IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

Sandpiper CDN, LLC, Plaintiff, v. Microsoft Corporation Defendant.	Civil Case No. 2:25-cv-00664-JRG

MICROSOFT CORPORATION'S MOTION TO DISMISS WILLFUL INFRINGEMENT CLAIMS IN SANDPIPER CDN, LLC'S SECOND AMENDED COMPLAINT

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I. INTRODUCTION

The Court should still dismiss Plaintiff Sandpiper CDN, LLC's ("Sandpiper") claims of pre-suit willful infringement. Its second amended complaint ("SAC") fails to cure the deficiencies in its original complaint and its first amended complaint ("FAC"). Defendant Microsoft Corporation ("Microsoft") has now given Sandpiper three chances to properly plead pre-suit willful infringement, but Sandpiper's SAC remains devoid of any facts showing Microsoft knew of any Sandpiper patent, much less of any alleged infringement. Nor has Sandpiper articulated any reason for failing to include the unremarkable facts it has added to its FAC and SAC in its original complaint. Sandpiper yet again fails to plead facts that plausibly allege willful infringement on any of the six asserted patents—U.S. Patent Nos. 8,478,903 ("the '903 Patent"), 8,924,466 ("the '466 Patent"), 9,456,053 ("the '053 Patent"), 9,722,883 ("the '883 Patent"), 9,762,692 ("the '692 Patent"), and 10,701,173 ("the '173 Patent") (collectively, the "Asserted Patents")—and the Court should dismiss its claims of willful infringement in their entirety, consistent with the precedent in this District.

II. STATEMENT OF FACTS

A. Procedural History

Sandpiper filed its original complaint ("complaint"), which included claims for willful infringement, on June 26, 2025. (D.I. 1.) Microsoft moved to dismiss Sandpiper's claims for willful infringement on September 5, 2025. (D.I. 16.) On September 18, 2025, Sandpiper filed an unopposed motion for extension of time to respond to Microsoft's motion to dismiss (D.I. 20,) which was granted by the Court (D.I. 21.) Rather than oppose or address the substantive points raised in Microsoft's motion to dismiss, Sandpiper filed its FAC on September 26, 2026 without having obtained any additional facts or otherwise conducting discovery relating to willfulness. (D.I. 22.) Microsoft then moved to dismiss Sandpiper's claims for willful infringement from the

FAC on October 10, 2025 (D.I. 28.) On October 15, 2025, Sandpiper filed another unopposed motion for extension of time to respond to Microsoft's motion to dismiss (D.I. 31,) which was granted by the Court (D.I. 33.)

On October 22, 2025, Microsoft served its first set of interrogatories on Sandpiper, which included an interrogatory requesting the identification of "all underlying facts related to any discussion between Microsoft and Sandpiper prior to June 26, 2025[,]" the date on which Sandpiper first filed its complaint ("Interrogatory No. 13"). Ex. A (Sandpiper's Response to Microsoft's Interrogatory No. 13) at 5. On October 29, 2025—one day before Sandpiper's deadline to file its response to Microsoft's motion to dismiss—Sandpiper served a "partial response" to Microsoft's Interrogatory No. 13. *Id*. Notably, Sandpiper's partial response did not contain any facts to support or allege that Microsoft had pre-suit knowledge of the asserted patents, or of any alleged infringement. *Id*. at 5-7.

Shortly after serving this partial response, Sandpiper's counsel notified Microsoft's counsel of its intention to file a second amended complaint "to plead the same material appearing in the interrogatory response[,]" and requested that Microsoft "simply withdraw its motion to dismiss." Ex. B (Email Correspondence) at 2. In response, counsel for Microsoft explained that Sandpiper's response to Interrogatory No. 13 fails to cure the fundamental deficiencies identified in Microsoft's prior two motions to dismiss willful infringement. *Id.* at 1. Counsel for Microsoft specifically highlighted that "Sandpiper's response to [Interrogatory No.] 13 discusses events that occurred in or around 2006—which is years before the earliest of the Asserted Patents issued in July 2013[,]" and that Sandpiper "does not make any specific allegations with respect to Microsoft" regarding its allegation that the "Sandpiper patents were highlighted to the potential buyers." *Id*. Microsoft consented to Sandpiper filing a second amended complaint, but noted

that "the most efficient path for the parties and the Court at this time is for Sandpiper to withdraw its willful infringement claim." *Id*.

Counsel for Sandpiper did not provide any response to this exchange with counsel for Microsoft, and instead filed its SAC on October 30, 2025 (D.I. 41)—***without*** seeking leave from this Court or conducting any additional discovery since filing its original complaint. As discussed in further detail in this Motion, Sandpiper's SAC still fails to include any facts establishing Microsoft knew of the Asserted Patents, much less any alleged infringement, and fails to cure the fundamental deficiencies previously identified in Microsoft's motions to dismiss. (D.I. 20, 28.)

B. Sandpiper's Second Amended Complaint

Sandpiper's SAC asserts that Microsoft infringes six Asserted Patents related to content delivery network technology, all of which originated from a different entity, Sandpiper Networks, Inc., ("Original Sandpiper") in the late 1990s and were later acquired by Level 3 Communications. (D.I. 41 ¶ 1.) The earliest of the Asserted Patents issued on July 2, 2013. (*Id*., Ex. A.) The accused products are Microsoft's Azure CDN and Azure Front Door services (used both internally and by third parties), which were not introduced on the market until May 2018. (*Id*. ¶¶ 102-103.) The SAC collectively labels these services the "Accused Microsoft Functionalities." (*Id*. ¶¶ 104-110.)

