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 OBJECTIONS TO THE REPORT AND RECOMMENDATION REGARDING THE MOTION TO DISMISS WILLFUL INFRINGEMENT IN SANDPIPER CDN, LLC'S SECOND AMENDED COMPLAINT

Defendant Microsoft Corporation respectfully submits these objections to the Report and Recommendation (Dkt. 56, "Report"), which recommends denying Microsoft's Motion to Dismiss Willful Infringement Claims in Sandpiper CDN, LLC's Second Amended Complaint. Fed. R. Civ. P. 72(b); L.R. CV-72. The Report credits Sandpiper's patchwork of allegations to conclude that the Second Amended Complaint pleads sufficient facts to state a plausible claim. However, these allegations are insufficient to support a "reasonable inference" of willfulness: they either predate the issuance of the asserted patents by seven years or more, reference industry publications that neither alleged infringement nor were specifically directed to Microsoft, or concern the hiring of personnel for whom there are no facts showing knowledge of Sandpiper's patents, much less of any alleged transfer of such knowledge to Microsoft.

As detailed below, the Report does not apply Supreme Court precedent, and does not mention or consider this Court's precedent, cited by Microsoft. Moreover, the Report does not consider critical facts cited by Microsoft. The Report's recommendation rests on presumptions that are not sufficiently plausible to allow the Court to draw the reasonable inference of willfulness and does not "nudge" Sandpiper's claims from conceivable to plausible, as required by *Twombly* and *Iqbal*. For these reasons, Microsoft's objections should be sustained, and Sandpiper's willful infringement claims should be dismissed.

I. The Report Fails to Apply Relevant Case Law

As a preliminary matter, the Report cites but does not apply binding Supreme Court precedent, nor does it address this Court's own decisions regarding the pleading standard for willfulness. 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. v. Twombly*, 550 U.S. 544, 570 (2007)). *Twombly* further instructs that "[f]actual allegations must be enough to raise a right to relief ***above the speculative level***" and that

allegations which are merely consistent with parallel business conduct do not suffice. *Twombly*, 550 U.S. at 555, 557 (emphasis added). The Report, however, focuses solely on Sandpiper's factual allegations that amount to ordinary business and customer/vendor interactions, namely "licensing, [] parallel CDN development, and hiring[,]" that the Court cautioned against in *Twombly*. Report at 5. These allegations reflect ordinary business conduct that are just as consistent with lawful commercial conduct as with the inferences Sandpiper urges. Indeed, the Report incorrectly embraces Sandpiper's conclusory allegations that discussions about acquiring a business or obtaining services from a business is tantamount to "licensing" any specific patent. Adopting this automatic implication as done by the Report would allow willful infringement allegations to take root in nearly any potential corporate transaction or service agreement, only to emerge years later. Accordingly, the Report's reliance on these allegations to find a "reasonable inference" of willfulness is at odds with *Twombly*'s requirement and rationale that a pleading must be supported by facts to state a claim that is not just "conceivable[,]" but "plausible." *Twombly*, 550 U.S. at 570.

Moreover, the Report fails to address Microsoft's cited precedent where this Court applied the *Twombly/Iqbal* standard to claims of pre-suit willful infringement in patent cases at the Rule 12 stage. *See NXP USA v. MediaTek*, 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. v. Bayerische Motoren*, 2022 WL 610796, at *7 (E.D. Tex. Jan. 24, 2022) (Gilstrap, J.) (same). The Report also does not discuss whether Sandpiper's allegations rise to the level of egregious, intentional, or knowing infringement reserved for allegations of willful infringement, as set forth by the Supreme Court in *Halo*. *Halo Elecs., Inc. v. Pulse Elecs., Inc*., 579 U.S. 93, 103 (2016).

II. The Report Glosses Over the Lack of Nexus Between Facts Allegedly Showing Knowledge

The Report acknowledges that "willfulness requires finding that the defendant knew of the *asserted patents* at the time of infringement." Report at 4. The Report then relies on three unconnected, alleged facts in combination to justify its conclusion that the allegations of knowledge are plausible: "prior dealings" that occurred ***seven years*** before the earliest asserted patent issued, RPX publications—an industry-wide newsletter—discussing Sandpiper's suit against a company ***other*** than Microsoft occurring approximately 18 years ***after*** these alleged prior dealings, and hiring of industry personnel where there is no evidence that the employee(s) ever had knowledge of the asserted patents or even worked in the relevant product line at Microsoft. These three categories of information are disconnected temporally and logically, and insufficient to support a "reasonable inference" of willfulness.

