING COMPANY

17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
19 **WESTERN DIVISION**

20 LASER SPALLATION TECHNOLOGIES,
21 LLC, a California company,

22 Plaintiff,

23 v.

24 THE BOEING COMPANY, a Delaware
25 corporation,

26 Defendant.

Case No. 2:23-cv-02294-AB-SK

**DEFENDANT'S MOTION TO
DISMISS PLAINTIFF'S SECOND
AMENDED COMPLAINT UNDER
FEDERAL RULES OF CIVIL
PROCEDURE 12(B)(2), 12(B)(3),
AND 12(B)(6)**

Judge: Hon. André Birotte Jr.

Date: February 2, 2024

Time: 10:00 a.m.

Ctrm: 7B

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 2, 2024 at 10:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 7B located at 350 West First Street, Los Angeles, California 90012, Defendant The Boeing Company ("Boeing") will, and hereby does, present for hearing by the Court, the Honorable André Birotte Jr. presiding, this Motion to Dismiss Plaintiff Laser Spallation Technologies, LLC's Second Amended Complaint ("Motion").

This Motion is made pursuant to the patent venue statute, 28 U.S.C. § 1400(b), and Federal Rules of Civil Procedure, 12(b)(2), 12(b)(3), and 12(b)(6). The Motion is based on this notice, the memorandum of points and authorities that follows, the declarations of Nicholas Matich, Thai Nguyen, Richard Bossi, Steven Brady, Dan Brecht, and Andrea Koumvakalis, and the files and records in this action, the arguments of counsel, and any other items the Court may consider.

This motion is made following the conference of counsel pursuant to Civil Local Rule 7-3, which took place on December 7, 2023.

DATED: December 15, 2023

Respectfully submitted,
MCKOOL SMITH, P.C.

By: /s/ Makenna Miller

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1 I. INTRODUCTION

2 In its Second Amended Complaint (“SAC”), Plaintiff Laser Spallation
 3 Technologies, LLC (“LST”) continues to assert that Defendant The Boeing Company
 4 (“Boeing”) infringes U.S. Patent No. 7,487,684 (“the ’684 patent”) by using a “Laser
 5 Bond Inspection Device” (“LBID”). The LBID is and always has been located in
 6 Washington State. Just like the First Amended Complaint (“FAC”), the SAC neither
 7 identifies any infringing device besides the LBID nor alleges any relevant actions that
 8 have occurred in California. LST cannot salvage the same deficient allegations merely
 9 by adding the conclusory assertion that alleged “stress analysis” or “mathematical
 10 work” by Boeing engineers in California—which does not use any laser much less
 11 Boeing’s only LBID—somehow infringes. And LST has done nothing to improve
 12 implausible infringement theories that it did not even defend in the first round of
 13 motion to dismiss briefing. Therefore, Boeing respectfully requests that the Court
 14 dismiss the SAC with prejudice for the same reason it dismissed LST’s earlier
 15 complaint, and if not on jurisdictional or venue grounds, then for failure to state a claim.

16 *First*, LST’s Second Amended Complaint should be dismissed for lack of
 17 personal jurisdiction under Rule 12(b)(2) and improper venue under Rule 12(b)(3).
 18 Since Boeing is not incorporated or headquartered in California, LST must identify
 19 “acts of infringement” that occurred in this District to establish personal jurisdiction or
 20 venue. LST does not allege that *any* infringement occurred here and does not identify
 21 any infringing device that has ever been in California—just the LBID, which
 22 indisputably has no connection to California. Instead, LST re-labels as “infringement”
 23 the same precursor activity that the Court previously found insufficient to establish
 24 personal jurisdiction. Referring to “stress analysis” or “mathematical work,” both of
 25 which obviously fall outside the claims of LST’s patent, as “infringement” is simply
 26 the pleading of a legal conclusion that courts disregard on Rule 12 motions.

27 *Second*, the SAC fails under Fed. R. Civ. P. 12(b)(6) and *Iqbal/Twombly*. LST
 28 did not defend its infringement theories in response to Boeing’s previous motion to

dismiss, but now re-alleges them almost verbatim. *Compare* FAC ¶18 with SAC ¶27; FAC ¶19 with SAC ¶28; FAC ¶21 with SAC ¶30; FAC ¶24 with SAC ¶32; FAC ¶26 with SAC ¶34; FAC ¶27 with SAC ¶35; FAC ¶28 with SAC ¶36; FAC ¶31 with SAC ¶39; FAC ¶32 with SAC ¶40. Once again, those allegations are inadequate.

Boeing requests that the Court dismiss the SAC in its entirety pursuant to Fed. R. Civ. P. 12(b)(2), in the alternative pursuant to Rule 12(b)(3), and in the further alternative under Rule 12(b)(6) with prejudice.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Factual Background

Boeing is a leading aerospace company organized under Delaware law and headquartered in Arlington, Virginia. Declaration of Steven Brady (“Brady Decl.”) ¶¶4-5. Boeing’s largest facilities are located near Seattle, Washington. *Id.* ¶6. Among other lines of business, Boeing frequently performs research under contracts with the U.S. military, NASA, and other federal agencies. *Id.* ¶7. Some of Boeing’s federal contracts relate to “laser bond inspection” (“LBI”). *Id.* ¶8. LBI generally refers to the process of using a laser to test the strength of a bond between two materials. *Id.*; *see also* SAC ¶32. For example, the SAC alleges that focusing a laser on bonded materials could create a “tensile stress wave [that can] separate[]” the materials “when a sufficiently high energy laser pulse is used.” SAC ¶32. LBI is not part of Boeing’s day-to-day business. Rather, Boeing’s use of LBI has been almost exclusively to better understand what practical applications LBI *might* have. Brady Decl. ¶20.

An LBID is a machine used to conduct LBI.¹ Brady Decl. ¶10. Boeing has only one LBID, which it purchased in 2012 from LSP Technologies Inc. (“LSP”), a company located in Ohio. *Id.* ¶11. Boeing’s LBID has been located at a Boeing facility in Washington since Boeing accepted delivery there. *Id.* ¶¶14-15.

All of Boeing’s LBI tests necessarily have occurred at the facility housing its

¹ LST’s Complaint refers to a “LBI tool” rather than an LBID, but for purposes of this motion, Boeing understands the terms to be synonymous.

1 LBID. *Id.* ¶16. Boeing’s LBID has *never* been located in California and none of
 2 Boeing’s LBI tests have occurred in California. *Id.* ¶18. Furthermore, none of the
 3 employees working on LBI projects are located in California. *Id.* ¶17

4 **B. Procedural History**

5 LST filed its complaint alleging infringement of the ’684 patent on March 28,
 6 2023. Dkt. 1. On July 13, 2023, Boeing filed its Motion to Dismiss the First Amended
 7 Complaint pursuant to Federal Rules of Civil Procedure 12(b)(2), 12(b)(3), and
 8 12(b)(6). Dkt. No. 45. On October 12, 2023, the Court agreed with Boeing, granting
 9 its Motion to Dismiss the First Amended Complaint under Rule 12(b)(2). Dkt. No. 67.
 10 The Court found that because no Boeing employees performing work on laser bond
 11 inspection projects work out of the Huntington Beach Facility and because Boeing has
 12 not performed any LBI testing in the Central District, LST failed to allege specific
 13 jurisdiction. Dkt. No. 67 at 5-6. The Court went on to state that while certain stress
 14 analysis that LST alleges occurs in Huntington Beach may be a *precursor* to laser bond
 15 inspection, LST did not plead infringement based on any activity other than laser bond
 16 inspection. *Id.* at 6. The Court did not reach the issues raised by Boeing’s motion under
 17 Rules 12(b)(3) and 12(b)(6). *Id.* at 7. On November 2, 2023, LST filed its Second
 18 Amended Complaint. Dkt. 73.