Sandpiper pleads that "during at least part of" the alleged infringement, Microsoft "either knew of the Asserted Patents, or was willfully blind to them," rendering the conduct "egregious and willful." (*Id*. ¶ 44.) However, Sandpiper does not plead any facts supporting this claim. The SAC does ***not*** allege that Microsoft was ever specifically informed of or otherwise knew of Sandpiper's patents, let alone that the Original Sandpiper, Level 3 Communications, or Sandpiper ever told Microsoft that its products infringed any Sandpiper patent.

Instead, Sandpiper relies on several generic, indirect events to suggest Microsoft "should have known" about the patents. Notably, each of these events occurred well before the issuance of the earliest Asserted Patent. Sandpiper states that its patents were "widely publicized" and "well known as fundamental" in the CDN space. (*Id.* ¶ 45.) Sandpiper recounts Sandpiper Networks' 1999 Digital Island merger and market reaction. (*Id.* ¶ 46.) Sandpiper explains that "on or about 2004, the assets of Digital Island and the Sandpiper Networks' patents were purchased by the data center company Savvis Inc. ('Savvis')." (*Id.* ¶ 28.) The SAC then alleges that in December 2006, Level 3 acquired Savvis's CDN assets, including intellectual property, for roughly $135 million, and that "various third parties" had bid on and expressed interest in these patents. (*Id.* ¶ 47.) Sandpiper also adds that in or around 2006, Mr. Andrew Swart, who was then employed at Savvis as Vice President of Engineering, met with potential buyers of the Sandpiper assets and gave presentations where "the Sandpiper patents were highlighted to the potential buyers." (*Id.* ¶ 48.) Sandpiper alleges that "Mr. Swart understood that Microsoft had made an offer to buy the Sandpiper assets." (*Id.*)

Sandpiper then alleges that Microsoft was "by far the largest" customer of Savvis's CDN services in late 2006 and that Savvis's "estimated monthly revenue" from its CDN contract with Microsoft appeared to total $1.1 million. (*Id.* ¶ 49.) It then cites to reports that Microsoft was building its own CDN with Limelight providing software and engineering support, while also demonstrating interest "in acquiring a CDN." (*Id.*) Sandpiper then states that at this time, the patent application that was granted as the '903 Patent was pending as application number 11/064,512 and that the parent to the patent application that was granted as the '466 Patent was also pending. (*Id.* ¶ 50.) Nowhere in the SAC does Sandpiper identify facts showing Microsoft's alleged pre-suit knowledge of the Asserted Patents, nor any alleged infringement.

(*See generally, id.*). Nor could it, given that ***the Asserted Patents did not begin issuing until seven years after these events occurred***. (*Compare id.* ¶¶ 44-50 *with* Ex. A-F).

Sandpiper further alleges that several publications "commented on the importance of the Sandpiper CDN intellectual property" and that around the time of Level 3's acquisition, a Microsoft executive made public statements relating to a "continued relationship with Level 3." (*Id.* ¶ 51.) Sandpiper also claims that in July 2007, Microsoft spent $200 million to end a Savvis co-location agreement and become a direct lessee for two data centers, with public statements about Microsoft's infrastructure vision. (*Id.* ¶ 52.) Based on this and Sandpiper's allegation that Microsoft became "one of Level 3's largest CDN customers," Sandpiper alleges that Microsoft "would have remained aware of Level 3's continued prosecution of new patents[,]" including the applications that matured into the '053 Patent, the '833 Patent, the '692 Patent, and the '173 Patent. (*Id.* ¶ 53.) Sandpiper fails to mention, however, that these patents issued between 2016-2020—at least 10 years after Level 3's acquisition of Savvis's CDN business.

Sandpiper also alleges Microsoft "has hired several individuals" from Sandpiper's predecessors and attempts to impute those individuals' knowledge of Sandpiper's patents to Microsoft as a basis for knowledge or willful blindness, but only identifies one individual—who works in "partner development" and does not even have a role specific to CDN technology—and does not provide any facts that would tend to show those individuals know of Sandpiper's patents or imparted that knowledge onto Microsoft. (*Id.* ¶ 54.) Instead, much like Sandpiper's other allegations, Sandpiper speculates that these individuals should have known about the patents because they were allegedly "understood to be central to the value of Sandpiper CDN." (*Id.*) Sandpiper also points to its 2024 lawsuits against Google (asserting, *inter alia*, the '903 patent) and Comcast (asserting the '903 and '692 patents), and alleges those suits received

significant press including RPX coverage. (*Id*. ¶¶ 55-56.) Averring that Microsoft is an RPX member receiving litigation updates and referencing RPX articles covering Sandpiper's other litigations and respective patents-at-issue, Sandpiper jumps to the conclusion that Microsoft was aware of or willfully blind to the patents in those suits and "never approached Sandpiper about a license" during their pendency. (*Id*. ¶¶ 57-60.) However, Sandpiper pleads no specific facts indicating that Microsoft or any of its employees specifically knew of any Sandpiper patent as a result of Sandpiper's prior lawsuits. (*See generally id*.). This is a series of logical leaps built on media and third-party alerts, not on any alleged pre-suit notice to Microsoft identifying the Asserted Patents or accusing specific Microsoft products. (*Id*.)

