

**IN THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT
OF TEXAS AUSTIN DIVISION**

HAPTIC, INC.,

Plaintiff,

v.

APPLE, INC.,

Defendant.

Civil Action No. 1-23-cv-01351

JURY TRIAL REQUESTED

**PLAINTIFF HAPTIC INC.'S RESPONSE IN OPPOSITION TO APPLE'S RULE
12(b)(6) MOTION**

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Plaintiff Haptic, Inc. (“Haptic”) submits this Response in Opposition to Defendant Apple, Inc.’s (“Apple”) Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim, (ECF No. 13).

Apple improperly asks the Court to resolve claim construction disputes at the motion-to-dismiss stage, inserts the word “directly” into the claim language, and attempts to import limitations based on prosecution statements that do not “clearly and unmistakably” disavow the claims’ scope. In short, Apple attempts to rewrite the patent in suit. Even under Apple’s strained claim construction assumptions, Haptic’s complaint adequately alleges infringement against Apple’s Back Tap feature.

The Court should deny Apple’s Motion.

I. Introduction

This case involves Apple’s infringement of U.S. Patent No. 9,996,738 (’738 Patent) titled “System and Method for Controlling a Terminal Device.” The ’738 Patent generally covers a tap-based control system that converts a surface into a controller for a terminal device. The control system includes a housing, a sensor, a mounting surface, a sensor, and a terminal device. The functionality disclosed in the ’738 Patent allows users to control devices through tap gestures on an ordinary surface. Claim 1 of the ’738 Patent reads:

A control system comprising:

a housing having an engagement means for a mounting surface;

a sensor contained within said housing, said sensor forming an interactive zone defined by a range of said sensor, said sensor being comprised of an accelerometer, said interactive zone being aligned with said mounting surface and overlaying said mounting surface outside a perimeter of said housing, said sensor being in a fixed position relative to said engagement means, wherein a contact interaction associated with said mounting surface within said interactive zone is detected by said sensor as data signals, said contact interaction being comprised of an impact on said mounting surface, said data signals being comprised of vibration data of said contact interaction;

a server in communication with said sensor, said server being comprised of a routing module, a processing module being connected to said routing module, and an output module connected to said processing module, said routing module receiving said data signals from said sensor, said processing module determining a data pattern corresponding to said data signals of said contact interaction and matching said data pattern with a gesture profile, said gesture profile being associated with a command; and

a terminal device being comprised of a receiving module and means for initiating activity of said terminal device corresponding to said command, said terminal device being in communication with said server, said output module transmitting said command to said receiving module, wherein said engagement means of said housing comprises:

an attachment means between said housing to said mounting surface; and

a transmission portion connecting said sensor to said attachment means of said housing and being comprised of a material with flexibility different than said mounting surface so as to set a rigid position of said sensor relative to said mounting surface, said contact interaction generating said data signals of said sensor through said transmission portion.

Dkt. No. 1-1 (“’738 Patent”).

As set out in Haptic’s Complaint, Haptic owns all rights, title, and interests to the ’738 Patent. Haptic is also an operating business that offers Knocki, a small wireless device that activates surfaces into touch control interfaces for terminal devices. The specific mode of interaction of Knocki are “tap gestures,” which are predefined tap patterns that can be applied to an activated surface. Knocki can be configured to control a variety of devices and programs.

In 2016 and 2017, Haptic and Apple representatives met several times to discuss partnership, collaboration, and opportunities to integrate Haptic’s patented technology into Apple’s products. Haptic disclosed its technology and its patent application to Apple at these meetings. Shortly after 2017, Apple ceased all contact with Haptic. In September 2020, Apple launched its “Back Tap” feature on all iPhones. Back Tap utilizes the invention disclosed in the

'738 Patent by activating the back side of the iPhone as a remote control tap interface and allowing users to double-tap or triple-tap that surface (or on an iPhone case) to trigger a wide variety of functions on an iPhone and other external devices.

Haptic sued Apple in November 2023 asserting claims for direct, contributory, and willful infringement.