19 **III. LEGAL STANDARD**

20 “The party asserting [personal] jurisdiction bears the burden to establish
 21 jurisdictional facts.” *In re Boon Glob. Ltd.*, 923 F.3d 643, 650 (9th Cir. 2019).
 22 However, “even if the plaintiff prevails in making a *prima facie* showing at the 12(b)(2)
 23 stage, the Court must ultimately determine whether the [jurisdictional] showing can be
 24 met by a preponderance of the evidence—whether at a pre-trial evidentiary hearing or
 25 at trial itself.” *Sinotrans Container Lines, Co. v. N. China Cargo Serv., Inc.*, No. 06-
 26 cv-7848-SVW (EX), 2007 WL 9706701, at *2 (C.D. Cal. Apr. 4, 2007).

27 Plaintiff bears the burden to prove venue is proper in its chosen District. *In re*
 28 *ZTE (USA) Inc.*, 890 F.3d 1008, 1013 (Fed. Cir. 2018). In patent infringement actions,

venue is only proper “in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.” 28 U.S.C. § 1400(b); *see TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 267–68 (2017)).

“To survive a motion to dismiss, 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 Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

IV. ARGUMENTS

A. LST fails to plead personal jurisdiction or proper venue.

It is undisputed that Boeing’s only LBID is located in Washington. *The SAC does not identify any other allegedly infringing device.* Rather, just like the FAC, the SAC refers generically to “infringing acts using the LBI tool or other similar devices,” but does not identify any device located in California capable of infringing LST’s patent. SAC ¶69. And just like the FAC, the activity that LST relies on—like Boeing patents and papers—confirms not only that Boeing’s LBID program has no connection to California, but that the actions, equipment, and people involved in LST’s claims are in Washington and not this District. No infringing device in California means no infringement in California, which means no jurisdiction or venue in California either. Thus, the SAC should be dismissed.

1. *LST Cannot Show Personal Jurisdiction over Boeing in this District*

The Supreme Court has recognized two types of personal jurisdiction: “general or all-purpose jurisdiction, and specific or conduct-linked jurisdiction.” *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014). The Court has already determined that general jurisdiction over Boeing does not exist in this District. Dkt. No. 67 (Order on MTD) at 5-6. “In order for a ... court to exercise specific jurisdiction, ‘the *suit*’ must ‘aris[e] out of or relat[e] to the defendant’s contacts with the *forum*.’” *Bristol-Myers Squibb*

1 *Co. v. Superior Ct. of California, San Francisco Cnty.*, 582 U.S. 255, 262 (2017)
 2 (emphasis in original). In the patent context, specific personal jurisdiction requires a
 3 showing that the defendant committed an act of infringement in the forum jurisdiction.
 4 *See Med. Sols., Inc. v. C Change Surgical LLC*, 541 F.3d 1136, 1141 (Fed. Cir. 2008).
 5 Only then can the plaintiff's claims "arise" from the defendant's contacts with the
 6 forum. *Bristol Myers Squibb*, 582 U.S. at 262.

7 LST does not identify any infringement in California. Instead, LST simply re-
 8 labels as "infringement" essentially the same facts that appeared in the FAC.

9 **Precursor Activity (Gupta Decl. ¶46):** In its opinion dismissing the FAC, the
 10 Court noted that "Dr. Gupta opines as to some activity occurring" in California
 11 regarding "stress analysis." Dkt. No. 67 (Order on MTD) at 6. The Court found this
 12 activity irrelevant, because "Dr. Gupta does not characterize this activity as laser bond
 13 inspection activity that would potentially infringe the '684 Patent." Dkt. No. 67 (Order
 14 on MTD) at 6. The Court said Dr. Gupta merely described "a precursor to laser bond
 15 inspection" not anything that could plausibly infringe LST's patent. *Id.* The SAC and
 16 Dr. Gupta's new declaration are not materially different, except that Dr. Gupta now
 17 claims that stress analysis is "something that, by itself, can infringe the invention of the
 18 '684 Patent." Gupta Decl. ¶46. That conclusory claim does not support jurisdiction or
 19 venue for several reasons.

20 First, the *facts* LST alleged in the SAC are not materially different from those
 21 alleged in the FAC. All that has changed is Dr. Gupta's label. Dr. Gupta asserts that
 22 work in California determines the "choice of the laser pulse to be used to generate the
 23 initial stress wave," the "critical locations within the test article where failure can occur"
 24 and "the way Boeing applies the invention." Gupta Decl. ¶51-52. That merely rehashes
 25 Dr. Gupta's prior claim that "stress analysis is integral to the overall bond certification
 26 process." Dkt. No. 67 (Order on MTD) at 6. The Court properly said this "precursor
 27 to laser bond inspection ... is not an accused activity." *Id.*

28 Even accepting these additional descriptions as true, they are insufficient to

1 establish jurisdiction, because they do not establish that Boeing performed any
 2 infringing act in California. The problem with the FAC was not insufficient detail about
 3 the “precursor activity,” but the fact that none of the “precursor activity” constitutes
 4 even part of an element of LST’s patent claims. That is just as true of Dr. Gupta’s new
 5 allegations as of the allegations in the FAC, notwithstanding Dr. Gupta’s re-labeling
 6 these activities as “infringement.”

7 For example, in *Medical Solutions*, the plaintiff alleged jurisdiction based on the
 8 defendant’s use of an infringing device at a trade show in the relevant district. 541 F.3d
 9 at 1138. The defendant “had its own booth, which displayed a ‘large and visible’ sign
 10 advertising the allegedly infringing product.” *Id.* The defendant passed out brochures
 11 for the infringing product. *Id.* The defendant even made sales “as a direct result of its
 12 marketing at the trade show.” *Id.* Moreover, the infringing product was “not just
 13 passively shown or displayed.” *Id.* The defendant “actively demonstrated” the product
 14 to “show[] how *parts* of the device functioned.” *Id.* at 1141 (emphasis added). *But*
 15 *none of that was enough to establish personal jurisdiction.* The Federal Circuit held
 16 that there was no specific jurisdiction, because the alleged use at the trade show was
 17 only for “*parts* of the device” and did not “practic[e] all the elements of at least one
 18 claim” of the patent. *Id.* at 1141-42 (emphasis added). Here, LST’s allegations of
 19 “precursor” activity are even more attenuated. The allegedly infringing device is not
 20 partially used in California—it has *never been* in California.

