

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

TOPWIRE LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

Civil Action No. 7:25-cv-00551-ADA

JURY TRIAL DEMANDED

**DEFENDANT APPLE INC.'S REPLY IN SUPPORT OF ITS PARTIAL MOTION TO
DISMISS PLAINTIFF TOPWIRE LLC'S FIRST AMENDED COMPLAINT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

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I. INTRODUCTION

TopWire’s Opposition (Dkt. No. 25) tacitly concedes the defects in its First Amended Complaint (Dkt. No. 22, the “FAC”). Rather than defend the inducement theory it actually pleaded, TopWire advances a new one to try to show that it sufficiently pleaded that Apple had the requisite specific intent to induce infringement. The FAC pleads an infringement theory based on the structure of an internal iPhone component—specifically, a stacked logic board. Dkt. No. 22 ¶¶ 23, 42–69. But in its Opposition, TopWire pivots to a different theory, arguing that ordinary consumer use of an iPhone—making calls, sending messages, running apps, connecting to the internet—necessarily constitutes infringement. Dkt. No. 25 at 6, 8–10. But that theory does not appear in the FAC, and TopWire cannot amend its pleading through briefing. And as to the separate knowledge requirement, TopWire still fails to identify any allegation in the FAC that Apple knew that the third-party acts it allegedly induced constituted infringement.

TopWire’s arguments in response to Apple’s motion to dismiss pre-suit willfulness fare no better. The FAC alleges that, after receiving a notice letter from TopWire, Apple asked for “claim charts and other information to support [TopWire’s] contention.” Dkt. No. 22 ¶ 41. The FAC does not allege that TopWire ever provided that information. Thus, based on TopWire’s own allegations, its letter did not provide the requisite knowledge of alleged infringement—the information explaining *how* Apple allegedly infringes. Rather than confront that problem, TopWire accuses Apple of imposing a “claim chart requirement.” Dkt. No. 25 at 4. But Apple makes no such argument. Apple simply takes TopWire’s pleading as written. And as pleaded, the FAC shows only that TopWire sent a letter containing threadbare allegations, Apple requested supporting information, and TopWire never provided it.

The Court should dismiss TopWire’s claims for pre-suit induced infringement and pre-suit willful infringement.

II. ARGUMENT

A. TopWire Failed To Plead The Specific Intent And Knowledge Requirements Necessary To Maintain Its Claims Of Pre-Suit Induced Infringement.

TopWire’s Opposition fails to excuse the fundamental defects that Apple identified with respect to TopWire’s pre-suit induced infringement pleadings. First, TopWire advances a new indirect infringement theory that is wholly absent from the FAC—that any use of an accused iPhone is direct infringement—to argue that generic references to Apple materials that generally show how to use an iPhone sufficiently pleads the requisite specific intent. That newly advanced theory cannot, however, cure the deficiencies in TopWire’s pleadings because that theory is nowhere in the FAC. Moreover, TopWire’s reliance on ordinary product materials still fails to allege the specific intent required for inducement. Second, TopWire attempts to side-step the knowledge requirements by myopically focusing on whether pre-suit claim charts are required and briefly referencing its conclusory willful blindness allegations. But that likewise cannot cure the deficiencies in TopWire’s pleadings because—with or without claim charts—TopWire pleaded no facts showing that Apple knew that the allegedly induced acts constituted infringement. And TopWire’s conclusory willful blindness allegations cannot fill that gap because those allegations fail to plausibly show any affirmative steps that Apple allegedly undertook to avoid learning of its alleged infringement.

1. TopWire’s New User-Operation Theory Cannot Supply The Missing Facts Required To Show Specific Intent.

Apple’s Motion explained that TopWire failed to sufficiently allege that Apple had specific intent to cause direct infringement by third parties—and that, instead, TopWire pleaded only conclusory statements that Apple “advertis[es], encourag[es], [and] instruct[s]” third parties regarding the accused products through ordinary product materials. Dkt. No. 23 at 8–10. TopWire attempts to excuse that failure by relying on a new indirect infringement theory: that “[e]very time

a consumer uses an iPhone in its ordinary manner,” the accused structures are engaged and “[d]irect infringement by third parties thus follows automatically and continuously from Apple’s own instructions on how to use the devices.” Dkt. No. 25 at 6, 8–10. That cannot salvage TopWire’s pre-suit inducement claims.

