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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN FRANCISCO DIVISION

11 DOLBY LABORATORIES, INC.,

12 Plaintiff,

13 vs.

14 INTERTRUST TECHNOLOGIES

15 CORPORATION,

16 Defendant.

Case No. 3:19-cv-03371-EMC

**INTERTRUST TECHNOLOGIES
CORPORATION'S MOTION TO
DISMISS THE COMPLAINT FOR LACK
OF SUBJECT MATTER JURISDICTION
AND FAILURE TO STATE A CLAIM;**

**MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: September 19, 2019

Time: 1:30 p.m.

Place: 450 Golden Gate Avenue

San Francisco, CA 94102

Judge: Hon. Edward M. Chen

Courtroom: 5

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INTERTRUST'S MOTION TO DISMISS

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on September 19, 2019, at 1:30 p.m., or as soon thereafter as the matter may be heard, in Courtroom 5 of the United States District Court for the Northern District of California located at 450 Golden Gate Avenue, San Francisco, California 94102, before the Honorable Judge Edward M. Chen, Defendant Intertrust Technologies Corporation (“Intertrust”) will, and hereby does, bring this Motion to Dismiss the Complaint for Lack of Subject Matter Jurisdiction and Failure to State a Claim.

Statement of Requested Relief. Intertrust seeks an order dismissing the “Complaint for Declaratory Judgment of Non-Infringement” filed by Plaintiff Dolby Laboratories, Inc. (“Dolby”) on two grounds. First, Intertrust moves to dismiss the complaint on the ground that there is no subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure because Dolby has failed to plead an “actual controversy” between the parties under the Declaratory Judgment Act, 28 U.S.C. 2201 *et seq.* Second, Intertrust moves to dismiss the complaint on the ground that its barebones, conclusory allegations fail to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, and such further evidence and argument as may be submitted prior to or at the hearing before this Court.

DATED: August 9, 2019

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By



Harold A. Barza

Attorneys for Intertrust Technologies Corporation

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Fed. R. Civ. P. 12(b)(6)	1, 5, 12
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MEMORANDUM OF POINTS AND AUTHORITIES

Statement of Issues to Be Decided

This motion presents the following issues for decision:

1. Should Dolby's complaint be dismissed for failure to plead facts sufficient to establish subject matter jurisdiction under the Declaratory Judgment Act because Dolby has pleaded only sparse, ambiguous, and conclusory allegations regarding its interactions with Intertrust that fail to establish an actual controversy, and has not pleaded facts that would confer standing on Dolby to litigate disputes between Intertrust and Dolby's customers?

2. Should Dolby's complaint be dismissed for failure to state a claim where Dolby has pleaded only the ultimate conclusions it asks the Court to draw—*i.e.*, that Dolby does not infringe Intertrust's patents—without any factual allegations that would give rise to a plausible claim for a declaration of non-infringement, such as a specific claim limitation that is not met by Dolby's products and the reason it is not met?

Preliminary Statement

Intertrust respectfully requests that Dolby's complaint for a declaratory judgment of non-infringement of 11 Intertrust patents be dismissed because Dolby (1) failed to plead a cognizable case or controversy, and (2) failed to meet the pleading requirements for a non-infringement claim.

First, Dolby's complaint fails to plead facts sufficient to confer on this Court subject matter jurisdiction because it does not plead an "actual controversy" between Dolby and Intertrust under the Declaratory Judgment Act. Federal courts have jurisdiction over declaratory judgment actions only when there is a "substantial" and "definite and concrete" controversy between the parties. Dolby alleges only that (1) Intertrust directed letters to Dolby customers alleging that the customers were infringing certain Intertrust patents by rendering movies using unlicensed DCI-compliant digital projection equipment, (2) that Dolby sells DCI-compliant media server products, and (3) that Intertrust subsequently directed communications to Dolby relating to patent royalties based on Dolby's DCI-compliant media server products as used in digital cinema applications. Those allegations, even if accepted, do not constitute a cognizable actual controversy between Intertrust and Dolby. Dolby makes no well-pled allegation that Intertrust accused Dolby of infringement, nor can such an

1 accusation cannot be reasonably inferred. And, even if Dolby's complaint had adequately pleaded an
 2 actual controversy between Intertrust and Dolby's *customers* (which it did not), Dolby has not alleged
 3 facts that would give it standing to pursue those disputes.