Lastly, Sandpiper alleges that Microsoft was aware of the "'053 patent at least as of 2017 because Microsoft cited the published application of the '053 patent during the prosecution of Microsoft's own patent: U.S. Patent No. 9,559,902." (*Id*. ¶ 61.) However, Microsoft did not cite the '053 Patent itself. Nor could it, given that the '053 Patent issued in 2016—three years ***after*** Microsoft filed its application for U.S. Patent No. 9,559,902.

Based on this, Sandpiper makes the conclusory allegation that Microsoft "knew it needed to own, or obtain a license to, the Sandpiper patents in order to avoid patent infringement" but "ultimately was unwilling to pay what was necessary to avoid infringement, and decided to willfully infringe the Sandpiper patents anyways." (*Id*. ¶ 62.) However, the generic and indirect events cited by Sandpiper fail to show Microsoft's alleged pre-suit knowledge of the Asserted Patents, much less of any alleged infringement—which is fatal to Sandpiper's allegations. (*See generally, id*.)

Sandpiper's willfulness theory rests on publicity and industry history, not on any direct notice to Microsoft of the Asserted Patents. (*Id*. ¶¶ 44-62.) It points to articles and statements

claiming the patents were "widely publicized" and "fundamental" in the CDN space. (*Id.* ¶ 45.) It recounts historical merger and acquisition events as background. (*Id.* ¶¶ 46-47, 51.) It alleges that "Mr. Swart understood that" Microsoft made a bid to purchase Sandpiper's assets in or around 2006—years before the earliest of the Asserted Patents issued in July 2013. (*Id.* ¶ 48.) It relies on Microsoft's former-customer relationship and later decision to build its own CDN. (*Id.* ¶¶ 49, 52-53, 62.) It references patent applications, rather than the Asserted Patents which issued years after the events described in Sandpiper's SAC. (*Id.* ¶¶ 44-53.) It invokes Microsoft's alleged hiring of former industry personnel to impute knowledge. (*Id.* ¶ 54.) It leans on press coverage and RPX reporting about Sandpiper's lawsuits against others. (*Id.* ¶¶ 55-60.) What it fails to do is allege that Microsoft actually received pre-suit notice identifying the Asserted Patents or accusing specific Microsoft products of infringement. (*Id.* ¶¶ 44-62.)

III. LEGAL STANDARD

A. Dismissal Under Fed. R. Civ. P. 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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007)); *Arnold v. Williams*, 979 F.3d 262, 266 (5th Cir. 2020) (quoting *Iqbal*, 556 U.S. at 678). To satisfy the plausibility standard, a plaintiff must plead facts that allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 663. "[D]etermining whether a complaint states a plausible claim for relief . . . [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Iqbal*, 556 U.S. at 679. This Court has applied that standard to claims of pre-suit willful infringement in patent cases at the Rule 12 stage. *See NXP USA, Inc. v. MediaTek Inc.*, No. 2:21-cv-00318-JRG, 2022 WL 799071, at *2 (E.D. Tex. Mar. 15, 2022) (Gilstrap, J.) (reciting *Twombly*/*Iqbal* and dismissing claims lacking necessary

factual predicates); *see also Arigna Tech. Ltd. v. Bayerische Motoren Werke AG*, No. 2:21-cv-00172-JRG, 2022 WL 610796, at *7 (E.D. Tex. Jan. 24, 2022) (Gilstrap, J.) (same).

B. Willful Infringement

Allegations of willful infringement are reserved for egregious, intentional or knowing infringement. *See Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 579 U.S. 93, 103 (2016). To plead pre-suit willful infringement in this District, a plaintiff must plausibly allege the defendant knew of the asserted patent before suit. *See NXP USA*, 2022 WL 799071, at *4; *see also Signode Indus. Grp. LLC v. Samuel, Son & Co.*, No. 2:24-CV-00080-JRG, 2024 WL 3543408, at *2 (E.D. Tex. July 25, 2024) (Gilstrap, J.); *see also Arigna Tech.*, 2022 WL 610796, at *7.

General industry awareness, portfolio/family knowledge, or vague communications that do not identify the specific patents or accuse infringement are insufficient to plead pre-suit knowledge. *See Dialect, LLC v. Bank of Am., N.A.*, No. 2:24-CV-00207-JRG, 2024 WL 4980794, at *2 (E.D. Tex. Dec. 4, 2024) (Gilstrap, J.); *Touchstream Techs., Inc. v. Altice USA*, Inc., No. 2:23-CV-00059-JRG, 2024 WL 1117930, at *2 (E.D. Tex. Mar. 14, 2024) (Gilstrap, J.). Willful blindness requires facts showing a subjective belief in a high probability the fact exists and deliberate actions to avoid learning it. *See Glob.-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 769-70 (2011). Conclusory labels or constructive-notice theories do not suffice. *Id.*

IV. ARGUMENT

A. Sandpiper's Claims of Willful Infringement Fail Because Sandpiper Insufficiently Pleads Pre-Suit Knowledge of Infringement

