

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

LBT IP II, LLC,
Plaintiff

v.

UBER TECHNOLOGIES, INC.
Defendant

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6:21-CV-01210-ADA

**ORDER DENYING-IN-PART AND GRANTING-IN-PART DEFENDANT’S MOTION
TO DISMISS**

Before the Court is Defendant Uber Technologies, Inc.’s (“Uber”) Motion to Dismiss Plaintiff LBT IP II, LLC’s (“LBT”) direct and induced infringement claims pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 18. LBT filed its Response on February 10, 2022. ECF No. 27. Uber filed its Reply on February 17, 2022. ECF No. 28. After careful consideration of the briefs and applicable law, the Court **GRANTS-IN-PART** and **DENIES-IN-PART** Uber’s Motion.

I. FACTUAL BACKGROUND

On November 19, 2021, LBT filed suit against Uber, accusing Uber of infringing four patents directed to GPS location and monitoring technology. ECF No. 1 ¶¶ 38–41. LBT alleges that Uber directly infringes, jointly infringes, and induces infringement of U.S. Patent No. 7,728,724 (“the ’724 Patent”); U.S. Patent No. 7,598,855 (“the ’855 Patent”); U.S. Patent No. 8,531,289 (“the ’289 Patent”); and U.S. Patent No. 8,224,355 (“the ’355 Patent”) through its eponymous ride-hailing application. *Id.* ¶¶ 60, 76, 93, 109. Uber moves to dismiss each count under Federal Rule of Civil Procedure 12(b)(6). ECF No. 18.

II. LEGAL STANDARD

A. Failure to state a claim.

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted is “a purely procedural question not pertaining to patent law,” so the law of the Fifth Circuit controls. *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1356 (Fed. Cir. 2007). When considering such motions, this Court “accepts all well-pleaded facts as true, views them in the light most favorable to the plaintiff, and draws all reasonable inferences in the plaintiff’s favor.” *Johnson v. BOKF Nat’l Ass’n*, 15 F.4th 356, 361 (5th Cir. 2021).

Rule 12(b)(6) requires that a complaint contain sufficient factual matter to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To meet this factual plausibility standard, the plaintiff must plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,” based on “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* In resolving a motion to dismiss for failure to state a claim, the question is “not whether [the plaintiff] will ultimately prevail, . . . but whether [the] complaint was sufficient to cross the federal court’s threshold.” *Skinner v. Switzer*, 562 U.S. 521, 530 (2011). “The court’s task is to determine whether the plaintiff has stated a legally cognizable claim that is plausible, not to evaluate the plaintiff’s likelihood of success.” *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010) (citing *Iqbal*, 556 U.S. at 678).

B. Induced infringement.

Section 271(b) of the Patent Act provides that “[w]hoever actively induces infringement of a patent shall be liable as an infringer.” 35 U.S.C. § 271(b). To succeed on such a claim, the patentee must show that the accused infringer (1) knowingly induced direct infringement and (2) possessed “specific intent” to induce that infringement. *See MEMC Electr. Materials, Inc. v. Mitsubishi Materials Silicon Corp.*, 420 F.3d 1369, 1378 (Fed. Cir. 2005). Willful blindness can satisfy the knowledge requirement, *Warsaw Orthopedic, Inc. v. NuVasive, Inc.*, 824 F.3d 1344, 1347 (Fed. Cir. 2016), and circumstantial evidence may suffice to prove specific intent, *MEMC*, 420 F.3d at 1378.

To state a claim for relief for induced patent infringement, “a complaint must plead facts plausibly showing that the accused infringer ‘specifically intended [another party] to infringe [the patent] and knew that the [other party]’s acts constituted infringement.” *Lifetime Indus., Inc. v. Trim-Lok, Inc.*, 869 F.3d 1372, 1376–77 (Fed. Cir. 2017) (quoting *In re Bill of Lading Transmission & Processing Sys. Pat. Litig.*, 681 F.3d 1323, 1336 (Fed. Cir. 2012) (hereinafter “*Bill of Lading*”). “[T]here can be no inducement or contributory infringement without an underlying act of direct infringement.” *Joao Control & Monitoring Sys., LLC v. Protect Am., Inc.*, No. 1:14-cv-00134-LY, 2015 U.S. Dist. LEXIS 74262, 2015 WL 3513151, at *3 (W.D. Tex. Mar. 24, 2015). “To state a claim for indirect infringement . . . a plaintiff need not identify a specific direct infringer if it pleads facts sufficient to allow an inference that at least one direct infringer exists.” *Bill of Lading*, 681 F.3d at 1336.

