

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: CV 23-02294-AB (SKx)

Date: February 1, 2024

Title: *Laser Spallation Technologies, LLC v. The Boeing Company*

Present: The Honorable **ANDRÉ BIROTTE JR., United States District Judge**

Carla Badirian

N/A

Deputy Clerk

Court Reporter

Attorney(s) Present for Plaintiff(s):

Attorney(s) Present for Defendant(s):

None Appearing

None Appearing

Proceedings: [In Chambers] ORDER DENYING DEFENDANT’S MOTION TO DISMISS [DKT NO. 78]

Before the Court is Defendant The Boeing Company’s (“Defendant” or “Boeing”) motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(2), 12(b)(3), and 12(b)(6). (“Motion,” Dkt. No. 78.) Plaintiff Laser Spallation Technologies, LLC (“Plaintiff” or “LST”) filed an opposition (“Opp’n,” Dkt. No. 79), and Defendant filed a reply. (“Reply,” Dkt. No. 85.) Finding these matters suitable for resolution without oral argument, the Court **VACATES** the hearing set for February 2, 2024. *See* Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15. For the following reasons, the Court **DENIES** the Motion subject to the outcome of jurisdictional discovery.

I. BACKGROUND

To decide this Motion, the Court considers the following allegations from Plaintiff’s Second Amended Complaint (“SAC,” Dkt. No. 73).

Plaintiff alleges that Defendant infringes U.S. Patent No. 7,487,684 (the “’684 Patent”). *See* FAC ¶ 26. The ’684 Patent, titled “Glass-Modified Stress Waves for Separation of Ultra Thin Films and Nanoelectronics Device Fabrication,” issued on February 10, 2009. *Id.* ¶ 17. At a high level, the ’684 Patent relates to testing substrates by propagating a stress wave to the substrate coating/interface to generate a tensile stress between the substrate and coating. *Id.* ¶ 18. Plaintiff asserts that Defendant infringes at least claims 1 and 13 of the ’684 Patent through its use of a laser bond inspection (“LBI”) tool to test composite substrates. *Id.* ¶ 31.

Claims 1 and 13 disclose:

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.

13. A method for separating a coating from a substrate, the substrate having a first side and a second side transversely disposed in a first axis, the 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 to form a coating/substrate interface, the method comprising:
positioning a glass element along the first axis on the second side of the substrate;
directing a laser pulse in the first axis at the glass element;
propagating and modifying a stress wave through the glass element to the coating/substrate interface to generate a tensile force between the substrate and the coating; and
separating the coating from the substrate as a result of the stress wave-generated tensile force.

’684 Patent, Claims 1 and 13.

Relevant to the jurisdictional issues addressed herein, Plaintiff alleges:

Boeing's acts of infringement are closely tied to this District, as shown by the following acts of Boeing:

- Performing infringing acts of treatment and/or testing using a laser device to perform laser spallation at Boeing's Huntington Beach facility.
- Conducting infringing acts of stress analysis of entire aircraft structures, including stringers and frame elements that are used to stiffen the composite fuselage skin of aircraft, at Boeing's Huntington Beach and/or Seal Beach facilities.
- Advertising for jobs for engineers to perform infringing acts related to laser bond testing and inspection at Boeing's Seal Beach and Long Beach facilities.
- Applying from locations in this District for U.S. patents having disclosure and claims that, if practiced, would likely infringe one or more claims of the '684 Patent. For example, Boeing applied for U.S. Patent No. 9,618,433 ("Method for Controlling Tensile Stress [D]uring Evaluation of a Bond Between Structures") from Seal Beach, and Boeing applied for U.S. Patent No. 9,995,670 ("Laser Inspection System and Method of Use") from Huntington Beach. Boeing's patent applications, having been filed from these locations in the District, indicate Boeing was performing the infringing activities described in those patents in the District.
- Publishing articles by Boeing engineers employed in Long Beach and Huntington Beach that describe performing infringing activities by Boeing related to laser bond testing and inspection.
- Applying for U.S. patents by inventors located in the Central District of California that, if practiced, would likely infringe one or more claims of the '684 Patent. For example, Boeing's U.S. Patent No. 10,239,155 ("Multiple Laser Beam Processing") listed two inventors, Anthony kay (from Moorpark, CA) and Andrea Koumvakalis (from Thousand Oaks, CA), located in the Central District of California. This indicates that the work they performed as a foundation to the patent, which would likely infringe the '684 Patent if practiced, was done by them or others at their direction at Boeing's facilities in this District.

- Inducing third parties to manufacture and/or service Boeing's products, including aircraft, using infringing acts at locations in the Central District of California.
- Contributing to the infringement of the '684 Patent through its activities in this District.

SAC ¶ 8. In connection with these allegations, the Court considers the exhibits attached to the SAC. (Dkt. Nos. 74-1–74-27.) The court also considers the declaration of Vijay Gupta ("Gupta SAC Decl.," Dkt. No. 75), which was filed in support of the SAC.