First, TopWire’s new inducement theory appears for the first time in its Opposition. Tellingly, TopWire cites nothing in the FAC that supports its new theory. *See generally* Dkt. No. 25 at 6. Rule 12(b)(6), however, “requires that [the] **complaint** contain sufficient factual matter to ‘state a claim to relief that is plausible on its face.’” *BillJCo, LLC v. Apple Inc.*, 583 F. Supp. 3d 769, 773–74 (W.D. Tex. 2022) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). In its FAC, TopWire alleged only that the accused iPhones contain an “Infringing Semiconductor Structure.” *See* Dkt. No. 22 ¶¶ 45–62 (providing photographs, cross-sections, and element-by-element allegations about the internal logic-board structure TopWire alleges meets claim 1 of the ’202 Patent). TopWire did **not** plead facts showing that a third party directly infringes when using an iPhone in its ordinary manner, nor that Apple’s user-facing materials instruct consumers to perform acts that constitute infringement.¹ *See generally* Dkt. No. 22 ¶¶ 22–69. Accordingly, TopWire’s new theory—advanced for the first time in its Opposition—cannot save its pre-suit inducement claims under Rule 12(b)(6). *See BillJCo*, 583 F. Supp. at 773–74.

Second, TopWire’s new theory improperly collapses inducement into direct infringement. In particular, the FAC alleges direct infringement based on Apple’s sale of iPhones that

¹ TopWire’s citations to paragraphs 23 and 44–62 of the FAC are inapposite—none plead that **use** of any iPhone logic board components is an act of infringement, nor that ordinary consumer use of an iPhone is itself an infringing act. *See* Dkt. No. 22 ¶¶ 23 (alleging only that the logic board controls many core iPhone functions), 44 (alleging only that paragraphs 45–62 “demonstrate infringement”), 45–62 (reciting allegations regarding internal structure of the accused iPhones and no pleadings regarding user conduct).

purportedly contain the accused logic board structure. Dkt. No. 22 ¶¶ 22–29, 42–62. But TopWire’s new theory recasts ordinary post-sale use of those same devices as instances of alleged induced infringement—even though, by TopWire’s own account, that use requires no additional conduct that Apple would need to encourage. Dkt. No. 25 at 6 (“The accused logic boards are not optional components that are activated only by specific user behaviors Apple would need to encourage.”). Induced infringement is not a mechanism to pile additional infringement allegations on top of accused products already captured by a plaintiff’s direct infringement allegations, as TopWire does here. TopWire, as a matter of law, cannot recover for indirect infringement based on the use of products for which it has already recovered under a theory of direct infringement based on the sale of those same products. *See Glenayre Elecs., Inc. v. Jackson*, 443 F.3d 851, 858–59 (Fed. Cir. 2006) (“[I]n cases like this one, where a patentee alleges that a manufacturer contributes to and induces infringement by its customers simply because it sells infringing products to its customers, damages assessed for indirect infringement normally will be the same as damages that would be assessed had the patentee sued and obtained a judgment against the customers.”).

Third, pleading inducement requires more than simply pleading direct infringement by third parties. Rather, TopWire “must allege a *specific intent to induce infringement*, which is ‘evidence of culpable conduct, directed to encouraging another’s infringement, not merely that the inducer had knowledge of the direct infringer’s activities.’” *Monolithic Power Sys., Inc. v. Meraki Integrated Cir. (Shenzhen) Tech., Ltd.*, No. 6:20-cv-008876-ADA, 2021 WL 3931910, at *5 (W.D. Tex. Sept. 1, 2021). TopWire, however, admits that “[t]he accused logic boards *are not . . . activated [] by specific user behaviors Apple would need to encourage.*” Dkt. No. 25 at 6. Accordingly, TopWire’s reliance on general “advertising, iPhone User Guide, support materials, and developer documentation [that] instruct customers how to use iPhones in their normal manner”

cannot provide the requisite specific intent. Dkt. No. 25 at 8, 10.

