

RUSS, AUGUST & KABAT

1 RUSS AUGUST & KABAT
 2 Brian Ledahl (CA SB No. 186579)
 3 Neil A. Rubin (CA SB No. 250761)
 4 Jacob Buczko (CA SB No. 269408)
 5 Paul A. Kroeger (CA SB No. 229074)
 6 Timothy T. Hsieh (CA SB No. 255953)
 7 12424 Wilshire Boulevard 12th Floor
 8 Los Angeles, California 90025
 9 Telephone: 310-826-7474
 10 Facsimile: 310-826-6991
 11 bledahl@raklaw.com
 12 nrubin@raklaw.com
 13 jbuczko@raklaw.com
 14 pkroeger@raklaw.com
 15 thsieh@raklaw.com

16 *Attorneys for Plaintiff*
 17 Document Security Systems, Inc.

18 **UNITED STATES DISTRICT COURT**
 19 **CENTRAL DISTRICT OF CALIFORNIA**

20 DOCUMENT SECURITY SYSTEMS,
 21 INC., a New York corporation,

22 *Plaintiff,*

23 vs.

24 OSRAM GMBH; OSRAM OPTO
 25 SEMICONDUCTORS GMBH & CO.;
 26 and OSRAM SYLVANIA INC.

27 *Defendants.*

28 Case No. 2:17-cv-05184-JVS-JCG

**PLAINTIFF DOCUMENT
 SECURITY SYSTEMS, INC.’S
 OPPOSITION TO DEFENDANT’S
 MOTION TO DISMISS THE FIRST
 AMENDED COMPLAINT**

TABLE OF CONTENTS

PAGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION..... 1

II. BACKGROUND..... 1

III. LEGAL STANDARDS 3

IV. ARGUMENT 5

 A. DSS Pleads Willful Infringement Beyond the Required Standard 5

 1. OSI Confuses Pleading with Proving Willfulness..... 5

 2. DSS Sufficiently Pleads Willfulness Under *Halo* 8

 3. Though Not Necessary at this Stage, DSS Pleads Specific Egregious
 Infringement by Defendants. 9

 B. DSS Properly Addressed the Court’s Order (Dkt. No. 44) and Removed the
 Language the Court Deemed a Concession Regarding Willful Infringement. 11

 C. DSS’s FAC Introduces New Allegations to Support Its Pleading of Willful
 Infringement..... 12

V. CONCLUSION 13

RUSS, AUGUST & KABAT

TABLE OF AUTHORITIES

PAGE

Cases

1

2 *Advanced Analogic Technologies, Inc. v. Kinetic Technologies, Inc.*,

3 No. C-09-1360 MMC, 2009 WL 1974602 (N.D. Cal. July 8, 2009)..... 6

4 *Apple Inc. v. Samsung Electronics Co., Ltd.*,

5 258 F. Supp. 3d 1013 (N.D. Cal. 2017) 9

6 *Ashcroft v. Iqbal*,

7 556 U.S. 662 (2009)..... 3

8 *Bayer Healthcare, LLC v. Baxalta, Inc.*,

9 No. 16-1122, 2017 U.S. Dist. LEXIS 126904 (D. Del. Aug. 10, 2017)..... 10

10 *Bell Atlantic Corp. v. Twombly*,

11 550 U.S. 544 (2007)..... 3

12 *Bio-Rad Labs. Inc. v. Thermo Fisher Sci. Inc.*,

13 No. CV 16-358-RGA, 2017 WL 438733 (D. Del. Feb. 1, 2017) 6, 9

14 *Bobcar Media, LLC v. Aardvark Event Logistics, Inc.*,

15 No. 16-885, 2017 WL 74729 (S.D.N.Y. Jan. 4, 2017) 8, 9, 10

16 *Boundaries Sols. Inc. v. CoreLogic, Inc.*,

17 No. 5:14-CV-00761-PSG, 2014 WL 4954017

18 (N.D. Cal. Sept. 29, 2014) 4, 7, 9

19 *CG Tech. Dev., LLC v. Big Fish Games, Inc.*,

20 No. 16-cv-857, 2016 WL 4521682 (D. Nev. Aug 29, 2016)..... 7

21 *Cont’l Circuits LLC v. Intel Corp.*,

22 No. 16-cv-2026 PHX DGC, 2017 WL 2651709 (D. Ariz. June 19, 2017) 8

23 *DermaFocus LLC v. Ulthera, Inc.*,

24 201 F. Supp. 3d 465 (D. Del. 2016)..... 6, 9

25 *DeSoto v. Yellow Freight System, Inc.*,

26 957 F.2d 655 (9th Cir. 1992) 12

27

28

RUSS, AUGUST & KABAT

TABLE OF AUTHORITIES

(continued)

PAGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DRG-International, Inc. v. Bachem Americas, Inc.,
Case No. CV-15-7276-MWF (SSx), 2016 WL 3460791
(C.D. Cal. Jan. 5, 2016) 1, 4

Emazing Lights, LLC v. De Oca,
No. 15-cv-1561, 2016 WL 7507765 (C.D. Cal. June 20, 2016)..... 7

Emblaze Ltd. v. Apple Inc.,
No. C11-01079 SBA, 2012 WL 5940782 (N.D. Cal. Nov. 27, 2012).... 1, 4, 6

Finjan Inc. v. Cisco Sys. Inc.,
No. 17-cv-00072-BLF, 2017 WL 2462423 (N.D. Cal. June 7, 2017)..... 7

Global-Tech Appliances, Inc. v. SEB S.A.,
563 U.S. 754 (2011)..... 12

Halo Electronics, Inc. v. Pulse Electronics, Inc.,
__ U.S. __, 136 S. Ct. 1923, 195 L. Ed. 2d 278 (2016).....passim

IpVenture, Inc. v. Cellco P’ship,
No. C 10-04755 JSW, 2011 WL 207978 (N.D. Cal. Jan. 21, 2011) 4

Jardin v. Datallegro, Inc.,
No. 08CV1462-IEG-RBB, 2009 WL 186194 (S.D. Cal. Jan. 20, 2009).... 4, 6

Manzarek v. St. Paul Fire & Marine Ins. Co.,
519 F.3d 1025 (9th Cir. 2008) 3

McZeal v. Sprint Nextel Corp.,
501 F.3d 1354 (Fed. Cir. 2007) 8

MobileMedia Ideas LLC v. HTC Corp.,
No. 2:10-CV-112-TJW, 2011 WL 4347037 (E.D. Tex. Sept. 15, 2011)..... 4

Nanosys, Inc. v. QD Vision, Inc.,
No. 16-cv-01957, 2016 WL 49430006 (N.D. Cal. Sept. 16, 2016)..... 4, 6, 8

Novitaz, Inc. v. inMarket Media, LLC,
No. 16-cv-06795-EJD, 2017 WL 2311407 (N.D. Cal. May 26, 2017) 10

Oakley, Inc. v. 5.11, Inc.,
No. 11CV2173 WOH CAB 2012 WL 5363245 (S.D. Cal. Oct. 29, 2012) 6

TABLE OF AUTHORITIES

(continued)

PAGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Oracle Corp. v. DrugLogic, Inc.,
807 F. Supp. 2d 885 (N.D. Cal. 2011) 1, 4

Progme Corp. v. Comcast Cable Commc'n LLC,
No. 17-1488, 2017 WL 5070723 (E.D. Pa. Nov. 3, 2017) 6, 9

Rambus, Inc. v. Nvidia Corp.,
No. C 08-3343 SI, 2008 WL 4911165 (N.D. Cal. Nov. 13, 2008) 1, 6

Robert Bosch Healthcare Sys., Inc. v. Express MD Sols., LLC,
No. C 12-00068 JW, 2012 WL 2803617 (N.D. Cal. July 10, 2012) 8

Shire Viropharma Inc. v. CSL Behring LLC et al.,
No. 17-414, 2018 WL 326406 (D. Del. Jan. 8, 2018) 6

Shroyer v. New Cingular Wireless Servs., Inc.,
622 F.3d 1035 (9th Cir. 2010) 3

Sony Corp. v. LG Electronics U.S.A., Inc.,
768 F. Supp. 2d 1058 (C.D. Cal. 2011) 6

Straight Path IP Grp., Inc. v. Apple Inc.,
No. C 16-03582 WHA, 2017 WL 3967864 (N.D. Cal. Sept. 9, 2017)..... 3, 8

Varion Med. Sys., Inc. v. Elekta AB,
No. 15-cv-871-LPS, 2016 WL 3748772 (D. Del. July 12, 2016)..... 7

Zimmer Surgical, Inc. v. Stryker Corp.,
No. CV 16-679-RGA-MPT, 2017 WL 3736750 (D. Del. Aug. 30, 2017)..... 9

Statutes

35 U.S.C. § 284 3, 8

Rules

Fed. R. Civ. P. 15(a)(2) 12

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.