To resolve the portions of the Motion brought under Fed. R. Civ. P. 12(b)(2) and (3), the Court also considers the Declarations of Thai Nguyen ("Nguyen Decl.," Dkt. No. 78-2), Richard Bossi ("Bossi Decl.," Dkt. No. 78-3), Andrea Koumvakalis ("Koumvakalis Decl.," Dkt. No. 78-4), Steven Brady ("Brady Decl.," Dkt. No. 78-5), Dan Brecht ("Brecht Decl.," Dkt. No. 78-6), and Vijay Gupta ("Gupta Opp'n Decl.," Dkt. No. 80).

II. LEGAL STANDARDS

a. Personal Jurisdiction

Under Federal Rule of Civil Procedure 12(b)(2), a defendant may seek dismissal of an action due to lack of personal jurisdiction. *See* Fed. R. Civ. P. 12(b)(2). A plaintiff need only make a *prima facie* showing of jurisdictional facts to survive the motion to dismiss. *See Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010) (internal citation omitted). "Because there is no statutory method for resolving [personal jurisdiction], the mode of its determination is left to the trial court." *Data Disc, Inc. v. Sys. Tech. Associates, Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977).

When adjudicating a motion to dismiss brought pursuant to Rule 12(b)(2), a district court may consider evidence outside of the pleadings, including affidavits submitted by the parties, and may order discovery on jurisdictional issues. *See Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001) (internal citation omitted). However, a court may consider materials only if: (1) the authenticity of the materials is not disputed; and (2) the plaintiff has alleged the existence of the materials in the complaint or the complaint "necessarily relies" on the materials. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (citation omitted). The court may also take judicial notice of matters of public record outside of the pleadings and consider

them for purposes of the motion to dismiss. *Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988); *Lee*, 250 F.3d at 689-90.

Although for purposes of assessing a motion to dismiss, the facts in the complaint are generally accepted as true, the court “may not assume the truth of allegations in a pleading which are contradicted by affidavit.” *Data Disc*, 557 F.2d at 1284 (internal citation omitted). “[C]onflicts between the facts contained in declarations submitted by the two sides must be resolved in the plaintiff’s favor.” *Rhoades v. Avon Products, Inc.*, 504 F.3d 1151, 1160 (9th Cir. 2007) (internal citation and quotation marks omitted).

b. Venue

Rule 12(b)(3) allows a party to seek dismissal of a lawsuit for improper venue. Fed. R. Civ. P. 12(b)(3). In patent infringement litigation, 28 U.S.C. § 1400(b) is “the exclusive provision” controlling venue. *TC Heartland L.L.C. v. Kraft Foods Grp. Brands L.L.C.*, 137 S. Ct. 1514, 1518 (2017) (quoting *Stonite Prods. Co. v. Melvin Lloyd Co.*, 315 U.S. 561, 563 (1942)). Under § 1400(b), a patent infringement action “may be brought in the judicial district where the defendant (1) resides, or (2) has committed acts of infringement and has a regular and established place of business.” *Id.* at 1514.

c. Failure to State a Claim

Fed. R. Civ. P. 8 requires a plaintiff to present a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Under Fed. R. Civ. P. 12(b)(6), a defendant may move to dismiss a pleading for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. Proc. 12(b)(6).

To defeat a Rule 12(b)(6) motion to dismiss, the complaint must provide enough detail to “give the defendant fair notice of what the ... claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint must also be “plausible on its face,” allowing the court to “draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “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.* Labels, conclusions, and “a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555.

When ruling on a Rule 12(b)(6) motion, “a judge must accept as true all of the factual allegations contained in the complaint.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). But a court is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Iqbal*, 556 U.S. at 678 (2009) (internal quotation marks omitted).

A court generally may not consider materials other than facts alleged in the complaint and documents that are made a part of the complaint. *Anderson v. Angelone*, 86 F.3d 932, 934 (9th Cir. 1996). However, a court may consider materials if (1) the authenticity of the materials is not disputed and (2) the plaintiff has alleged the existence of the materials in the complaint or the complaint “necessarily relies” on the materials. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (citation omitted). The court may also take judicial notice of matters of public record outside of the pleadings and consider them for purposes of the motion to dismiss. *Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988); *Lee*, 250 F.3d at 689-90.

d. Leave to Amend

“The court should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). “If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). This principle is to be applied with “extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir.2003) (per curiam). “This policy is applied even more liberally to *pro se* litigants.” *Eldridge v. Block*, 832 F.2d 1132, 1135 (9th Cir.1987).

There are a number of specific rationales, the *Foman* factors, that justify dismissal without granting leave to amend: undue delay, bad faith, repeated failure to cure deficiencies by previous amendments, undue prejudice, or futility. *Foman*, 371 U.S. at 182. “Absent prejudice, or a strong showing of any of the remaining *Foman* factors, there exists a presumption under Rule 15(a) in favor of granting leave to amend.” *Eminence Capital, LLC*, 316 F.3d at 1052. “Dismissal with prejudice and without leave to amend is not appropriate unless it is clear on de novo review that the complaint could not be saved by amendment.” *Id.*

III. DISCUSSION

a. General Jurisdiction

Plaintiff does not argue that this Court has general jurisdiction over Boeing. *See generally* Opp’n. For the reasons previously stated, Plaintiff has not pled sufficient facts establishing general jurisdiction over Defendant. (*See* Dkt. No. 67 at 4–5.)

b. Specific Jurisdiction

“To establish specific jurisdiction, a plaintiff must demonstrate that the defendant has purposefully directed his activities at residents of the forum and the litigation results from alleged injuries that arise out of or relate to those activities.” *Avocent Huntsville Corp. v. Aten Int’l Co.*, 552 F.3d 1324, 1330 (Fed. Cir. 2008) (internal quotation omitted). However, the Court “may not assume the truth of allegations in a pleading which are contradicted by affidavit.” *Data Disc*, 557 F.2d at 1284 (internal citation omitted).