1. Sandpiper's Claims of Willful Infringement do not Include any Allegations of Knowledge of the Asserted Patents.

Sandpiper pleads no facts showing Microsoft actually knew of any asserted patent before the filing of this suit—no letter, meeting, email, or other pre-suit communication from Sandpiper identifying the patents or accusing infringement—so its pre-suit willful infringement allegations

fail as a matter of law. *See Signode Indus.*, 2024 WL 3543408, at *2 (finding that plaintiff must plausibly allege defendant knew of an asserted patent before the lawsuit to support a claim of willfulness); *see also NXP USA*, 2022 WL 799071, at *3 (dismissing pre-suit willfulness because the complaint pled no pre-suit knowledge and relied only on notice from the filing, holding post-filing notice cannot supply pre-suit knowledge, while allowing post-suit willfulness to proceed). Indeed, the majority of the facts relied on by Sandpiper in its SAC—including its newly added allegation that "Mr. Swart understood that Microsoft had made an offer to buy the Sandpiper assets" in or around 2006 (D.I. ¶ 48)—occurred nearly over half a decade before the first of the six Asserted Patents even issued. (D.I. 41 ¶¶ 45-53). At most, those allegations describe ordinary customer/vendor relationships and business dealings, as well as public business statements that are equally consistent with routine competitive strategy as with the inference of pre-suit knowledge, which does not satisfy Rule 8's plausibility requirement. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 557 (2007).

Sandpiper's allegations about predecessors-in-interest, industry history, acquisitions, or patent portfolio buzz do not bridge that gap. *See, e.g., HOYA Corp. v. Alcon Inc.*, 713 F. Supp. 3d 291, 317 (N.D. Tex. 2024) ("Knowledge of a patent portfolio generally is not the same thing as knowledge of a specific patent."); *see also Bayer Healthcare LLC v. Baxalta Inc.*, 989 F.3d 964, 988 (Fed. Cir. 2021) (finding even where"[t]he evidence adduced at trial [] demonstrates [] knowledge of the [asserted] patent and [] direct infringement of the asserted claims[,]" this did not rise to the "level of wanton, malicious, and bad-faith behavior required for willful infringement"). Indeed, on allegations more robust than what Sandpiper offers, this Court and others in this District have dismissed claims of pre-suit willful infringement. *See Touchstream Techs.*, 2024 WL 1117930, at *2 (finding that a "patent-pending" discussion and an application

number did not show knowledge of later-issued asserted patents); *see also Dialect*, 2024 WL 4980794, at *2 (finding that general knowledge of the portfolio and vague letter is insufficient); *see also Arigna Tech.*, 2022 WL 610796, at *4 (dismissing pre-suit willful infringement for lack of pre-suit knowledge).

Further, Sandpiper's references to the "patent applications" that matured into the Asserted Patents are similarly unavailing. (D.I. 41 ¶¶ 50, 53, 61.) Courts in this District have held that "knowledge of a patent application alone cannot supporting a finding of willful infringement." *Nonend Inventions, N.V. v. Apple Inc.*, Case No. 2:15-cv-466-JRG-RSP, 2016 WL 1253740, at *2 (E.D. Tex. Mar. 11, 2016) (citing *State Indus., Inc. v. A.O. Smith Corp.*, 751 F.2d 1226, 1236 (Fed. Cir. 1985)); *see also State Indus.*, 751 F.2d at 1236 ("[f]iling an application is no guarantee any patent will issue and a very substantial percentage of applications never result in patents"). As the Supreme Court cautioned, allegations that are equally compatible with lawful conduct do not "[nudge] their claims across the line from conceivable to plausible." *Bell Atl. Corp.*, 550 U.S. at 547.

2. Claiming Willful Blindness of Sandpiper's Patents Alone Is Insufficient to Support a Claim of Willfulness

Sandpiper's claims that Microsoft was willfully blind to the Asserted Patents also fail as a matter of law to support its claims of willful infringement. Willful blindness requires facts showing (1) a subjective belief in a high probability the patents existed and covered the accused conduct, and (2) deliberate actions to avoid confirming that fact. *See Glob.-Tech Appliance*, 563 U.S. at 769-70. Sandpiper pleads neither.

Sandpiper's SAC identifies no pre-suit notice to Microsoft of the asserted patents, no communication to a Microsoft employee conveying those patents, no internal suspicion that Azure's CDN was likely covered by these patents, and no deliberate avoidance. Instead,

Sandpiper only pleads that public events (e.g., Level 3's 2006-07 CDN acquisition), Microsoft's alleged bid to "buy the Sandpiper assets" years before the earliest of the Asserted Patents issued (D.I. ¶ 48,) Microsoft's hiring of industry personnel, and RPX coverage of Sandpiper's later suits against others and the respective patents-at-issue somehow suggest that Microsoft should have known both the specific patents asserted in this case and that its products infringe. And with respect to RPX, Sandpiper's allegations are not even specific to Microsoft, but rather to all RPX members generally. Similarly, with respect to the "potential buyers" of Sandpiper's assets in or around 2006, Sandpiper's allegations are not specific to Microsoft, but rather to all "potential buyers." (D.I. ¶ 48.) This Court has found similar theories insufficient to plead pre-suit knowledge. *See Touchstream Techs.*, 2024 WL 1117930, at *2-3. This does not satisfy *Halo*'s requirement that willfulness be "intentional or knowing." *Halo Elecs.*, 579 U.S. at 103-5. Moreover, Sandpiper does not even attempt to plead facts showing that Microsoft took deliberate actions to avoid confirming alleged infringement. (*See generally*, D.I. 41 ¶¶ 45-62). This is fatal to Sandpiper's allegations. *See Signode Indus.*, 2024 WL 3543408, at *2; *see also NXP USA*, 2022 WL 799071, at *4. Without more, the business behavior Sandpiper describes does not plausibly suggest the subjective belief and deliberate avoidance that willful blindness requires.