II. Legal Standard

To survive a motion to dismiss under Rule 12(b)(6), a complaint must “contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). When ruling on a motion to dismiss under Rule 12(b)(6), courts accept all well-pleaded factual allegations as true and construe all reasonable inferences in favor of the plaintiff. *Id.*

The “purpose of a motion to dismiss is to test the sufficiency of the complaint, not to decide the merits.” *Nalco Co. v. Chem-Mod, LLC*, 883 F.3d 1337, 1350 (Fed. Cir. 2018) (citation omitted). A plaintiff need not “prove its case at the pleading stage.” *Id.* Instead, the complaint must place the “potential infringer . . . on notice of what activity . . . is being accused of infringement.” *Id.* (citation omitted).

III. Argument

A. Haptic’s Complaint States a Claim for Direct Infringement.

Haptic’s complaint states a claim for direct infringement of the ’738 Patent. Apple asks this Court to prematurely engage in claim construction, asserts a construction that improperly inserts the word “directly” into the claim language, and misreads statements made during prosecution that do not clearly and unmistakably disavow the claim scope.

1. Apple’s Claim Construction Arguments Are Premature and Should Be Rejected.

Apple seeks dismissal of Haptic’s claims by arguing that the Accused Products do not involve “an impact on said mounting surface,” as required by the ’738 Patent. Apple’s argument implicitly depends upon a claim construction that is favorable to Apple: that “an impact on said mounting surface” means an impact *directly* on the mounting surface. Motion at 10-11 (“Haptic points to a part inside the iPhone as the alleged ‘mounting surface,’ but a user does not tap or knock that part of the iPhone.”); *id.* (“The claims require a user to directly ‘impact’ or tap ‘on’ the claimed ‘mounting surface.’”). Not only is Apple’s claim construction incorrect on the merits, such claim construction is wholly improper at the motion-to-dismiss stage.

Courts routinely hold that “claim construction is inappropriate at the 12(b)(6) pleading stage” because the parties “have neither completed claim construction discovery nor briefed claim construction issues.” *See Mel NavIP LLC v. Toyota Motor N. Am., Inc.*, No. 2:22-CV-00152-JRG, 2023 WL 1766266, at *3 (E.D. Tex. Feb. 3, 2023) (collecting authority); *Nalco Co.*, 883 F.3d at 1349 (holding that claim construction is “not suitable for resolution on a motion to dismiss.”). To the extent claim construction arguments are considered at the motion-to-dismiss stage at all, courts give patent claims their “broadest possible construction.” *In re Bill of Lading Transmission & Processing Sys. Pat. Litig.*, 681 F.3d 1323, 1343 n.13 (Fed. Cir. 2012).

In *Nalco*, the Federal Circuit considered a district court’s Rule 12(b)(6) dismissal of patent infringement claims in which the parties asserted competing interpretations of the terms “flue gas” and “injecting.” 883 F.3d at 1348–49. The Federal Circuit reversed that dismissal because it required resolving claim construction issues:

These disputes between the parties hinge on where “flue gas” may be located within the power plant and what limitations are appropriate on where “injecting” may occur. It is not appropriate to resolve these disputes, or to determine whether the

method claimed in the '692 patent should be confined to the preferred embodiment, on a Rule 12(b)(6) motion, without the benefit of claim construction.

Id. at 1350 (collecting authority).

Here, as in *Nalco*, the parties dispute the interpretation and scope of the term “impact on a mounting surface.” Apple’s primary argument is that this term requires an impact *directly* on a mounting surface and not an impact on the mounting surface that originated elsewhere. As discussed below, Haptic disputes Apple’s construction and addition of the word “directly” because that word does not appear in the claim language and was not discussed during prosecution.¹

Further, a person of ordinary skill in the art would understand an impact on a surface to include both impacts originating on the surface and impacts originating elsewhere that have an impact on the surface. Because Apple’s motion implicates claim construction issues, the Court should decline to resolve them at this early stage. *See id.* at 1349 (“Defendants’ arguments boil down to objections to Nalco’s proposed claim construction for ‘flue gas,’ a dispute not suitable for resolution on a motion to dismiss.”).

2. Even if the Court Addressed Claim Construction Issues, Apple’s Construction Improperly Inserts the Word “Directly” into the Claim Language.

