IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

PROXENSE, LLC, **Plaintiff,** **v.** **MICROSOFT CORPORATION,** **Defendant.**	**Case No. 6:23-cv-319-ADA** **JURY TRIAL DEMANDED**

DEFENDANT MICROSOFT CORPORATION'S OPENING BRIEF IN SUPPORT OF
ITS MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

MICROSOFT 1017

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I. INTRODUCTION

Proxense LLC's ("Proxense") Complaint fails to specifically state ***what*** products are being accused, ***how*** any product is accused of infringing every limitation of any claim, and ***why*** the accused infringement is allegedly willful. With a lengthy[1] yet deficient pleading, Proxense alleges that Microsoft infringes three patents on biometric data authentication and three patents on hybrid devices in proximity – but never even defines the "Accused Product." In fact, the Complaint leaves unclear whether there are multiple accused products, as Proxense inconsistently uses both the undefined terms, "Accused Product" and "Accused Products," throughout the Complaint. Compounding the confusion, Proxense names a multitude of ***non-*** Microsoft products, including: a) products from Apple and Google, b) an "authenticator"; and c) a "resource", as contributing to the amorphous infringement. *See, e.g.,* Compl. ¶¶ 47, 59, 60. Moreover, Proxense fails to allege that any single product—alone or in combination—practices all of the claimed limitations. Withholding from Microsoft what products are accused, let alone how Microsoft's products allegedly correlate with each claim limitation, Proxense fails to state a plausible claim for patent infringement. For this reason alone, Proxense's Complaint should be dismissed under Fed. R. Civ. P. 12(b)(6) with prejudice.

The deficiencies in Proxense's Complaint go even further. Proxense independently fails to meet the minimum pleading requirements because it violates the prohibition against divided infringement. Specifically, Proxense fails to state a plausible claim that Microsoft "makes, uses, offers to sell, or sells" a product that infringes the Asserted Patents because Proxense's

[1] *See* Fed. R. Civ. P. 8(a) (requiring a "short and plain statement of the claim" showing entitlement to relief); *Mann v. Boatwright*, 477 F.3d 1140, 1148 (10th Cir. 2007) (affirming Rule 8 dismissal when it was impossible to "separate the wheat from the chaff" in the complaint and because "[i]t was not the district court's job to stitch together cognizable claims for relief from the wholly deficient pleading")."

allegations include the actions and products of multiple third parties, including device manufacturers and app developers. Indeed, black letter law requires a single entity to commit all the acts necessary to infringe a patent, either personally or vicariously, and Proxense fails to plead any allegations that Microsoft uses or controls all the necessary components of the asserted claims. Due to this fatal flaw, dismissal of Proxense's infringement allegations is also warranted.

II. STATEMENT OF RELEVANT FACTS

A. Proxense Asserts Six Patents Relating to Authentication

Proxense's Complaint alleges that Microsoft directly infringes at least one claim of six asserted patents relating to authentication. Three of these patents, the '730, '954, and '905 patents (collectively, "the Biometric PDK patents"), titled "Biometric Personal Data Key (PDK) Authentication," relate to "systems, devices, and methods for an integrated device that persistently stores biometric data for a user in a tamper-resistant format." Compl. ¶¶ 21-23, 28. These patents all require "persistently storing biometric data" of a user, "receiving [] scan data from a biometric scan," and "comparing the scan data to the biometric data." *See* '730 patent at cl. 1; '954 patent at cl. 1; '905 patent at cl. 1. The other three patents, the '042, '289, and '960 patents (collectively, "the Hybrid Device patents"), titled "Hybrid Device Having a Personal Digital Key and Receiver-Decoder Circuit and Methods of Use," relate to "systems, devices, and methods of utilizing personal digital keys for verifying a user in order to enable applications, functions or services." Compl. ¶¶ 24-26, 28. These patents all require a device that communicates wirelessly with an external "personal digital key" within a proximity zone. '042 patent at cl. 10; '289 patent at cl. 14; '960 patent at cl. 14. Proxense's Complaint does not identify which specific Microsoft product is allegedly infringing or how any Microsoft product allegedly correlate with each of the claim limitations. *See* Compl. ¶¶ 41-252.

