

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 11-21371-CIV-ALTONAGA/Simonton

ARRIVALSTAR, S.A., et al.,

Plaintiffs,

vs.

**INTERMEC TECHNOLOGIES
CORPORATION, et al.,**

Defendants.

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ORDER

THIS CAUSE came before the Court upon Defendant, Intermec Technologies Corporation’s (“Intermec[’s]”) Motion to Dismiss Complaint for Patent Infringement (“Motion”) [ECF No. 24], filed on August 29, 2011. The Court has carefully reviewed the parties’ written submissions and applicable law.

I. BACKGROUND

This case involves the alleged patent infringement of United States Patent Numbers: 6,174,859; 6,748,320; 6,952,645; 7,030,781; 7,400,970; 6,904,359; 6,317,060; 6,486,801; and 5,657,010 (collectively, the “Patents”). (*See* Compl. [ECF No. 1] ¶ 1). Plaintiff, ArrivalStar S.A. (“Arrivalstar”), is a Luxembourg corporation, and Plaintiff, Melvino Technologies Limited (“Melvino”), is a British Virgin Islands corporation (collectively, “Plaintiffs”). (*See id.* ¶¶ 5–6). Plaintiffs allege that they “own all right, title and interest” in the Patents (*id.* ¶¶ 7–15), and that Defendants have infringed the Patents under the patent laws of the United States, Title 35 of the United States Code (*see id.* ¶ 1). With respect to Defendant Intermec in particular, Plaintiffs allege in Counts 1 and 2 that Intermec has directly and indirectly infringed the Patents “through, among

other activities, the commercial sale, offer and/or use of its ‘Asset Tracking Solutions’ programs/products/services/systems which utilize tracking and messaging technologies” protected by the Patents. (*Id.* ¶¶ 20–21, 23–24). In the Motion, Intermec seeks dismissal of the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (*See* Mot. 2).

II. LEGAL STANDARD

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Although this pleading standard “does not require ‘detailed factual allegations,’ . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* (quoting *Twombly*, 550 U.S. at 555). Pleadings must contain “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. Indeed, “only a complaint that states a plausible claim for relief survives a motion to dismiss.” *Iqbal*, 129 S. Ct. at 1950 (citing *Twombly*, 550 U.S. at 556). To meet this “plausibility standard,” a plaintiff must “plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 1949 (citing *Twombly*, 550 U.S. at 556). “The mere possibility the defendant acted unlawfully is insufficient to survive a motion to dismiss.” *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009) (citing *Iqbal*, 129 S. Ct. at 1949).

When reviewing a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and take the factual allegations therein as true. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997). But pleadings that “are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide

the framework of a complaint, they must be supported by factual allegations.” *Iqbal*, 129 S. Ct. at 1950; *see also Sinaltrainal*, 578 F.3d at 1260 (“[U]nwarranted deductions of fact’ in a complaint are not admitted as true for the purpose of testing the sufficiency of plaintiff’s allegations.”). A court’s analysis of a Rule 12(b)(6) motion “is limited primarily to the face of the complaint and attachments thereto.” *Brooks*, 116 F.3d at 1368.

III. ANALYSIS

A. Identifying the Instrumentality

Intermec first asserts that Plaintiffs fail to “adequately identify the instrumentality accused of infringement.” (Mot. 2–3). To the contrary, Plaintiffs have sufficiently identified the infringing instrument as the so-called “Asset Tracking Solutions.” (Compl. ¶¶ 20, 23). Intermec states that it “does not make or sell” such an instrument (Mot. 2), but any factual dispute as to whether Intermec sells or uses “Asset Tracking Solutions” is not properly addressed under Rule 12(b)(6), which binds the Court to accept the allegations of the Complaint as true.

To state a claim for direct infringement, compliance with Form 18 of the Federal Rules of Civil Procedure, Appendix of Forms (“Form 18”) suffices. *See Elan Microelects. Corp. v. Apple, Inc.*, 2009 U.S. Dist. LEXIS 83715, at *7 (N.D. Cal. Sept. 14, 2009). Plaintiffs’ allegations that they own the Patents, and that Intermec has infringed the Patents using a named instrumentality, comply with Form 18. Judge Jordan employed analogous reasoning in denying dismissal of a direct infringement claim in a very similarly-worded complaint from the same Plaintiffs. *See Arrivalstar S.A. v. Young*, No. 11-20628-Civ-Jordan, [ECF No. 37] 2–3 (S.D. Fla. June 13, 2011) (noting that allegations of patent ownership and defendant’s infringement “using specifically named software” complied with Form 18) (citing FED. R. CIV. P. 84 (“The forms in the Appendix suffice under these

rules and illustrate the simplicity and brevity that these rules contemplate.”)). Plaintiffs have sufficiently identified the allegedly infringing instrumentality in compliance with Form 18, and accordingly the Motion is denied with respect to Count 1 for direct infringement.

B. Alleging Facts of Indirect Infringement

Intermec next contends that Plaintiffs fail to allege facts establishing the elements of an indirect infringement claim. (*See* Mot. 5–6). Intermec cites several authorities in support of its contention that Plaintiffs must allege facts demonstrating the elements of induced or contributory infringement. (*Id.*). Some of these authorities are readily distinguishable.¹ However, the Court agrees with Judge Jordan that to state a claim for inducement of infringement, Plaintiffs “must allege that [Defendant’s] inducement was intentional.” *Arrivalstar*, No. 11-20628-Civ-Jordan, [ECF No. 37] 3. Plaintiffs have not alleged specific intent, but note that they are willing to amend the Complaint to do so. (*See* Resp. 6–7). In addition, to state a claim for contributory infringement, a plaintiff should “at a minimum” allege that the defendant’s “products are ‘especially designed’ to be used by others to infringe, and that those products lack substantial noninfringing uses.” *In re Bill of Lading*, 695 F. Supp. 2d 680, 686 (S.D. Ohio 2010). Plaintiffs likewise have not alleged such facts supporting a claim for contributory infringement. The Court therefore dismisses Plaintiffs’


¹ In *Lucent Technologies, Inc. v. Gateway, Inc.*, 580 F.3d 1301 (Fed. Cir. 2009), the court analyzed a claim of indirect infringement under a judgment-as-a-matter-of-law standard, and *Ricoh Co., Ltd. v. Quanta Computer Inc.*, 550 F.3d 1325 (Fed. Cir. 2007), applied a summary-judgment standard. Neither is helpful in evaluating a complaint under Rule 12(b)(6). The court in *Elan*, 2009 U.S. Dist. LEXIS 83715, analyzed indirect infringement in light of Rule 11(b)(3), out of a concern that the plaintiff had “no factual circumstances known to it that would constitute a good reason to believe a claim exists,” *id.* at *11 (internal quotation marks omitted), an issue that has not been raised here. The court in *Elan* said the plaintiff “should be able to articulate at least some facts as to why it is reasonable to believe there is infringement,” *id.*, but at the same time noted “[t]his is not to say that [plaintiff] necessarily must *plead* any or all such facts to state a claim” *Id.* at *11–12 n.5. These three cases therefore do not conclusively establish what Plaintiffs here must allege to state a claim for indirect infringement at this stage.

indirect infringement claim against Intermecc (Count 2) without prejudice.

IV. CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that the Motion [ECF No. 24] is **DENIED in part** with respect to Count 1 for direct infringement against Intermecc, and **GRANTED in part** with respect to Count 2 for indirect infringement against Intermecc. Plaintiffs have until October 7, 2011 to file an amended complaint.

DONE AND ORDERED in Chambers at Miami, Florida, this 26th day of September 2011.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record