Here, the SAC alleges that Boeing “[p]erform[ed] infringing acts of treatment and/or testing using a laser device to perform laser spallation at Boeing’s Huntington Beach facility,” “[c]onduct[ed] infringing acts of stress analysis of entire aircraft structures, including stringers and frame elements that are used to stiffen the composite fuselage skin of aircraft, at Boeing’s Huntington Beach and/or Seal Beach facilities.” SAC ¶ 8. There are also allegations related to inducing infringement and contributory infringement. *Id.* This is sufficient to meet the *prima facie* standard for specific jurisdiction.

However, Bossi declared that “[a]ll significant work relating to the [laser bond inspection or “LBI”] program occurred in Washington State.” Bossi Decl. ¶ 5. Bossi further stated that he was “not aware of any Boeing laser ultrasound projects in California at . . . anytime.” *Id.* ¶ 10. Bossi next stated that “[n]o engineers at Seal Beach or Huntington Beach helped develop LBI.” *Id.* ¶ 11. Nguyen also declared that he was “not aware of anyone in Boeing’s California facilities using an LBID [an LBI device] or performing any ‘laser spallation.’” Nguyen Decl. ¶ 12. Koumvakalis declared that she did not work on “‘laser bond inspection’ or laser bond inspection tools or devices,” and she has “never been involved in Boeing’s work on these topics and [was] not aware of any Boeing employees in California who were.” Koumvakalis Decl. ¶ 10. Brady declared that “neither [the Huntington Beach office nor the Seal Beach office] houses an LBID or has been the site of LBI testing.” Brady Decl. ¶ 16. Brady further declared that “[n]o Boeing employees perform[ed] work on LBI projects . . . out of Boeing’s Long Beach or Huntington Beach facilities,” he was “not aware of any work relating to LBI that occurred at those facilities,” and “Boeing has not performed any LBI testing in the Central District of California.” *Id.*

¶¶ 17–18. Finally, Brady declared that he was not aware of “any Boeing personnel or files relevant to this case located in the Central District of California.” *Id.* ¶ 19.1

These statements are sufficient to contradict the allegations in the SAC. Plaintiff argues that the statements in these declarations are limited “only to tests using the LBID device that is located in Washington.” Opp’n at 11. This position is unpersuasive because the above-quoted statements reach beyond the device located in Washington. *See, e.g.*, Bossi Decl. ¶¶ 10, 11; Nguyen Decl. ¶ 12; Brady Decl. ¶¶ 16-19. Nor is Plaintiff correct that the statements in the declarations are limited to any LBIDs; several of the statements in the declarations cover methods as well as devices. *See, e.g.*, Bossi Decl. ¶¶ 10, 11; Nguyen Decl. ¶ 12; Brady Decl. ¶¶ 17-19. Likewise, although a few of the statements are limited to specific facilities, others extend to each Boeing facility in California and this District.

Thus, it is appropriate to review the remaining issues raised by Plaintiff to determine if they raise any fact issues.

First, the Gupta SAC Decl. states that the “stress analyses” performed by Boeing’s engineers are “integrally connected to the ’684 Patent’s invention and may even infringe the ’684 Patent’s method claims by themselves.” Gupta SAC Decl. ¶ 46. Gupta reiterates that “[t]he stress analysis performed by Boeing engineers at Boeing’s Huntington Beach facility is not only a necessary precursor to further laser bond inspection activity, but is something that, by itself, can infringe the invention of the ’684 Patent.” *Id.* Again, Gupta states that “[t]he mathematical work done by Boeing’s engineers is not merely a precursor, but is required to practically perform the method claimed in the ’684 Patent.” *Id.* As an example, Gupta declares that “the laser pulse needs to be just enough to create the desired separation, so the mathematical work in calculating the needed pulse is an integral part of each step of the process and not a mere precursor.” *Id.* It is also stated that the stress analysis “is integral to the overall bond certification process, as it tells them where to monitor and perform the bond inspection by using the ’684 Patent’s invention.” *Id.* ¶ 13. Finally, Gupta declares that “[s]uch mathematical stress analysis work is only relevant to LBI, and cannot be used for other purposes.” *Id.* ¶ 46.

1 For purposes of personal jurisdiction, it is Defendant’s contacts with California, rather than this District, which are material. However, no party contends that Defendant has any relevant activities with California outside of this District, so for purposes of this Motion, Defendant’s activities in California and its activities within this District are referred to identically.