4 Second, Dolby's allegations of non-infringement are plainly inadequate because they plead
 5 only the conclusory allegation of the ultimate conclusion that they seek: "Dolby is not infringing and
 6 has not infringed, directly or indirectly, literally or under the doctrine of equivalents, willfully or
 7 otherwise, any claim of [the Patents-in-Suit]." Although Dolby's complaint brands several Dolby
 8 products as allegedly "Accused Products" (without pleading that those products have ever actually
 9 been accused of infringement), merely identifying a product and a patent and alleging that the product
 10 does not infringe the patent is insufficient to state a claim for a declaratory judgment of non-
 11 infringement. Rather, the plaintiff must identify and explain—at absolute bare minimum—why at
 12 least one specific limitation is not practiced by the accused product or its use. Dolby has not identified
 13 even a single limitation of any claim that it contends is not practiced by its products or their use, much
 14 less alleged why the limitation is not met.

15 The Complaint's Factual Allegations

16 On June 13, 2019, Dolby filed this declaratory judgment action against Intertrust, seeking
 17 declarations that "Dolby is not infringing and has not infringed" any claim of 11 patents, each of
 18 which is assigned to Intertrust (the "Patents-in-Suit"). Dkt. No. 1 ("Compl.") ¶¶ 10-20, 29-61. The
 19 complaint alleges that:

- 20 • "[I]n or around April of 2018, Intertrust, by its attorney, directed communications ... to Dolby
 21 customers alleging that the customers were infringing the Patents-in-Suit by rendering movies
 22 using unlicensed digital projection equipment compliant with requirements set forth by Digital
 23 Cinema Initiatives, LLC ('DCI'), such as in the Digital Cinema System Specification ('DCSS')." *Id.* ¶ 24.
- 25 • Intertrust subsequently "directed communications to Dolby regarding the Patents-in-Suit,"
 26 including communications relating to patent royalties based on "Dolby's Doremi and Dolby
 27 branded DCI compliant media server products as used in digital cinema applications" (the "Dolby
 28 Accused Products"). *Id.* ¶ 25. The complaint identifies "the ShowVault/IMB, IMS1000,

IMS2000, IMS3000, DSS100/DSP100, DSS200, and DCP2000” as examples of Dolby Accused Products. *Id.*

- Dolby informed Intertrust that it “did not agree that compliance with the DCI specification showed infringement of Intertrust’s patents” and, concurrently with filing this declaratory judgment action, that it “declines to take a license.” *Id.* ¶ 26.
- “In the past, Intertrust has initiated litigation asserting at least some of the Patents-in-Suit,” including against Apple, in this District. *Id.* ¶ 27.

Notably, the complaint does **not** allege:

- That Intertrust has ever threatened Dolby with litigation regarding any of the Patents-in-Suit;
- That Intertrust has ever accused Dolby of directly infringing any of the Patents-in-Suit (except in conclusory fashion in a personal jurisdiction allegation, *see id.* ¶ 7);
- That Intertrust has ever accused Dolby of engaging in acts that would constitute indirect infringement of any of the Patents-in-Suit;
- That Dolby has any duty to defend or indemnify any Dolby customer that has received communications from Intertrust alleging that they were infringing the Patents-in-Suit;
- Any specific limitation of any specific claims of any of the eleven Patents-in-Suit that is not practiced by the Dolby Accused Products or their use; or
- How or why the Dolby Accused Products or their use do not practice any specific limitation of any specific claim of any of the eleven Patents-in-Suit.

Argument

I. THE COMPLAINT MUST BE DISMISSED BECAUSE IT FAILS TO PLEAD FACTS SUFFICIENT TO ESTABLISH SUBJECT MATTER JURISDICTION

A motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure tests the subject matter jurisdiction of the court. *See, e.g., Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039-40 (9th Cir. 2003). The plaintiff bears the burden of establishing the court’s jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A Rule 12(b)(1) motion may make a facial or a factual attack on the existence of subject matter. This motion presents a facial attack. “In a facial attack, the challenger asserts that the allegations contained in a complaint are

insufficient on their face to invoke federal jurisdiction.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). “The district court resolves a facial attack as it would a motion to dismiss under Rule 12(b)(6): Accepting the plaintiff’s allegations as true and drawing all reasonable inferences in the plaintiff’s favor, the court determines whether the allegations are sufficient as a legal matter to invoke the court’s jurisdiction.” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). “The plaintiff must allege facts,” however, and “not mere legal conclusions[.]” *Id.*¹

