

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION**

TOPWIRE LLC,

Plaintiff,

V.

APPLE INC.,

Defendant.

Case No. 7:25-cv-00551-ADA

Jury Trial Demanded

**PLAINTIFF TOPWIRE LLC’S OPPOSITION TO DEFENDANT APPLE INC.’S PARTIAL
MOTION TO DISMISS TOPWIRE LLC’S FIRST AMENDED COMPLAINT**

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I. INTRODUCTION

The Court should deny the motion (Dkt. 23, “Motion”) brought by Apple, Inc. (Apple) to dismiss Plaintiff TopWire, LLC’s (TopWire) First Amended Complaint (Dkt. 22, “FAC”). Apple’s Motion asks the Court to foreclose TopWire’s claims of pre-suit indirect and willful infringement. But TopWire plausibly alleges pre-suit indirect and willful infringement of U.S. Patent No. 9,859,202 (the ’202 Patent), as evidenced through TopWire’s well-pled factual allegations supported by detailed averments of the parties’ pre-suit communications.

First, TopWire plausibly alleges pre-suit willful infringement. On July 10, 2025—months before this lawsuit was filed—TopWire sent Apple a Notice Letter that identified the ’202 Patent, identified specific Apple products by model (including the iPhone 11 and iPhone 13), specified the specific infringing components (“processors that utilize a spacer connector”), and directed Apple to particular claims of the ’202 Patent (e.g., claim 1). *See* Dkt. 22, FAC at ¶¶ 31-40. This Court has determined similar pleadings are more than sufficient to plead pre-suit willfulness. *See, e.g., Parity Networks, LLC v. Cisco Sys., Inc.*, No. 6:19-CV-00207-ADA, 2019 WL 3940952, at *3 (W.D. Tex. July 26, 2019) (pre-suit willful infringement was adequately pled where plaintiff alleged that the defendant received a notice letter identifying the asserted patents, identifying the accused products, and suggesting that the accused products are either relevant to or infringe the asserted patents); *Textile Computer Sys., Inc. v. Broadway Nat’l Bank*, 620 F. Supp. 3d 557 (W.D. Tex. 2022) (similar); *Voip-Pal.com, Inc. v. Facebook, Inc.*, 2022 WL 1394550 (W.D. Tex. May 3, 2022) (similar). Apple’s Motion ignores these relevant orders and focuses instead on the fact that TopWire did not *also* deliver formal infringement claim charts during the parties’ pre-suit discussions. *See* Mot. at 2, 4-5, 11-13. But this Court has never required pre-suit claim charts as a prerequisite to pleading willfulness, and doing so would “demand[] far too much at the pleading

stage.” *ACQIS LLC v. Wiwynn Corp.*, 614 F. Supp. 3d 499, 505 (W.D. Tex. 2022) (rejecting the argument that a notice letter must explicitly explain how accused products infringed the asserted patents, finding such demands required plaintiff to “prove its case at the outset”).

Second, TopWire plausibly alleges pre-suit induced infringement. The FAC identifies specific direct infringers—retailers including Best Buy, T-Mobile, AT&T, Verizon, and Walmart, as well as end-user consumers—and alleges that Apple induced their infringement through affirmative acts, such as advertising, marketing materials, developer resources, and instructional guides like the iPhone User Guide that directed customers to operate the accused products in infringing ways. FAC ¶¶ 23-25, 64-65. Because operation of Apple's accused devices necessarily engages the infringing logic boards that “control most of the iPhone's core functions,” FAC ¶ 23, Apple's instructions to customers on how to use those devices are themselves instructions to engage in an infringing use. *See Castlemorton Wireless v. Bose Corp.*, No. 6:20-cv-00029-ADA, 2020 WL 6578418, at *5 (W.D. Tex. July 22, 2020); *see also Arigna Techs. Ltd. v. TCL Tech. Grp. Corp.*, No. 6:22-CV-00217-ADA, 2022 WL 22869781, at *5 (W.D. Tex. Nov. 21, 2022); *ACQIS LLC v. Lenovo Grp. Ltd.*, No. 6:20-CV-00967-ADA, 2022 WL 2705269, at *7 (W.D. Tex. July 12, 2022).