21 To plead jurisdiction, LST must allege that Boeing—in *California*—performed a
 22 “method for separating a coating from a substrate” or used an “apparatus for generating
 23 a tensile stress” that meets all the elements of LST’s claims. Neither the “mathematical
 24 work” nor the “stress analysis” that allegedly occurred in California are such a method
 25 or involve such an apparatus. LST does not even claim that they are or do. Even if
 26 these activities occur and are “integrally connected” to alleged infringement, which
 27 Boeing disputes, the alleged acts do not constitute “practicing all the elements of at least
 28 one claim” of the patent. *Id.* at 1142; Gupta Decl. ¶¶29, 58, 46. LST cannot meet its

jurisdictional burden by simply re-labeling non-infringing activities as “infringement.” Courts disregard such conclusory pleading. *See Ashcroft*, 556 U.S. at 678.

Furthermore, as Boeing has explained, no Boeing personnel in California perform these functions regarding Boeing’s use of the LBID. *See* Brady Decl. ¶¶17-18; Nyugen Decl. ¶12; Declaration of Richard Bossi (“Bossi Decl.”) ¶¶9-11; Koumvakalis Decl.” ¶10. Dr. Gupta’s “bare allegations” to the contrary cannot overcome Boeing’s “specific denials.” *Terracom v. Valley Nat. Bank*, 49 F.3d 555, 562 (9th Cir. 1995).

Finally, if LST’s patent *could* be infringed by “stress analysis” or “mathematical work,” then the complaint should still be dismissed because the patent would be invalid because the patent claims would be obvious. Every aircraft manufacturer, starting with the Wright brothers, has performed “stress analysis” on their products. *See* Nguyen Decl. ¶¶10-11; *see also* U.S. Patent No. 821,393 (describing a “flying-machine” “constructed of wood having the necessary strength”). In fact, the Federal Aviation Administration has long required this type of analysis. *See e.g.* 14 C.F.R. §§ 23.305, 23.307. Further, it is well established that “analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, a[re] essentially mental processes” that are not patent eligible under 35 U.S.C. § 101. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016). Patents on pure “stress analysis” or pure “mathematical work” are invalid. *Id.*

California Job Postings (SAC ¶52-55): LST cites several advertisements for mechanical engineering jobs in California as a basis for jurisdiction. Dkt. 74-8 (“Emery Decl.”), Ex. 7. According to LST, these engineers perform “stress analysis” that is used for Boeing’s LBI work. SAC ¶¶45, 53-54. However, LST does not allege that these analysts do anything more than “precursor activity,” (discussed above) which the Court previously held did not support jurisdiction. Dkt. 67 (Order on MTD) at 6. Therefore, even taking as true LST’s assertion that these positions are somehow relevant to the case, LST’s allegations regarding these jobs do not support jurisdiction in California.

1 *Medical Sol'ns*, 541 F.3d at 1138.

2 Nothing in the job postings suggests any connection with LST's patent or laser
3 inspection technology generally. As explained in the declaration from Thai Nguyen,
4 Boeing's Structures Chief Engineer (and confirmed in articles LST cites), these
5 positions do not involve the use of laser technology or data for laser bond inspection,
6 but rather analysis of aircraft mechanical issues based on data from other tools. Emery
7 Decl., Ex. 3A at 4; *see also* Nguyen Decl. ¶¶10-12. Contrary to LST's allegations, these
8 personnel would not use LBID technology or even rely on data from it, because the
9 LBID "is still considered untested and not ready for commercial use and especially uses
10 critical to safety of flight." Nguyen Decl. ¶14. As Dr. Brady avers, LBI is a subject of
11 research, not a part of Boeing's day-to-day business, and these engineering positions
12 deal with day-to-day operations of aircraft. Nguyen Decl. ¶12; Brady Decl. ¶20. No
13 part of the LBI program is in California. Nguyen Decl. ¶12; Brady Decl. ¶¶17-19.

14 **Conversations with Dr. Richard Bossi (SAC ¶71):** Dr. Richard Bossi is a
15 retired Boeing employee from Washington who initiated Boeing's LBID program. LST
16 alleges that in 2004, Dr. Gupta called Dr. Bossi, although the two had never previously
17 spoken. Gupta Decl. ¶54. According to Dr. Gupta, Dr. Bossi told him that Dr. Bossi
18 "routinely travels to" California "to interact with the engineers there" regarding
19 Boeing's LBID research. Gupta Decl. ¶41.

20 Even accepting Dr. Gupta's declaration as true, Dr. Gupta does not say that Dr.
21 Bossi (or anyone) actually *used* an LBID in California, only that Dr. Bossi went there
22 to "interact with" engineers. Gupta ¶41. Dr. Gupta does not say that these engineers
23 actually used Boeing's LBID (or any other device) either. *Id.* Indeed, that would have
24 been impossible: the LBID is located in Washington (the place Dr. Bossi was traveling
25 *from*), and Boeing did not acquire the LBID until 2012 (*eight years* after Dr. Bossi
26 purportedly said he was traveling to California). Brady Dec ¶¶11, 14, 15. Therefore,
27 even assuming Dr. Gupta's statement regarding Dr. Bossi's work with California
28 engineers is accurate, it would not support jurisdiction or venue, because it would not

1 show that Boeing infringed LST's patent in California.

2 Furthermore, the Court need not and should not accept Dr. Gupta's declaration
3 as true, because Dr. Bossi controverts it in every relevant respect. Dr. Bossi *never*
4 traveled to California for LBID projects. Bossi Decl. ¶11. And Dr. Bossi categorically
5 denies that any part of the LBID program occurred in California. Bossi Decl. ¶¶5, 9.

6 Dr. Bossi has been retired from Boeing for several years and has no incentive to
7 be untruthful. Bossi Decl. ¶1. By contrast, Dr. Gupta is LST's agent.² Further, at the
8 time of the alleged conversation, Dr. Bossi and Dr. Gupta had never previously spoken
9 and they have not maintained contact since. Bossi Decl. ¶6. It is far more likely that
10 Dr. Gupta is mistaken about a brief conversation that he had almost 20 years ago, with
11 a man he barely knows, than that Dr. Bossi would misremember whether he traveled to
12 California for LBID research.

13 **2008 Boeing Presentation (SAC ¶51):** LST also cites a 2008 presentation by
14 Dr. Bossi. The presentation contains nothing relevant to this case and was given four
15 years before Boeing acquired its LBID. Even if it were relevant, LST does not allege
16 any connection between this presentation and California. The presentation took place
17 in Washington where Mr. Bossi lives. Emery Decl., Ex. 6; Bossi Decl. ¶13.

18 **2010 Boeing Presentation (SAC ¶42):** LST also cites a 2010 Boeing
19 presentation. SAC ¶¶42-43. The presentation uses the word "LBID" once but does not
20 even say what an LBID is, or anything else relevant to the case. Regardless, the
21 presentation took place "Seattle, WA," two years before Boeing acquired an LBID, and
22 all five of the main presenters are *Washington-based* Boeing employees or former
23 employees.³ SAC ¶¶42-43. The presentation has no connection to California.

24
25 ² See Matich Ex. G (Secretary of State filing lists the same address for Gupta and LST).
26 ³ See U.S. Patent No. 11,215,552 (listing Marc Piehl as inventor located in Washington);
27 U.S. Patent No. 9,845,411 (listing Kay Blohowiak as inventor located in Washington);
28 U.S. Patent No. 9,021,813 (listing Matt Dilligan as inventor located in Washington),
U.S. Patent No. 10,502,719 (listing "Russell Lee Keller" i.e. Rusty Keller as inventor
located in Washington).