In short, Sandpiper's conclusory statements that based on these facts, Microsoft was "willfully blind" to its alleged infringement are not enough. *See Dialect*, 2024 WL 4980794, at *5. Were this the standard, every defendant could be charged with being willfully blind to the patents of every company whose technology receives press coverage or whose patents are asserted in litigation. Such cannot be the case.

B. Dismissal Consistent with Similar Decisions in this District

This Court has dismissed pre-suit willful infringement where the complaint lacks concrete facts that the defendant actually knew of the asserted patents before filing. For

example, in *Touchstream*, the plaintiff pointed to a pre-suit meeting, "patent-pending" discussions, and disclosure of an application number, and yet the Court found those allegations did not plausibly show knowledge of the later-issued asserted patents and dismissed pre-suit willful infringement. *See Touchstream Techs.*, 2024 WL 1117930, at *2–3. It is not enough for a plaintiff to rely on general awareness of a prior owner's patent portfolio and a non-accusatory communication that did not identify the asserted patents or claim infringement. *Dialect*, 2024 WL 4980794, at *3-5. Like in *Dialect* where the Court found those non-specific allegations could not plead pre-suit knowledge or willful blindness, here, Sandpiper has also listed nothing but non-specific allegations, like Microsoft's former-customer status and later CDN build, in its SAC. Similar to *Arigna*, where the Court found that the complaint offered no facts showing pre-suit knowledge for not satisfying the threshold requirement for pre-suit willingness and dismissed, here, Sandpiper has also failed to meet this threshold. *Arigna Tech.*, 2022 WL 610796, at *7. Other than to make factually unsupported and conclusory allegations, Sandpiper points to no patent-specific pre-suit notice, no internal suspicion, and no deliberate avoidance. (D.I. 41 ¶¶ 45-62.) Those allegations reflect ordinary business conduct that are just as consistent with lawful competitive strategy as with the inference Sandpiper urges. That is precisely the kind of non-specific business activity that does not meet the plausibility threshold for willful infringement. *See Bell Atl. Corp.*, 550 U.S. at 570.

This District further requires plausible allegations that the defendant knew of the ***specific*** patent-in-suit before filing, and has rejected theories grounded only in knowledge of related families or general technology areas. *See Signode Indus.*, 2024 WL 3543408, at *2 (emphasis added). And when a plaintiff tries to rely on notice from the complaint itself, the Court has held that post-filing notice cannot retroactively supply missing pre-suit knowledge. *NXP USA*, 2022

WL 799071, at *4. Here, Sandpiper has not pled that Microsoft had any specific knowledge of any Asserted Patent, other than to vaguely allege Microsoft should have known of the Asserted Patents because of RPX publications and Sandpiper's other litigations. This is insufficient as a matter of law. *See, e.g., Motion Offense, LLC v. Dropbox, Inc.*, 2024 WL 5185355, at *2-3 (W.D. Tex. Aug. 26, 2024) (granting motion to dismiss pre-suit willful infringement claims where plaintiff merely relied on prior lawsuit against the same defendant asserted patents in the same family).

Measured against those decisions, Sandpiper's allegations mirror what this Court has already rejected. Sandpiper's pleading falls squarely within those dismissed patterns. It offers no patent-specific letter, meeting, or email. It points instead to public events, portfolio press, RPX coverage, and hiring. (D.I. 41 ¶¶ 46-47, 54-60.) Those are not facts of pre-suit knowledge. Nor do they show willful blindness. That doctrine demands a subjective belief in a high probability coupled with deliberate steps to avoid the truth. *See Glob.-Tech Appliance*, 563 U.S. at 769-70. And enhanced damages are reserved for intentional and egregious misconduct, not for industry awareness. *See Halo Elecs.*, 579 U.S. at 103-5. On this record, dismissal of the pre-suit willful infringement claim is consistent with how this Court treats materially similar claims.

V. CONCLUSION

For the preceding reasons, Microsoft respectfully requests that this Court dismiss all of Sandpiper's allegations of pre-suit willful infringement.

Date: November 13, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via CM/ECF on November 13, 2025, upon all counsel of record.

/s/ Benjamin C. Elacqua
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Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

SANDPIPER CDN, LLC, *Plaintiff,* v. **MICROSOFT CORPORATION**, *Defendant.*	Case No. 2:25-cv-664-JRG **JURY TRIAL DEMANDED**

PLAINTIFF SANDPIPER CDN, LLC'S PARTIAL OBJECTIONS AND RESPONSES TO DEFENDANT MICROSOFT CORPORATION'S
FIRST SET OF INTERROGATORIES (NO. 13)

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff Sandpiper CDN, LLC ("Sandpiper") submits the following responses and objections to Defendant Microsoft Corporation ("Microsoft") First Set of Interrogatories, served October 22, 2025. This response is limited to a partial response to Interrogatory No. 13, based on Sandpiper's investigation to date. Sandpiper will provide objections and responses to the other interrogatories in this set, and updated objections and responses to Interrogatory No. 13, by the deadline for these responses. Sandpiper does not waive any objection by providing an early, partial response to Interrogatory No. 13 now.

