

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

SOUNDCLEAR TECHNOLOGIES LLC,

Plaintiff,

v.

AMAZON.COM, INC.;
AMAZON.COM SERVICES LLC; and
AMAZON WEB SERVICES, INC.,

Defendants.

Case No. 1:24-cv-01283-AJT-WBP

JURY TRIAL DEMANDED

**MEMORANDUM IN SUPPORT OF DEFENDANTS’
MOTION TO DISMISS SECOND AMENDED COMPLAINT UNDER RULE 12(b)(6)**

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INTRODUCTION

Plaintiff has had multiple opportunities to amend its complaint to cure the deficiencies in its pleadings. Now on its Second Amended Complaint (“SAC”), Plaintiff still fails to plead a plausible claim for patent infringement or willful infringement.

The asserted claims of the two remaining patents asserted in the SAC can be summarized in a few basic steps. The purported invention is a device that: (1) receives voice input from a user; (2) calculates the distance between the device and the user; (3) classifies the voice as a “first voice” or a “second voice” based on the distance; and (4) provides a tailored audio response based on the classification. To state a plausible claim of infringement and survive a motion to dismiss, the complaint must include supported factual allegations sufficient for the Court to reasonably infer that the accused devices perform all of these steps. But the complaint does not do so. To the contrary, the documents upon which the complaint relies for factual support contradict Plaintiff’s infringement allegations. Consequently, Plaintiff fails to state a plausible claim of infringement and the complaint should be dismissed.

FACTUAL BACKGROUND

Plaintiff’s original complaint asserted that Amazon infringes U.S. Patent Nos. 11,069,337 (“the ’337 patent”); 11,244,675 (“the ’675 patent”); and 9,223,487 (“the ’487 patent”). (Dkt. 1.) Amazon moved to dismiss the Complaint, arguing that: (1) the asserted patents are invalid under 35 U.S.C. § 101; (2) Plaintiff failed to plead a plausible claim for infringement; and (3) Plaintiff failed to plead a plausible claim for willful infringement. (Dkt. 32.) After a hearing, the Court agreed with Amazon’s first argument and held all three asserted patents invalid. (Dkt. 63, 64.) The Court did not address the sufficiency of the pleadings for infringement or willful infringement.

Plaintiff then moved to alter or amend the judgment, arguing that a recent deposition of an

Amazon employee suggested that the asserted claims of the '337 and '675 patents were not conventional. (Dkt. 70.) The Court granted Plaintiff's motion, finding that a plausible claim for patent validity exists for the '337 and '675 patents only. (Dkt. 84.) The Court affirmed its decision that the '487 patent is invalid. (*Id.*)

Plaintiff filed a First Amended Complaint on January 24, 2025. (Dkt. 89.) Less than two weeks later, Plaintiff filed the SAC (Dkt. 96), which is the subject of this Motion.

ARGUMENT

I. PLAINTIFF FAILS TO STATE A PLAUSIBLE CLAIM FOR DIRECT INFRINGEMENT.

The Court should dismiss Plaintiff's SAC because it suffers from the same deficiencies as the original complaint. (*See* Dkt. 32.)

A. Legal Standard.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim 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)). Plausibility requires "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Rather, the complaint must contain "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "[T]he Supreme Court developed the plausibility standard, in part, because discovery serves as an ineffective and uneconomical means to weed out groundless claims or to determine their plausibility in the first place[.]" *Wood v. Southside Physician Network, LLC*, No. 3:19CV144 (DJN), 2019 WL 3416665, at *6 (E.D. Va. July 29, 2019) (quoting *Twombly*, 550 U.S. at 559).