B. Proxense Does Not State Specifically Which Microsoft Product is Accused

Proxense does not define "Accused Product" or "Accused Products," terms used throughout its Complaint. *Id*. ¶¶ 46-53, 79, 108. Instead of defining the Accused Products, Proxense vaguely describes the "infringing architecture" as consisting of "[t]hree primary components." *Id*. ¶47. These three primary components appear to be "Microsoft Identity Platform,"[2] an "authenticator" that can be "developed and sold by Microsoft's [third party] partners," and a "resource," such as "an application, website, or subscription." *Id*. ¶¶ 47, 51, 52. Moreover, throughout the Complaint, Proxense refers generally to "Microsoft's universal platform password-less architecture," without any further specificity. *See, e.g*., *id*. ¶¶ 33, 46, 49, 61, 62, 65, 69, 72, 74, 76, 78, 80. Proxense does not offer any claim charts mapping how Microsoft's products allegedly correlate with each of the claim limitations.

C. Proxense Admits That The Alleged Infringement Involves the Actions and Devices of Multiple Third Parties

Proxense does not allege that Microsoft makes, uses, sells, or imports all components of any system and does not provide any factual allegations to support such an allegation. *Id*. ¶¶ 109, 143, 178, 201, 224, 247. Instead, Proxense expressly acknowledges that the actions and devices of multiple third parties, including mobile device manufacturers and mobile app developers, are required. Throughout its Complaint, Proxense specifically accuses "Android" and "iOS devices," neither of which is controlled by Microsoft. *See, e.g*., *id*. ¶¶ 33, 49, 51, 54, 55, 59, 60, 64, 85, 86, 87, 88, 89, 97, 119, 120, 121, 122, 123, 131, 153, 154, 155, 156, 157, 165, 196, 219, 242; *see also* Dkts. 1-18, 1-30, 1-33, 1-42 (Android exhibits) and Dkts. 1-19, 1-31 (iOS exhibits). Further, Proxense alleges that third party developers can "integrate their applications

[2] Contrary to Proxense's suggestion-by-capitalization, the "Microsoft identity platform" is not a discrete Microsoft product, but rather is an offering with several components. *See*, *e.g.*, Dkt. 1-26.

. . . in order to offer [the accused system of] cross platform password-less authentication via biometrics and the use of ID and access tokens to their customers and subscribers." *Id.* ¶ 51. To confirm that the accused system requires the devices and actions of third parties, Proxense acknowledges that at least two of the "three primary components" of the "infringing architecture" can be provided by a third party "subscribing business," third party "subscribing developer," or generally one of Microsoft's third-party partners. *Id.* ¶¶ 47, 51, 52. One of these three "primary" components is the "authenticator," which Proxense recognizes can be "developed and sold by Microsoft's [third party] partners." *Id.* ¶ 47. Another of the three "primary" components, which Proxense calls the "resource," "may be an application, website, and/or a subscription offered by . . . a subscribing business[] or a subscribing developer." *Id.*

III. LEGAL STANDARD

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 Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Allegations "merely consistent with" liability are insufficient. *See Twombly*, 550 U.S. at 557. To meet the plausibility standard, plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged" and its claim must be based on "more than a sheer possibility" of liability. *See Iqbal*, 556 U.S. at 678.

In a patent infringement case, a plaintiff must "explicitly plead facts to plausibly support" its assertions of direct infringement. *See Ruby Sands LLC v. Am. Nat'l Bank of Tex.*, No. 2:15-cv-1955-JRG, 2016 WL 3542430, at *2 (E.D. Tex. June 28, 2016). "There must be some factual allegations that, when taken as true, articulate why it is plausible that the accused product infringes the patent claim." *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1352-53 (Fed. Cir. 2021). Failing to show that the accused products plausibly meet all claim limitations renders the

allegations insufficient. *See, e.g., De La Vega v. Microsoft Corp*., No. 19-cv-00612- ADA, 2020 WL 3528411, at *6 (W.D. Tex. Feb. 7, 2020) ("Because Plaintiff does not include even a short written description of how the accused instrumentalities meet the 'coupling' limitation, his complaint fails to state a claim upon which relief can be granted."). Moreover, a greater level of detail is required for complex technologies or material elements. *See Bot M8*, 4 F. 4th at 1353 (level of detail required depends on "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"); *see also Vervain, LLC v. Micron Tech., Inc*., No. 6:21-cv-00487-ADA, 2022 WL 23469, at *5 (W.D. Tex. Jan. 3, 2022) ("Based on the complexity and materiality of the claims, the Court concludes that pleading infringement . . . will require more than attaching photos of the Accused Products and summarily alleging that each and every limitation is satisfied.").