III. ANALYSIS

Uber moves for dismissal by asserting that LBT’s Complaint fails to meet the minimum pleading requirements imposed by *Twombly* and *Iqbal*. Uber contends LBT’s direct infringement

claims do not sufficiently indicate how the Asserted Patents are infringed. Uber further contends LBT has not shown the requisite direction or control for its joint infringement claims. Lastly, Uber argues LBT's induced infringement claims must be dismissed because the Complaint does not plead pre-suit knowledge and does not adequately plead the underlying direct infringement. For the reasons stated below, the Court finds LBT's pleading sufficient on direct, joint, and post-suit induced infringement, and accordingly declines to dismiss LBT's Complaint on those counts. In accordance with the Court's usual practice, the Court dismisses LBT's pre-suit inducement claim and grants LBT leave to amend its Complaint to re-allege pre-suit inducement after beginning fact discovery.

A. LBT sufficiently pleads direct infringement.

Liability for direct infringement arises under 35 U.S.C. § 271(a) when a party, without authorization, “makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent.” The activities set forth in § 271(a) do not result in direct infringement unless the accused product embodies the complete patented invention. *See Rotec Indus., Inc. v. Mitsubishi Corp.*, 215 F.3d 1246, 1252 & n.2 (Fed. Cir. 2000). Therefore, to state a claim of direct infringement sufficient to withstand a motion to dismiss, a plaintiff must plead facts that plausibly suggest that the accused product meets each limitation of the asserted claim(s). *See TMI Sols. LLC v. Bath & Body Works Direct, Inc.*, C.A. No. 17-965-LPS-CJB, 2018 U.S. Dist. LEXIS 167648, 2018 WL 4660370, at *9 (D. Del. Sept. 28, 2018). The Federal Circuit has provided guidance on pleading direct infringement under *Iqbal / Twombly*. *See Disc Disease Sols. Inc. v. VGH Sols., Inc.*, 888 F.3d 1256 (Fed. Cir. 2018). In *Disc Disease*, the Federal Circuit reversed the district court's dismissal of plaintiff's direct infringement claims, finding that the plaintiff's allegations were sufficient under

the plausibility standard of *Iqbal* and *Twombly* because the complaint specifically identified the three accused products and alleged that the accused products met “each and every element of at least one claim” of the asserted patents, either literally or equivalently. *Disc Disease*, 888 F.3d at 1260.

Uber argues that the Complaint fails to properly map the allegations to the language of the ’724, ’855, and ’289 Patents. *See* ECF No. 18 at 6-11. But plaintiffs are not required to use the exact same terms as the asserted claim when alleging infringement by the accused products. Rather, plaintiffs only need to plead “factual content that allows the court to *draw the reasonable inference* that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (emphasis added). The Court finds LBT has satisfied the minimum pleading requirements for its direct infringement claims.

1) The ’724 Patent

LBT sufficiently pleads direct infringement of the ’724 Patent. Uber argues “LBT does not identify any accused ‘reference signal,’ ‘a first transmitter/receiver station,’ or ‘a second transmitter/receiver station.’” ECF No. 18 at 7. But the claim terms need not be expressly identified to allow the Court to reasonably infer Uber’s infringement from the Complaint.

In the Complaint, LBT alleges:

[T]he Uber driver’s smartphone communicates and sends position information, in addition to GPS information, over a mobile network using multiple cell towers. Location of the driver’s smartphone is determined by GPS by comparing measurements from two or more GPS satellites to the smartphone, and between the GPS satellites and the earth.

ECF No. 1 ¶ 67. LBT also alleges “the Uber driver’s smartphone calculates location data even when line-of-sight between the Uber driver’s smartphone and GPS satellites are impaired.” *Id.*

¶ 68. These allegations address the following steps of the method in Asserted Claim 13:

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