GENERAL OBJECTIONS

1. The following General Objections apply to all of Sandpiper's responses, and shall be deemed incorporated into the Objections to each and every specific Interrogatory. To the extent that a particular General Objection is cited in a specific response, it is provided because it is believed to be particularly applicable to the specific Interrogatory, and all other General Objections

still apply to that response and are not waived. The lack of a specific objection by Sandpiper to a particular, individual Interrogatory shall not be construed as an admission that responsive information exists.

2. Sandpiper objects to Defendant's Interrogatories to the extent the Interrogatories seek information beyond that which is presently available to Sandpiper from a reasonable search of its own records and a reasonable inquiry of its present employees. Likewise, Sandpiper objects to any Interrogatory that seeks to impose a duty on Sandpiper to create or perform analyses that Sandpiper does not create or maintain in the ordinary course of business. The objections and responses that follow reflect Sandpiper's present knowledge, information, and beliefs. Sandpiper has not completed its discovery, investigation, research, and/or trial preparation. The following responses are based solely on information that is presently available and specifically known to Sandpiper. The following responses are given without prejudice to Sandpiper's right to product evidence of any subsequently discovered information. Sandpiper reserves the right to amend any and all responses herein as additional information is ascertained. Sandpiper's objections as set forth herein are made without prejudice to Sandpiper's right to assert any additional or supplemental objections should Sandpiper discover additional grounds for such objections.

3. Sandpiper objects to Defendant's Interrogatories to the extent the Interrogatories seek information that is protected by the attorney-client privilege, work-product immunity, or any other applicable protection from discovery. It shall be understood that inadvertent disclosure of communications protected by any privilege shall not constitute a waiver of the applicable privilege, either as to those communications inadvertently revealed, or as to any other communications.

4. Sandpiper objects to Defendant's Interrogatories to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence, and to the extent

they call upon Sandpiper to investigate, collect, and disclose information and/or documents that are neither relevant to any claim or defense in this matter nor reasonably calculated to lead to the discovery of admissible evidence. By responding to an Interrogatory, Sandpiper is not conceding that the Interrogatory is relevant to the subject matter of this litigation or reasonably calculated to lead to the discovery of admissible evidence. Nor are Sandpiper's responses intended to be incidental or implied admissions. Sandpiper expressly reserves the right to object to further discovery into the subject matter of these Interrogatories and to the introduction of these responses to the Interrogatories into evidence. Sandpiper also expressly reserves the right to challenge the authenticity, relevance, materiality, privilege, or admissibility of the information provided in the documents identified and/or produced in response to these Interrogatories at any subsequent proceeding or trial.

5. Sandpiper objects to Defendant's Interrogatories to the extent the Interrogatories seek trade secrets or other confidential or proprietary, commercial, or business information. Sandpiper will produce such information, if requested and not otherwise objectionable, as "CONFIDENTIAL – ATTORNEY'S EYES ONLY" under the terms of the parties' Joint Proposed Protective Order, which will govern the disclosure of confidential information in this matter. Dkt. No. 39-1. Pursuant to the Proposed Protective Order, access to documents or information marked with a confidentiality designation "is limited to individuals listed in paragraphs 5(a-c) and (e-g)" of the Proposed Protective Order. *Id*. § 9, p. 8.

6. Sandpiper objects to Defendant's Interrogatories to the extent the Interrogatories encompass information which Sandpiper is under an obligation to a third party or a court order to not disclose. To the extent reasonable, Sandpiper will produce such information as "CONFIDENTIAL – ATTORNEY'S EYES ONLY" under the terms of the parties' Joint Proposed

Protective Order, which will govern the disclosure of confidential information in this matter. Dkt. No. 39-1. Pursuant to the Proposed Protective Order, access to documents or information marked with a confidentiality designation "is limited to individuals listed in paragraphs 5(a-c) and (e-g)" of the Proposed Protective Order. *Id.* § 9, p. 8.

7. Sandpiper objects to Defendant's Interrogatories to the extent the Interrogatories seek information that is already in Defendant's possession, is publicly available, and/or is otherwise equally accessible to Defendant.

8. Sandpiper objects to Defendant's Interrogatories to the extent the Interrogatories seek information that is not in Sandpiper's possession, custody or control, that could be obtained from some other source that is more convenient, less burdensome, or less expensive.

9. Sandpiper objects to Defendant's Interrogatories to the extent the Interrogatories require Sandpiper to undertake an unreasonable search of its files and records.

10. Sandpiper objects to Defendant's Interrogatories to the extent a response would be unduly burdensome and expensive, taking into account the needs of the case, and its importance to the relevant issues.

11. Sandpiper objects to Defendant's Interrogatories to the extent the Interrogatories seek information from or related to a time period beyond that relevant to the determination of the propriety of venue the present action.

12. Sandpiper objects to Defendant's Interrogatories to the extent they seek production or disclosure of certain categories of information before the deadlines agreed upon by the parties, as promulgated by the Court, or as set forth in the local rules and/or other applicable law.

13. Sandpiper objects to Defendant's Interrogatories to the extent the Interrogatories are unreasonably cumulative or duplicative.

14. The lack of a specific objection by Sandpiper to a particular, individual Interrogatory shall not be construed as an admission that responsive information exists.

SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 13:[1]

Identify all underlying facts related to any discussion between Microsoft and Sandpiper prior to June 26, 2025—including but not limited to allegations set forth in ¶¶ 33–127 of Sandpiper's Complaint (Dkt. No. 1)—and describe in detail all persons involved in such interaction, all interactions each such individual had with Microsoft, the dates of each such interaction, the purpose of each such interaction, the nature of each such interaction, any resulting action or communication, and what information each such individual possesses relating to Sandpiper's claims of willfulness at issue in this case.

RESPONSE TO INTERROGATORY NO. 13:

Sandpiper incorporates each of the foregoing objections to this response. Sandpiper objects to the compound nature of this Interrogatory as it contains multiple discrete interrogatories. For example, this Interrogatory first asks Sandpiper to (1) "identify" facts of "discussions," then (2) more broadly asks for "all interactions each such individual had with Microsoft" and (3) any "resulting action or communication," before (4) asking for all other information "relating to" willfulness that each individual holds. Sandpiper thus contends this should be treated as four separate interrogatories and reserves its right to treat them as such. *See Erfindergemeinschaft Uropep GbR v. Eli Lilly & Co.*, 315 F.R.D. 191, 197 (E.D. Tex. 2016) (Bryson, C.J.) (applying a

[1] Sandpiper understands the labelling of this interrogatory as Number 12 was inadvertent, and re-labels it here as Interrogatory Number 13.

"related question" approach to compound interrogatories and counting discrete subparts as multiple interrogatories).

Sandpiper further objects to this Interrogatory as overly broad and unduly burdensome as it implicates documents and things outside of the possession, custody, and/or control of Sandpiper. This Interrogatory seeks information that is equally accessible by Microsoft, e.g., is currently in the possession, custody, and/or control of third parties such as Lumen Technologies. Moreover, Microsoft has not defined any terms in its interrogatories as served, and Sandpiper objects to Microsoft's use of the terms "any" and "all" is vague and ambiguous. Sandpiper further objects to this Interrogatory to the extent the Interrogatory, through the use of these vague and ambiguous terms, seeks communications and/or materials that are protected by privilege, such as attorney work product privilege and/or attorney-client privilege. For purposes of responding to this Interrogatory, Sandpiper will understand "all interactions," "all persons," and "any resulting action or communication" to refer to such interactions, persons, and actions or communications relating to the allegations set forth in ¶¶ 33–127 of Sandpiper's Complaint (Dkt. No. 1), prior to June 26, 2025. Sandpiper's response below reflects facts that are not subject to any such privilege and the response should not be construed as a waiver of any such privilege. Sandpiper also objects to this Interrogatory to the extent it implicates ESI subject to separate procedures to be determined by the Court's forthcoming Order on ESI.

In particular, Sandpiper further objects to the portion of this Interrogatory that requests "what information each such individual possesses relating to Sandpiper's claims of willfulness at issue in this case." Willfulness is a legal determination and a "totality of the circumstances" issue. *See Hillman Grp., Inc. v. KeyMe, LLC*, No. 2:19-CV-00209-JRG, 2021 WL 1248180, at *2 (E.D. Tex. Mar. 30, 2021) (citing *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1933

(2016); *Gustafson, Inc. v. Intersystem Indus. Prods., Inc.*, 897 F.2d 508, 510 (Fed. Cir. 1990)) ("Willfulness is a matter of culpability and is determined by considering the totality of the circumstances.").

Subject to and without waiving the foregoing objections, Sandpiper responds as follows:

In 2006, Mr. Andrew Swart, then employed at Savvis as a Vice President of Engineering, was involved with aspects of the due diligence discussions with various prospective bidders for the sale of Sandpiper assets discussed in the First Amended Complaint. FAC ¶¶ 44-53 (*see also* Complaint, Dkt. No. 1, ¶¶ 47-49). At that time, there were several competitive bids for the Sandpiper assets. FAC ¶ 48.

Mr. Swart travelled to San Francisco to meet with several potential buyers of the Sandpiper assets as part of those diligence discussions. In these presentations Mr. Swart gave to potential buyers, the Sandpiper patents were highlighted to the potential buyers. Around that time, Mr. Swart understood that Microsoft had made an offer to buy the Sandpiper assets. The Sandpiper assets, as offered for sale and eventually sold, included the Sandpiper patents. *See* FAC ¶ 47. Mr. Swart's recollection is that in the early stages of this process, bids were in the $20 million range. Ultimately, the sale to Level 3 was for $135 million. FAC ¶ 47.

Dated: October 29, 2025

Regards,

/s/ *Philip A. Eckert*
Philip A. Eckert

Ryan D. Dykal
Mark Schafer (*pro hac vice*)
Philip A. Eckert (*pro hac vice*)
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Counsel for Plaintiff Sandpiper CDN, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via email on this 29 day of October, 2025.

