UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CYPH, INC.,	Case No. 22-cv-00561-JSW
Plaintiff,	
v.	**ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION TO DISMISS FIRST AMENDED COMPLAINT**
ZOOM VIDEO COMMUNICATIONS, INC.,	
Defendant.	Re: Dkt. No. 54

Now before the Court for consideration is the motion to dismiss filed by Zoom Video Communications, Inc. ("Zoom"). The Court has considered the parties' papers, relevant legal authority, and the record in this case, and it HEREBY GRANTS, IN PART, AND DENIES, IN PART, Zoom's motion, with leave to amend.

BACKGROUND

The Court recited the factual background underlying this patent infringement dispute in its Order granting, in part, Zoom's motion to dismiss Plaintiff Cyph, Inc.'s ("Cyph") original complaint. *See Cyph, Inc. v. Zoom Video Commc'ns, Inc.*, 2022 WL 1556417, at *1 (N.D. Cal. May 17, 2022). In brief, Cyph alleges Zoom uses end-to-end encryption technology in its products and services and could not have provided that technology without practicing the inventions claimed in six of Cyph's United States patents: No. 9,948,625 (the "'625 Patent"), No. 10,701,047 (the "'047 Patent"), No. 10,020,946 (the "'946 Patent"), No. 9,794,070 (the "'070 Patent"), No. 10,003,465 (the "'465 Patent"), and No. 9,954,837 (the "'837 Patent") (collectively the "Asserted Patents").[1]

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1   The Court concluded that Cyph sufficiently identified the accused products. However, it

2   granted Zoom's motion to dismiss because it determined Cyph's allegations did "nothing more

3   than allege Zoom infringes by reciting the relevant claim language verbatim" and did not include

4   any allegations that "the actions of Zoom's customers can be attributed to Zoom." *Cyph*, 2022

5   WL 1556417, at *3-*4. Because Cyph failed to state a claim for direct infringement, the Court

6   dismissed its claims for contributory and induced infringement. *Id.*

7   Cyph has amended to include allegations about non-party Keybase, and about how

8   Keybase products allegedly infringe the claims of the relevant patents. (FAC ¶¶ 41-47, 58-64,

9   119-133.)[2] By reference to several Zoom publications, Cyph also provides additional detail on

10   how Zoom Products allegedly infringe the claims of the Asserted Patents. (*See* FAC ¶¶ 18-22, 48-

11   57, 69-70, 76, 82, 85, 94, 100, 107, 111.) Cyph also alleges that the term "'User,' as recited in the

12   claims of the Asserted Patents corresponds to the 'Front-end Component' or 'Client' as defined in

13   the Cyph System Architecture as described in the Specification of each of the Asserted Patents."

14   (*Id.*, ¶ 21.) Although there are references to human "users" in the Specification, Cyph alleges that

15   the term "User" as recited in the claims does not refer to a "human or any other entity not under

16   Cyph's control.'" (*Id.*; *see also e.g.*, FAC Ex. A, '625 patent, col. 3, ll. 21-26.)

17   **ANALYSIS**

18   **A.   Applicable Legal Standards.**

19   Zoom again moves to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). A

20   motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the pleadings

21   fail to state a claim upon which relief can be granted. A court's "inquiry is limited to the

22   allegations in the complaint, which are accepted as true and construed in the light most favorable

23   to the plaintiff." *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008). Even under the

24   liberal pleading standard of Rule 8(a)(2), "a plaintiff's obligation to provide 'grounds' of his

25   'entitle[ment] to relief' requires more than labels and conclusions, and formulaic recitation of the

26

27   the claims regarding that patent. The claims relating to the '837 Patent are asserted only against
     Keybase, Inc, which Zoom acquired in May 2020. (*See* FAC, ¶ 3.)

1 elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)

2 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Pursuant to *Twombly*, a plaintiff cannot

3 merely allege conduct that is conceivable but must instead allege "enough facts to state a claim to

4 relief that is plausible on its face." *Id.* at 570. "A claim has facial plausibility when the plaintiff

5 pleads factual content that allows the court to draw the reasonable inference that the defendant is

6 liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*,

7 550 U.S. at 556).

8   In a patent case, a plaintiff cannot satisfy the pleading standards set forth in *Twombly* and

9 *Iqbal* "by reciting the claim elements and merely concluding that the accused protect has those

10 elements. There must be some factual allegations that, when taken as true, articulate why it is

11 plausible that the accused product infringes the patent claim." *Bot M8 LLC v. Sony Corp. of Am.*,

12 4 F.4th 1342, 1353 (Fed. Cir. 2021) (internal quotations and citations omitted).[3] A patentee "need

13 not prove its case at the pleadings stage"; it also is not required "to plead infringement on an

14 element-by-element basis." *Id.* at 1352; *see also Phonometrics, Inc. v. Hospitality Franchise Sys.,*

15 *Inc.*, 203 F.3d 790, 794 (Fed. Cir. 2000). Instead, the patentee must allege sufficient facts to

16 "place the potential infringer on notice of what activity is being accused of infringement." *Bot*

17 *M8*, 4 F.4th at 1352. "The level of detail required in any given case will vary depending upon a

18 number of factors, including the complexity of the technology, the materiality of any given

19 element to practicing the asserted claim(s), and the nature of the allegedly infringing device." *Id.*

20 at 1353.