Even if the Court were to improperly take up the claim construction issue at this phase of the case, Apple’s construction is incorrect. Apple repeatedly adds the word “directly” into its construction of “impact on said mounting surface.” *E.g.*, Motion at 3 (“Although the specification discusses two types of impacts . . . the claims plainly require impacts that are *directly* ‘on’ the mounting surface.”); Motion at 11 (“The claims require a user to *directly* ‘impact’ or tap ‘on’ the claimed ‘mounting surface.’”).

¹ Haptic also disputes Apple’s characterization of the '738 Patent in the “Introduction” and “Factual Background” sections of its Motion. Apple uses phrases that do not appear in the claim language, including “an entirely separate device,” “an exterior mounting surface,” and an “associated surface.”

But Apple’s Motion omits that the claim language does not contain the word “directly.”

Claim 1 provides in relevant part:

A control system comprising:

a housing having an engagement means for a mounting surface;

a sensor contained within said housing, said sensor forming an interactive zone defined by a range of said sensor, said sensor being comprised of an accelerometer, said interactive zone being aligned with said mounting surface and overlaying said mounting surface outside a perimeter of said housing, said sensor being in a fixed position relative to said engagement means, ***wherein a contact interaction associated with said mounting surface within said interactive zone is detected by said sensor as data signals, said contact interaction being comprised of an impact on said mounting surface***, said data signals being comprised of vibration data of said contact interaction;

’738 Patent at Claim 1 (emphasis added). This language requires only an “impact on” the mounting surface. It does not require an “impact ***directly*** on” the mounting surface, as Apple argues.

Consistent with that claim language, the specification describes embodiments of the invention that have indirect impacts “on” a mounting surface. The specification’s description of Figures 7–9 identifies several types of impacts “on” a mounting surface, including (a) an impact that is “*not always directly on*” the mounting surface and (b) an impact “on the wall surface opposite the mounting surface that is transmitted to the mounting surface”:

The contact interaction is associated with the mounting surface 22 and the contact interaction is detected through the mounting surface 22, even if the contact interaction *is not always directly on* the mounting surface 22.

Id. at 7:64–8:1.

The *contact interaction is on the wall surface opposite the mounting surface 22*, but the knocking on the wall surface is transmitted to the mounting surface 22 and then to the sensor 30.

Id. at 7:54–56. As shown in Figure 9, the first point of the contact interaction can be “associated with” the mounting surface, and the contact interaction also has an impact “on” that surface:

The contact interaction is associated with the mounting surface 22 and the contact interaction is detected through the mounting surface 22, even if the contact interaction is not always directly on the mounting surface 22.

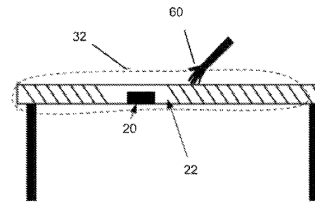


FIG. 9

Further, Apple’s construction requiring a *direct* “impact on said mounting surface” renders superfluous the language in Claim 10 of the patent in suit. Claim 1 states: “wherein a contact interaction *associated with said mounting surface* within said interactive zone is detected by said sensor as data signals, said *contact interaction being comprised of an impact on said mounting surface.*” Claim 10, in contrast, requires “*making a physical impact on said mounting surface* so as to generate a contact interaction.” If Apple’s construction were correct, there would have been no reason to include an entirely separate claim of a physical impact on the mounting surface.

It is no surprise that the patent specification and claims recognize that impacts can originate from another location and cause an impact to occur on the mounting surface. The Patent’s use of the term “impact” follows from that term’s plain and ordinary meaning. The *McGraw-Hill Dictionary of Scientific and Technical Terms* defines “impact” as a “forceful collision between two bodies which is sufficient to cause an appreciable change in the momentum of the system on which it acts.” Such contact interactions do not necessarily create an impact only on one point of contact. Rather, a contact interaction can have an impact on the target of the contact in a manner that causes an appreciable change in the momentum of the system. For example, in *Crane Co. v. Sandenvendo Am., Inc.*, the district court construed the term “severe impact forces.” 2009 WL 1586704, at *12 (E.D. Tex. June 5, 2009). The court explained that such impacts could “cause immediate effervescence and overflowing of carbonated beverages upon opening” or could cause “damage to a container/product such that the container or product is no longer suitable for

consumption or sale.” These different types of “impacts” confirm that an “impact” can be either direct or indirect.