Gupta's statements regarding what activities infringe or do not infringe the '684 Patent are legal conclusions and thus properly disregarded. Indeed, in the method claim identified in the SAC, none of the steps relate to stress analysis or to calculating the needed pulse or deciding where to perform the bond inspection. *See* '684 Patent at Claim 13. Gupta and Plaintiff do not explain how stress analysis would infringe the '684 Patent. Gupta's statement that stress analyses are integrally connected to the '684 Patent are also conclusory. His statement that stress analysis is required to practically perform the method claimed in the '684 Patent, and that it cannot be used for other purposes, are not conclusory. However, these statements are not material. Plaintiff's claims do not arise out of or relate to these activities because they form no part of the claimed method. Even if these activities are necessary to prepare for the claimed method and not necessary for other purposes, a patent-infringement "claim both 'arises out of' and 'relates to' the defendant's alleged manufacturing, using, or selling of the claimed invention." *Avocent Huntsville Corp. v. Aten Int'l Co.*, 552 F.3d 1324, 1332 (Fed. Cir. 2008). That is the relevant conduct, and Gupta's statements do not place any of this conduct in California because they do not controvert Defendants' declarations that laser bond inspection activity does not occur in this District.

Second, Plaintiff contends that "Boeing has advertised job openings as recent as November 2023, seeking structural stress analysts and test engineers in the Central District of California for analyzing and validating . . . the bonded adhesive joints." SAC ¶ 53 (citing Gupta SAC Decl. ¶ 44). Relatedly, Plaintiff also argues that "Boeing's job descriptions for these positions match the activities for conducting laser testing and inspection discussed in the Boeing '670 Patent and the Boeing '433 Patent, and such activities infringe the '684 Patent." *Id.* (citing Gupta SAC Decl. ¶¶ 16-40). Because copies of these job postings have been used as exhibits to the SAC and have been quoted in the SAC, the Court does not rely on Plaintiff's characterization of these postings. (Dkt. No. 74-8.) The job postings do not support Plaintiff's argument. It is true that the postings seek "Stress Analysis Engineers." *See* SAC ¶ 54. However, nothing in the job postings indicates that the individuals being hired to work in this District would perform stress analysis related to LBI. Even if such an indication were present, allegations that Boeing engaged in stress analysis in this District are insufficient for the reasons already stated. Plaintiff also argues that the individuals being hired would predict potential failure modes for various components, including adhesive joints. SAC ¶ 54. However, the job postings also state that candidates would perform this analysis using finite element models and various computer software, not that they would use laser bond inspection. *See id.* Thus, nothing links these job duties to any of the asserted claims of the '684 Patent. Plaintiff argues that the postings support its position because candidates were

supposed to comply with FAA and EASA regulations and would help provide repairs to airplanes. *See* SAC ¶¶ 54–55. But again, Plaintiff has not linked these facts to any of patent claims at issue.

Plaintiff responds that, nevertheless, these job postings are relevant because the job duties described therein match the activities discussed in the Boeing '670 Patent and the Boeing '433 Patent, and those activities infringe the '684 Patent. *See* Opp'n at 12-13. This argument will be discussed further in connection with those patents.

Third, Gupta describes a conversation he had with Bossi, who was involved in setting up Boeing's LBI activities. Gupta SAC Decl. ¶ 41. Gupta further states Bossi told Gupta that Bossi "routinely travels to Boeing's research facilities in Seal Beach and Huntington Beach to interact with the engineers there for the development of the LBI method." *Id.* Gupta also declares that Bossi told Gupta "the laser ultrasound experience of the engineers in Boeing's Southern California facilities was helping [Bossi] develop the LBI method." *Id.* In response, Defendant argues that Gupta does not claim Bossi told him Boeing used an LBID in California. Although true, Gupta does claim that Bossi told him Boeing worked on the development of an LBI method in this District. *See id.* As Plaintiff notes, the '684 Patent contains both method claims and apparatus claims. Thus, Gupta's testimony contradicts the testimony of Defendant's declarants that none of Boeing's employees in the District worked on LBI and that no LBI activities occurred at Boeing's facilities here. *See* Bossi Decl. ¶¶ 5, 10, 11; Brady Decl. ¶¶ 16–19. Defendant contends that Gupta's statements should not be credited because (a) Bossi submitted a declaration that the LBID is located in Washington and had not been acquired until eight years after the conversation with Gupta took place; (b) Bossi's current declaration is inconsistent with Gupta's recollection of their conversation; (c) Bossi is retired and has no incentive to be untruthful whereas Gupta is employed by Plaintiff; and (d) the conversation between Bossi and Gupta took place almost 20 years ago. Although these are reasonable arguments, at this point, "conflicts between the facts contained in declarations submitted by the two sides must be resolved in the plaintiff's favor." *Rhoades*, 504 F.3d at 1160.