II. BACKGROUND

TopWire owns all rights, title, and interest to the '202 Patent, which relates to semiconductor structures for use in mobile devices, including smartphones. FAC ¶¶ 16, 19.

TopWire filed this action on December 1, 2025, alleging past and ongoing infringement of the '202 Patent. Dkt. 1. The Complaint alleged Apple directly, indirectly, and willfully infringes the '202 Patent. *Id.* at ¶¶ 46, 65, 69.

Apple moved to dismiss TopWire's Complaint as to pre-suit willful and induced infringement under Rule 12(b)(6) on February 9, 2026. Dkt. 19. Apple's primary argument

centered on TopWire’s failure to sufficiently specify the parties’ pre-suit communications and how that plausibly supports claims of pre-suit willfulness and inducement. In response, TopWire filed its First Amended Complaint on February 23, 2026. Dkt. 22 (FAC). Apple then filed the present Motion to Dismiss Under Rule 12(b)(6), Dkt. 23 (Mot.), to which TopWire now timely responds.

III. LEGAL STANDARD

Rule 8 requires “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable,” provided the complaint pleads facts sufficient to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007).

IV. ARGUMENT

A. TopWire’s FAC States a Plausible Claim for Willful Infringement of the ’202 Patent.

Apple’s motion to dismiss pre-suit willfulness rests entirely on an alleged requirement that pre-suit communications must include infringement contention claim charts mapping the asserted patent onto the accused products. Apple asserts that TopWire’s FAC fails to allege Apple’s pre-suit knowledge of infringement because, without pre-suit infringement contention charts, TopWire failed to inform Apple of “*how* any accused product infringes.” Mot. 11 (emphasis added). Apple maintains throughout its motion that TopWire should have cured this alleged deficiency by providing it with claim charts mapping the ’202 Patent onto the infringing devices. *See* Mot. 2, 4-5, 11-13 (“specifically requesting claim charts”; “Apple responded by requesting claim charts”; “Apple’s request for claim charts”; “the Letter does not provide any claim chart”; Apple “request[ed] precisely that information—*i.e.*, a ‘claim chart’”; “[c]lassically, a notice letter provides claim charts”). But Apple does not cite a single case imposing that requirement on a

patent holder. That is because no such requirement exists.

Instead, Apple's sole support for its claim chart requirement is *Bench Walk Lighting LLC v. LG Innotek Co.*, an out-of-district opinion that Apple mischaracterizes. 530 F. Supp. 3d 468 (D. Del. 2021). In *Bench Walk*, the court found the plaintiff's pre-suit notice letter insufficient to support pre-suit knowledge after the plaintiff conceded the issue by failing to make any argument about the letter's contents in its brief. *Id.* at 477 ("As Defendants raised the issue of insufficiency of the Notice Letter's contents to provide pre-suit knowledge in their motion and Plaintiff did not respond, it is considered to have conceded the issue."). In other words, *Bench Walk* was decided on procedural grounds; it is silent as to the issue Apple raises here, whether notice letters must also contain infringement contention claim charts.

Apple's novel standard is not only unsupported, but also inconsistent with this Court's procedures. Under this Court's OGP § II, preliminary infringement contentions and claim charts are served after the complaint is filed. This Court has held that the filing of the complaint itself is sufficient to establish post-suit willfulness, even though claim charts have not yet been served at that point. *See BillJCo, LLC v. Apple Inc.*, 583 F. Supp. 3d 769 (W.D. Tex. 2022). Apple's position would thus require *more* of a pre-suit notice letter than this Court demands of the complaint.