Factual allegations must be supported by evidence. *See Cellcontrol, Inc. v. Mill Mountain Cap., LLC*, No. 7:21-CV-246, 2022 WL 598752, at *3 (W.D. Va. Feb. 28, 2022) (infringement allegations implausible where the allegations were inconsistent with the evidence upon which Plaintiff founded its allegations). Courts in this District routinely dismiss complaints that fail to clearly articulate a plausible infringement theory. *See, e.g., Macronix Int’l Co. v. Spansion Inc.*, 4 F. Supp. 3d 797, 804 (E.D. Va. 2014); *Mician v. Catanzaro*, No. 2:17-CV-548, 2018 WL 2977398, at *4 (E.D. Va. June 13, 2018); *Asghari-Kamrani v. United Servs. Auto. Ass’n*, No. 2:15-CV-478, 2016 WL 1253533, at *4 (E.D. Va. Mar. 22, 2016). When asserting infringement of a method claim, the complaint must “identify the steps of the claimed infringing process that allegedly violated the protected method and must allege that all the protected steps have been used by the infringer.” *Ziptronix, Inc. v. Omnivision Techs., Inc.*, No. C 10–5525 SBA, 2011 WL 5416187, at *3 (N.D. Cal. Nov. 8, 2011); *see also Zipit Wireless, Inc. v. LG Elecs. U.S.A., Inc.*, No. 20-01494 (KM) (JBC), 2022 WL 170864, at *4 (D.N.J. Jan. 18, 2022) (complaint failed to sufficiently allege infringement because Plaintiff “has not sufficiently alleged that [Defendant] *performs every step* of the claimed methods.”); *Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1320 (Fed. Cir. 2009) (“Direct infringement requires a party to perform each and every step or element of a claimed method or product.”).

B. Plaintiff Fails to Plausibly Plead Infringement of the ’337 Patent.

Plaintiff alleges that Amazon infringes claim 4 of the ’337 patent. (Dkt. 96 ¶ 102.) That claim is directed to classifying a voice based on distance and tailoring output based on that classification. The claim recites:

4. A voice-content control method, comprising:
 - [a] calculating a distance between a user and a voice-content control device;
 - [b] acquiring a voice spoken by a user;

- [c] analyzing the acquired voice to classify the acquired voice as either one of a first voice and a second voice based on the distance between the user and the voice-content control device;
- [d] analyzing the acquired voice to execute processing intended by the user;
- [e] generating, based on content of the executed processing, output sentence that is text data for a voice to be output to the user; and
- [f] adjusting a sound volume of voice data obtained by converting the output sentence thereinto, wherein
- [g] at the generating,
 - [g1] a first output sentence is generated as the output sentence when the acquired voice has been classified as the first voice, and
 - [g2] a second output sentence is generated as the output sentence in which a part of information included in the first output sentence is omitted when the acquired voice has been classified as the second voice, wherein
- [h] at adjusting the sound volume of voice data, further adjusting the sound volume of voice data such that the sound volume of voice data obtained by converting the first output sentence thereinto differs from the sound volume of voice data obtained by converting the second output sentence thereinto.

(Dkt. 96-1, Ex. 1 at 19:23-20:9.) To plead a plausible claim of infringement, Plaintiff must allege facts, supported by evidence, sufficient to allow the Court to reasonably infer that an accused device performs each and every step. *Ziptronix*, 2011 WL 5416187, at *3; *see also Zipit Wireless*, 2022 WL 170864, at *4; *Exergen*, 575 F.3d at 1320. Plaintiff does not do so.

1. Plaintiff Fails to Plausibly Plead Classifying a Voice Based on Distance and Generating a Voice Response Based on that Classification.

To infringe claim 4 of the '337 patent, an accused device must, among other things:

- (1) calculate a distance between a user and the device (element 4[a]);
- (2) classify the user's voice as a first or second voice *based on the user-to-device distance* (element 4[c]); and
- (3) generate either a "first output sentence" (text data to be output as voice) or a different "second output sentence" (that omits some information) *based on the classification* (element 4[g]).

Plaintiff fails to plausibly allege that the accused devices perform these steps.

Plaintiff's allegations that the accused devices classify a voice based on distance as required by element 4[c] are set forth in Paragraph 117 of the SAC. Plaintiff's allegations that the accused devices generate different output sentences based on that classification, as required by element 4[g], are set forth in Paragraph 123 of the SAC. However, these allegations are the same as the allegations in the original complaint for these claim elements. (*Compare* Dkt. 1, ¶ 65 with Dkt. 96, ¶ 119, and Dkt. 1, ¶ 69 with Dkt. 96, ¶ 123.) Accordingly, they should be dismissed for the same reasons set forth in Defendant's original motion to dismiss. (Dkt. 32 at 25-27.)

