

networks.” ‘033 Patent, at [57]. The ‘838 patent claims “a system, apparatus, and method for providing a distributed location based service system to a mobile user.” ‘838 Patent, at [57]. The ‘687 patent claims a “method of transmitting data frames over a data network . . . from a transmitter to a receiver with an Inter Frame Space (IFS) time.” ‘687 Patent, at [57]. The ‘325 patent claims a “transmission system . . . in which it is possible to transfer accurate timing information.” ‘325 Patent Col.1 ll.27–28.

MES asserted these patents in three separate suits against defendants that manufacture mobile phone devices that employ allegedly infringing technology (“the devices”), and defendants that service the devices. In the two subject cases, MES brought claims for direct infringement against Defendants Motorola Mobility, Inc. (“Motorola”) and HTC Corporation and HTC America (collectively “HTC”), and claims of induced infringement against Defendants AT&T Mobility LLC, Verizon, and Sprint Spectrum L.P.

Verizon moves to dismiss the induced infringement claims pursuant to Fed. R. Civ. P. 12(b)(6), arguing that MES’s allegations, taken as true, do not establish that Verizon specifically intended to induce infringement, a requirement of the cause of action. In response, MES contends that the allegations in the Amended Complaints, and the reasonable inferences therefrom, satisfy the pleading standard.

II. Applicable Law

A. Legal Standard for Motion to Dismiss

To survive a Rule 12(b)(6) motion to dismiss, a pleading must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The pleading standard Rule 8 announces does not require “detailed factual allegations,” but it does demand more than an unadorned accusation devoid of factual support. *Ashcroft v. Iqbal*, 556

U.S. 662, 678 (2009). A satisfactory pleading must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). While a court must accept all of the claimant's allegations as true, it is not bound to accept as true "a legal conclusion couched as a factual allegation." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). Where the facts do not permit the court to infer more than the mere possibility of misconduct, the pleading has stopped short of showing that the pleader is plausibly entitled to relief. Fed. R. Civ. P. 8(a)(2); *Iqbal*, 556 U.S. at 678.

B. Induced Infringement

"Whoever actively induces infringement of a patent shall be liable as an infringer." 35 U.S.C. § 271(b). To be liable as an inducer of infringement, a defendant must have (1) knowledge that the induced act constitutes patent infringement and (2) a specific intent to encourage another's infringement. *In re Bill of Lading Transmission & Processing Sys. Patent Litig.*, 681 F.3d 1339 (Fed. Cir. 2012) (citing *Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S.Ct. 2060, 2068 (2011)); *DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1306 (Fed. Cir. 2006). Where a device is suitable for "substantial noninfringing use," plaintiff must show that the defendant "intended that the article be used for direct infringement." *Ricoh Co., Ltd. v. Quanta Computer Inc.*, 550 F.3d 1325, 1341 (Fed. Cir. 2008) (citing *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 935 (2005)). Such intent may be shown by statements or actions directed to promoting infringement, or by other circumstantial evidence. *Id.* at 1341–42. Moreover, a plaintiff needs not "prove its case at the pleading stage," and, as with all Rule 12(b)(6) motions to dismiss, the court may not "choose among competing inferences" as long as plaintiff pleads "sufficient facts to render . . . [its] asserted inferences plausible." *Bill of Lading*, 681 F.3d at 1339–40.

III. Analysis

A. Knowledge that the Induced Act Constitutes Infringement

Plaintiff asserts, and Verizon does not dispute, that Verizon had knowledge that the Motorola and HTC devices directly infringed Plaintiff's patents, from at least the time that Verizon was served with a copy of the Original Complaints. '794 *Am. Compl.* ¶¶ 18, 31, 44, 57; '797 *Am. Compl.* ¶¶ 17, 30, 43, 56. Thus, the allegations in the Amended Complaints—that Verizon continued to induce uses it had learned from the Original Complaint infringed Plaintiff's patents—satisfy the knowledge requirement of an induced infringement claim. See *Global-Tech Appliances*, 131 S.Ct. at 2068.

B. Specific Intent to Encourage Infringement

Verizon's Motions hinge on one central argument, that no reasonable inference of specific intent to encourage infringement can be drawn from efforts to promote an end that can be accomplished by both infringing and non-infringing means. To illustrate its position, Verizon asks the Court to consider a hypothetical in which there is a screw head that fits both a flat-head and a Phillips-head screwdriver, and a plaintiff with a patent covering the process of driving in a screw with a flat-head driver. *Verizon's Reply* 3. According to Verizon, a plausible claim for induced infringement would require more than an allegation that "the defendant . . . induced others to drive in screws in general because there would be two different means to achieve the result—one infringing [(flat-head)] and the other non-infringing [(Phillips-head)]." *Id.* Even with all inferences drawn in favor of Plaintiff, Verizon claims there would be no basis for the finding that the defendant specifically intended others to practice the plaintiff's patent.

