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 OSRAM SYLVANIA Inc.

9
 10 **IN THE UNITED STATES DISTRICT COURT**
 11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
 12 **SOUTHERN DIVISION**

13 DOCUMENT SECURITY SYSTEMS,
 INC.,

14 Plaintiff,

15 v.

16 OSRAM GMBH; OSRAM OPTO
 17 SEMICONDUCTORS GMBH & CO.;
 OSRAM LICHT AG; and OSRAM
 18 SYLVANIA INC.,

19 Defendants.

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

DEFENDANT
OSRAM SYLVANIA INC.'S
REPLY IN SUPPORT OF ITS
MOTION TO DISMISS THE
FIRST AMENDED COMPLAINT

Judge: Honorable James V. Selna
 Date: February 5, 2018
 Time: 1:30 pm
 Courtroom: 10C

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1 **I. Introduction**

2 Plaintiff Document Security Systems, Inc. ("DSS" or "Plaintiff") bought a
3 portfolio of patents from another company, then rapidly asserted them against an
4 entire industry. Plaintiff launched a raft of complaints against an array of
5 defendants, mostly just repeating the same boilerplate accusations from one
6 complaint to the next. After this Court dismissed Plaintiff's original willful
7 infringement allegations, Plaintiff had an opportunity to plead additional *facts* in an
8 effort to state a plausible willfulness claim, yet it did not do so. Instead, Plaintiff's
9 First Amended Complaint merely replaces old boilerplate with new boilerplate,
10 alleging no new facts that could make Plaintiff's willfulness allegations plausible.

11 As this Court found, in Plaintiff's original Complaint "DSS concede[d] that at
12 this time, it cannot plead facts sufficient to state a plausible claim for willful
13 infringement." (D.I. 44-1 at 17.) Plaintiff now asks the Court to completely ignore
14 this admission when assessing Plaintiff's First Amended Complaint, merely because
15 "DSS removed the language found . . . to be a concession." (D.I. 58, Opp. Br. at 11.)
16 But Plaintiff's admission remains on the record in this litigation, and to overcome it
17 Plaintiff would have needed to plead *new facts* in its First Amended Complaint that
18 support a plausible willful infringement claim. Plaintiff did not do so. Its prior
19 admission thus applies equally to the facts alleged in its First Amended Complaint.
20 Plaintiff's admission on the record, coupled with its failure to plead any new facts,
21 readily establishes the continued implausibility of its willfulness allegations.

22 Further, even without considering Plaintiff's admission, the allegations in its
23 First Amended Complaint fall far short of stating any plausible willfulness claim.
24 Plaintiff boldly asserts that, "[t]o plead willful infringement, a party need only plead
25 'the barest factual assertion of knowledge of an issued patent.'" (D.I. 58, Opp. Br.
26 at 1.) Plaintiff misstates the law, ignoring binding Supreme Court authority along
27 with the rulings of this Court and numerous other district courts. This Court has
28 held—applying the standards provided by the Supreme Court in *Twombly*, *Iqbal*,

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