The SAC does not plausibly allege that the accused products meet these limitations. Like the original complaint, the SAC alleges two theories of infringement—one based on Voice ID and one based on Adaptive Content. (Dkt. 96, ¶¶ 117, 123.) Both theories fail to state a plausible claim.

a. Voice ID

As in the original complaint, the SAC alleges that the accused devices infringe because they purportedly classify voices using the Voice ID feature and then output different responses based on the Voice ID. (Dkt. 96, ¶ 123.) But Plaintiff pleads no facts from which this Court can reasonably infer that Voice ID classifies a voice *based on a calculated distance between the user and the device*, as required by claim 4 of the '337 patent.

Plaintiff's allegations render its infringement theory implausible. Specifically, Plaintiff admits that Voice ID classifies voices "based on a voice profile ... associated with individual users." (*Id.*, ¶ 117; *see also id.* ¶ 123 (Voice ID "recognizes a user by their voice").) Plaintiff's complaint cites to an Amazon website, which explains that "Voice ID *uses voice recognition* to recognize you and display personalized content[.]" (*See id.*, ¶ 123 (emphasis added); Ex. 2.) The personalized content can include, for example, personal calls and messages, news, shopping, and skills. (Ex. 2.)

Plaintiff's infringement theory based on Voice ID is implausible because Plaintiff's conclusory allegation (i.e., that Voice ID classifies based on a distance) is inconsistent with the evidence Plaintiff cites for its allegations, which shows that Voice ID classifies voices based on something else—voice profiles. (Compare Dkt. 96, ¶ 123 with Ex. 2.) Thus, Plaintiff's first theory does not state a plausible claim of infringement. *Cellcontrol, Inc. v. Mill Mountain Cap., LLC*, No. 7:21-CV-246, 2022 WL 598752, at *3 (W.D. Va. Feb. 28, 2022); *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1354 (Fed. Cir. 2021) (“Where, as here, the factual allegations are actually *inconsistent* with and contradict infringement, they are likewise insufficient to state a plausible claim.”).

b. Adaptive Content

The SAC, like the original complaint, also alleges that the accused devices use the “adaptive content feature” or “SIR beam selection” to classify a voice as “near” or “far.” (Dkt. 96, ¶ 117.) According to the SAC, some devices may then use “Adaptive Content” to “display more or less information depending on whether an acquired voice has been classified as one that corresponds to a nearby/close user or a far/distant user[.]” (*Id.*, ¶ 123.) This allegation does not state a plausible claim for infringement.

The documents cited in the SAC show that Adaptive Content changes the content *displayed* on the screen of certain Echo Show devices. (Ex. 3.) The Amazon website Plaintiff cites states that Adaptive Content uses the Echo Show's camera “to adjust the on-screen display based on how close [users] are to the device.” (*Id.*) If a user is close, the device may change the displayed content to provide more detail. (*Id.*) If a user is farther away, the device may change the displayed content to be more easily viewed from a distance. (*Id.*) Thus, the SAC confirms that Adaptive Content relates merely to content *displayed* on a screen. (Dkt. 96, ¶ 123 (accused products “display more or less information”).) But the claims require something different: tailoring an output

sentence “that is text data *for a voice to be output to the user.*” (’337 patent, claim element 4[e] (emphasis added).) Nothing in the complaint would allow the Court to infer that any accused device uses the Adaptive Content feature to tailor *voice output*.

As in its original complaint, Plaintiff includes a conclusory allegation that the accused products “can also provide a voice response with more or less information consistent with the more or less information that is visually displayed.” (Dkt. 96, ¶ 123.) Plaintiff repeated this attorney argument at oral argument. (Ex. 1 (Hearing Tr.) at 68:18-69:1.) Yet, Plaintiff’s SAC contains no support for its attorney argument that Adaptive Content alters any “voice response.” To the contrary, Plaintiff cites an Amazon website that explains that Adaptive Content optimizes merely “home screen content” on Echo Show devices. (Dkt. 96, ¶ 123 (citing Ex. 3).) That website never mentions altering the content of any audio output, let alone a “voice response” to an acquired voice. Thus, Plaintiff fails to allege any facts from which the Court can reasonably infer that Adaptive Content generates different “voice responses” based on user proximity. Plaintiff therefore fails to plausibly allege that the accused products meet the “output sentence” limitations of the claims.