Dolby seeks relief under the Declaratory Judgment Act (Compl. ¶¶ 1 and 5), which provides that “[i]n a case of actual controversy within its jurisdiction ... any court of the United States ... may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a). A party alleging subject matter jurisdiction exists by invoking the Declaratory Judgment Act bears the burden of showing an “actual controversy.” *Crossbow Tech., Inc. v. YH Tech.*, 531 F. Supp. 2d 1117, 1120 (N.D. Cal. 2007). Subject matter jurisdiction exists only if “the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (citing *Md. Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941)). This controversy must be “‘definite and concrete, touching the legal relations of parties having adverse legal interests,’ ... ‘real and substantial’ and ‘admi[t] of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.’” *Id.* The Declaratory Judgment Act is permissive, not mandatory, by providing that a court “may” exercise jurisdiction where such a controversy exists, which has been interpreted to give courts “unique and substantial discretion in deciding whether to declare the rights of litigants.” *Id.* at 136; 28 U.S.C. § 2201(a).

¹ In contrast, the defendant in a factual attack presents evidence to refute the jurisdictional facts alleged in the complaint. *Thornhill Publ’g Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). Once the defendant introduces such evidence, the plaintiff “must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction.” *Savage*, 343 F.3d at 1039 n.2 (internal citations omitted).

In patent cases, an actual controversy requires allegations of “both (1) an affirmative act by the patentee related to the enforcement of his patent rights and (2) meaningful preparation to conduct potentially infringing activity.” *Ass’n for Molecular Pathology v. U.S. Patent & Trademark Office*, 689 F.3d 1303, 1318 (Fed. Cir. 2012) (citations omitted), *rev’d in part on other grounds by Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576 (2013). Although the second factor is undisputed for purposes of this motion, Dolby has failed to plead with sufficient detail any “affirmative act” by Intertrust related to the enforcement of its patent rights. The complaint suggests Dolby seeks to allege two possible affirmative acts: (i) an affirmative act directed toward Dolby; and (ii) affirmative acts directed toward Dolby’s customers. Both efforts fail.

A. The Complaint Does Not Allege an “Affirmative Act” of Enforcement Against Dolby

The Federal Circuit has observed that an affirmative act creating a “definite and concrete” dispute requires more than “‘a communication from a patent owner to another party, merely identifying its patent and the other party’s product line.’ How much more is required is determined on a case-by-case analysis.” *3M Co. v. Avery Dennison Corp.*, 673 F.3d 1372, 1378-79 (Fed. Cir. 2012) (internal citations omitted) (quoting *Hewlett-Packard Co. v. Acceleron LLC*, 587 F.3d 1358, 1362 (Fed. Cir. 2009)). This Court has previously catalogued factors typically courts have typically considered in conducting this “case-by-case analysis,” including:

1. the strength of any threatening language in communications between the parties;
2. the depth and extent of infringement analysis conducted by the patent holder;
3. whether the patent holder imposed a deadline to respond;
4. any prior litigation between the parties;
5. the patent holder’s history of enforcing the patent at issue;
6. whether the patent holder’s threats have induced the alleged infringer to change its behavior;
7. the number of times the patent holder has contacted the alleged infringer;
8. whether the patent holder is simply a holding company with no source of income other than enforcing patent rights;

9. whether the patentee refused to give assurance it will not enforce its patent;
10. whether the patent holder has identified a specific patent and specific infringing products;
11. the extent of the patent holder's familiarity with the product prior to suit;
12. the length of time that transpired after the patent holder asserted infringement; and
13. whether communications initiated by the declaratory judgment plaintiff have the appearance of an attempt to create a controversy in anticipation of filing suit.

ActiveVideo Networks, Inc. v. Trans Video Elecs., Ltd., 975 F. Supp. 2d 1083, 1087-88 (N.D. Cal. 2013) (Chen, J.).

The complaint includes only three allegations regarding the interactions between Dolby and Intertrust. The first, contained within an allegation related to personal jurisdiction, is an assertion that "Intertrust purposefully directed allegations of patent infringement to Dolby in this District by directing communications to Dolby and meeting with Dolby in this District, and in such communications and meeting, alleging that Dolby infringes one or more claims of the Patents-in-Suit." Compl. ¶ 7. This conclusory allegation does not meet Dolby's burden of pleading "facts, not mere legal conclusions" to plead federal subject matter jurisdiction. *Leite*, 749 F.3d at 1121; *Crow Creek Sioux Tribe v. United States*, 900 F.3d 1350, 1354-55 (Fed. Cir. 2018) ("plausibility" requirement applicable to motions to dismiss under Rule 12(b)(6) also applies to facial challenges to subject matter jurisdiction under Rule 12(b)(1) and, accordingly, "[t]hreadbare recitals of the elements . . . , supported by mere conclusory statements, do not suffice").