Fourth, the SAC cites a 2008 presentation that took place in Everett, Washington. SAC ¶ 51. It is alleged that this presentation "displays the wide body aircraft structures and results from a stress analysis." *Id.* The SAC also depicts a slide containing the phrases "[f]ocus on certification of bonded composite structure" and "[b]ond design." *Id.* This presentation does not support Plaintiff's argument. Although the presentation mentions bond structure and bond design generally, it

does not mention laser bond inspection, let alone the claimed method or apparatus. An independent review of the presentation is appropriate because it is attached as an exhibit to the SAC. The review shows that the presentation does not mention stress analysis. Even if the presentation had mentioned stress analysis, or if the wide body aircraft structures depicted in the presentation somehow indicated that Defendant had engaged in stress analysis, that would not be sufficient, for the reasons already stated. Finally, the presentation took place in Washington, where Boeing concedes it has conducted research related to laser bond inspection. There is no basis for inferring from this presentation that Boeing engaged in any relevant activities in California.

Fifth, the SAC cites a 2010 presentation given at the University of Washington. SAC ¶ 42. This presentation describes “Boeing[’s] [a]pproach to [b]onding [c]ertification” as including “LBID.” *Id.* Defendant objects that the presentation does not define LBID, but this position is unpersuasive. It appears that LBID is referring to laser bond inspection devices rather than some other technique with the same abbreviation. Nor is it material that Defendant had not yet purchased its LBID at the time of the presentation, given that the presentation was describing an “approach” rather than activities that were already ongoing. However, this presentation does not controvert Defendant’s declarations because it was given at the University of Washington by Washington-based employees, and nothing links the presentation to Defendant’s activities in California.

Sixth, the SAC cites certain publications by Boeing engineers concerning hybrid wing body research by Boeing and NASA. SAC ¶¶ 45–47. However, Plaintiff only alleges these articles are significant because they relate to “stress analysis of the entire aircraft structure” *Id.* ¶¶ 45, 47. As previously stated, allegations that Defendant performed stress analysis in California do not support Plaintiff’s position. Plaintiff also cites Gupta’s declaration, which states that “Boeing engineers identified areas that are most prone to adhesive failure and would therefore require monitoring during servicing of the aircraft.” Gupta SAC Decl. ¶ 15. Again, however, these publications contain no facts that would support an inference that LBI, let alone the claimed method or apparatus, was used to monitor these areas. Nor does Gupta’s declaration provide such facts.

Seventh, the SAC cites an article stating that Boeing conducts LBI tests. SAC ¶ 57. However, the portion of the article relied on by Plaintiff nowhere mentions Boeing’s California activities. *Id.* Likewise, Defendant has presented uncontroverted evidence that the individual identified in the article as being involved in Boeing’s LBI tests is based in Washington. *See* U.S. Patent No. 11,215,552.

Eighth, the SAC cites a 2022 article authored by L. John Hart-Smith, who is alleged to be employed by Boeing in Long Beach. SAC ¶ 58. The article describes “being able to monitor degradation of bond strength during service” as a “Holy Grail.” (Dkt. No. 74-10 at 3.) Plaintiff argues that a different Boeing employee used the phrase “holy grail” in a different article to refer to LBI. *Compare id. with* SAC ¶ 57. However, Plaintiff’s argument fails to recognize that the article teaches away from the use of such techniques. The article states that “[w]aiting until someone devises a reliable after-the-fact inspection method for bonded structures . . . is going to take an extremely long time if it is ever accomplished.” (Dkt. No. 74-13 at 12.) The article further states that “such a technique could not enable the design joint strengths to ever be restored [because] it is too late to try to inspect quality into a part after it has been built.” *Id.* Elsewhere, the article describes efforts to achieve this “Holy Grail” as “futile[.]” (Dkt. No. 74-10 at 3.) Thus, this article does not suggest that Defendant has used LBI anywhere, let alone in California.

Finally, the SAC cites U.S. Patent Nos. 8,714,016; 9,784,668; 9,618,433; and 10,239,155. *See* SAC ¶¶ 61-65. Plaintiff alleges, that if Defendant practices these patents, this would likely infringe at least Claims 1 and 13 of the ’684 Patent. Gupta SAC Decl. ¶¶ 16-40, 56-59. However, these are legal conclusions which need not be accepted as true. Starting with the ’016, ’668, and ’433 Patents, all the listed inventors are based in Washington, where Defendant concedes it has an LBID. The ’433 Patent identifies Boeing’s address as being in Seal Beach, California. However, Boeing has proffered uncontroverted evidence that, at the relevant time, Boeing’s outside patent prosecution counsel listed Boeing’s mailing address as its corporate headquarters or the address of its patent prosecution team, the latter of which is in California. Brecht Decl. ¶ 6. Thus, the addresses on the ’433 Patent do not support Plaintiff’s position that the invention underlying the ’433 Patent was developed in this District.

The analysis is different as to the ’155 Patent. Two of the four inventors, Koumvakalis and Kay, are residents of this District. *See* ’155 Patent. Defendant responds that Koumvakalis declares she never built a working version of the relevant apparatus, she was not aware of anyone building the relevant apparatus, and she is not at all familiar with LBI, and that she would have traveled “to be where the hardware is” if necessary. Koumvakalis Decl. ¶¶ 5, 6, 9. These responses do not alter the relevant analysis. Although Koumvakalis states that she and Kay played a “secondary” role in developing the relevant technology, Koumvakalis’ declaration does not otherwise address Kay, who has not submitted a declaration. Even as to Koumvakalis, Plaintiff has offered more than a bare allegation that she was involved

in LBI technology. The '155 Patent states that the relevant invention “can include generating a shockwave through the workpiece such as for a laser bond inspection process.” '155 Patent at 5:2-3. That process is quite similar to the claimed method in the '684 Patent. Both involve the use of a laser to create a shockwave to perform LBI. It is true that the '155 Patent does not describe every element of the claimed method and the '155 Patent does not prove that Boeing performed LBI research in this District. However, the '155 Patent does support Plaintiff's position.