2. Plaintiff Fails to Plausibly Plead Adjusting the Volume Based on Distance.

Plaintiff’s SAC fails to state a plausible claim of infringement, and therefore should be dismissed, for a second, independent reason. In addition to classifying the voice based on distance and generating different voice outputs based on that classification, claim 4 requires outputting the responses at a different volume (element 4[f]). Specifically, claim 4 recites “adjusting the sound volume” such that the volume of the “first output sentence” differs from the volume of the “second output sentence” (element 4[h]). And, to state a plausible claim of infringement, Plaintiff must plead facts sufficient for the Court to reasonably infer that Amazon’s devices infringe the claim,

i.e., perform *every step* of the method recited in claim 4. *Ziptronix*, 2011 WL 5416187, at *3; *see also Zipit Wireless*, 2022 WL 170864, at *4; *Exergen*, 575 F.3d at 1320. Even if Plaintiff had plausibly alleged that the accused devices calculate a user-to-device distance, classify a voice based on that distance, and generate different output responses based on that distance (which it did not, as discussed above), the SAC should still be dismissed because it fails to plausibly allege that any accused device *also* adjusts the output volume based on the distance.

Plaintiff presents three theories of how the accused products purportedly adjust the volume: (1) Adaptive Volume, (2) Whisper Mode, and (3) multiband compressor limiter (“MBCL”). All of these theories fail to state a plausible claim of infringement.

a. Adaptive Volume

Plaintiff alleges that the accused products’ Adaptive Volume function satisfies the volume adjustment limitation. (Dkt. 96, ¶ 124.) If Plaintiff’s allegations are taken as true, they show—at most—that the Adaptive Volume feature in the accused devices alter the output volume based on the level of ambient noise. (*Id.*) Plaintiff relies on a document that explains that “if you ask Alexa a question in a loud room with this feature enabled, it will automatically increase its volume to a level where you can hear Alexa respond.” (Ex. 4; *see also* Dkt. 96, ¶¶ 121, 125.) Contrary to Plaintiff’s infringement theory, those allegations establish that the accused devices *do not* change the volume based on any classification of a voice as a first voice or second voice based on the user-to-device distance. Indeed, Plaintiff identifies no “classification” at all and alleges no facts from which this Court could infer that any accused device classifies a voice based on a user-to-device distance, generates different voice responses based on the classification, and then uses Adaptive Volume to output those different voice responses at different volumes. Thus, Plaintiff’s allegations relating to Adaptive Volume fail to state a plausible claim of infringement.

b. Whisper Mode

Plaintiff similarly fails to plead a plausible claim based on the Whisper Mode function. (See Dkt. 96, ¶ 124.) Plaintiff relies upon a document that explains that if Whisper Mode is enabled, the accused devices “respond to whispered speech by whispering back.” (Ex. 5.) The Court cannot reasonably infer from Plaintiff’s complaint that an Echo device classifies a voice based on the user-to-device distance, generates a different voice response based on that classification, *and* uses Whisper Mode to adjust the volume of the output of one of the responses. Indeed, Plaintiff’s theory seems to be that an Echo device will respond with a whisper if the voice is classified as a “near voice,” but will respond with a “regular voice” if the voice is classified as a “far” voice. But Plaintiff’s evidence does not support this. Rather, the evidence shows that a device will respond in a whisper if the detected voice is determined to be a whisper *regardless of the user’s distance from the device*. Thus, Plaintiff’s allegations relating to Whisper Mode fail to state a plausible claim of infringement.

c. Multiband Compressor Limiter (“MBCL”)

In its SAC, Plaintiff added a description of a feature referred to as multiband compressor limiter (“MBCL”) and alleged that this feature satisfies the volume adjustment limitations. (Dkt. 96, ¶¶ 122, 126.) But the deposition testimony of the Amazon employee upon which Plaintiff relies confirms that MBCL does not practice the claim. (*Id.*) The MBCL feature modifies the volume of different frequency bands in an audio signal to improve the listening experience. (Dkt. 96-4 (Ex. 4) at 226:8-15.) For example, if playing an audio signal would result in that signal being distorted, then the MBCL will limit the audio signal level. (*Id.* at 227:7-13.) Nothing in this testimony suggests, or would allow the Court to reasonably infer, that MBCL changes the volume based on a classification of a voice as a first voice or second voice based on the user-to-device distance. Indeed, Plaintiff makes no attempt to connect the volume adjustment of frequency bands

to a distance between the user and accused device.