Under the correct standard, a notice letter satisfies the knowledge requirement for pre-suit willfulness when it (1) identifies the asserted patent, (2) accuses specific products, and (3) points to the basis for the infringement allegation. *See, e.g., Parity Networks*, 2019 WL 3940952, at *3 (pre-suit willful infringement was adequately pled where plaintiff alleged that the defendant received a notice letter identifying the asserted patents, identifying the accused products, and suggesting that the accused products are either relevant to or infringe the asserted patents); *Textile Computer Sys.*, 620 F. Supp. 3d at 565 (same); *Wiwynn Corp.*, 614 F. Supp. 3d at 505 (same). TopWire's Notice Letter, which was attached to the FAC, satisfies each element. The letter

informed Apple that TopWire’s ’202 Patent “relates to a spacer connector used to electrically connect two substrates,” that “Apple sells a line of mobile devices containing processors that utilize a spacer connector,” identified several of the particular example infringing products at issue (iPhone 11 and iPhone 13), and directed Apple to “claim 1 of the ’202 patent.” FAC ¶¶ 32-40, Ex. B. Nothing more is required, and Apple cites no authority saying otherwise.

Therefore, the FAC’s allegations of pre-suit willful infringement of the ’202 Patent are sufficient.

Because Apple cites *BillJCo*, 583 F. Supp. 3d 769, as supporting its rule statement for pre-suit knowledge of infringement, it is worthwhile to mention that *BillJCo* is distinguishable. There, the complaint merely alleged that it had sent a notice letter “regarding the Patents-in-Suit.” *Id.* But the *BillJCo* plaintiff refused to attach its notice letter or otherwise substantiate the contents of that pre-suit communication, for “unclear” reasons. *Id.* The Court held that the allegations were insufficient because they revealed “almost nothing about the nature and contents” of the letter. *Id.* The opposite occurred here. TopWire attached to and detailed in the FAC the Notice Letter and its various details that together make plausible TopWire’s claim of pre-suit willfulness. *Compare id. with* FAC. ¶¶ 31-40.

The Court should deny Apple’s motion to dismiss TopWire’s claims of pre-suit willful infringement.

B. TopWire Stated a Plausible Claim for Induced Infringement.

The Court should also deny Apple’s motion to dismiss TopWire’s pre-suit induced infringement claims. Induced infringement is a fact-based inquiry, generally resolved “at the summary judgment stage or at trial.” *Parity Networks*, 2019 WL 3940952, at *2 (denying motion to dismiss indirect infringement claims). Apple’s attempt to dismiss these claims before discovery is premature and not supported by relevant case law.

To *prove* induced infringement at trial, one is required to show (1) “direct infringement” and (2) “that the alleged infringer possessed the requisite intent to induce infringement, which . . . requires that the alleged infringer knew or should have known his actions would induce actual infringements.” *Barry v. Medtronic, Inc.*, 914 F.3d 1310, 1334 (Fed. Cir. 2019) (citations omitted). To plead inducement, one needs simply to plead allegations making those elements plausible. “[I]nducement can be found where there is [e]vidence of active steps taken to encourage direct infringement, which can in turn be found in advertising an infringing use or instructing how to engage in an infringing use.” *Id.*

i. TopWire Plausibly Alleged Direct Infringement of Third Parties.

TopWire alleges direct infringement by third parties. The First Amended Complaint identified specific retailers such as Best Buy, T-Mobile, AT&T, Verizon, and Walmart, and alleges that they directly infringe the '202 Patent by selling Apple's infringing products to consumers. FAC ¶ 64. The FAC also alleges that consumers directly infringe when they use the accused Apple products. *Id.*

There is no gap between TopWire's allegations of third-party infringement and its semiconductor-level infringement theory. The FAC describes in detail how the accused products satisfy the claim limitations of the '202 Patent. FAC ¶¶ 23-26, 47-62. The accused logic boards are not optional components that are activated only by specific user behaviors Apple would need to encourage. They are “the brains for the iPhone” that control “most of the iPhone's core functions.” FAC ¶¶ 23, 44. Every time a consumer uses an iPhone in its ordinary manner by, for example, making calls, sending messages, running applications, or connecting to the internet, the accused structures are engaged. Direct infringement by third parties thus follows automatically and continuously from Apple's own instructions on how to use the devices.

ii. TopWire Plausibly Alleged Apple's Knowledge That the Induced Acts Constituted Infringement.