In fact, the Report's own findings—specifically, that "knowledge of the asserted patents is ***impossible***" based on the parties' "prior dealings" that "occurred prior to the issuance of the asserted patents"—only support a finding that Sandpiper's willfulness claims should be dismissed. Report at 4 (emphasis added). The Report further recognizes that "Defendant's prior dealings with Plaintiff and their predecessors, along with their citation to the '053 patent cannot alone form a basis for willfulness." *Id.*

Despite this recognition, the Report relies on these same "prior dealings" from 2006 including alleged "licensing, then parallel CDN development"—all occurring years before the earliest of the asserted patents issued in July 2013—to incorrectly conclude that "Plaintiff's pleadings . . . are sufficiently plausible to allow the Court to draw the reasonable inference of Defendant's willfulness." *Id*. at 5. To start, the Report erroneously considers the original assignee, Sandpiper Networks, and subsequent acquirers to be "predecessors" to plaintiff

Sandpiper CDN, LLC, which is unsupported by any alleged fact. And notably, the Report does not cite any supporting case law for its recommendation that there is a "reasonable inference" of willfulness despite first finding that knowledge of the asserted patents is "impossible" based on the same alleged facts. *Id*. at 4. Nor does the Report articulate any basis that questionable allegations of knowledge through industry publications or employee hires make these discredited "prior dealings" any more relevant to pleading willful infringement.

Moreover, the Report does not address—let alone distinguish—this Court's cases dismissing pre-suit willful infringement where the complaint lacks concrete facts that the defendant actually knew of the asserted patents before filing. *Dialect, LLC v. Bank of Am.*, 2024 WL 4980794, at *3-5 (E.D. Tex. Dec. 4, 2024) (Gilstrap, J.); *Touchstream Techs. v. Altice USA*, 2024 WL 1117930, at *2–3 (Gilstrap, J.). Indeed, in *Dialect*, the defendant was the direct, targeted recipient of a pre-suit notice letter which this Court found insufficient to plausibly allege pre-suit knowledge required for willfulness. *Dialect,* 2024 WL 4980794, at *3 (citing *Bench Walk v. LG Innotek*, 2021 WL 65071, at *11-12 (D. Del. 2021), report and recommendation adopted, (finding that the patentee's alleged notice letter was insufficient where it did not identify all the asserted patents, most of the accused products, and any information as to how the asserted patents were allegedly infringed)). Similarly, in *Touchstream*, the plaintiff pointed to a pre-suit meeting, "patent-pending" discussions, and disclosure of an application number, and yet this Court found those allegations did not plausibly show knowledge of the later-issued asserted patents and dismissed pre-suit willful infringement. *Touchstream*, 2024 WL 1117930, at *2–3.

The RPX publications relied on in the Report (at 4) here are even more attenuated—they were mass-generated "newsletter" style publications sent to industry recipients that describe ongoing patent litigation. They do ***not*** mention Microsoft or imply Microsoft infringes any

patent. Nor does viewing such generic publications in light of decades-old "prior dealings" between a prior patent holder and Defendant during which ancestor patents may have been mentioned reach the willfulness pleading threshold. Report at 4. Those "prior dealings" happened a full seven years before the first asserted patent issued, and even longer before the RPX article regarding Sandpiper's other litigation.

In *Signode*, this Court found that "Plaintiff's allegations do not, even in their totality, support a plausible inference of pre-suit knowledge[,]" where "Plaintiff's allegations fail to logically connect its allegations to the Asserted Patents[.]" *Signode v. Samuel*, 2024 WL 3543408, at *4 (E.D. Tex. July 25, 2024) (Gilstrap, J.). Similarly, here, the Report relies on "Plaintiff's assertions, that Defendant's employees had knowledge of the asserted patents while employed by Plaintiff (and/or its predecessors[1])." Report at 4. However, Sandpiper 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 have a role related to the accused technology—and does not provide facts that would tend to show those individuals know of the asserted patents, let alone imparted that knowledge onto Microsoft. Dkt. 43 at 5. Similar to *Signode*, Sandpiper's allegations—including with respect to hiring of industry personnel—fail to logically connect its allegations to the asserted patents and thus cannot support a plausible inference of pre-suit knowledge.

III. CONCLUSION

For all of the above reasons and the reasons set forth in Microsoft's briefing (Dkt. 43; Dkt. 53), Microsoft respectfully objects to Magistrate Judge Payne's Report and requests that the Court sustain the objections and grant Microsoft's Motion to Dismiss Willful Infringement.

[1] The Report again mistakes Plaintiff as being related to the original Sandpiper.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via CM/ECF on January 26, 2026, upon all counsel of record.

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