The second and third allegations regarding Dolby's interactions with Intertrust, reprinted in full, state:

Subsequent to contacting Dolby's customers, Intertrust directed communications to Dolby regarding the Patents-in-Suit, including communications relating to patent royalties based on both Dolby's Doremi and Dolby branded DCI compliant media server products as used in digital cinema applications (collectively, the "Dolby Accused Products"). Dolby's Doremi and Dolby branded DCI compliant media server products include, for example, the ShowVault/IMB, IMS1000, IMS2000, IMS3000, DSS100/DSP100, DSS200, and DCP2000.

1 Dolby communicated to Intertrust that it did not agree that compliance
 2 with the DCI specification showed infringement of Intertrust's patents.
 3 Dolby further responded to Intertrust concurrent with this filing that,
 among other things, Dolby does not infringe the Patents-in-Suit, and
 that Dolby declines to take a license.

4 Compl. ¶¶ 25-26. Notably, these paragraphs stop short of alleging that Intertrust accused Dolby of
 5 infringing its patents, directly or indirectly, and shed little light on the nature of the interactions
 6 between Dolby and Intertrust. These allegations are insufficient to plead a substantial controversy.
 7 *See, e.g., BroadSign Int'l, LLC v. T-Rex Prop. AB*, No. 16 CV 04586-LTS, 2018 WL 357317, at *4
 8 (S.D.N.Y. Jan. 10, 2018) (declaratory judgment plaintiff failed to allege a substantial controversy
 9 between the plaintiff and defendant because “[e]ven if [Defendant] did ‘demand’ that Plaintiff
 10 consider the license agreement it proposed ‘to prevent []the initiation of] further patent infringement
 11 actions against [Plaintiff’s] customers, as Plaintiff asserts, there is no indication of any discussion or
 12 threat of litigation against Plaintiff.”). Although Dolby’s allegations are even less detailed, here, as in
 13 *BroadSign International*, “there is no indication of any discussion or threat of litigation against
 14 Plaintiff,” or even any “demand.” *Id.*

15 Moreover, these two allegations provide no information that would allow the Court to evaluate
 16 at least ten of the thirteen factors it identified in *ActiveVideo Networks* as informing the case-by-case
 17 analysis required to determine subject matter jurisdiction, namely: “the strength of any threatening
 18 language in communications between the parties”; “the depth and extent of infringement analysis
 19 conducted by the patent holder”; “whether the patent holder imposed a deadline to respond”; “any
 20 prior litigation between the parties”; “whether the patent holder’s threats have induced the alleged
 21 infringer to change its behavior”; “the number of times the patent holder has contacted the alleged
 22 infringer”; “whether the patent holder is simply a holding company with no source of income other
 23 than enforcing patent rights”; “whether the patentee refused to give assurance it will not enforce its
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1 patent”; “the extent of the patent holder’s familiarity with the product prior to suit”; and “the length of
2 time that transpired after the patent holder asserted infringement.”² 975 F. Supp. 2d at 1087-88.

3 As to the remaining three factors, at least two do not support the existence of a substantial
4 controversy. “[W]hether communications initiated by the declaratory judgment plaintiff have the
5 appearance of an attempt to create a controversy in anticipation of filing suit,” *ActiveVideo Networks*,
6 975 F. Supp. 2d at 1087, is ambiguous at best; although Dolby alleges that Intertrust communicated
7 with it regarding “patent royalties,” Compl. ¶ 25, the only mention of patent infringement or a
8 licensing offer in these allegations is in reference to communications from Dolby to Intertrust,
9 including a communication “concurrent with [the] filing” of this suit. *Id.* ¶ 26. “[W]hether the patent
10 holder has identified a specific patent and specific infringing products,” *ActiveVideo Networks*, 975 F.
11 Supp. 2d at 1088, is also ambiguous; although Dolby contends Intertrust communicated with it
12 regarding the Patents-in-Suit and “Dolby’s Doremi and Dolby branded DCI compliant media server
13 products as used in digital cinema applications,” Compl. ¶ 25, the complaint is opaque regarding the
14 specificity of these communications. Only the third remaining factor, “the patent holder’s history of
15 enforcing *the patent at issue*,” *ActiveVideo Networks*, 975 F. Supp. 2d at 1087 (emphasis added)—
16 which is not based on Intertrust’s interactions with Dolby at all—is meaningfully illuminated by
17 Dolby’s complaint, which separately alleges that Intertrust sued to enforce three of the Patents-in-Suit
18 against Apple six years ago. *Id.* ¶ 27. Even this tenuous allegation, however, applies to only three of
19 the eleven Patents-in-Suit.