Fourth, TopWire’s strained interpretation of the caselaw cannot salvage its pre-suit inducement claims. *Castlemorton*, *Arigna*, *Wiwynn*, and *Canon* are inapposite. In each of those cases, the complaint—unlike the FAC here—actually alleged that *use* of the accused product was itself the necessary infringing act.

In *Castlemorton*, for example, the complaint alleged that Bose’s accused products “detect[] a carrier frequency of a direct sequence spread spectrum signal in compliance with the IEEE 802.11b and/or IEEE 802.11g wireless standard,” and that, “[b]y complying with the 802.11b and/or 802.11g standard, the Bose ‘421 products necessarily infringe the ‘421 patent.” *Castlemorton Wireless, LLC v. Bose Corp.*, No. 6:20-cv-00029-ADA, 2020 WL 6578418, at *5 (W.D. Tex. July 22, 2020). Thus, the complaint actually spelled out Castlemorton’s theory that “the very operation of Bose’s accused products constitute[d] a direct infringement of the ‘421 patent.” *Id.*

The same was true in *Arigna*, where the complaint—not subsequent briefing—alleged that TCL’s marketing touted “mmWave support . . . to help you keep up with the speed of life” and that TCL’s user guides instructed consumers how to activate the accused functionality—*e.g.*, by “press[ing] and hold[ing]” the power key or using features that were “automatically scanning and optimising data usage to preserve battery levels.” *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).

Likewise, in *Wiwynn*, the complaint expressly alleged that the accused servers were configured such that “direct infringing use necessarily occurs upon operation of the Accused Servers in their normal, intended manner without any specific action of the end user other than turning on the product.” *ACQIS LLC v. Wiwynn Corp.*, 614 F. Supp. 3d 499, 507 (W.D. Tex.

2022).

And in *Canon*, the complaint alleged that “[u]se of the ’767 Accused Products, in accordance with such instructions, directly infringes the ’767 Patent.” *Canon, Inc. v. TCL Elecs. Holdings Ltd.*, No. 2:18-cv-00546-JRG, Dkt. No. 22 ¶ 118.

The FAC contains no such allegations. It does not plead that the ordinary use of an iPhone is itself an infringing act, much less that Apple’s product materials instruct consumers to engage in that purportedly infringing use. TopWire cannot import that theory for the first time in its Opposition. *See Vargas v. Salazar*, No. 4:23-cv-04267, 2024 WL 4804091, at *3 (S.D. Tex. Nov. 1, 2024), *report and recommendation adopted*, No. 4:23-cv-4267, 2024 WL 4804065 (S.D. Tex. Nov. 15, 2024) (“Plaintiff cannot amend her complaint through her Response and without leave of court.”).

TopWire’s attempts to distinguish Apple’s cases fare no better. *See* Dkt. No. 25 at 9–10. Even if TopWire had pleaded its new user-operation theory in the FAC, its induced infringement allegations would still fail because the FAC does not actually plead that theory as the basis for inducement. Instead, for induced infringement, the FAC offers only bare assertions that Apple “advertis[es], encourag[es], [and] instruct[s]” third parties through ordinary product materials, plus a footnote citation to a user guide with no explanation of how that material encourages any infringing act. That is still insufficient to plead specific intent. *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) (“Conclusory allegations, or legal conclusions masquerading as factual conclusions, will not suffice to prevent a motion to dismiss.”).

Accordingly, TopWire’s pre-suit induced infringement allegations should be dismissed.

2. TopWire’s Bare-Bones Letter And Conclusory Willful Blindness Allegations Do Not Plead Facts Showing The Knowledge Of

Infringement Required To Maintain Its Claims For Pre-Suit Inducement.