Apple’s argument that an impact must be “directly” on a mounting surface is inconsistent with the claim language, ignores embodiments described in the specification, and renders superfluous the phrase “contact interaction associated with said mounting surface” in the immediately preceding clause. *See SimpleAir, Inc. v. Sony Ericsson Mobile Comm’s AB*, 820 F.3d 419, 429 (Fed. Cir. 2016) (“[I]nterpretations that render some portion of the claim language superfluous are disfavored.”).

3. Haptic Did Not Disavow the Claim Scope During Prosecution.

The standard for importing limitations from prosecution history statements is “exacting” and requires a “clear and unmistakable” disavowal of claim scope. *3M Innovative Properties Co. v. Tredegar Corp.*, 725 F.3d 1315, 1325 (Fed. Cir. 2013). The Federal Circuit has “cautioned . . . that ‘because the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes.’” *Cont’l Circuits LLC v. Intel Corp.*, 915 F.3d 788, 796 (Fed. Cir. 2019) (citation omitted); *see also Liqui-Box Corp. v. Scholle IPN Corp.*, 449 F. Supp. 3d 790, 797 (N.D. Ill. 2020) (“Deciding that prosecution history estoppel bars Plaintiff from asserting infringement based on the doctrine of equivalents is also premature at this [Rule 12(b)(6)] stage.”).

Apple cannot meet this exacting standard. Apple asserts that Haptic disclaimed any interpretation of Claim 1 in which an impact is not *directly* on a mounting surface. Apple states: “Despite initially drafting the claims broadly, Haptic amended the claims during prosecution to capture only impacts that are directly ‘on’ the ‘mounting surface.’” Motion at 5. Apple exaggerates the scope of Haptic’s amendment. A close reading of the File History shows that Haptic (1) did

not delete the term “a contact interaction *associated with* said mounting surface” from the claims and (2) did not add the word “directly” to the claims:

a sensor contained within said housing, said sensor forming an interactive zone defined by a range of said sensor, said sensor being comprised of an accelerometer, said interactive zone being aligned with said mounting surface and overlaying said mounting surface outside a perimeter of said housing, said sensor being in a fixed position relative to said engagement means, wherein a contact interaction associated with said mounting surface within said interactive zone is detected by said sensor as data signals, said contact interaction being comprised of an impact on said mounting surface, said data signals being comprised of vibration data of said contact interaction;

Dkt. No. 13-2 (2018-02-26 Amendment at 7). This type of amendment does not expressly redefine the claim term in a manner that amounts to a “clear and unmistakable” disclaimer of claim scope.

Apple cites several statements in Haptic’s remarks accompanying that amendment describing the contact interaction in Claim 1 as a “physical impact on a mounting surface.” Motion at 6. For the same reasons an impact “on” a mounting surface does not require an impact “directly” on a mounting surface, a “*physical impact*” likewise does not require a “direct impact” on the mounting surface.

Even if “physical impact” meant the same thing as “direct impact” (it does not), the final claim language undermines Apple’s arguments regarding these prosecution statements. The final language in Claim 1 does not include a “physical impact” requirement. That is notable in comparison to Claims 10, 11, and 13, which do require a “physical impact” on the mounting surface:

Claim 10 provides: “making a *physical impact* on said mounting surface so as to generate a contact interaction.”

Claim 11 provides: “The method of controlling the terminal device according to claim 10, wherein the step of making a *physical impact* on said mounting surface further comprises making a plurality of *physical impacts* on said mounting surface, said contact interaction being associated with more than one *physical impact*.”

Claim 13 provides: “The method of controlling the terminal device according to Claim 12, wherein the step of making a *physical impact* on said mounting surface further comprises making a plurality of *physical impacts* on said mounting surface, said contact interaction being associated with *more than one physical impact*.”