1 **Hybrid Wing Body Articles (SAC ¶¶45-47):** LST cites publications by Boeing
 2 engineers describing hybrid wing body research by Boeing and NASA. SAC ¶¶45-47.
 3 The articles do not allege any activity that could plausibly be connected to LST’s
 4 patents. The articles say that NASA put a scale model of a wing under mechanical loads
 5 and evaluated the wing’s performance with “strain gauges,” “variable displacement
 6 transducers,” and “video cameras.” Emery Decl., Ex. 3A at 4. In other words, NASA
 7 used *conventional* testing techniques, not lasers or anything related to LST’s patent.
 8 Further, the testing was done by NASA “at the NASA Langley Research Center”
 9 located in “Hampton, Virginia.” Emery Decl., Ex. 3A at 1-2, Ex. 4 at 1. Actions by
 10 NASA that occurred in Virginia do not establish jurisdiction over Boeing in California.

11 **Trade Press Articles (SAC ¶¶56-58):** LST cites two trade press articles which
 12 quote Boeing engineer Marc Piehl regarding Boeing’s LBI program. However, neither
 13 article says anything about Boeing’s activities in California. Emery Decl., Ex. 8, 9
 14 (cited at SAC ¶¶ 56-58). Mr. Piehl lives and works in Washington. *See* U.S. Patent
 15 No. 11,215,552 (listing Marc Piehl as inventor located in Washington).

16 **Boeing Patents (SAC ¶¶61-65):** LST asserts that several Boeing patents show
 17 that Boeing performs allegedly infringing activities in California. They do not.

18 *First*, LST never says when or where Boeing actually practices any of these
 19 patents. Other than the LBID, LST does not identify any specific device that plausibly
 20 could practice these patents. And other than as part of its LBID program, LST does not
 21 allege any reason Boeing would practice them, much less do so in California. The mere
 22 fact that Boeing owns a patent does not mean that Boeing actually uses any of the
 23 technology it describes. Many companies own patents that they do not practice. LST
 24 itself is an example. As Dr. Brady avers, LBI is not part of Boeing’s day-to-day
 25 business. Brady Decl. ¶20.

26 Furthermore, even in developing the technology claimed in a patent, the applicant
 27 need not actually build or use the invention. The USPTO expressly allows applicants
 28 to file patent applications based on “[s]imulated or predicted test results and prophetic

examples (paper examples).” *Manual of Patent Examining Procedure* (“MPEP”) § 608.01(p). USPTO instructs applicants to describe *actual* test results and examples in the “past tense” to distinguish them from “predicted test results.” *Id.* Thus, owning or applying for a patent might be “consistent with” being a user of the technology in the patent, but it is “just as much” consistent with other “routine market conduct.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 566 (2007). The Supreme Court has rejected such “false inferences” based on “facts that are ‘merely consistent with’ a defendant’s liability,” but which do not make it any more likely. *Id.*; *Iqbal*, 556 U.S. at 678.

Here, LST does not point to any anything in Boeing’s patents that would indicate Boeing actually built the inventions they describe. To the contrary, all of the patents LST cites are written in the present tense, consistent with Boeing having relied on “[s]imulated or predicted test results” in its patent applications. MPEP § 608.01(p). Therefore, LST’s allegations of Boeing’s patent ownership do not drag LST’s “claims across the line from conceivable to plausible.” *Twombly*, 550 U.S. at 570.

Second, even if one could infer that Boeing built actual devices described in its patents before filing its patent applications, all of the patents LST cites were filed in 2015 or earlier. There is no reason to think that Boeing practices the patents *now* or at any point for which LST could recover damages. *See* 35 U.S.C. § 286.

Third, even assuming that Boeing practiced the inventions in Boeing’s patents during a relevant time period, LST does not show that doing so would *infringe* LST’s patent. *See infra* Section IV.B.4. For example, the patents describe myriad variations on the inventions and LST does not claim that Boeing uses every variation or that all variations infringe. At most, LST claims that practicing the inventions *could* infringe.

Finally, even assuming that the patents show that Boeing was infringing LST’s patent at some relevant point in time, the patents do not show that Boeing has done so *in California*. Boeing addresses each patent’s lack of connection to California below.

U.S. Patent Nos. 8,714,016, 9,784,668 and others: These patents and the various patents and publications referenced in paragraph 59 of Dr. Gupta’s declaration

1 make no reference to California and state that all the inventors are located in
 2 *Washington*, where Boeing’s LBI is located. Emery Decl., Exs. 12, 15. LST alleges no
 3 connection between these patents and California.

4 **U.S. Patent Nos. 9,618,433 and 9,995,670:** These patents also list Washington
 5 as the location of all of the inventors. LST asserts that these patents show Boeing
 6 performs relevant activities in California, because the patents list California as Boeing’s
 7 location. However, at the time the applications were pending, Boeing’s in-house patent
 8 prosecution team received its physical mail, including from the USPTO, at the
 9 company’s California offices. Declaration of Dan Brecht (“Brecht Decl.”) ¶4. The team
 10 itself was dispersed in several locations, but Boeing’s outside patent prosecution
 11 counsel sometimes listed a California address for Boeing, because that was the mailing
 12 address for their primary contacts at Boeing. Brecht Decl. ¶¶4-6. The reference to
 13 California on these patents has no bearing on where Boeing did anything, other than
 14 receive mail. Brecht Decl. ¶¶6-7.

15 **U.S. Patent No. 10,239,155:** LST points out that two of the inventors on this
 16 patent are California residents. That is irrelevant for several reasons.

17 First, LST does not even assert that practicing the invention in this patent could
 18 infringe LST’s patent, just that this patent is “integrally connected” to Boeing’s alleged
 19 infringement. Gupta Decl. ¶58. Accordingly, it cannot give rise to an inference that
 20 Boeing infringed in California or that jurisdiction or venue are proper here. *Medical*
 21 *Soln’s*, 541 F.3d at 1142.

22 Second, the inventor LST highlights, Dr. Andrea Koumvakalis, avers that she
 23 never built a working version of the apparatus described in the patent application and
 24 she is not aware of anyone else doing so either. Declaration of Andrea Koumvakalis
 25 (“Koumvakalis Decl.”) ¶5; *see also* MPEP § 608.01(p). Moreover, Dr. Koumvakalis,
 26 and the other California inventor on the ’155 patent played a supporting role. The work
 27 was primarily done by and for Alan Stewart, a Boeing employee *in Washington*. *Id.* at
 28 ¶6.

1 Third, Dr. Koumvakalis also avers she *did not even know what an LBID was* until
 2 hearing of LST’s allegations. *Id.* at 10. Needless to say, she never worked on Boeing’s
 3 LBID program. *Id.* The notion that her invention is “integrally connected” to Boeing’s
 4 LBID program is unsupported.

5 Fourth, in the video interview of Dr. Koumvakalis cited by Dr. Gupta, Dr.
 6 Koumvakalis states “[t]he items I worked on [at Boeing] required a lot of travel and
 7 always to be where the hardware is.” Gupta Decl. ¶56 at 28:33. Dr. Koumvakalis
 8 confirms this in her declaration. Koumvakalis Decl. ¶9. Therefore, even though Dr.
 9 Koumvakalis resides in California, the very evidence on which LST relies makes clear
 10 that she would have traveled elsewhere “to be where the hardware is.” *Id.*

11 **2. LST Cannot Show that Venue Is Proper in this District**

12 Section 1400(b) provides that venue in a patent case is proper only (1) “in the
 13 judicial district where the defendant resides” or (2) “where the defendant has committed
 14 acts of infringement and has a regular and established place of business.” 28 U.S.C. §
 15 1400(b).