A plaintiff has the burden of showing that each accused product infringes the asserted claims. *See L&W, Inc. v. Shertech, Inc*., 471 F.3d 1311, 1318 (Fed. Cir. 2006) ("[Plaintiff] must make a prima facie showing of infringement as to each accused device . . . ."). For system claims, direct infringement requires that a single defendant make, use, or sell all portions of the system. *See Centillion Data Sys., LLC v. Qwest Commnc'ns Int'l Inc*., 631 F.3d 1279, 1288 (Fed. Cir. 2011); *see also Synchronoss Techs. v. Dropbox, Inc*., 987 F.3d 1358, 1368 (Fed. Cir. 2021) ("Because Drop-box does not provide its customers with any hardware in conjunction with its accused software, Dropbox does not make, sell, or offer for sale the complete invention.").

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IV. ARGUMENT

A. Proxense's Complaint Does Not Allege Which Microsoft Products Infringe or How They Allegedly Infringe

1. No Identification of Accused Product(s)

Proxense's Complaint relies on a hodgepodge of features taken from websites describing several different Microsoft authentication offerings, yet never states which offering is accused of infringement, much less how it infringes. The Complaint merely throws around names of some Microsoft solutions or products—ranging from the "Microsoft [i]dentity [p]latform," "Azure Active Directory," "Windows Hello," to "Microsoft Authenticator App"—and non-Microsoft products—ranging from Android and iOS phones to "authenticators developed by Microsoft's partners." Compl. ¶¶ 50, 51; *see also* Dkts. 1-18, 1-30, 1-33, 1-42 (Android exhibits) and Dkts. 1-19, 1-31 (iOS exhibits). But Proxense never alleges that any single Microsoft product or service (or even a specific combination of products, for that matter) meet the limitations of any asserted claim. Rather, Proxense resorts to vaguely describing aspects of a multitude of different generic products without alleging how they work together to allegedly infringe satisfy the numerous elements of the asserted claims. Paragraph 54 is exemplary:

> 54. Microsoft directly infringes the Patents-in-Suit by ***creating and utilizing a universal platform password-less architecture incorporating authenticators***, including Windows Hello on Windows 10 and 11, Microsoft Authenticator App on Android and iOS devices, and controlling the action of its ***partners to create authenticators*** that work on Windows, the Microsoft Edge browser, and online Microsoft accounts, incorporating the Microsoft Identity platform which controls the actions of authenticators and the ***dissemination of bear* [*sic*] *tokens and other such access messages, offering services, applications subscriptions and other such resources hosted by separate systems*** which are accessed via tokens provided by Microsoft Identity Platform, and offering businesses and developers identity and access management services which entail requesting user authentication and receiving tokens in a manner directed and controlled by Microsoft, including the use of Microsoft Authentication Library.

Id. ¶ 54; *see also id*. at ¶¶ 81-252.

According to Proxense, an accused product must be three different components with varying functions. *Id*. ¶ 47 (claiming the "infringing architecture" consists of "[t]hree primary components" – the Microsoft identity platform, an "authenticator," and a "resource" that must be on a "system separate and distinct from [the] Microsoft [i]dentity [p]latform"). Yet Proxense fails to plead facts sufficient to support a theory that a combination of products infringe the Asserted Patents. *See Bot M8*, 4 F.4th at 1353; *TeleSign Corp. v. Twilio*, cv 16-2106-PSG, 2016 WL 4703873, at *3 (C.D. Cal. Aug. 3, 2016) (finding plaintiff failed to state a claim for infringement when it neither plausibly alleged any one product performed all elements nor that multiple products were used "conjunctively" to infringe); *Zitovault v. IBM*, No. 3:16-cv-0962-M, 2018 WL 2971179, at *3 (N.D. Tex. Mar. 29, 2018) (stating it would be improper to "only chart [one product's] functionality for some limitations and [another product's] functionality for other limitations"). That is, Proxense fails to allege how various products together might meet the limitations. Proxense simply does not describe how any specific combination of components might plausibly work "conjunctively" together to meet the limitations. *See Telesign*, 2016 WL 4703873, at *3.

Thus, Proxense's allegations fail to make out a plausible claim for infringement. *See id*.; *Bot M8*, 4 F.4th at 1355 ("Although the FAC alleges that the PS4 contains multiple storage media and multiple authentication programs, we agree with the district court… [that they] do not plausibly allege that gaming information and a mutual authentication program are stored together on the same memory.").