20 Taken as a whole, the non-conclusory allegations of Dolby’s complaint allege that Intertrust
21 has accused some of its customers of infringement (which, as discussed below, is insufficient to confer
22 subject matter jurisdiction in a declaratory judgment suit by Dolby); Intertrust has communicated with
23 Dolby, including regarding patent royalties and a category of Dolby products; and Dolby has denied
24 any patent infringement. These allegations, accepted as true, are simply insufficient to plead a
25

26
27 ² The complaint alleges only that Intertrust communicated with Dolby “[s]ubsequent to
28 contacting Dolby’s customers,” which the complaint elsewhere alleges began in or about April 2018,
Compl. ¶¶ 24-25, some fourteen months before Dolby filed its complaint.

1 “substantial controversy, between parties having adverse legal interests, of sufficient immediacy and
2 reality to warrant the issuance of a declaratory judgment.” *MedImmune*, 549 U.S. at 127.

3 B. The Complaint Does Not Allege Any Basis for Dolby to Claim that “Affirmative
4 Acts” Against Its Customers Are Affirmative Acts Against Dolby

5 To the extent that Dolby seeks to manufacture subject matter jurisdiction from an “affirmative
6 act” against Dolby’s *customers*, it fares no better. The complaint alleges only that Intertrust informed
7 certain Dolby customers that they were infringing the Patents-in-Suit “by rendering movies using
8 unlicensed digital projection equipment compliant with requirements set forth by [DCI], such as in the
9 Digital Cinema System Specification (‘DCSS’).” Compl. ¶ 24. Notably, this allegation is itself bare
10 and, like Dolby’s allegations regarding its own communications with Intertrust, insufficient to plead
11 an affirmative act. Even assuming, solely for the purposes of this argument, however, that this single
12 allegation is sufficient to allege affirmative acts by Intertrust against Dolby’s customers, Dolby has
13 not alleged any facts that would give it standing to seek a declaratory judgment of non-infringement
14 on the basis of any actual dispute between Intertrust and Dolby’s customers.

15 A “supplier has standing to commence a declaratory judgment action if (a) the supplier is
16 obligated to indemnify its customers from infringement liability, or (b) there is a controversy between
17 the patentee and the supplier as to the supplier’s liability for induced or contributory infringement
18 based on the alleged acts of direct infringement by its customers.” *Arris Grp., Inc. v. British*
19 *Telecomms. PLC*, 639 F.3d 1368, 1375 (Fed. Cir. 2011). Neither condition is alleged here. Dolby
20 does not allege that it has any duty to indemnify its customers, *cf.* Compl. ¶ 24, and, as demonstrated
21 above, Dolby’s allegations regarding its communications with Intertrust fail to describe an actual
22 controversy, much less one based specifically on allegations of indirect infringement by Dolby based
23 on its customers’ alleged direct infringement. *Id.* ¶¶ 25-26; *accord Microsoft Corp. v. DataTern, Inc.*,
24 755 F.3d 899, 904-05 (Fed. Cir. 2014) (“[I]n determining whether there is a case or controversy of
25 sufficient immediacy to establish declaratory judgment jurisdiction we look to the elements of the
26 potential cause of action. . . . [T]o establish a substantial controversy regarding inducement, there
27 must be allegations by the patentee or other record evidence that establish at least a reasonable
28 potential that such a claim could be brought.”); *In re RAH Color Techs. LLC Patent Litig.*, No. 18-

CV-07465-SI, 2019 WL 2342191, at *5 (N.D. Cal. June 3, 2019) (finding allegations regarding claim charts defendant provided to plaintiff’s customers—without attaching the claim charts themselves—and listing how many references to plaintiff’s product or literature the claim charts contain insufficient to establish a reasonable potential that defendant could bring a claim against plaintiff for indirect infringement).³

C. Even If the Complaint Pleaded a “Definite and Concrete” Dispute (and It Does Not),
the Court Should Exercise Its “Unique and Substantial Discretion” to Dismiss This
Action