16 Here, venue is not proper under prong (1), because the word “resides” “refers
 17 *only* to the State of incorporation.” *TC Heartland*, 581 U.S. at 267-68 (emphasis added).
 18 Boeing is incorporated in Delaware, not California. SAC ¶3.

19 Venue also is not proper under prong (2), because, as discussed above, LST has
 20 not pled an “act[] of infringement” in this district. Therefore, even if LST had alleged
 21 both that Boeing did something related to its claims in California and that whatever
 22 Boeing did in California is sufficient to subject Boeing to personal jurisdiction in
 23 California, LST still would not satisfy the venue statute. For example, even if activities
 24 which LST says are “integrally connected” to the alleged infringement—like “stress
 25 analysis”—suffice for personal jurisdiction, they clearly are not “acts of infringement”
 26 under § 1400(b). Gupta Decl. ¶29. Therefore, the SAC should be dismissed under Rule
 27 12(b)(3).
 28

1 **3. *LST is not entitled to Venue or Jurisdictional Discovery or***
 2 ***Transfer***

3 The Ninth Circuit has repeatedly cautioned against giving Plaintiffs jurisdictional
 4 discovery in cases like this one. In *Boschetto v. Hansing*, for example, the Ninth Circuit
 5 held that the district court properly denied the plaintiff’s request for jurisdictional
 6 discovery, because the request “was based on little more than a hunch that it might yield
 7 jurisdictionally relevant facts.” 539 F.3d 1011, 1020 (9th Cir. 2008). Likewise, in *LNS*
 8 *Enter. LLC v. Cont’l Motors, Inc.*, the Ninth Circuit rejected the notion that a plaintiff’s
 9 mere “belief that Defendants have substantial contacts in” the jurisdiction is enough to
 10 open the doors to discovery. 22 F.4th 852, 865 (9th Cir. 2022) (brackets omitted).
 11 Similarly, in *Terracom*, the Ninth Circuit held that when a “plaintiff’s claim of personal
 12 jurisdiction appears to be both attenuated and based on bare allegations in the face of
 13 specific denials made by defendants, the Court need not permit even limited discovery.”
 14 49 F.3d at 562. Finally, as this Court explained in *Body Fit*, “[j]urisdictional discovery
 15 need not be allowed . . . if the request amounts only to a fishing expedition.” *Body Fit*
 16 *Training USA Inc. v. F45 Training Pty*, 2020 WL 8372966, at *7 (C.D.Cal., 2020).

17 Here, there are no relevant facts in controversy on which discovery would shed
 18 any light. Even taking all of LST’s allegations as true would not establish jurisdiction.
 19 Moreover, even if LST did dispute some relevant fact in a more than conclusory fashion,
 20 the court need not grant discovery. When the Plaintiff rests its case on written materials,
 21 the Court can determine that the “[p]laintiff’s evidentiary showing [to support
 22 jurisdiction] is unconvincing.” *Petrash v. Biomet Orthopedics, LLC*, No. C 18-5508
 23 SBA, 2019 WL 8013939, at *4 (N.D. Cal. June 6, 2019). LST’s only declarant, Dr.
 24 Gupta, has no basis for his speculation about Boeing’s activities other than documents
 25 that speak for themselves and an alleged conversation he had almost twenty years ago
 26 with a person he barely knows. The Court should not credit Dr. Gupta’s “belief” that
 27 something relevant occurred in California.

28 Finally, the court should dismiss the action rather than transfer. Transfer is not

1 an available remedy when personal jurisdiction is lacking. *Rivera v. Invitation Homes,*
 2 *Inc.*, No. 18-CV-03158-JSW, 2020 WL 8910882, at *9 (N.D. Cal. Oct. 29, 2020). LST
 3 also has not shown that a transfer “in the interests of justice.” *Id.*

4 **B. LST Fails to State a Claim of Infringement**

5 To plead patent infringement, the plaintiff must allege “factual content” which
 6 creates a “reasonable inference” that the accused products meet “each and every
 7 element of at least one claim” of the asserted patent. *Disc Disease Sols. Inc. v. VGH*
 8 *Sols., Inc.*, 888 F.3d 1256, 1260 (Fed. Cir. 2018). The complaint must also “link[] the
 9 [accused] products to the claim elements” so as to put the defendant on notice of the
 10 plaintiff’s infringement theories. *Yates v. Walmart Inc.*, No. 2:22-cv-07519-MCS-
 11 GJS, 2022 WL 2189617, at *2 (C.D. Cal. Apr. 13, 2022). Finally, “a patentee may
 12 subject its claims to early dismissal by pleading facts that are inconsistent with the
 13 requirements of its claims.” *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1346
 14 (Fed. Cir. 2021).

15 **1. LST’s vague non-LBID claims fail.**

16 The SAC identifies two sets of allegations connected to its infringement
 17 theory—one that specifically identifies Boeing’s LBID, and a second that describes
 18 “other types of bond inspections using lasers.” SAC ¶5. The Court should disregard
 19 these latter allegations as vague, unsupported, and conclusory. LST does not even
 20 attempt to identify these “other types of bond inspections,” choosing instead to focus
 21 its complaint on aspects of Boeing’s LBID. By failing to include any articulable facts
 22 surrounding these “other types” of lasers, LST has not pleaded facts creating a
 23 “reasonable inference” that the unspecified products or tests meet “each and every
 24 element of at least one claim” of LST’s patent. *Disc Disease Sols. Inc.*, 888 F.3d at
 25 1260.

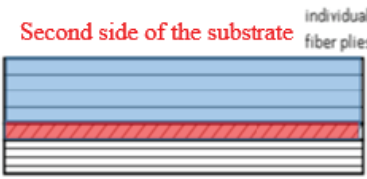
26 Indeed, LST’s vague description makes it impossible for Boeing to defend
 27 against these allegations. LST admits, for example, that laser bond inspection
 28 techniques were “commonly applied in the art” at the time of its purported invention.

Emery Decl., Ex. 1 ('684 Patent) at 2:16-37; *see* Fed. R. Civ. P. 10(c). But without knowing what specific devices allegedly infringe, Boeing can neither determine (1) where the devices might be (for the purposes of jurisdiction), (2) whether the devices infringe, or (3) whether the devices were “commonly [used] in the art” at the time of LST’s purported invention (for the purposes of patent validity). Emery Decl., Ex. 1 ('684 Patent) at 2:16-37. The only specific allegations in the SAC relate to LBID, and these fail for their own independent reasons. Boeing should not be forced to defend against LST’s vague allegations that LST failed to plead with even a minimum level of specificity.

2. *LST’s LBID allegations are contradictory.*

Even regarding the LBID, LST’s claims fail. The only patent claims LST discusses in the SAC are claims 1 and 13. SAC ¶31. Both require a “substrate,” a “coating,” and a “glass element.” The “glass element” must also be “configured to propagate and modify a stress wave to the coating/substrate interface to generate a tensile stress between the substrate and the coating.” Emery Decl., Ex. 1 ('684 Patent) at Claims 1, 13. The Second Amended Complaint’s allegations regarding the last element—the “glass element”—are especially confused and contradictory.