21   If the allegations are insufficient to state a claim, a court should grant leave to amend,

22 unless amendment would be futile. *See, e.g.*, *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th

23 Cir. 1990); *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 246-47 (9th

24 Cir. 1990). However, if a plaintiff has previously amended a complaint, a court has "broad"

25 discretion to deny leave to amend. *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir.

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27 ————————————————

[3]   Prior to 2015, a patentee generally could satisfy the requisite pleading standards by
utilizing Form 18. However, that year the Supreme Court abrogated the form. *See, e.g., Lifetime*

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1   1990) (quoting *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989)).

2   **B.   The Parties' Evidence.**

3   As a general rule, "a district court may not consider any material beyond the pleadings in

4   ruling on Rule 12(b)(6) motion." *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994), *overruled*

5   *on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002) (citation

6   omitted). However, the Court may consider "documents incorporated into the complaint by

7   reference, and matters of which [the Court] may take judicial notice." *Tellabs, Inc. v. Makor*

8   *Issues & Rights, Ltd.*, 551 U.S. 308, 322-23 (2007).

9   Zoom submits two exhibits to support its motion, each of which are cited in Cyph's claim

10   charts as providing support for its infringement contentions: an excerpt from Keybase Book Proofs

11   ("Proofs"); and a Zoom white paper entitled "E2E Encryption for Zoom Meetings" version 3.2

12   dated October 29, 2021 ("E2Ev.3.2"). (Dkt. No. 54-1, Declaration of Andrew T. Jones, ¶¶ 3-4,

13   Exs. A-B.) Cyph does not dispute that those documents are authentic, and it relies on each of

14   those documents to support its claims. Therefore, the Court considers them under the

15   incorporation by reference doctrine.

16   Cyph submitted three exhibits with its opposition to support its arguments regarding the

17   claims of the '047 Patent: two excerpts from Wikipedia pages and a dictionary definition of the

18   term "technique." (Dkt. No. 58, Declaration of Carl I. Brundidge, ¶¶ 3-5., Exs. 1-3.) Because the

19   Court did not rely on any of these documents, it denies Cyph's request as moot.

20   **C.   The Court Grants, in Part, and Denies, in Part, Zoom's Motion to Dismiss the Direct**
     Infringement Claims.
21

22   **1.   Single Actor.**

           Each of the Asserted Patents are directed to methods or systems and methods. "Direct
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     infringement under § 271(a) occurs where all steps of a claimed method are performed by or
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     attributable to a single entity." *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 797 F.3d 1020,
25
     1022 (Fed. Cir. 2015). When method claims are at issue and more than one actor is involved "in
26
     practicing the steps, a court must determine whether the acts of one are attributable to the other
27
     such that a single entity is responsible for the infringement." *Id.* In *Akamai*, the Federal Circuit

1   determined that may occur: (1) when an "entity directs or controls others' performance"; or "(2)

2   where the actors form a joint enterprise." *Id.*

3   Zoom argues that the patents differentiate between the "front-end component" and the

4   "user" of that component, which renders Cyph's allegations implausible because a single entity

5   does not perform each step of the claimed methods. As set forth above, Cyph alleges the term

6   "user" does not refer exclusively to a human and alleges that, as used in the claims, "user"

7   "corresponds to the 'Zoom Client' in the Zoom System Architecture [because] the 'User' and the

8   'Zoom Client' perform the same or similar functions in the respective System Architectures."

9   (*See, e.g.*, FAC, ¶ 66; Ex. G, at 5 n.1.) That is, Cyph argues that the term can also be construed to

10   apply to Zoom's software. Therefore, according to Cyph, it is plausible for "User" to be the

11   "Front-End Component" that Zoom would control.

12   In *Bot M8*, the Federal Circuit noted that even though a plaintiff is not required to prove its

13   case at the motion to dismiss stage, there may be times when the plaintiff "may subject its claims

14   to early dismissal by pleading facts that are inconsistent with the requirements of its claims." 4

15   F.4th at 1346 (citing *Nalco Co. v. Chem-Mod, LLC*, 883 F.3d 1337, 1348-50 (Fed. Cir. 2018)).   A

16   plaintiff needs to allege claims that are "*plausible*" and not merely possible. *Twombly*, 550 U.S. at

17   570 (emphasis added). Here, Cyph does not plausibly allege the term "user" is software written

18   and controlled by Zoom. For example, in the '625 patent specification, Cyph states that devices

19   can be used to provide feedback to a "user" in "any form of sensory feedback" such as visual,

20   auditory, or tactile feedback. (FAC Ex. A, '625 patent, col. 9, ll. 27-28.) Cyph also stated that an

21   input from "the user can be received in . . . acoustic, speech, or tactile" form. (*Id.*, col. 9, ll. 31-

22   32.) Cyph argues this language demonstrates it is plausible to read "Front-end Component," as

23   used in the claims, as software. However, Cyph's own patent states that a front-end component is

24   "a client computer" not software. (*Id.*, col. 9, l. 37.) In addition, it is not plausible that software

25   can provide or would need visual, auditory or tactile feedback.

26   Accordingly, the Court concludes Cyph has not sufficiently alleged that the term "user"

27   encompasses software controlled by Zoom and fails to allege that Zoom practices each step of the

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