Presently, Plaintiff has not demonstrated that its claims arise from or relate to Defendant's activities in California. Even the '155 Patent and Gupta's testimony regarding his conversation with Bossi, which reflect a factual dispute whether Defendant worked on LBI in this District, lack sufficient detail to determine whether Plaintiff's claims arise out of Defendant's conduct in this District rather than the LBID in Washington. Consequently, the Court is persuaded that jurisdictional discovery is appropriate. “Without discovery and a record on jurisdiction, this court must resolve all factual disputes in the plaintiff's favor.” *Nuance Commc'ns, Inc. v. Abbyy Software House*, 626 F.3d 1222, 1231 (Fed. Cir. 2010). Defendants oppose jurisdictional discovery, arguing that Plaintiff's request is based on a “hunch,” a mere “belief,” and “bare allegations” and reflects only a “fishing expedition.” Motion at 20. This description is not accurate. Because the '155 Patent and Gupta's testimony regarding his conversation with Bossi raise an inference contrary to the declarations submitted by Defendant, jurisdictional discovery is appropriate. Moreover, although this evidence is not itself sufficient to warrant jurisdictional discovery, Plaintiff has proffered evidence that Defendant has engaged in potentially infringing conduct somewhere and has proffered evidence that Defendant has substantial operations in California, which further supports a finding that jurisdictional discovery is appropriate. The Court is also mindful that the claimed method and apparatus are unlikely to be used in public view, so Plaintiff cannot be expected to possess conclusive evidence of infringement at the pleading stage. This factor further supports the appropriateness of jurisdictional discovery. Defendant also objects to the burden that jurisdictional discovery could impose, but Defendant makes no showing that this burden would not be mitigated by the requirement that all discovery be both relevant and proportional to the needs of the case. *See Fed. R. Civ. P. 26(b)(1)*.

However, Plaintiff is cautioned that the Court need not resolve all factual disputes in its favor after Plaintiff receives jurisdictional discovery. “Where discovery is conducted, . . . the plaintiff bears the burden of proving by a preponderance of the evidence the facts necessary to establish personal jurisdiction over the defendant.” *Genetic Veterinary Scis., Inc. v. LABOKLIN GmbH & Co. KG*,

933 F.3d 1302, 1309 (Fed. Cir. 2019). After jurisdictional discovery, Plaintiff will have to provide evidence that Defendant engages in conduct that could infringe the claimed method or apparatus, rather than merely performing stress analysis, using lasers, or engaging in LBI generally.

c. Venue

The result is the same as to both personal jurisdiction and venue. Defendant does not appear to dispute that it has a regular and established place of business in this District; the only remaining issue is whether the defendant has committed acts of infringement here. *See* Motion at 19. Although the personal-jurisdiction and venue analyses are not identical, the key issue here is whether Defendant’s potentially infringing activities occur in California, elsewhere, or both. For the same reasons previously stated, Plaintiff has proffered enough evidence to make jurisdictional discovery appropriate but not enough to warrant denial of the Motion as to either personal jurisdiction or venue.

d. Patent Infringement

“[P]atentees need not prove their case at the pleading stage.” *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1346 (Fed. Cir. 2021). However, “while a patentee’s pleading obligations are not insurmountable, a patentee may subject its claims to early dismissal by pleading facts that are inconsistent with the requirements of its claims.” *Id.* In addition, “[t]here 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. Thus, “a plaintiff cannot assert a plausible claim for infringement . . . by reciting the claim elements and merely concluding that the accused product has those elements.” *Id.* “The level of detail required in any given case will vary depending upon a number of factors, including the complexity of the technology, the materiality of any given element to practicing the asserted claim(s), and the nature of the allegedly infringing device.” *Id.*

For example, the Federal Circuit has held that a case cannot be dismissed when it “involves a simple technology,” “[t]he complaint specifically identified the three accused products,” and “alleged that the accused products meet ‘each and every element of at least one claim of the [patents], either literally or equivalently.’” *Disc Disease Sols. Inc. v. VGH Sols., Inc.*, 888 F.3d 1256, 1260 (Fed. Cir. 2018).

Indeed, “the Federal Rules of Civil Procedure do not require a plaintiff to plead facts establishing that each element of an asserted claim is met.” *In re Bill of Lading*

Transmission & Processing Sys. Pat. Litig., 681 F.3d 1323, 1335 (Fed. Cir. 2012). “In some circumstances, failure to allege facts that plausibly suggest a specific element or elements of a claim have been practiced may be fatal in the context of a motion to dismiss.” *Id.* at 1342. Instead, “what is necessary is that facts, when considered in their entirety and in context, lead to the common sense conclusion that a patented method is being practiced.” *Id.* at 1343.