2. No Allegation That Microsoft "Persistently Stor[es] Biometric Data" or Communicates with a "Hybrid Device" in a "Proximity Zone"

In addition to the deficiencies above, Proxense fails to allege that any product meets certain required limitations of the Asserted Patents. The Biometric PDK Patents require

"persistently storing biometric data" of a user, "receiving [] scan data from a biometric scan," and "comparing the scan data to the biometric data." *See* '730 patent at cl. 1; '954 patent at cl. 1; '905 patent at cl. 1. For these limitations, however, Proxense does not identify how it alleges that any ***Microsoft*** product stores any biometric data or how it alleges the biometric data is stored, received, or compared. *See*, *e.g.*, Compl. ¶¶ 86, 87 (never identifying a Microsoft product). As a result, Microsoft is given no notice of what Proxense is accusing for these limitations.

Similarly, for the Hybrid Device Patents, Proxense fails to allege that any products meet certain limitations. Specifically, these three patents require circuitry that communicates wirelessly or a "wireless communication interface of a device" with an external "personal digital key" within a proximity zone. '042 patent at cl. 10; '289 patent at cl. 14; '960 patent at cl. 14. Proxense, however, does not identify what it alleges is a "receiver-decoder circuit" or a "wireless communication interface of a device," or what they allegedly communicate with within a "proximity zone."

Indeed, complaints that omit specific claim limitations are "insufficient to satisfy the *Iqbal/Twombly* standard" and thus insufficient to "plausibly allege infringement." *Bot M8*, 4 F. 4th at 1355. For example, in *Bot M8*, the Federal Circuit found that "[w]hile Bot M8 point[ed] to different storage components in the allegedly infringing devices, it never sa[id] which one or ones satisfy[ied] the mutual authentication limitation." *Id*. Here, Proxense also points to various products or services from multiple parties, but never alleges which one or ones satisfy the aforementioned limitations. *See id*.

Proxense thus fails the most basic requirements of governing patent law, which requires allegations showing how the accused products meet the claimed limitations. *See, e.g., Vervain*

LLC, 2022 WL 23469, at *9 (granting motion to dismiss where complaint failed to sufficiently plead factual allegations to support a reasonable inference that the accused product practiced the claimed "hot blocks" and "data integrity test" limitations); *De La Vega*, 2020 WL 3528411, at *7 (dismissing direct infringement claims for failure to allege "coupling" limitation met by accused products); *Ruby Sands LLC*, 2016 WL 3542430, at *4 (dismissing direct infringement claim "constructed upon a fatally flawed foundation" as no factual allegations "even remotely suggest[ed]" that the defendant sold the product that was alleged to meet the claim limitation). These omissions further show that Proxense's allegations are fatally incomplete.

B. Proxense's Complaint Violates the Fundamental Rule Prohibiting Divided Infringement

Proxense separately fails to meet the minimum pleading requirements because it violates the fundamental rule prohibiting divided infringement. In particular, Proxense fails to allege (and cannot allege) that Microsoft directly infringes the Asserted Patents when the actions and products of: a) multiple third party device manufacturers; b) third party "authenticators"; and c) and third party "resources" are pled.

Proxense acknowledges that at least two of the "three primary components" of the "infringing architecture"—which Proxense calls the "authenticator" and the "resource"—can be provided by a third party "subscribing business," third party "subscribing developer," or generally one of Microsoft's third party partners. Compl. ¶¶ 47, 51, 52; *see also* Dkts. 1-18, 1-30, 1-33, 1-42 (Android exhibits) and Dkts. 1-19, 1-31 (iOS exhibits). As for these two components, Proxense concedes that: "the resource is on a system ***separate and distinct*** from Microsoft…" and is a "***separate and distinct*** entit[y]" from the Microsoft identity platform. *Id*. (emphasis added). By Proxense's own pleading, at least two of the three primary components of the infringing architecture can be or is provided by third parties, not Microsoft.

Proxense repeatedly admits that any infringing product would require the acts and devices of third party mobile device manufacturers, such as Google for Android devices and Apple for iOS devices. Throughout its Complaint, Proxense specifically accuses "Android" and "iOS" devices – neither of which is controlled by Microsoft. *See, e.g.*, *id*. ¶¶ 33, 49, 51, 54, 55, 59, 60, 64, 85, 86, 87, 88, 89, 97, 119, 120, 121, 122, 123, 131, 153, 154, 155, 156, 157, 165, 196, 219, 242; *see also* Dkts. 1-18, 1-30, 1-33, 1-42 (Android exhibits) and Dkts. 1-19, 1-31 (iOS exhibits). In particular, Proxense alleges that "Android devices" and "iOS devices" are necessary components of any alleged infringement because it is those third party devices that "persistently stor[e] biometric data in a tamper proof format." *Id*. ¶¶ 59, 60. For example, Proxense's Complaint alleges the following:

> "Android's implementation guides require tamper-proof raw fingerprint data or derivates (for example, templates) [that] ***must never be accessible from outside the sensor driver or TEE (trusted execution environment)*** and fingerprint acquisition, enrollment, and recognition ***must occur inside the TEE***. *See* Exhibit 17. When following these guidelines, requiring acquisition and recognition to occur within the TEE means that ***the biometric data never leaves the TEE***. ***Android's TEE***, called Trusty, uses ARM's TrustzoneTM to virtualize the main processor and create a secure trusted execution environment isolated from the rest of the system. *See* Exhibit 29. Accordingly, the biometric data, which never leaves the TEE, also never leaves the Trustzone housing Trusty. Keeping biometric data within the Trustzone, ***Android phones persistently store biometric data in a tamper proof format***. Furthermore, access to the biometric hardware on Android devices is controlled by Fingerprint HIDL. *Id*. The methods enabled by the Fingerprint HIDL do not permit altering biometric data. *See id*."

Id. ¶ 59 (internal citations omitted and emphasis added). Similarly, Proxense alleges the following for Apple's iOS devices:

> "***Apple's Secure Enclave*** is a dedicated secure subsystem … isolated from the main processor to provide an extra layer of security designed to keep sensitive data secure even when the Application Processor kernel becomes compromised. *See* Exhibit 18. During enrollment, the Secure Enclave processes, encrypts, and stores the corresponding Touch ID and Face ID template data. *Id*. ***The Secure Enclave thus provides a tamper proof format for sensitive data, such as biometric data***, even when a hack or other malicious software compromises the Application Processor."

Id. ¶ 60 (internal citations omitted and emphasis added). Although the Complaint focuses on Android and iOS, Proxense does not limit itself to these third parties. Proxense also alleges that devices "manufactured by Microsoft['s] partners, such as [but not limited to] Dell" infringe or are necessary to infringe the Patents-in-Suit by "persistently stor[ing] user data." *Id.* ¶ 57.

To demonstrate a defendant is liable for direct infringement, a plaintiff must show that the defendant "without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent." 35 U.S.C. § 271 (a). "[F]or a party to be liable for direct patent infringement under 35 U.S.C. § 271(a), that party must commit all the acts necessary to infringe the patent, either personally or vicariously." *Aristocrat Techs. Australia Pty Ltd. v. Int'l Game Tech.*, 709 F.3d 1348, 1362 (Fed. Cir. 2013).

The Federal Circuit has explained that "to 'make' a system under §271(a), [a party] would need to combine all of the claim elements." *Centillion*, 631 F.3d at 1288. And "use" of a patent system requires that a party "put the invention into service, *i.e.*, control the system as a whole and obtain benefit from it." *Intellectual Ventures I LLC v. Motorola Mobility LLC*, 870 F.3d 1320, 1328 (Fed. Cir. 2017) (quoting *Centillion*, 631 F.3d at 1284). In other words, "a person must control (even if indirectly) and benefit from ***each claimed component***." *Id.* at 1329 (emphasis added); *see also Synchronoss,* 987 F.3d at 1369 ("Direct infringement by 'use' of a claimed system requires use of each and every element of the system."); *ESW Holdings, Inc. v. Roku, Inc.*, No. 6-19-CV-00044-ADA, 2021 WL 1069047, at *5 (W.D. Tex. Mar. 18, 2021) (accused infringer cannot infringe system claim where it "neither controls each system component recited in [the claim] nor makes, sells, or offers to sell [all of] the claimed system."); *TecSec, Inc. v. Int'l Bus. Machines Corp.,* 769 F. Supp. 2d 997, 1010 (E.D. Va. 2011), *aff'd*, 466

F. App'x 882 (Fed. Cir. 2012), and *rev'd on other grounds,* 731 F.3d 1336 (Fed. Cir. 2013) (citing *Rotec Indus., Inc. v. Mitsubishi Corp.,* 215 F.3d 1246, 1252 (Fed. Cir. 2000)) ("To prove that [defendant] directly infringed the system claims, plaintiff must show that [defendant] made, used, sold, offered for sale, or imported the entire claimed system(s).").