In its opening brief, Apple explained TopWire’s failure to plead facts demonstrating that Apple had pre-suit knowledge that any third party’s acts constituted infringement. Dkt. No. 23 at 10–11. In its Opposition, TopWire does not even attempt to identify any allegation in its FAC plausibly showing that Apple knew the acts it supposedly induced constituted infringement. Instead, TopWire attempts to skirt the requirement to plead knowledge of infringement by focusing only on whether pre-suit claim charts are required and referencing its conclusory willful blindness allegations. Neither of those arguments can salvage TopWire’s pre-suit inducement claims.

First, TopWire pivots to its notice letter, arguing that the letter identified the ’202 Patent and put Apple on notice that “its products infringed the ’202 Patent.” Dkt. No. 25 at 7.² But the knowledge requirements for willfulness and inducement are different. To plead induced infringement, TopWire must allege facts showing that Apple knew the acts it allegedly *induced* constituted infringement by another—not that Apple’s own acts constitute infringement. *See Joao Control & Monitoring Sys., LLC v. Protect Am., Inc.*, No. 1:14-cv-134-LY, 2015 WL 3513151, at *5 (W.D. Tex. Mar. 24, 2015).³ TopWire identifies nothing in the notice letter that could show that Apple had this knowledge.

The cases TopWire cites do not bridge that gap because those cases address knowledge of the asserted patent, not knowledge that the allegedly induced acts constituted infringement. In *Textile Computer Sys.*, for example, the court held that the notice letter adequately pleaded

² For the reasons explained in Apple’s opening and reply briefs regarding TopWire’s pre-suit willfulness allegations, the notice letter likewise did not put Apple on notice of its own alleged infringement.

³ TopWire’s attempt to differentiate *Joao* ignores that, in granting the motion to dismiss, the court further relied on its finding that the claims “suffer from the same lack of inference-supporting facts and reliance on conclusory statements that merely mirror the elements of the cause of action.” *Joao*, 2015 WL 3513151, at *5. The same is true here.

knowledge of the asserted patent; but it did not address whether the letter established knowledge that the allegedly induced acts were infringing. *Textile Computer Sys., Inc. v. Broadway Nat'l Bank*, 620 F. Supp. 3d 557, 565 (W.D. Tex. 2022).

TopWire's reliance on *Wiwynn* is similarly misplaced. In *Wiwynn*, the court found the knowledge element adequately pleaded because the complaint specifically alleged that "Wiwynn knew the acts it induced (like importation, U.S. sales, and use by its customers) constituted infringement." *Wiwynn*, 614 F. Supp. 3d at 507; *see also ACQIS LLC v. Lenovo Grp. Ltd.*, No. 6:20-cv-00967-ADA, 2022 WL 2705269, at *7 (W.D. Tex. July 12, 2022) ("Lenovo knew the acts it induced (like importation, US retail sales, and use by consumers) constituted infringement."). Here, by contrast, the FAC contains no comparable allegation—TopWire does not plead that Apple has "knowledge that third parties would infringe by selling and using those products." Dkt. No. 25 at 7.

Second, TopWire's willful blindness allegations fail. Willful blindness requires pleading facts showing that Apple took affirmative steps to avoid gaining actual knowledge. Dkt. No. 23 at 10–11. TopWire does not dispute that standard, distinguish the cases Apple cited, or identify any allegation that Apple did anything of the sort. *See* Dkt. No. 25 at 6–8. Indeed, that Apple requested information from TopWire to support TopWire's analysis-free allegations shows the opposite of willful blindness; rather, it shows that Apple took affirmative steps to understand TopWire's infringement allegations. *See* Dkt. No. 22 ¶¶ 31, 41. TopWire offers no response to that fundamental inconsistency in its conclusory invocation of willful blindness.

Accordingly, because TopWire failed to plead sufficient facts to plausibly show that Apple knew the allegedly induced acts constituted infringement—or that Apple deliberately avoided gaining such knowledge—TopWire's pre-suit inducement claim should be dismissed for this

additional reason.

B. TopWire’s Pre-Suit Willfulness Claim Fails Because The FAC Does Not Sufficiently Plead Facts Demonstrating Pre-Suit Knowledge Of Infringement.