In short, Plaintiff's allegations do not allow the Court to reasonably infer that any accused device (a) calculates the user-to-device distance, (b) classifies the voice based on distance, (c) generates a different output voice response based on the classification, *and* (d) outputs the different responses at different volumes. To survive a motion to dismiss, Plaintiff must plausibly allege that an accused device performs *all* of these steps. *Ziptronix*, 2011 WL 5416187, at *3; *see also Zipit Wireless*, 2022 WL 170864, at *4; *Exergen*, 575 F.3d at 1320. Plaintiff's SAC, like its original complaint, fails to do so and should be dismissed.

3. Plaintiff's Amendments Do Not Make Its Infringement Allegations Plausible.

Plaintiff's SAC adds new allegations in an attempt to shore up its infringement allegations. But none of those other allegations relate to the claim limitations above. Thus, Plaintiff's amendments are immaterial and cannot save the complaint.

For example, Paragraphs 60-64 are irrelevant allegations about how various processing functionalities in the accused products are interconnected. Plaintiff concludes that the interconnected nature of the system allows it to "dynamically respond to changes in user behavior or environmental conditions." (Dkt. 96, ¶ 64.) But whether functionalities are interconnected has nothing to do with classifying voices based on the user-to-device distance and tailoring a voice response based on that distance.

Paragraphs 65-66 refer to testing in which devices purportedly determined distance, but contain no allegations regarding how those distances are used, if at all, to generate different voice responses at different volumes. Paragraphs 67-80 and 128-131 relate to indirect infringement and do not contain new allegations regarding the calculation of user-to-device distance, voice classification, or changes in voice responses. Paragraphs 81-100 allege that an Amazon employee did not

know all the details of how the various accused devices operate. None of these paragraphs contain any allegations that would allow the Court to infer that the accused devices perform the steps discussed above.

Plaintiff also added allegations in Paragraphs 104-115 relating to various functionalities such as “Sound Source Localization,” “Computer Vision,” cross-correlation, and the “APL Entity-Sensing Extension” as components allegedly used to “calculate the distance to a sound source as a fundamental step in determining the spatial location of the source.” (*See, e.g.*, Dkt. 96, ¶¶ 108-112.) Even if those allegations are accepted as true for purposes of this Motion, they at most would plausibly allege that *some* accused devices calculate a user-to-device distance *for some purpose*. But the claims require far more than calculating a distance. Plaintiff must allege facts from which the Court can reasonably infer that the calculated distance is used in a very specific way: (1) to classify the voice as a first or second voice; and (2) to generate and provide different output voice responses at different volumes depending on how the voice is classified. The allegations that Plaintiff added provide no facts from which such an inference can reasonably be made.

Plaintiff’s allegations regarding Echo Spatial Perception (*id.*, ¶ 113) highlight the irrelevance of Plaintiff’s amendments. As Plaintiff admits, Echo Spatial Perception merely determines which Amazon device is closest to the user so that Alexa responds through the closest device. (*Id.*) This has nothing to do with calculating a user-to-device distance to classify a voice as either a first or second voice and generate different voice responses, at different volumes, based on that classification. Indeed, Plaintiff makes no allegations suggesting that the Echo Spatial Perception function performs those steps. Rather, the source document cited in the SAC explains that the location of the user determined using Echo Space Perception merely determines which device in a multi-device environment will be used to generate the output. (Ex. 6.)

Thus, the SAC fails to plausibly allege that the accused products use a calculated distance to classify a voice based on the distance between the user and the device, generate an output sentence that is text data for a voice to be output to the user, and change both the output sentence and the volume based on the voice classification.

4. Plaintiff Failed to Address Its Deficiencies Despite Suggestions from The Court.

Amazon explained the failures in Plaintiff's original complaint at the hearing on Amazon's first motion to dismiss. (Ex. 1 (Hearing Tr.) at 30:21-35:10.) In response, Plaintiff argued that the accused devices are "black boxes" and that, because it has not had any discovery, it has "no way of knowing what's going on within that black box." (*Id.* at 61:20-62:1.) But as the Court recognized, Plaintiff could have purchased one of the accused devices and tested it for infringement:

THE COURT: Well, as I understand what you're saying, you need the source code, you need the software to establish that it has this functionality to distinguish between users based on distance and then modulate the volume response. Correct?

MR. SPRENGER: Correct.