The FAC also alleges sufficient facts to establish Apple's knowledge that the induced acts constituted infringement. As set forth in the willfulness section above, TopWire's Notice Letter identified the '202 Patent, accused specific iPhone models, identified the specific infringing component (e.g., “processors that utilize a spacer connector”), and directed Apple's attention to claim 1 of the '202 Patent as a representative claim. FAC ¶¶ 31-40, Ex. B. As discussed at length above, where this Court has held that notice letters of this type satisfy the knowledge requirement for pre-suit willfulness, it has likewise held the same for the knowledge requirement of induced infringement. *See, e.g., Textile Computer Sys.*, 620 F. Supp. 3d 557, 565 (notice letters were “sufficient to satisfy the knowledge requirement” for pre-suit induced infringement); *Wiwynn Corp.*, 614 F. Supp. 3d 499, 507; *Lenovo Grp. Ltd.*, 2022 WL 2705269, at *7.

As alleged in TopWire’s FAC, Apple knew at least from the date of receipt of the Notice Letter that its products infringed the '202 Patent. Apple also knew that third-party sellers and users who sold or operated those products would infringe. *Wiwynn Corp.*, 614 F. Supp. 3d at 507 (induced infringement existed where use of the infringing components “necessarily occurs upon operation of the Accused [Products] in the normal, intended manner without any specific action of the end user other than turning on the product”). Apple's knowledge of its own products’ infringement and its knowledge that third parties would infringe by selling and using those products are, in this case, the same knowledge, because the infringing structures are integrated in the product itself, and ordinary use of the products necessarily involves those structures.

Apple cites *Joao Control & Monitoring Sys., LLC v. Protect Am., Inc.*, No. 1-14-CV-134-LY, 2015 WL 3513151, at *1 (W.D. Tex. Mar. 24, 2015) to argue that TopWire’s allegations of pre-suit knowledge regarding third-party infringement are insufficient. But the inducement claims in *Joao* were dismissed not for failure to allege knowledge of third-party infringement specifically, but rather due to the “complexity” and “exceedingly broad nature” of the allegations, spanning six

patents with 901 total claims. *Id.* at *5. Those facts bear no resemblance to this case, which involves a single patent with just several claims, and a consistent and concise infringement theory resting on a particular component in Apple’s products.

To the extent Apple contends it lacked actual knowledge, the FAC alternatively pleads willful blindness. FAC ¶ 68. Apple’s response to the Notice Letter requesting claim charts and then waiting for suit to be filed without further communication is consistent with an effort to avoid confirming infringement rather than investigating it. FAC ¶ 41. This is also sufficiently pled and renders plausible Apple’s pre-suit inducement.

iii. TopWire Plausibly Alleged Apple’s Specific Intent to Induce Infringement.

Apple’s induced infringement liability follows directly from the fact that the accused logic boards are “the brains for the iPhone” that control “most of the iPhone’s core functions.” FAC ¶¶ 23, 44. Because those structures are integrated in every accused device and are engaged whenever a consumer uses an iPhone in its normal manner, there is no gap between Apple’s general promotion of iPhone use and Apple’s encouragement of specifically infringing uses. This Court recognized this principle in *Castlemorton*: “any effort by [defendant] to help its customers utilize the features of its accused products—including distributing how-to guides and other reference materials—necessarily results in the customers’ infringing the patent” and such materials are therefore properly characterized as “instruct[ions on] how to engage in an infringing use.” 2020 WL 6578418, at *5. Apple’s advertising, iPhone User Guide, support materials, and developer documentation all instruct customers how to use iPhones in their normal manner, and that normal use necessarily activates the accused structures. FAC ¶ 65 & n.14.