The table below compares a diagram from the Second Amended Complaint (at left) purporting to show Boeing’s infringement with '684 Patent Claim 1 (at right).

Image from Compl. ¶ 32 (annotated with coloring and red lettering)	Claim 1 (annotated with coloring and arrows)
Glass element not present  individual fiber plies composite substrate 1 Epoxy coating composite substrate 2 or another substrate (Al, steel, etc.)	1. An apparatus for generating a tensile stress between a substrate and a coating, comprising: - a substrate having a thickness, said thickness defined by a first side and a second side in a first axis; - a coating applied to the first side of the substrate such that the coating and substrate are axially spaced along the first axis in intimate facing contact with each other such to form a coating/substrate interface; and - a glass element disposed on the second side of the substrate and axially spaced along the first axis; wherein the glass element is configured to propagate and modify a stress wave to the coating/substrate interface to generate a tensile stress between the substrate and the coating.

1 LST’s diagram is unchanged from the FAC. Claim 1 requires that the “glass element”
 2 be on the “second side of the substrate,” *i.e.*, the opposite side from the “coating.”
 3 However, the diagram shows *nothing* on the second side of the substrate.⁴ Even taking
 4 all facts in the SAC as true, LST’s diagram directly contradicts LST’s infringement
 5 claim, because there is no “glass element” on the “second side of the substrate.” Since
 6 the SAC alleges facts that show *non*-infringement, the SAC should be dismissed. *Bot*
 7 *M8*, 4 F.4th at 1346.

8 **3. LST’s “glass element” theories are incoherent and inconsistent.**

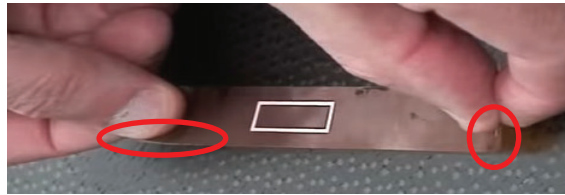
9 Instead of identifying a “glass element” in the location where the claims require
 10 it to be, LST offers scattershot allegations of what the “glass element” *might* be, none
 11 of which are located “second side of the substrate” and all of which suffer from other
 12 serious defects—even at the pleading stage.

13 LST tries to allege at least four different theories about what the “glass element”
 14 could be. LST apparently believes the “glass element” could be, 1) “EMAT sensor
 15 tape,” *e.g.* SAC ¶¶34, 35, 36, 2) “HYSOL EA9394 epoxy,” *e.g.* SAC ¶¶38, 39) fiber
 16 laminates, *e.g.* SAC ¶¶37-39, or 4) some combination of (2) to (4), *e.g.* SAC ¶39. In
 17 response to Boeing’s first motion to dismiss LST *did not defend* theories 1-4, but now
 18 re-alleges them almost verbatim. LST also now asserts that Boeing infringes by virtue
 19 of its ownership of certain patents, *e.g.* SAC ¶¶64, 66. The Federal Circuit has rejected
 20 this type of “kitchen sink” pleading, because confusing and inherently contradictory
 21 descriptions of alleged infringement are insufficient as a matter of law.⁵ *Bot M8*, 4
 22 F.4th at 1354.

23
 24 ⁴ Claim 13 is similar but calls the “coating” side the “second side” and puts the “glass
 25 element” on the “first side.” Whatever the labels, the coating and glass are on opposite
 26 sides, and LST’s diagram shows nothing where the “glass element” must be.

27 ⁵ The image that appears at paragraph 33 of the SAC also appeared in the FAC, but with
 28 an additional arrow pointing to an inspection head light as an additional “glass element.”
See Dkt. 45 (Boeing’s Motion To Dismiss FAC) at 15 (discussing the “window
 theory”). The SAC omits this arrow which Boeing takes as LST’s concession that it no
 longer accuses the inspection head light.

1 **“EMAT Tape” is “glass element” theory:** The Second Amended Complaint
 2 labels “EMAT sensor tape” as a “Glass Element” (*see* image following ¶34) but,
 3 beyond this conclusory label, it fails to allege that the EMAT sensor tape is made of
 4 glass. “[A] complaint nakedly alleging that the accused product practices the claimed
 5 invention’s point of novelty will rarely suffice.” *Vervain*, 2022 WL 23469, at *5.
 6 Indeed, the Second Amended Complaint alleges facts showing that the EMAT sensor
 7 tape is *not* glass. LST cites a YouTube video from the LBID manufacturer showing
 8 that, unlike most glass, the “EMAT tape” is flexible. SAC ¶36 (screen shot from the
 9 video reproduced below with annotations showing the bends). The Court need not,
 10 and should not, accept LST’s conclusory allegations that “EMAT tape” is glass.⁶



11
 12
 13
 14 **“HYSOL EA9394” is a “glass element” theory:** This theory suffers from
 15 numerous flaws. First, the Second Amended Complaint alleges that “HYSOL
 16 EA9394” is an “epoxy that is widely used ... in the aerospace industry.” SAC ¶38.
 17 The Second Amended Complaint then asserts, without explanation, that HYSOL
 18 EA9394 “acts as a glass element and modifies the compression stress.” *Id.* ¶38.

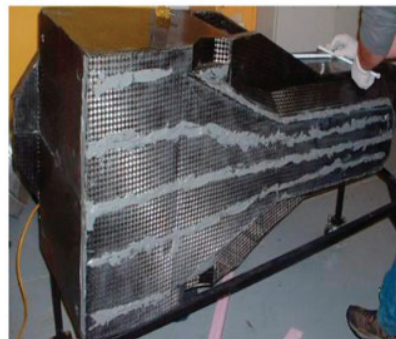
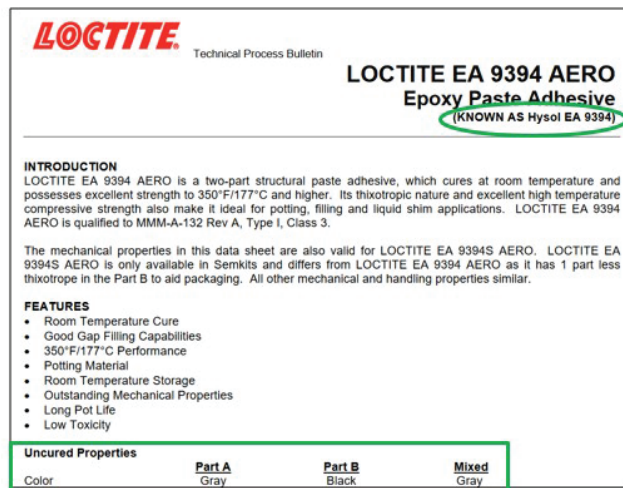
19 Re-labeling “epoxy” as “glass” does not make LST’s claims plausible. Indeed,
 20 this Court should take judicial notice of the definition of HYSOL EA9394 because it
 21 can be “accurately and readily determined from sources whose accuracy cannot
 22 reasonably be questioned.” Fed. R. Evid. 201(b)(2). HYSOL EA9394 is available for
 23 retail purchase from numerous sources⁷ and was in use by, among others, the United
 24 States government well before the priority date of LST’s patent.⁸ Manufacturer’s
 25

26
 27 ⁶ A cursory inspection shows that the EMAT tape is not made of glass. Brady Decl.,
 ¶12.