THE COURT: But even if it has that functionality or that potential, in order to infringe the patent, they have to actually utilize that functionality; don't they?

MR. SPRENGER: That's correct, Your Honor.

THE COURT: All right. And you can tell that by simply using the Alexa's feature; can't you? I mean, *you can use Alexa and say, Alexa. And you can be different distances and see if the voice modulates depending on the distance.*

MR. SPRENGER: Sure. Well, for example --

THE COURT: And have you alleged that it does that?

(*Id.* at 63:12-64:5 (emphasis added).) Following this exchange, Plaintiff's counsel conferred, repeated vague allegations regarding the functionality of the accused devices, and concluded that Plaintiff had "no way of knowing what's really going on inside there at this stage." (*Id.* at 64:6-65:2.) But Plaintiff did not dispute that it could have simply tested a device to see whether it

actually provides different responses at different volumes depending on the user-to-device distance.

Despite this discussion at oral argument, Plaintiff's SAC still contains *no allegations* relating to any testing or any actual operation of any accused device. Plaintiff acknowledged that it could easily purchase an accused device and test it to see whether it provides a different response, at a different volume, depending on the user-to-device distance. Plaintiff either never tested an accused device as suggested by the Court, or Plaintiff performed the suggested testing but the results of those tests did not support Plaintiff's infringement claim. Plaintiff cannot hide behind negative test results. Nor can it bury its head in the sand, avoid basic testing, and drag Amazon through costly, disruptive, and meritless litigation. *See Wood*, 2019 WL 3416665, at *6. If the accused devices actually generated different responses at different volumes based on the user-to-device distance, then this would be easily perceptible to Plaintiff through basic testing. But Plaintiff has not provided a single example in which such distance-based voice tailoring is provided by any of the accused devices.

Based on the allegations in the SAC, the Court *cannot* reasonably infer that any Amazon product performs *every step* in claim 4 of the '337 patent. To the extent an accused device alters a voice output based on Voice ID, it does so based on the voice profile, not based on the user-to-device distance, and it does not adjust the volume based on the distance. To the extent an Echo Show device uses Adaptive Content to *display* different information based on user proximity, it does not classify any voice, output different *voice responses* based on the user-to-device distance, or adjust the volume. Thus, Plaintiff's infringement claim for the '337 patent is not plausible and must be dismissed.

C. Plaintiff Fails to Plausibly Plead Infringement of the '675 Patent.

Like claim 4 of the '337 patent, claim 6 of the '675 requires classifying a voice based on the user-to-device distance and then generating an output sentence that changes based on the classification. (Dkt. 96-2, Ex. 2 at 21:41-22:2.) The SAC alleges the same theories of infringement for the '675 patent as discussed with regards to the '337 patent. (Dkt. 96, ¶¶ 137-146.) Thus, Plaintiff's infringement allegations for the '675 patent are implausible for the same reasons as for the '337 patent.

II. PLAINTIFF FAILS TO STATE A PLAUSIBLE CLAIM OF INFRINGEMENT FOR THE ACCUSED PRODUCTS AND SERVICES.

Plaintiff alleges that “the Amazon Products and Services” infringe the asserted patents. (Dkt. 96, ¶ 15.) Plaintiff defines “the Amazon Products and Services” as over 40 different accused products, including various Amazon Echo, Kindle, and Fire products. (*Id.*) Plaintiff also defines “the Amazon Products and Services” as all products or services that use the products, any combination of products or services that comprise the accused products, and “all other current or legacy products and services” that operate in a similar manner. (*Id.*) Plaintiff never alleged that the various accused products are representative of each other or even operate in the same manner.

Further, in the individual counts, Plaintiff does not allege any particular product infringes any particular claim. Instead, Plaintiff generally alleges that “the Amazon Products and Services” infringe and identifies various disparate features or services as infringing. For example, for Counts I and II, as discussed above, Plaintiff argues the “Adaptive Content” feature is infringing. (*Id.*, ¶¶ 124, 138.) But Plaintiff does not allege that any of the accused products contain that feature, much less that all of them do. Indeed, Plaintiff cannot make any such allegation, because many of the accused products do not contain any kind of display screen, which Adaptive Content requires. (*See e.g., id.*, ¶ 103 (citing an Amazon Echo teardown of a device without a display).)