Assuming defendant had knowledge of plaintiff's patent, Verizon's hypothetical presents

two possible inferences: that defendant intended plaintiff not to infringe by using a Phillips-head screwdriver, or that defendant intended plaintiff to infringe by using a flat-head screwdriver. Both inferences are reasonable, and the Court cannot, at the pleading stage, choose between them. *See Bill of Lading*, 681 F.3d at 1339–40 (noting, in the context of an induced infringement claim, that “nothing in *Twombly* or its progeny allows a court to choose among competing inferences as long as there are sufficient facts alleged to render the non-movant’s asserted inferences plausible”).

For the purpose of the Motions to Dismiss, it is undisputed that Verizon promoted and/or advertised uses that can be accomplished by allegedly infringing means. For example, Verizon provided user guides that instruct consumers how to use the devices on a WiFi network and in conjunction with GPS—uses that MES alleges can be accomplished by infringing the ‘033, ‘838 and ‘687 patents—and Verizon sold LTE-compatible devices, the use of which could infringe the ‘325 patent. *See Verizon Mot. 4*. Nonetheless, Verizon argues that MES’s pleading is insufficient because MES does not allege that the promoted uses can *only* be accomplished through infringing means. *Id.* at 4–6. Therefore, Verizon argues that the allegations, taken as true, do not give rise to a presumption that Verizon intended its customers to infringe. *See id.* at 5. But because the Court’s inquiry at this stage is only to determine whether one could reasonably infer that Verizon intended to encourage infringement, the Court disagrees with Verizon’s premise that dismissal is warranted.

Verizon argues that MES’s Amended Complaints are deficient for failure to allege that Verizon had an “affirmative intent to cause the direct infringement.” *Verizon Reply 2*. In fact, MES repeatedly asserts that Verizon “*specifically intended* for consumers to acquire and use . . . [the] devices in a manner that infringes” the patents-in-suit. ‘794 *Am. Compl.* ¶¶ 19, 32, 45, 58;

‘797 *Am. Compl.* ¶¶ 18, 31, 44, 57 (emphasis added). These allegations, combined with the specific factual allegations pertaining to each of the patents-in-suit, as detailed below, gives rise to a reasonable inference that Verizon intended its customers to infringe.

With respect to the ‘325 patent, MES alleges (1) that the devices “infringe[] the claims of the ‘325 patent” when they “operate on a communication network (e.g., an LTE network) and extract timing signal from data communicated over the network,” and (2) that Verizon advertises that the devices are LTE-compatible, “thereby encouraging consumers to . . . infringe[] claims of the ‘325 patent.” ‘794 *Am. Compl.* ¶ 58; ‘797 *Am. Compl.* ¶ 57. This allegation most closely resembles the screwdriver hypothetical in that MES alleges simply that Verizon advertised a use—LTE communication—that the devices can accomplish through both infringing and non-infringing means. Consumers may be able to operate on an LTE network without infringing the ‘325 patent. Nonetheless, it is reasonable to infer that by advertising the LTE compatibility, Verizon intended its customers to operate on an LTE network and extract timing signal from data communicated over the network, an allegedly infringing use.

The allegations pertaining to the remaining patents share a common model: MES alleges that (1) Verizon distributed user guides and/or tutorials promoting a certain use, and (2) that the promoted use constitutes infringement. With respect to the ‘033 patent, MES alleges that Verizon “provided user guides and/or tutorials instructing consumers on how to configure the [devices] . . . to operate as a mobile hotspot (*i.e.*, to communicate data received from a first communication network to a second communication network).” ‘794 *Am. Compl.* ¶ 19; ‘797 *Am. Compl.* ¶ 18. MES also alleges that using devices “that are configured to communicate data received from a communication network (*e.g.*,

cellular network, WiFi network) to a second communication network (e.g., cellular network, WiFi network) *infringes claims of the '033 patent.*” *Id.* (emphasis added). In other words, MES alleges that Verizon instructed consumers how to communicate data received from a first communication network to a second, and that such use infringes the ‘033 patent.

Similarly, with respect to the ‘687 patent, MES alleges that Verizon “provided user guides and/or tutorials that instruct consumers on how to connect” the devices “to WiFi data networks (e.g., 802.11 networks) that use interframe spacing (RIFS), *which causes the . . . [d]evices to perform methods claimed by the ‘687 patent.*” ‘794 *Am. Compl.* ¶ 45; ‘797 *Am. Compl.* ¶ 44 (emphasis added). Likewise, with respect to the ‘838 patent, MES alleged that Verizon “provided user guides and/or tutorials instructing consumers on how to use location based services . . . *in an infringing manner.*” ‘794 *Am. Compl.* ¶ 32; ‘797 *Am. Compl.* ¶ 31 (emphasis added). These allegations, coupled with the claim that Verizon specifically intended to encourage infringing uses, establishes a reasonable inference that Verizon intended its consumers to infringe the patents-in-suit, and, at least at this stage, satisfies the second element of the cause of action.

IV. Conclusion

The Court concludes that the facts alleged in MES’s Amended Complaints, taken as true, allow for a reasonable inference that Verizon specifically intended its customers to take actions it knew would infringe the patents-in-suit. Therefore, MES’s indirect infringement claims satisfy the federal pleading standard, and Verizon’s Motion to Dismiss is **DENIED**.

SO ORDERED.

March 6, 2013.