Plaintiff argues that it “need merely place the ‘potential infringer . . . on notice of what activity . . . is being accused of infringement.’” Opp’n at 18 (quoting *K-Tech Telecomms., Inc. v. Time Warner Cable, Inc.*, 714 F.3d 1277, 1284 (Fed. Cir. 2013)). However, *K-Tech* analyzed the complaint for both “notice and facial plausibility[.]” 714 F.3d at 1286 (noting that “[t]he adequacy of the facts pled depends on the breadth and complexity of both the asserted patent and the accused product or system and on the nature of the defendant’s business activities”). Nor could *K-Tech* have overruled *Twombly* and *Iqbal*, which provide that notice alone is not sufficient.

Here, the Motion focuses on several issues. First, Defendant contends that the allegations pertaining to “other types of bond inspections using lasers” are too vague to notify Defendant of the accused activities and are conclusory. Motion at 21. Second, as to the allegations regarding the LBID, Defendant claims that the LBID does not use a glass element, let alone a glass element in the position required by the claims. Motion at 23–28. Third, Defendant states that its ownership of certain patents does not show infringement, both because there are no facts indicating that Defendant practices those patents and there are no facts showing that practicing those patents would infringe. *Id.* at 28–29. Fourth, Defendant contends that 35 U.S.C. § 295 does not aid Plaintiff because that statute does not apply at the pleadings stage. *See* Reply at 18. Fifth, Defendant denies that the second and third causes of action, which relate to induced and contributory infringement, are adequately alleged because each cause of action depends on an act of direct infringement. *See id.*

As to the allegations regarding “other types of bond inspections,” the Court agrees with Defendant that these allegations are both conclusory and too vague to place Defendant on notice of what activity is being accused of infringement. Other than the phrase “other types of bond inspections,” no detail is provided that would help Defendant understand what conduct is challenged. *See* SAC ¶ 22.

However, the allegations regarding the LBID are presently sufficient. Defendant is correct that the asserted claims require that the glass element and coating be located on opposite sides of the substrate. ’684 Patent at Claims 1, 13 (describing “a coating

applied to the first side of the substrate” and “a glass element disposed on the second side of the substrate”). As to the definition of “glass element,” the specification states that “[t]he glass element may comprise Pyrex, soda lime, quartz, borosilicate or similar material.” ’684 Patent at 3:18–20. Plaintiff has also offered Gupta’s testimony, who states that the glass element “is not limited to silica glasses, but rather . . . [all] materials that result in modifying the stress wave profile when it transmits through their thickness.” Gupta SAC Decl. ¶ 10. Even if this is not a compelling claim construction, this is a motion to dismiss, not a *Markman* hearing. It presently appears plausible that, either literally or through the doctrine of equivalents, all materials that are used propagate and modify laser light could infringe the ’684 Patent. Among other things, Plaintiff contends that electromagnetic acoustic transducer (EMAT) sensor tape is a glass element. *See* SAC ¶¶ 34, 35. The SAC describes the laser energy being transmitted through the tape to the substrate below. *See id.* at 10–12. It is therefore plausible that the tape qualifies as a glass element. The Motion does not contend that the EMAT tape is in a place that would preclude a finding of infringement. *See* Motion at 24. Indeed, a review of the SAC indicates that the epoxy coating and tape are on opposite sides of the composite substrate. *Compare* SAC at 9 *with id.* at 10–12. Because the EMAT tape theory is adequately alleged based on the present record, it is not necessary to determine whether HYSOL EA9394 epoxy, fiber laminate, or other materials could qualify as glass elements or whether they are located on the second side of the substrate.

For similar reasons, it is unnecessary to determine whether it has been adequately alleged that practicing Defendant’s patents would infringe the ’684 Patent or whether it has been adequately alleged that Defendant practices the patents identified in the SAC.

Next, “if the court finds – (1) that a substantial likelihood exists that the product was made by the patented process, and (2) that the plaintiff has made a reasonable effort to determine the process actually used in the production of the product and was unable to so determine, the product shall be presumed to have been so made, and the burden of establishing that the product was not made by the process shall be on the party asserting that it was not so made.” 35 U.S.C. § 295. However, this statute has no application at the pleadings stage, where no factual findings can be made. Several cases have declined to apply this statute at the pleadings stage. *See, e.g., Karl Storz Endoscopy-Am. Inc. v. Integrated Med. Sys. Int’l, Inc.*, 400 F. Supp. 3d 1248, 1253 (N.D. Ala. 2019) (“But § 295, which allows a court to shift ‘the burden of establishing that the product was not made by the [patented] process,’ requires the court to make factual findings in the plaintiff’s favor.”); *Dr. Greens, Inc. v. Stephens*, No. 311CV638JAH CAB, 2012 WL 12846976, at *10 (S.D. Cal. Mar. 21, 2012)

(“And with regard to the presumption of infringement set forth in 35 U.S.C. § 295, the Court agrees with Plaintiff that the presumption does not apply when deciding a motion to dismiss for failure to state a claim because, for example, the Court must make factual findings regarding whether Plaintiff’s product was made by the process protected by the ’776 patent before the presumption attaches.”); *Vitaworks, LLC v. Qianjiang Yongan Pharm. Co.*, No. CV 16-5321-CCC-MF, 2017 WL 11477186, at *2 (D.N.J. Aug. 22, 2017) (“Here, at the motion to dismiss stage, the Court is faced with an entirely different question, namely, whether Plaintiff’s complaint contains sufficient factual matter to state a claim to relief that is plausible on its face.”).