As noted above, the Declaratory Judgment Act affords federal courts “unique and substantial discretion in deciding whether to declare the rights of litigants.” *MedImmune*, 549 U.S. at 136. Accordingly, “district courts possess discretion in determining whether and when to entertain an action under the Declaratory Judgment Act, even when the suit otherwise satisfies subject matter jurisdictional prerequisites.” *Wilton v. Seven Falls Co.*, 515 U.S. 277, 282 (1995); *Leadsinger, Inc. v. BMG Music Publ’g*, 512 F.3d 522, 533 (9th Cir. 2008) (“Federal courts do not have a duty to grant declaratory judgment; therefore, it is within a district court’s discretion to dismiss an action for declaratory judgment.”). “The reason for giving this discretion to the district court is to enable the court to make a reasoned judgment whether the investment of judicial time and resources in a declaratory action will prove worthwhile in resolving a justiciable dispute.” *Takeda Pharm. Co. v. Mylan Inc.*, 62 F. Supp. 3d 1115, 1126 (N.D. Cal. 2014) (quoting *Minn. Mining & Mfg. Co. v. Norton Co.*, 929 F.2d 670, 672 (Fed. Cir. 1991)). Here, Dolby’s barebones complaint includes so few factual allegations—and the ones it does include are so ambiguous—that it is impossible to determine

³ In *In re RAH Color Technologies Patent Litigation*, the district court provided an example of an allegation that was insufficient to plead subject matter jurisdiction for a declaratory judgment action of no induced infringement: “For instance, the SAC alleges that in the final infringement contentions RAH served on Xerox [a customer sued by RAH], the claim charts regarding the ‘870 and ‘008 patents refer to EFI or its products or product literature ‘69 times in 35 pages purportedly to show that the claim limitations of asserted claims in the ‘870 and ‘008 patents are found in the accused EFI print servers and software.” 2019 WL 2342191, at *5. Dolby’s complaint provides nothing even close to this level of specific allegations that were still deemed insufficient to confer subject matter jurisdiction.

whether this case presents a worthwhile “investment of judicial time and resources.” *Id.* Even if the complaint sufficiently pleaded a substantial controversy (which it does not, *see* §§ I.A. & I.B, *supra*), the Court would be well within its discretion to decline to exercise its jurisdiction here.

II. THE COMPLAINT MUST BE DISMISSED BECAUSE ITS BALD ASSERTIONS THAT DOLBY DOES NOT INFRINGE THE PATENTS-IN-SUIT FAIL TO STATE A CLAIM

A. The *Iqbal/Twombly* Pleading Standard Applies to Dolby’s Complaint for Declaratory Judgement of Non-Infringement

To survive a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, “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*, 556 U.S. 662, 678 (2009) (internal quotations omitted); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A complaint fails to state a claim when there is a “lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (quoting *Balistreri v. Pacifica Police Dep’t.*, 901 F.2d 696, 699 (9th Cir. 1988)). Although a court must accept as true all well-pleaded allegations of material fact in the complaint, *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010), it is not required to credit “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (quoting *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)); *Iqbal*, 556 U.S. at 681 (bare assertions that amount to nothing more than a “formulaic recitation of the elements” of a claim “are conclusory and not entitled to be assumed true”). If the facts alleged do not support a reasonable inference of liability, the claim must be dismissed. *See Iqbal*, 556 U.S. at 678-79.

To plead a direct infringement claim that passes muster under *Iqbal* and *Twombly*, a plaintiff must allege facts indicating how the defendant’s accused products practice each of the limitations found in at least one asserted claim. *See, e.g., e.Digital Corp. v. iBaby Labs, Inc.*, No. 15-cv-05790-JST, 2016 WL 4427209, at *3-4 (N.D. Cal. Aug. 22, 2016) (dismissing direct infringement claim where plaintiff failed to allege facts showing that the accused products practiced *all* limitations of an exemplary asserted claim); *Scripps Research Inst. v. Illumina, Inc.*, No. 16-cv-661 JLS-BGS, 2016

1 WL 6834024, at *6 (S.D. Cal. Nov. 21, 2016) (dismissing infringement claim where allegations did
2 not explain how the accused product met the claim limitations).