28 ⁷ *See, e.g.*, Matich Decl., Exs. B-D.

⁸ Matich Decl., Ex. A at 26.

documentation⁹ and a photo from an engineering textbook¹⁰ (reproduced below) show beyond question that HYSOL EA9394 is unlike anything ordinarily called glass. In fact, HYSOL EA9394 is a gray, opaque paste with no resemblance to glass.



“[T]he Court need not accept as true allegations contradicted by judicially noticeable facts ... without converting the Rule 12(b)(6) motion into one for summary judgment.” *Mendoza v. Lehigh Sw. Cement Co.*, No. 11-CV-01286-LHK, 2012 WL 1534754, at *4 (N.D. Cal. May 1, 2012) (cleaned up), *aff’d*, 540 F. App’x 813 (9th Cir. 2013). If LST contends that HYSOL EA9394 can be a “glass element,” more than using that label is required to make its contention plausible.

Second, “[w]here a claim lists elements separately, the clear implication of the claim language is that those elements are distinct components of the patented invention.” *Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1254 (Fed. Cir. 2010) (quotations and alterations omitted). LST’s HYSOL EA9394 theory fails because it apparently depends on treating HYSOL EA9394 as both the “coating” and “glass element” in the claims. For example, paragraph 32 of the SAC says that the HYSOL EA9394 “epoxy coating forms the coating/substrate interface,” suggesting that HYSOL EA9394 is the claimed “coating,” not the glass element. Later, paragraph 38 contradicts this, saying that HYSOL EA9394 “acts as a glass element.”

⁹ See Matich Decl., Ex. E.

¹⁰ Matich Decl., Ex. F at 3.14.8.2.

1 Under *Dickinson*, HYSOL EA9394 cannot be both the “glass element” and the
2 “coating.” 616 F.3d at 1254.

3 Even if HYSOL EA9394 could satisfy two elements of LST’s claims, LST has
4 not pled the necessary facts here. The claims require that the “coating” and “glass
5 element” be on *opposite sides* of the substrate. LST does not allege that Boeing uses
6 HYSOL EA9394 on both sides of the substrate. (Recall LST’s diagram reproduced
7 *supra*). Therefore, even if *Dickinson* did not bar LST’s HYSOL EA9394 theory, it
8 would still be inadequately pled.

9 Third, complaints for patent infringement are properly dismissed at the pleading
10 stage when they “reveal an inconsistency that is fatal to its infringement case.” *Bot*
11 *M8*, 4 F.4th at 1354. Here, LST “has essentially pleaded itself out of court” by
12 articulating inconsistent theories. *Id.* The claimed “glass element” must be
13 “configured to propagate and modify a stress wave.” Emery Decl., Ex. 1 (’684 Patent)
14 at Claim 1. However, the notion that HYSOL EA9394 is “configured to propagate and
15 modify a stress wave” is logically inconsistent with the rest of the SAC. LST
16 acknowledges that HYSOL EA9394 is “for **bonding** two composite substrates.” SAC
17 ¶32 (emphasis added). A *bonding* agent, however, is not “*configured* to propagate and
18 modify a stress wave,” it is “*configured*” to join two items together. Emery Decl., Ex.
19 1 (’684 Patent) at Claim 1 (emphasis added). Put differently, the SAC alleges that
20 Boeing uses HYSOL EA9394 to *create* bonds (i.e., increase tensile strength), and that
21 the allegedly infringing tests are meant to make sure the bonds are strong. But the
22 claims (as read by LST) require that the “glass element” (i.e., HYSOL EA9394) be
23 “configured” to *weaken* bonds by “*propagating*” stress waves. The SAC does not
24 explain how HYSOL EA9394 could be “configured” to create bonds and weaken the
25 same bonds simultaneously. Boeing cannot reasonably defend itself from these
26 contradictory and inconsistent allegations.

27 **“Fiber laminate” is a “glass element” theory:** LST’s fourth infringement theory
28 suffers from similar flaws as its HYSOL EA9394 theory, and should be dismissed for

1 similar reasons.

2 First, the SAC states that “a glass element in the form of fiber laminate is present
3 in the path of the generated compression stress wave.” SAC ¶37. Nothing in the
4 specification or SAC gives any basis for equating a fiber laminate with a “glass
5 element.” The conclusory assertion that a fiber laminate is a “glass element” does not
6 meet the *Iqbal/Twombly* pleading standard. *See also Ashcroft*, 556 U.S. at 681.

7 Second, similar to the HYSOL EA9394 theory, this infringement theory
8 apparently depends on treating the “fiber laminate” as both the “glass element” and the
9 “substrate.” Paragraph 32 refers to the “composite substrate,”¹¹ and paragraph 38
10 asserts that the “composite” has “a glass element.” That theory fails as a matter of law
11 because the “composite” cannot be both the “substrate” and the “glass element.”
12 *Dickinson*, 616 F.3d at 1254. Treating the “fiber laminate” as both the “glass element”
13 and the “substrate” is particularly inapposite here, since the “glass element” must be
14 “on the second side of the substrate.” Emery Decl., Ex. 1 (’684 Patent) at Claim 1.
15 The fiber laminate cannot be “on the second side” of itself. *Id.* Again, LST’s pleaded
16 facts are at odds with its theories.

17 Finally, and also similar to the HYSOL EA9394 theory, LST alleges that Boeing
18 uses the fiber laminate “composite” to manufacture “components in aircraft
19 structures,” including “up to 50% of the 787 aircraft.” SAC ¶27. Boeing allegedly
20 uses the LBID “to see if residual strength [of the composite/epoxy bond] after service
21 deterioration meets the minimum design strength.” SAC ¶30. But again, LST has
22 essentially pleaded itself out of court, *see Bot M8*, 4 F.4th at 1354, because the notion
23 that the fiber laminate/composite is “configured to propagate and modify a stress wave
24 to the coating/substrate interface”—to weaken the structure—is obviously inconsistent
25 with LST’s allegation in paragraph 27 that Boeing seeks to maintain structural integrity
26 of the very same parts.

27
28 ¹¹ Boeing interprets the “composite” to be the same as the “fiber laminate” in LST’s complaint.

1 **LST cannot combine its incoherent “glass element” theories:** To the extent that
 2 LST argues that its various theories work in conjunction to satisfy the “glass element”
 3 claim element that also fails, because LST does not explain how these elements could
 4 work together to form a “glass element.”

5 **4. *Boeing’s ownership of patents does not show infringement.***

6 As discussed above, Boeing’s ownership of patents does not indicate that it uses
 7 the technology they describe. *Supra* IV.A.1. Even setting that aside, LST does not
 8 show that using the technology in Boeing’s patents could infringe LST’s patent. For
 9 example, like many patents, Boeing’s patents describe numerous variations on the
 10 technology. Each has numerous claims. Therefore, even if Boeing uses *some* version
 11 of the technology in the patents and *some* version of the technology would infringe,
 12 LST does not allege that Boeing has used an infringing version (let alone where, how,
 13 or why Boeing did so). Practicing Boeing’s patents may be “consistent with” practicing
 14 LST’s purported invention, but that does not mean that Boeing did so. *Twombly*, 550
 15 U.S. at 570.