The Motion does not mention the second and third causes of action. *See generally* Motion. The Reply only contests these causes of action because no direct infringement has been adequately alleged. *See* Reply at 18. Because one of Plaintiff’s direct-infringement theories is presently adequate, the second and third causes of action are also presently adequate.

Finally, in evaluating whether Plaintiff has stated a claim, the Court has only been seeking to determine whether jurisdictional discovery would be an exercise in futility. Thus, only one of Plaintiff’s potential infringement theories is evaluated for plausibility. To avoid dismissal on personal-jurisdiction or venue grounds, Plaintiff will have to show that its claims arise out of or relate to conduct in California and that conduct which could infringe the ’684 Patent occurred in this District. Thus, this evaluation of Plaintiff’s infringement allegations is without prejudice to any future evaluation (a) after jurisdictional discovery establishes what alleged conduct occurs in this District, (b) if jurisdictional discovery reveals evidence relevant to the sufficiency of Plaintiff’s infringement allegations that can be considered at the pleadings stage, (c) if the matter is dismissed on personal-jurisdiction or venue grounds, or (d) if the matter is transferred to another forum.

e. Willfulness

Plaintiff has adequately alleged willfulness. “To establish willfulness, the patentee must show the accused infringer had a specific intent to infringe at the time of the challenged conduct.” *Bayer Healthcare LLC v. Baxalta Inc.*, 989 F.3d 964, 987 (Fed. Cir. 2021). “To willfully infringe a patent, the patent must exist and one must have knowledge of it.” *State Indus., Inc. v. A.O. Smith Corp.*, 751 F.2d 1226, 1236 (Fed. Cir. 1985) (emphasis omitted).

First, Plaintiff has alleged that Boeing cited or discussed the ’684 Patent during the prosecution of Boeing’s own patents. SAC ¶¶ 62, 63; Dkt. No. 74-23 at 88; *see also*

Dkt. No. 74-26 at 108. “A complaint may sufficiently plead a defendant’s actual knowledge when ‘a plaintiff alleges that a defendant previously filed papers with the PTO identifying the patents as prior art.’” *Intell. Ventures I LLC v. AT & T Mobility LLC*, 69 F. Supp. 3d 461, 465 (D. Del. 2014) (quoting *MONEC Holding AG v. Motorola Mobility, Inc.*, 897 F. Supp. 2d 225, 229 (D. Del. 2012)).

Second, the SAC alleges that Dr. Gupta made a presentation to Boeing on November 22, 2021, “wherein the use of methods described in the ’684 Patent for modifying and propagating stress waves using laser pulses was discussed with Boeing personnel.” SAC ¶ 72. Defendant responds that knowledge of the methods described in the ’684 Patent is not equivalent to knowledge of the patent itself or to knowing infringement.² Although this allegation is not sufficient standing alone, this allegation undermines Defendant’s contention that it did not knowingly infringe because the ’684 Patent relates to semiconductor manufacturing rather than airplane manufacturing.

Third, the SAC alleges that Defendant conceded knowledge of an earlier related patent. SAC ¶ 70. Defendant argues this allegation is insufficient because knowledge of an earlier related patent does not create knowledge of later patents. As before, this allegation is not sufficient standing alone. But at least at the pleadings stage, it supports an inference that, notwithstanding the ’684 Patent relates to semiconductor manufacturing, Defendant knew it could use the relevant technology.

Fourth, the SAC alleges that Defendant monitors patents related to laser testing and thereby became aware of the ’684 Patent. SAC ¶ 69. However, this allegation need not be accepted as true. *Intell. Pixels Ltd. v. Sony Interactive Ent. LLC*, No. SACV201422JVSKEsx, 2020 WL 7872961, at *2–3 (C.D. Cal. Nov. 20, 2020) (holding the plaintiff’s allegations were “derivative from the central theory that [the defendant] knew of the [relevant] Patent because it knew of the [underlying] application and monitored it” and rejecting this allegation as “conclusory”).

At the pleadings stage, a plaintiff’s claims of willfulness need only be plausible. Based on the first three facts discussed here, Plaintiff has met this standard. Defendant’s citation of the ’684 Patent shows awareness of the patent. Likewise, Boeing’s interest in using the technology underlying the ’684 Patent and interest in

² Plaintiff has now proffered a declaration that the meeting discussed the ’684 Patent itself. Gupta Opp’n Decl. ¶ 12. However, because this new declaration was not filed in support of the SAC, it would not be appropriate to consider it.

another related patent permit—at least for now—an inference from knowledge of the '684 Patent to a specific intent to infringe it.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss is **DENIED** pending the outcome of jurisdictional discovery.

IT IS SO ORDERED.