3 A claim for declaratory relief of non-infringement is essentially the “mirror image” of an
4 infringement claim, *Comcast Cable Commc’ns, LLC v. OpenTV, Inc.*, 319 F.R.D. 269, 273 (N.D. Cal.
5 2017), and courts have accordingly held declaratory judgment plaintiffs (and counterclaimants) to the
6 same pleading standard. *See, e.g., id.*; *The Beer Barrel, LLC v. Deep Wood Brew Prods., LLC*, No.
7 2:16-cv-00440-DN-BCW, 2016 WL 5936874, at *5 (D. Utah Oct. 12, 2016); *Tannerite Sports, LLC v.*
8 *Jerent Enters., LLC*, No. 6:15-cv-00180-AA, 2016 WL 1737740, at *5 (D. Or. May 2, 2016); *RAH*
9 *Color Techs. LLC v. Ricoh USA Inc.*, 194 F. Supp. 3d 346, 352 (E.D. Pa. 2016); *Deerpoint Grp., Inc.*
10 *v. Acqua Concepts, Inc.*, No. 1:14-cv-01503-SAB, 2014 WL 7178210, at *3-4 (E.D. Cal. Dec. 16,
11 2014); *PageMelding, Inc. v. ESPN, Inc.*, No. C 11-06263 WHA, 2012 WL 3877686, at *2 (N.D. Cal.
12 Sept. 6, 2012). Thus, to meet the *Iqbal/Twombly* pleading standard, a complaint for declaratory
13 judgment of non-infringement “should include specific factual allegations about how [the plaintiff’s]
14 products do not infringe [the defendant’s] patents rather than a single conclusory statement that ‘[the
15 plaintiff’s] Products do not and have not infringed on any valid and enforceable claim of Defendants’
16 Patents.’” *The Beer Barrel*, 2016 WL 5936874, at *5.⁴

17 The *Iqbal/Twombly* standard also applies to claims seeking a declaratory judgment of no
18 indirect infringement, including induced and contributory infringement. *See, e.g., PageMelding*, 2012
19 WL 3877686, at *2-3 (citing *In re Bill of Lading*, 681 F.3d at 1336); *TSMC Tech., Inc. v. Zond, LLC*,
20 No. 14-721-LPS-CJB, 2015 WL 661364, at *6 n.11 (D. Del. Feb. 13, 2015) (citations omitted).

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22
23 ⁴ Prior to December 1, 2015, Form 18 of the Appendix of Forms to the Federal Rules of Civil
24 Procedure governed the pleading standard for both direct infringement claims and claims for
25 declaratory judgment of no direct infringement. *See, e.g., In re Bill of Lading Transmission and*
26 *Processing Sys. Patent Litig.*, 681 F.3d 1323, 1334-36 (Fed. Cir. 2012). With the Supreme Court’s
27 abrogation of Rule 84 of the Federal Rules of Civil Procedure (which had endorsed the Appendix of
28 Forms), courts now overwhelmingly apply the *Iqbal/Twombly* pleading standard to both direct
infringement claims and claims for declaratory judgment of no direct infringement. *See, e.g.,*
e.Digital Corp., 2016 WL 4427209, at *2-3; *Windy City Innovations, LLC v. Microsoft Corp.*, 193 F.
Supp. 3d 1109, 1114 (N.D. Cal. 2016); *The Beer Barrel*, 2016 WL 5936874, at *5; *Tannerite Sports*,
2016 WL 1737740, at *5; *RAH Color Techs. LLC v. Ricoh USA Inc.*, 194 F. Supp. 3d. at 352-53.

B. Dolby's Complaint Fails to Allege Sufficient Facts to State a Claim Under the *Iqbal*/*Twombly* Pleading Standard

Dolby's complaint fails to state a claim for a declaratory judgment of non-infringement because, with respect to non-infringement, it merely recites the bald assertion that "Dolby is not infringing and has not infringed, directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, any claim of [the Patents-in-Suit]." Compl. ¶¶ 30, 33, 36, 39, 42, 45, 48, 51, 54, 57, 60. Although the complaint identifies various purportedly accused products, *id.* ¶ 25, the complaint does not identify a single limitation of a single claim that Dolby alleges is not met by a specific accused product (or even its products more generally) or the use of an accused product, much less explain why that limitation is not met by an accused product or its use. Indeed, Dolby's complaint does not give even the slightest hint of Dolby's non-infringement theories. Because these allegations do not reasonably support an inference of non-infringement, the complaint must be dismissed. *See Iqbal*, 556 U.S. at 678-79; *Deerpoint*, 2014 WL 7178210, at *4 ("Conclusory statements and recitation of the elements of a claim are not sufficient to state a cognizable claim." (citing *Iqbal*, 556 U.S. at 678)).