The FAC alleges that Apple took “actions intending to cause infringing acts by third parties,” including “advertising, encouraging, instructing, providing support for, and/or operating the Accused Products for or on behalf of such third parties.” FAC ¶¶ 65, 67. The FAC alleges

Apple markets the infringing products to resellers, wireless carriers, and consumers, and then sells them to resellers and consumers, knowing that they will be offered for sale, sold, and used in the U.S. FAC ¶¶ 64-65. The FAC also alleges that Apple “publishes specifications, datasheets, instruction manuals, support materials, developer materials, marketing materials, and user guide materials that explain, advertise, instruct on, or provide support for the Accused Products.” FAC ¶ 65.

Taken together, these allegations more than suffice to plausibly allege Apple's specific intent to induce infringement. “It is reasonable to infer, at the motion to dismiss stage, that by selling infringing products and showing customers how to use those products, [Apple] intended those customers to infringe on [TopWire’s] patents.” *See Arigna Techs.*, 2022 WL 22869781, at *5 (citations omitted); *see also Wiwynn Corp.*, 614 F. Supp. 3d 499, 507; *Canon, Inc. v. TCL Elecs. Holdings, Ltd.*, No. 2:18-cv-00546, 2020 WL 1478356, at *5 (E.D. Tex. Mar. 25, 2020).

Apple’s cases are not to the contrary. For example, Apple's reliance on *Affinity Labs of Tex., LLC v. Toyota Motor N. Am.*, No. 6:13-cv-365, 2014 WL 2892285 (W.D. Tex. May 12, 2014) is misplaced. *Affinity Labs* held that ordinary marketing cannot establish specific intent to induce infringement when there is a gap between general product use and the specifically infringing use. There, the plaintiff alleged only that the defendant induced customers to buy the product (Toyota vehicles), but not that it induced them to use the product in an infringing way (which required use of the vehicles’ USB ports). *Id.* at *7. Here, by contrast, there is no gap because any use of the Accused Products necessarily requires use of the infringing semiconductor structures, *e.g.*, FAC ¶¶ 23-25, 44, and Apple expressly instructed its customers on how to use its products. FAC ¶¶ 65.

In *Iron Oak Techs., LLC v. Acer Am. Corp. et al.*, 6:17-cv-00143, 2017 WL 9477677, at *5 (W.D. Tex. Nov. 28, 2017), the complaint failed to allege sufficient facts to support a plausible inference of specific intent. But here, the FAC provides concrete factual allegations including that

the accused logic boards control most of the iPhone's core functions, FAC ¶¶ 23, 44, and that Apple publishes instructional materials directing consumers to use those functions, including the iPhone User Guide and other product support materials. FAC ¶ 65 & n.14. Those are not legal conclusions, but rather factual allegations that, taken as true, support a straightforward inference of specific intent as in *Castlemorton* and *Arigna Techs.*

As for *Ikorongo Texas LLC v. LG Elecs. Inc. et al.*, No. 6:20-cv-257-ADA (W.D. Tex.), there was no opinion issued by the court. However, the complaint in *Ikorongo* is distinguishable from the First Amended Complaint here, because it failed to allege how the operation of LG devices necessarily constituted infringement. *Id.* By contrast, TopWire alleges the infringing logic boards control “most of the iPhone’s core functions.” FAC ¶ 23.

V. CONCLUSION

The Court should deny Apple's Rule 12(b)(6) motion. TopWire's First Amended Complaint plausibly alleges that Apple's receipt of the Notice Letter, which identified the '202 Patent, specific infringing products, and the infringing components, gave Apple the pre-suit knowledge required for willful infringement. The FAC also plausibly alleges the specific intent required for induced infringement by its allegations regarding Apple's own advertising, marketing, and instructional materials, which prompted consumers to use products that necessarily operate the accused semiconductor structures.

Dated: March 23, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the March 23, 2026, a copy of the foregoing was served on the following party electronically through the U.S. District Court, Western District of Texas ECF system to all counsel of record all of whom are Filing Users of the Court's Electronic Filing System.

/s/ Warren J. McCarty, III
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