’738 Patent. The lack of a requirement in one claim as compared with other claims in the same patent undermines Apple’s arguments. *See In re Varma*, 816 F.3d 1352, 1363–64 (Fed. Cir. 2016) (“[T]he principle that the same phrase in different claims of the same patent should have the same meaning is a strong one, overcome only if ‘it is clear’ that the same phrase has different meanings in different claims.”).

Apple has not carried its burden to establish that Haptic’s February 2018 amendment and prosecution statements regarding “physical impact” meet the exacting standards to establish disavowal of claim scope. *See Thorner v. Sony Computer Ent. Am. LLC*, 669 F.3d 1362, 1366 (Fed. Cir. 2012) (“Absent a clear disavowal in the specification or the prosecution history, the patentee is entitled to the full scope of its claim language.”).

4. Apple’s Back Tap Feature Infringes the ’738 Patent, Even Under Apple’s Strained Claim Construction.

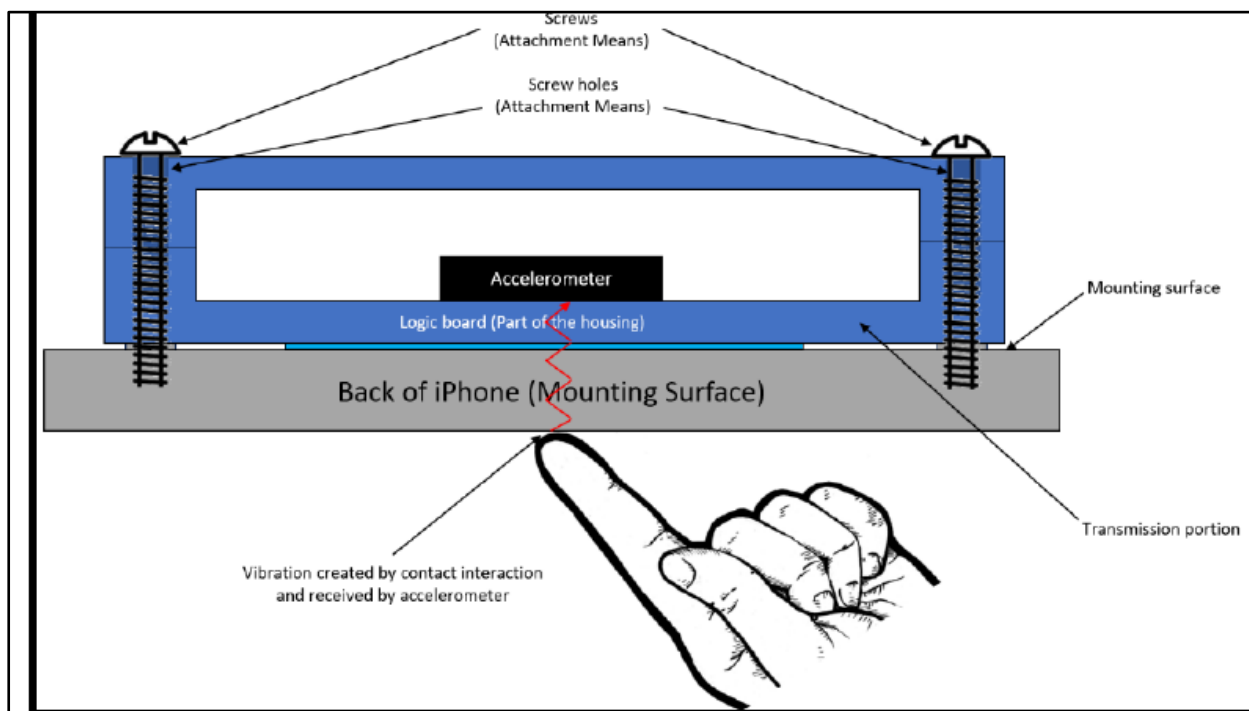
Applying the plain and ordinary meaning of “impact on said mounting surface,” Haptic has sufficiently alleged direct infringement. The plain language of the ’738 Patent requires a contact interaction “associated with” a mounting surface that is comprised of an impact “on” the mounting surface. *See* Claim 1 (“[W]herein a contact interaction associated with said mounting surface within said interactive zone is detected by said sensor as data signals, said contact interaction being comprised of an impact on said mounting surface.”). In the Accused Products, a user double- or triple-taps on the back of an iPhone to activate the Back Tap feature. This contact interaction within

the interactive zone is “associated with” the mounting surface and creates vibrations that have an impact “on” the mounting surface. In short, by tapping on the back of the iPhone, a user causes an impact to occur on the mounting surface.