TopWire’s arguments in its Opposition do not excuse the FAC’s failure to plead facts that plausibly establish Apple’s pre-suit knowledge of infringement.

TopWire’s only argument to the contrary is that Apple supposedly imposed a requirement that pre-suit notice letters must include claim charts to support a later allegation of pre-suit willful infringement. Dkt. No. 25 at 3–4. Apple makes no such argument. Although claim charts are certainly *one way* to provide the requisite notice of infringement, they are not the only way. Apple’s argument is that the FAC fails to plead facts to show that TopWire put Apple on notice of its alleged infringement in *any* meaningful way—via a claim chart or otherwise.

In particular, as Apple explained in its motion, TopWire’s FAC alleges that: (1) TopWire sent an analysis-free letter to Apple that made no attempt to compare any accused product to any patent claim; (2) Apple requested factual support for TopWire’s threadbare allegations—in the form of a claim chart or otherwise; and (3) TopWire filed suit without any further response. Dkt. No. 23 at 11–13. That sequence of events shows that TopWire never meaningfully put Apple on notice of any alleged infringement. Rather, TopWire’s letter was a purely performative act to check a box, such that TopWire could later plead willful infringement. If TopWire truly wished to put Apple on notice of its alleged infringement, TopWire could have—and should have—provided some explanation of how any Apple product allegedly satisfies patent claims directed to a specific “spacer connector” and substrate structure as recited in the claims. *See, e.g.*, Dkt. No. 22-1 at claim 1. Thus, TopWire’s failure to respond to Apple’s request shows that it never provided Apple with the requisite notice of alleged infringement. *See Bench Walk Lighting LLC v. LG Innotek Co.*, 530 F. Supp. 3d 468, 492 (D. Del. 2021), *report and recommendation adopted*,

530 F. Supp. 3d 468, 477 (D. Del. 2021) (“Nor does the Court understand how the letter could have provided Defendants with notice of how they infringed any patent-in-suit, since the letter made no attempt to do so.”).⁴

TopWire’s cited cases do not save its pleadings. In *Parity*, the court noted that the plaintiff sent notice letters and that the defendant confirmed it would investigate and respond; there was no allegation, as here, that the defendant specifically requested supporting information and never received it. *Parity Networks, LLC v. Cisco Sys., Inc.*, No. 6:19-cv-00207-ADA, 2019 WL 3940952, at *3 (W.D. Tex. July 26, 2019). The same is true of *Textile* and *Wiwynn*—neither involved a complaint that affirmatively alleged that the defendant requested additional information and that the plaintiff never provided it. See *Textile Computer Sys.*, 620 F. Supp. 3d at 567 (only noting that notice letters were sent, but not that the defendant ever replied to the notice letters, much less requested additional information about its alleged infringement); *Wiwynn*, 614 F. Supp. 3d at 504–05 (same).

Accordingly, TopWire’s pre-suit willfulness claim should be dismissed.

III. CONCLUSION

For the reasons set forth above and in Apple’s opening brief, Apple respectfully submits that the Court should dismiss TopWire’s claims of pre-suit induced infringement and pre-suit willful infringement.

Dated: March 30, 2026

Respectfully submitted,

By: /s/ Joze Welsh
Deron R. Dacus

⁴ TopWire’s attempt to distinguish *Bench Walk* misstates the decision. *Bench Walk* is not “silent” on the issue Apple raises. See Dkt. No. 25 at 4. To the contrary, the magistrate judge found the notice letter insufficient in part because it “include[d] no attempt to describe *how* it is that [defendant] is infringing.” 530 F. Supp. 3d 468, 492. TopWire quotes only the district court’s rationale for overruling the plaintiff’s objections, but the district court adopted the magistrate judge’s report and recommendation. *Id.* at 477.

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record are being served with a copy of the foregoing document via the Court's CM/ECF system per Local Rule CV-5(b)(1) on March 30, 2026.

/s/ Jozse Welsh
Jozse Welsh