

ORAL ORDER: The Court, having reviewed the remaining unaddressed portion of Defendant's motion to dismiss ("Motion"), (D.I. 11), in which Defendant seeks to dismiss any claims of indirect or willful infringement in the Complaint, hereby ORDERS as follows: (1) With regard to any claims for willful infringement, Plaintiff has confirmed that it was not attempting to plead any such claims. (D.I. 16 at 23 n.1) This portion of the Motion, then, is DENIED as MOOT. And the portion of the Complaint that mentions willfulness, (D.I. 1 at 30 (paragraph f); see also D.I. 17 at 10-11), is hereby STRICKEN.; (2) With regard to any claims for indirect infringement, Plaintiff only attempts to plead such a claim as to the 468 patent, (D.I. 1 at para. 32); as to that claim, the Motion is GRANTED. In order to plead indirect infringement, a plaintiff must plead facts rendering it plausible that a defendant not only had knowledge of the patents-in-suit, but also knowledge of how it infringed those patents, prior to the date of the relevant complaint's filing. See *Valinge Innovation AB v. Halstead New England Corp.*, Civil Action No. 16-1082-LPS-CJB, 2017 WL 5196379, at *2 (D. Del. Nov. 9, 2017), report and recommendation adopted, 2018 WL 11013902 (D. Del. Jan. 18, 2018). Here, the Complaint asserts that Plaintiff sent two pre-Complaint notice letters to Defendant. (D.I. 1 at paras. 5-6) But in those letters--even assuming they were received by Defendant (as to which there is some doubt, (see D.I. 12 at 18 & n.5; D.I. 13, ex. 2))--Plaintiff never even asserts that Defendant infringes the 468 patent. Only the first of the two letters (sent on June 1, 2022) speaks in any detail about Plaintiff's intellectual property, and even that letter simply states that the information Plaintiff has is "insufficient" to allow it to draw any conclusion as to whether Defendant infringes the patent. (D.I. 13, ex. 1) If the patentee does not have the ability to assert in a notice letter that infringement is actually (or at least likely) occurring, that renders it less plausible that the recipient of that letter would have in fact made the requisite pre-suit connection between the claims of the patents at issue and the recipient's products. See *Teradyne, Inc. v. Astronics Test Sys., Inc.*, Case No. CV 20-2713-GW-SHKx, 2020 WL 8173024, at *3 (C.D. Cal. Nov. 6, 2020); *Polaris PowerLED Techs., LLC v. Vizio, Inc.*, Case No. SACV-18-1571 JVS (DFMx), 2019 WL 3220016, at *2-3 (C.D. Cal. May 7, 2019). Thus, the Complaint does not sufficiently allege that Defendant knew that the patent was being infringed as of its receipt of this June 1 letter (assuming the letter was received). See *Helios Streaming, LLC v. Vudu, Inc.*, Civ. No. 19-1792-CFC/SRF, 2020 WL 3167641, at *1 (D. Del. June 15, 2020).; and (3) If Plaintiff wishes, it may file an amended complaint that attempts to address these issues within 14 days. Ordered by Judge Christopher J. Burke on 2/22/2023. (dlb) (Entered: 02/22/2023)

As of February 23, 2023, PACER did not contain a publicly available document associated with this docket entry. The text of the docket entry is shown above.

InQuisient Inc. v. ServiceNow, Inc.
1-22-cv-00900 (DDE), 2/22/2023, docket entry 52