Courts have consistently dismissed claims for declaratory judgment of non-infringement based on allegations that are substantively identical to, and even considerably more substantive, than the allegations in Dolby's complaint. *See, e.g., Comcast Cable*, 319 F.R.D. at 272-73 (allegations identifying the accused services and limitations they did not meet were insufficient to state a plausible claim for relief because "it is impossible to infer . . . even a general idea of what the [accused] services are, much less how they fail to meet the [cited] limitation[s]"); *RAH Color Techs. LLC v. Ricoh USA Inc.*, 194 F. Supp. 3d at 351-53 (allegations that defendant "has not infringed and does not infringe, either directly, indirectly, contributor[il]y, or by inducement, any valid and enforceable claim of the [asserted] patent either literally or under the doctrine of equivalents, willfully, or otherwise" were insufficient to plead a counterclaim for declaratory judgment of non-infringement); *The Beer Barrel*, 2016 WL 5936874, at *5 (description of the plaintiff's products and a conclusory allegation that they did not infringe any of the defendant's patents insufficient to state a claim); *Deerpoint*, 2014 WL 7178210, at *4 (allegations reciting sixteen "reasons" to find no infringement or invalidate the

1 patent—e.g., “as shown by the file wrappers, . . . [patentee] is estopped from claiming that the patents
2 cover or include any apparatus or device or product or method manufactured, used, or sold by [the
3 declaratory judgment plaintiff]”—were simply “conclusory statements with no supporting factual
4 allegations” and insufficient to state a plausible claim for relief).

5 Dolby’s complaint similarly falls short of stating a claim for indirect infringement because it
6 fails to allege facts that, if true, would establish that it did not indirectly infringe. *See, e.g.,*
7 *PageMelding*, 2012 WL 3877686, at *3 (no claim stated for indirect non-infringement because “ESPN
8 has not alleged any facts, that if true, would lead to a reasonable inference that it did not intend
9 another party to infringe the patent-at-issue.”); *In re RAH Color Techs. LLC Patent Litig.*, 2019 WL
10 2342191, at *6 (observing that “a supplier suing for declaratory of no induced infringement” could
11 plead its claim “by providing [patentee-prepared] claim charts that allege direct infringement by the
12 supplier’s customer and that cite to supplier-provided ‘user guides and documentation for each claim
13 element’” (quoting *Datatern*, 755 F.3d at 905)); *see also DataTern*, 755 F.3d at 906 (patentee-
14 supplied claim charts insufficient to create actual controversy regarding contributory infringement
15 because, “[f]or example, they do not imply or suggest that [the supplier’s product] is not ‘a staple
16 article or commodity of commerce suitable for substantial non-infringing use,’” as would be required
17 for patentee to plead claim of contributory infringement against supplier) (citing 35 U.S.C. § 271(c)
18 (2012)). Although Dolby need not admit these additional elements of indirect infringement, it must
19 plead some factual basis to suggest that Intertrust contends these elements are met. Dolby has not
20 done so.

21 Completely devoid of *any* factual allegations explaining what Dolby’s products are and why
22 they do not practice even a single limitation of the claims of the Asserted Patents, Dolby’s complaint
23 relies solely on conclusory allegations that it is entitled to a declaratory judgment of non-infringement
24 because it does not infringe Intertrust’s patents. These allegations plainly fail to plead a plausible non-
25 infringement claim under *Iqbal* and *Twombly*. *See, e.g., Comcast Cable*, 319 F.R.D. at 274 (“The
26 simple fact is that Comcast knows how its own products and services work and can easily show in its
27 pleadings how, specifically, a single claim limitation is absent from each accused product or service.
28

1 It must comply fully with the requirements of *Twombly/Iqbal* as to all counts[.]”). Dolby’s complaint
2 should be dismissed on the additional ground that it fails to state a claim.

3 Conclusion

4 For all of the foregoing reasons, Intertrust respectfully submits that the Court should dismiss
5 Dolby’s complaint and this premature action in its entirety.

6 DATED: August 9, 2019

Respectfully submitted,

7 QUINN EMANUEL URQUHART & SULLIVAN, LLP

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9 By



10 Harold A. Barza

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12 CORPORATION
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CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record for the parties.

Dated: August 9, 2019

/s/ Harold A. Barza
Harold A. Barza