This relationship between the contact interaction associated with the mounting surface and the impact on the mounting surface is described in Haptic’s claim charts:

<i>Haptic, Inc. v. Apple, Inc., (W.D. Tex.)</i> Infringement of U.S. Patent No. 9,996,738	
[1.8.b] wherein a contact interaction associated with said mounting surface within said interactive zone is detected by said sensor as data signals.	In each of the Accused Products, the “contact interaction” consists of a double-tap or triple-tap on the back of the iPhone. Because the mounting surface is within the “interactive zone” of the back side of the iPhone, the contact interaction on the back of the iPhone impacts the mounting surface and is “associated with said mounting surface within said interactive zone.” The sensor (accelerometer) detects the contact interactions (taps) as data signals.
[1.9] said contact interaction being comprised of an impact on said mounting surface, said data signals being comprised of vibration data of said contact interaction;	Each Accused Product includes a “contact interaction being comprised of an impact on said mounting surface, said data signals being comprised of vibration data of said contact interaction.” In each of the Accused Products, double-taps and triple-taps on the back of the iPhone are contact interactions that impact the mounting surface. These contact interactions (taps) generate data signals that are comprised of vibrations. The contact interactions have certain characteristics that allow the vibrations to be identified as at least double-taps or triple-taps and that comprise “vibration data” that the sensor detects as “data signals.”

...



Dkt. No. 1-2 at 10, 18.

All of Apple’s other arguments rely on Apple’s assertion that an impact “on” the mounting surface requires a *direct* impact on the mounting surface. *See* Motion at 10 (“Haptic’s direct infringement claim should be dismissed because the complaint does not allege facts sufficient to show that Apple’s Back Tap feature for iPhone meets the “impact on said mounting surface” limitation.”). But Apple’s own directions to its users prove Apple knows full-well that Haptic’s construction is correct and that its product practices the claimed invention. Apple instructs users to “double or triple tap on the back of your iPhone to trigger the action you set.” Apple, *Use Back Tap on your iPhone*, <https://support.apple.com/en-us/111772>. But Back Tap works while an iPhone is in a case. *See* Macworld, ‘Back Tap’ Feature in iOS 14 Turns Rear of iPhone into a Button (Nov. 3, 2020), <https://www.macworld.com/article/675545/back-tap-feature-in-ios-14-turns-rear-of-iphone-into-a-button.html> (“Back Tap also works through a cover.”). Like the embodiment described at 7:64–8:1 and Figure 9, a contact interaction with an iPhone case is not “directly” on the mounting surface, but rather is a contact interaction “associated with” the mounting surface that results in an impact on the mounting surface. Because the iPhone case is connected to the iPhone that contains the mounting surface, the contact interaction with the case is *both* “associated with” the mounting surface *and* creates an impact “on” the mounting surface.

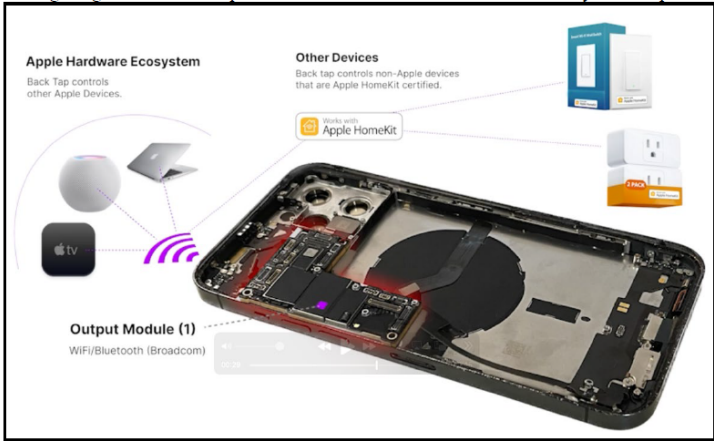
B. Haptic Has Sufficiently Pleaded Contributory Infringement Based on Apple’s Sales and Monetization of HomeKit and HomeKit Certified Devices.