By: */s/ Philip A. Eckert*

Exhibit B

From: Claire Chang
Sent: Thursday, October 30, 2025 3:33 PM
To: Philip Eckert; Dale Pedrick; Cheryl Wang; Benjamin C. Elacqua; ddacus@dacusfirm.com; Bailey Benedict; Joe Dorris; Riley Green
Cc: Sandpiper; Andrea Fair; Garrett Parish
Subject: RE: Sandpiper v Microsoft; 2:25-cv-00664-JRG-RSP: Service of Response to Rog. 13

Phil,

Thank you for your email. We disagree that Sandpiper's response to ROG 13 moots Microsoft's motion to dismiss willful infringement. As a preliminary matter, Sandpiper's response to ROG 13 discusses events that occurred in or around 2006—which is years before the earliest of the Asserted Patents issued in July 2013. Put simply, Sandpiper still fails to allege Microsoft's alleged knowledge of the Asserted Patents, much less of any alleged infringement—which is required to plead pre-suit willful infringement in this District. If Sandpiper intends to allege knowledge of the "patent applications" that matured into the Asserted Patents, this is similarly unavailing including because courts in this District have held that "knowledge of a patent application alone cannot supporting a finding of willful infringement." *Nonend Inventions, N.V. v. Apple Inc.*, Case No. 2:15-cv-466-JRG-RSP, 2016 WL 1253740, at *2 (E.D. Tex. Mar. 11, 2016) (citing *State Indus., Inc. v. A.O. Smith Corp.*, 751 F.2d 1226, 1236 (Fed. Cir. 1985)); *see also State Indus.*, 751 F.2d at 1236 ("[f]iling an application is no guarantee any patent will issue and a very substantial percentage of applications never result in patents"). Further, Sandpiper's response to ROG 13 vaguely alleges that the "Sandpiper patents were highlighted to the potential buyers," but does not make any specific allegations with respect to Microsoft. For at least these reasons, Sandpiper's response to ROG 13 fails to cure the fundamental deficiencies identified in Microsoft's motion to dismiss willful infringement. Accordingly, Microsoft cannot agree to withdraw its motion to dismiss willful infringement.

Despite this, Microsoft consents to Sandpiper filing a second amended complaint. However, rather than continuing to allege a deficient willful infringement claim, the most efficient path for the parties and the Court at this time is for Sandpiper to withdraw its willful infringement claim. Please confirm that Sandpiper agrees to withdraw its willful infringement claim. We can then discuss a date for Microsoft's answer in this case.

Best,
Claire

Claire Chang
Associate ■ Fish & Richardson P.C.

T: 650 839 5039 | cchang@fr.com

From: Philip Eckert <peckert@bsfllp.com>
Sent: Wednesday, October 29, 2025 2:01 PM
To: Dale Pedrick <dpedrick@bsfllp.com>; Cheryl Wang <cwang@fr.com>; Benjamin C. Elacqua <Elacqua@fr.com>; ddacus@dacusfirm.com; Bailey Benedict <benedict@fr.com>; Joe Dorris <dorris@fr.com>; Claire Chang <cchang@fr.com>; Riley Green <rgreen@fr.com>
Cc: Sandpiper <sandpiper@bsfllp.com>; Andrea Fair <andrea@millerfairhenry.com>; Garrett Parish

<garrett@millerfairhenry.com>
Subject: Re: Sandpiper v Microsoft; 2:25-cv-00664-JRG-RSP: Service of Response to Rog. 13

[This email originated outside of F&R.]

Microsoft counsel,

As you know, Microsoft has a pending motion to dismiss pre-suit willfulness, and the deadline for Sandpiper's opposition is tomorrow. As you also know, last week Microsoft served an interrogatory on Sandpiper regarding pre-suit willfulness issues. Today we served a partial response to that interrogatory. We are prepared to file a second amended complaint tomorrow to plead the same material appearing in the interrogatory response we served today, which would moot your motion to dismiss. But in the interest of efficiency, please let us know by 4 p.m. Central tomorrow if Microsoft would be willing to simply withdraw its motion to dismiss and agree on a date for Microsoft's Answer in this case.

Best,

Philip Eckert

Associate

BOIES SCHILLER FLEXNER LLP

1401 New York Avenue, N.W., Washington, DC 20005

(t) +1 202 274 1141 | (m) +1 816 716 4153 | peckert@bsfllp.com

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From: Dale Pedrick <dpedrick@bsfllp.com>
Sent: Wednesday, October 29, 2025 3:05 PM
To: Cheryl Wang <cwang@fr.com>; Benjamin C. Elacqua <Elacqua@fr.com>; ddacus@dacusfirm.com <ddacus@dacusfirm.com>; Bailey Benedict <benedict@fr.com>; Joe Dorris <dorris@fr.com>; Claire Chang <cchang@fr.com>; Riley Green <rgreen@fr.com>
Cc: Sandpiper <sandpiper@bsfllp.com>
Subject: Sandpiper v Microsoft; 2:25-cv-00664-JRG-RSP: Service of Response to Rog. 13

Counsel,

Please see the attached.

Thank you,

Dale Pedrick
Paralegal

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

Sandpiper CDN, LLC, Plaintiff, v. Microsoft Corporation Defendant.	Civil Case No. 2:25-cv-00664-JRG

ORDER GRANTING DEFENDANT MICROSOFT CORPORATION'S MOTION TO DISMISS WILLFUL INFRINGEMENT IN SANDPIPER CDN LLC'S SECOND AMENDED COMPLAINT

Having considered Microsoft Corporation's Motion to Dismiss Willful Infringement in Sandpiper CDN LLC's Second Amended Complaint and all other papers filed by the parties in support of said Motion, the Court ORDERS as follows: Microsoft Corporation's Motion to Dismiss Willful Infringement in Sandpiper CDN LLC's Second Amended Complaint is GRANTED.