Plaintiff's failure to plead how any particular accused product infringes the claims is ground for dismissal. *See CTD Networks LLC, v. Microsoft Corp.*, Civil Case No. W-22-CV-01049-XR, 2023 WL 5417141, *3 (W.D. Tex., Aug. 22, 2023) (dismissing complaint that was "mixing and matching" products without showing how an individual product infringed); *WirelessWerx IP LLC, v. OnStar, LLC*, Civil Case No. 2:23-cv-11501-MAG-APP, 2024 WL 1607018, *9 (E.D. Mich., Apr. 12, 2024) (dismissing complaint that "cobble[d] together an infringement allegation" by picking and choosing software features of multiple products).

III. PLAINTIFF FAILS TO STATE A PLAUSIBLE CLAIM OF INDUCED INFRINGEMENT.

Plaintiff's SAC alleges induced infringement of the '337 and '675 patents for the first time. (Dkt. 96, ¶¶ 128, 130-131, 152. 154-155.) But "there can be no inducement or contributory infringement without an underlying act of direct infringement." *In re Bill of Lading Transmission and Processing Sys. Pat. Litig.*, 681 F.3d 1323, 1333 (Fed. Cir. 2012). Thus, because the SAC fails to plausibly allege that Amazon directly infringed the '337 and '675 patents, the Court should also dismiss Plaintiff's induced infringement claims. *See id.*; *see also Ottah v. Bracewell LLP*, No. 2022-1876, 2022 WL 16754378, at *4 (Fed. Cir. Nov 8, 2022) ("Without a 'predicate finding' of direct infringement, there can be no finding of induced infringement, and so [Plaintiff's] induced infringement claim likewise fails."); *Heidary v. Amazon.com, Inc.*, 706 F. Supp.3d 525, 535 (D. Md. 2023) ("As the Court will grant the Motion to Dismiss as to the direct infringement claim, the induced infringement claim necessarily fails."); *FBA Operating Co. v. ETN Capital, LLC*, No. 5:23-CV-505-D, 2025 WL 242531, at *5 (E.D.N.C. Jan. 17, 2025) ("Absent a viable claim for direct infringement, a claim for indirect infringement fails.").

IV. PLAINTIFF FAILS TO STATE A PLAUSIBLE CLAIM FOR WILLFUL INFRINGEMENT.

A plaintiff “must plead facts showing willfulness” to avoid dismissal of a willful infringement claim. *Bushnell Hawthorne, LLC v. Cisco Sys., Inc.*, No. 1:18-CV-760, 2019 WL 8107921, at *1 (E.D. Va. Feb. 26, 2019). For example, the complaint must allege that the defendant had knowledge of the patent. *Id.* at *1 (citing *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1341 (Fed. Cir. 2016)). In its Prayer for Relief, Plaintiff requests “enhanced damages for willful infringement.” (Dkt. 96 at 53.) However, the SAC contains no allegations of willful infringement and no allegations pertaining to Amazon’s knowledge of the patents or intent to infringe. Accordingly, the Court should strike Plaintiff’s prayer for enhanced damages for willful infringement.

In response to Amazon’s previous Motion to Dismiss, Plaintiff attempted to limit its willful infringement claim to post-suit willfulness. (Dkt. 35 at 30.) There are inconsistencies across Districts, and within this one, as to whether a complaint can create a post-suit willfulness claim. *See Security First Innovations, LLC v. Google LLC*, Case No. 2:23-CV-97, 2023 WL 7726389 at *9 (E.D. Va., Nov. 15, 2023). The Courts in this District that have not allowed such a theory have reasoned that, if such claims were allowed, then every lawsuit could include a willful infringement claim, the mere filing of a complaint would create a claim for relief, and it would disincentivize pre-suit notice and settlements. *Id.*; *Rembrandt Social Media, LP v. Facebook, Inc.*, 950 F. Supp. 2d 876, 884 (E.D. Va. 2013) (“Federal Circuit authority makes clear that an allegation of willful infringement must depend upon pre-suit knowledge of the patent in issue.”). Thus, even if the Court does not dismiss Plaintiff’s direct and induced infringement claims, the Court should follow those cases and dismiss Plaintiff’s willful infringement claim.

Respectfully submitted,

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February 18, 2025

CERTIFICATE OF SERVICE

I certify that on February 18, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will then send notification of such filing (NEF) to all counsel of record.

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