Contributory infringement occurs if a party sells, or offers to sell, “a component of a patented . . . combination, . . . or a material . . . for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use.” 35 U.S.C. § 271(c).

Haptic alleges at Paragraphs 60–61 that Apple is liable for contributory infringement because “Apple controls and monetizes the technical architecture for Apple’s ‘HomeKit,’ which enables Back Tap to control other devices and allows Apple to set the rules for how third-party devices can work with Back Tap.” Dkt. No. 1 at ¶¶60–61. Haptic alleges that HomeKit enables other devices to be controlled by Back Tap and that Apple’s Shortcuts software enables Back Tap to control HomeKit-certified devices. Shortcuts is pre-installed on every iPhone that has the Back Tap feature and is seamlessly integrated into the Back Tap interface. Dkt. No. 1-2 at 15. Haptic’s claim charts also identify examples of HomeKit-compatible devices:

For example, the “Control Nearby Devices” command can be associated with terminal devices on the same local area network as the Accused Products, including Apple Watches, iPads, other iPhones, Apple TVs, Apple HomePods, Apple MacBook Laptops, third-party devices, and other HomeKit-compatible devices. All these terminal devices controllable via Back Tap receive commands at receiving modules from the Accused Products’ output modules. For terminal devices external to the Accused Products that are outside the Accused Products’ local area network, the Accused Products use Back Tap to activate and control those terminal devices through the Apple “Shortcuts” feature and the Apple “Home” application, which are integrated into Back Tap. For example, a user can create a shortcut that turns on or off all the lights in a home, and use the Back Tap feature to assign that command to either the double-tap or triple-tap gesture.

The following image identifies examples of external terminal devices controllable by Back Tap:



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All shortcuts, including those associated with the Apple HomeKit-compatible smart-home devices owned by the user, are automatically listed in the Back Tap interface, can be configured and controlled by Back Tap, and are listed within the Shortcuts application of the iPhone.

Dkt. No. 1-2 at 15–16.

Apple asserts that these pleadings are conclusory. Motion at 15–17.

Consistent with Haptic’s pleadings, Apple controls the technical and design aspects for Apple’s proprietary smart home platform HomeKit. Haptic alleges that Apple controls and monetizes the technical architecture for HomeKit. Haptic alleges that Apple implemented a requirement that third-party devices that can be controlled by Back Tap must be HomeKit certified. Haptic’s pleadings also describe Haptic’s own interactions with Apple relating to HomeKit integrations (¶¶38–39) and specifically identify HomeKit-certified devices that interact with the Back Tap feature. *See, e.g.*, Dkt. No. 1-2 at 21. Haptic has adequately pleaded that the Back-Tap interfacing elements of Apple’s HomeKit technology are material infringing components of the Accused Devices that have no substantial non-infringing uses. *See Glaston Corp. v. Salem Fabrication Techs. Grp.*, 2022 WL 16901987, *5–7 (M.D.N.C. 2022) (“Plaintiffs allege that the Northglass furnaces are a material component of the methods claimed within the ’540 Patent. It is not the court’s role to assess the ultimate strength of this claim at this stage, as long as it meets the relatively low threshold of plausibility, which it does.”); *Apple Inc. v. AliveCor, Inc.*, 2023 WL 4091287, *2–4 (N.D. Cal. 2023) (“At this stage, the Court makes all inferences in favor of Plaintiff, and whether [the plaintiff] eventually will be able to prove that the Accused Products have no substantial non-infringing uses is for another day.”).

At this early Rule 12(b)(6) stage, Haptic’s allegations sufficiently state a claim for contributory infringement.

IV. Conclusion

For the reasons above, the Court should deny Apple’s Rule 12(b)(6) Motion. In the alternative, if the Court grants Apple’s motion, Haptic respectfully requests that the dismissal be without prejudice.

Date: February 5, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the court's CM/ECF system on February 5, 2024.

/s/ *Ace M. Factor*
Ace M. Factor