Here, Proxense's Complaint is similar to the circumstances in *CalAmp*, where the Federal Circuit held that the defendant could not directly infringe where it did not provide an essential claim element. *Omega Patents, LLC v. CalAmp Corp*., 920 F.3d 1337, 1345 (Fed. Cir. 2019). Just as the defendant in *CalAmp* did not provide the accused cell tower, Microsoft does not provide the devices, applications, websites, and/or subscriptions that Proxense identifies for the alleged infringement. *Id*. Similarly, a case dismissed by this Court involved "[a] system for selecting streaming image content output by a camera from at least one mobile content provider." *De La Vega v. Microsoft Corp*., No. W-19-CV-00612-ADA, 2020 WL 3528411, at *2 (W.D. Tex. Feb. 7, 2020). The plaintiff in *De La Vega* accused applications provided by Microsoft, specifically Microsoft Mixer and its companion Microsoft Mixer Create App. *Id.* However, the asserted claim "require[d] at last three actors" to infringe, and the plaintiff failed to plead that the actions of these three actors were attributable to the defendants as it failed to "allege or explain how Microsoft and Google are liable for joint infringement with a any third parties." *Id*. at *7. The Court found this to be fatal to the plaintiff's claims, which were dismissed with prejudice. *Id*.

Moreover, Proxense does not—and cannot plausibly—allege that Microsoft "controls" or "directs" the actions of these third parties. Though Proxense references a "Terms of Use," which it claims to serve as a contract between Microsoft and the "authenticator developer[s]," Exhibit 12 cited by Proxense does not mention anything about a "Terms of Use" or "contract" between

Microsoft and the authenticator developers *Id*. ¶ 50, Ex. 12. Setting aside the deficiencies in relying on Exhibit 12, Proxense's argument only extends to the third party ***developers***, while making no mention of the third party mobile ***device manufacturers*** essential to Proxense's claims of infringement. These device manufacturers include Google and Apple for its Android and iOS devices, respectively, and Microsoft does not direct or control either entities (nor is there such an allegation by Proxense). Further, a contract alone—much less a general "Terms of Use"—is insufficient to show control. *See, e.g., Emtel, Inc. v. Lipidlabs, Inc., et al*., 583 F.Supp.2d 811, 837-38 (S.D. Tex. 2008) ("[t]he aspects of contractual control that Emtel asserts as evidence of the movants' direction or control… do not show a basis for vicarious liability that would create a fact issue as to divided infringement") (internal citations omitted).

Proxense's prior suit against Samsung is informative in its differences. In that action, Proxense defined the Accused Products as a closed Samsung system that did not involve the actions and devices of third parties. Specifically, Proxense alleged that Samsung "distributed variants of Samsung Pay . . . [which] is operable on a range of Samsung devices, including at least all smartphones from the Galaxy S6 and above." *Proxense, LLC v. Samsung Elecs. Co*., No. 6.21-CV-00210, Dkt. No. 1 (Compl.) ¶ 40 (W.D. Tex. Mar. 5, 2021). Proxense then lists *over 50* specific Samsung devices. *See id*. In marked contrast, Proxense fails to name a single Microsoft product, much less a closed or otherwise integrated Microsoft system that does not involve the actions and devices of third parties. Instead, Proxense only provides vague references to "Microsoft's universal platform password-less architecture" or Microsoft's "infringing architecture," without any further specificity. *See, e.g., id*. ¶¶ 33, 46, 49, 61, 62, 65, 69, 72, 74, 76, 78, 80.

Given that Proxense targets third parties as part of the alleged infringement, Proxense's allegations are deficient. Accordingly, dismissal is warranted.

C. Dismissal with Prejudice is Warranted as Any Amendment Would be Futile

Proxense's own omissions and allegations reflect its recognition that Microsoft's products do not—and cannot—satisfy all limitations of the asserted claims. Thus, Proxense cannot correct its flawed allegations. Any amendment would be futile, and the complaint should be dismissed with prejudice. *See Burke v. Ocwen Loan Servicing*, 855 F. App'x 180, 187 (5th Cir. 2021); *Valdez v. Victory Med. Ctr. Southcross*, No. SA-16-CA-1016-FB, 2016 WL 11605674, at *5 (W.D. Tex. Dec. 12, 2016).

V. CONCLUSION

For these reasons, Microsoft respectfully requests dismissal of Proxense's Complaint in its entirety with prejudice.

Dated: July 10, 2023

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By: */s/ Melissa R. Smith*

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CERTIFICATE OF SERVICE

The hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on July 10, 2023. As of this date, all counsel of record have consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system.

/s/ Melissa R. Smith
Melissa R. Smith