16 **U.S. Patent No. 8,714,016:** LST’s complaint does not explain the relevance of
 17 this patent, except to note that the patent examiner identified LST’s patent as prior art,
 18 along with a dozen other patents. SAC ¶61. Virtually every patent lists earlier patents
 19 as prior art, but that does not mean that every later patent applicant is infringing the
 20 earlier patents. In fact, the applicant must establish that its invention is *different*.

21 **U.S. Patent Nos. 9,784,668:** Dr. Gupta says that Boeing’s ’668 patent “describes
 22 directing a laser to an absorber surface to generate compression pulse within a ‘prism’,
 23 which reads on the ‘glass element’ of” LST’s patent. Gupta Decl. ¶62. However, LST
 24 must plead facts showing that Boeing “practic[es] *all* the elements of at least one claim”
 25 of its patent, not just the “glass element.” *Medical Soln’s*, 541 F.3d at 1142 (emphasis
 26 added). LST does not say how practicing the ’668 patent would meet the other claim
 27 limitations. Moreover, even assuming that practicing the ’668 patent could satisfy all
 28 the non-glass element claim elements in LST’s patent it would not mean that Boeing

1 was infringing, because Boeing would not need to use a “glass element.” The ’668
 2 patent says only that its invention “*may* include a prism,” which is the only thing LST
 3 claims is a “glass element” in the ’668 patent. Emery Decl., Ex. 15 (emphasis added).
 4 Indeed, only *two* of the *eighteen* claims require a “prism.” LST does not allege that
 5 Boeing actually practices either claim requiring a “prism” or explain why it would
 6 practice those claims instead of others (assuming it practices the ’668 patent at all).

7 **U.S. Patent No. 9,618,433:** LST says that the ’433 patent describes the use of
 8 “glassy materials,” like “acrylic,” “polycarbonate,” “quartz,” and “sapphire.” Emery
 9 Decl., Ex. 18; Gupta Decl. ¶21. However, none of these materials are actually glass,
 10 and LST does not claim otherwise. LST also does not say which (if any) of these
 11 materials it believes Boeing is using or where Boeing uses them.

12 **U.S. Patent No. 9,995,670:** LST acknowledges that “the Boeing ’670 Patent
 13 does not disclose the specific material type that would be used” as a supposed “glass-
 14 element” in the practicing the ’670 patent. Gupta Decl. ¶36. Nonetheless, Dr. Gupta
 15 speculates that a “thermochromatic energy-absorbing material” recited in Boeing’s
 16 patent *could* be made of glass. *Id.* LST does not say what “thermochromatic energy-
 17 absorbing material” Boeing uses, where Boeing uses it, or whether *that* material is glass.

18 **U.S. Patent No. 10,239,155:** LST does not allege that using the technology
 19 described in the ’155 patent actually infringes LST’s patent, just that “any work related
 20 to the Boeing ’155 Patent is integrally connected” to LST’s purported invention. Gupta
 21 Decl. ¶58.

22 **5. *Other allegations in LST’s complaint do not fix its theories.***

23 LST points to various public documents which show that Boeing uses an LBID
 24 (or completely unrelated technologies), like “Boeing’s LBI-related patents.” Gupta.
 25 Decl. ¶59. But, these documents do not help LST, because Boeing has *admitted* that is
 26 uses an LBID. The parties dispute whether the LBID *infringes*, not whether Boeing
 27 uses one. Nothing in these documents supports the claim that the LBID (or anything
 28 else) infringes LST’s patent.

1 Trade Press Articles (SAC ¶56): LST cites articles which say that LBI is the “holy
2 grail of bonding.” But even if the LBID is the “holy grail,” that does not mean it falls
3 within LST’s patent’s claims. This article does not show how Boeing’s LBID or any
4 other device infringes.

5 California Job Postings (SAC ¶52-55): These postings do not mention or have
6 anything to do with laser technologies. *Supra* IV.A.1.

7 2008 Boeing Presentation (SAC ¶51): This document does not mention LBI or
8 anything that LST claims could infringe its patent. *See also* Bossi Decl. ¶13.

9 2010 Boeing Presentation (SAC ¶42): The document mentions LBI, but provides
10 no information about it or anything else that could plausibly infringe LST’s patent.

11 Hybrid Wing Body Articles (SAC ¶45-47): The articles do not mention anything
12 related to LST’s patent, just conventional aircraft testing like “strain gauges.” *Supra*
13 IV.A.1. Furthermore, the articles state that the testing they describe was carried out by
14 NASA at a NASA facility, and not by Boeing. LST does not explain how Boeing would
15 be responsible for NASA’s tests.

16 **C. LST Has Not Pled Facts to Support a Claim for Willful Infringement**

17 A claim for willful infringement must allege facts from which it can be plausibly
18 inferred that the party accused of infringement had knowledge of the asserted patent
19 and knowledge that the party’s alleged conduct infringed the patent. *See Bayer*
20 *Healthcare LLC v. Baxalta Inc.*, 989 F.3d 964, 987 (Fed. Cir. 2021). LST has pled
21 neither.

22 *First*, LST makes various allegations that Boeing knew of Dr. Gupta’s *different*
23 patent which is *prior art* to the patent-in-suit. *E.g.* SAC ¶70. But, Boeing’s alleged
24 knowledge of a different patent does not establish that Boeing knew of the patent-in-
25 suit or believed it would infringe it.

26 *Second*, the Amended Complaint nakedly asserts that Boeing monitors LST’s
27 patents and became aware of the ’684 patent though its assumed patent monitoring
28 activities. SAC ¶69. But Courts in this district dismiss willfulness claims based on

conclusory claims that the defendant monitors patent filings. *See Intell. Pixels Ltd. v. Sony Interactive Ent. LLC*, No. 20-cv-01422-JVS (KESx), 2020 WL 7872961, at *3 (C.D. Cal. Nov. 20, 2020).

Third, LST points to a 2021 presentation that Dr. Gupta allegedly gave to Boeing. SAC ¶72. However, LST does *not* allege that anyone in the meeting ever mentioned the patent-in-suit. Obviously, the fact of a meeting between Dr. Gupta and Boeing cannot show Boeing’s awareness of a patent, much less infringement, if the patent was never mentioned. *N. Atl. Imports*, 2020 WL 1042209, at *2.

Finally, bare awareness of LST’s patent—which LST has not pled—would not give rise to any inference that Boeing believed it infringed and certainly not of LST’s claims here. The very title of LST’s patent says that it pertains to “nanoelectronics device fabrication” which has nothing to do with testing “epoxy-bonded joints” or anything else alleged in the SAC. SAC ¶30 (emphasis added).

V. CONCLUSION

For the foregoing reasons, Boeing respectfully requests that the Court dismiss LST’s Second Amended Complaint in its entirety with prejudice. Boeing does not believe that jurisdictional discovery or an evidentiary hearing are necessary, but would request such a hearing in the alternative to proceeding with the merits of the case.

DATED: December 15, 2023

Respectfully submitted,
MCKOOL SMITH, P.C.

By: /s/ Makenna Miller

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CERTIFICATE OF COMPLIANCE LOCAL RULE 7-3

The undersigned, counsel of record for Defendant, certifies that the parties met and conferred regarding this motion on December 7, 2023 in compliance with L.R. 7-3.

By: /s/ Makenna Miller

Makenna Miller
Attorney for Defendant