

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. SA CV 24-00415 JVS-JDE Date July 26, 2024  
Title Kolon Industries, Inc. v. Hyosung Advanced Materials Corp. and Hysoung USA, Inc.

Present: The Honorable **James V. Selna, U.S. District Court Judge**

Elsa Vargas

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings: [IN CHAMBERS] Order Granting Motions to Dismiss [Dkt. Nos.44 and 47]**

Both Hyosung Advanced Materials Corp. and Hyosung USA, Inc. (together, “Hyosung Defendants”) filed a motion to dismiss Plaintiff Kolon Industries, Inc.’s (“Kolon”) amended complaint. See “Am. Compl.,” Dkt. No. 37. Defendant Hyosung USA, Inc. (“Hyosung USA”) filed a motion to dismiss Kolon’s claims for direct infringement, willful infringement, and pre-suit damages. Memorandum in Support of Hyosung USA’s Motion, Dkt. No. 45; Reply in Support of Hyosung USA’s Motion, Dkt. No. 63. Defendant Hyosung Advanced Materials Corp. (“Hyosung Advanced”) filed a motion to dismiss Kolon’s claims for direct, induced, contributory, and willful infringement and pre-suit damages. Memorandum in Support of Hyosung Advanced’s Motion, Dkt. No. 48; Reply in Support of Hyosung Advanced’s Motion, Dkt. No. 64. Kolon filed a single opposition addressing both motions. Opposition, Dkt. No. 62.

For the following reasons, the Court **GRANTS** the Hyosung Defendants’ motions and dismisses the FAC without prejudice.

**I. BACKGROUND**

Hyosung USA previously filed a motion to dismiss Kolon’s initial complaint. See Dkt. No. 35. The filing of Kolon’s amended complaint mooted that motion. See Order, Dkt. No. 56. Thus, the Court did not reach the merits of the prior motion.

In its amended complaint, Kolon alleges that the Hyosung Defendants infringe at least claim 1 of U.S. Patent No. 9,617,663 (the “663 Patent”), at least claim 4 of U.S. Patent No.

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9,789,731 (the “’731 Patent”), and at least claim 1 of U.S. Patent No. 10,196,765 (the “’765 Patent”). Dkt. No. 37 ¶¶ 98, 117, and 134. The ’663, ’731, and ’765 Patents (together, the “Asserted Patents”) relate to hybrid tire cord (“HTC”) comprised of different yarns having different physical properties. See ’663 Patent, Abstract. The HTC may include both a nylon yarn and an aramid yarn. ’765 Patent, Abstract. The Asserted Patents explain that this configuration offers advantages, including improved strength and fatigue properties, and it is easy to manufacture. ’773 Patent, Abstract.

Kolon alleges that the Hyosung Defendants “work together to develop, manufacture, offer for sale, and/or sell, import, or otherwise provide infringing products in the United States.” FAC ¶ 29. Kolon identifies the Hyosung Defendants’ “two-ply HTC composed of one ply of aramid and one ply of nylon” as the accused product. Id. ¶¶ 42 and 97. Kolon alleges direct, induced, contributory and willful infringement. Id. ¶¶ 110-15, 127-132, and 144-48. Relevant to its induced and willful infringement claims, Kolon further alleges that the Hyosung Defendants had actual knowledge of the Asserted Patents at least as early as February 4, 2021. Dkt. No. 37 ¶ 30. Kolon alleges that it identified the Asserted Patents in a letter it sent to Hyosung Advanced and that it warned Hyosung Advanced about manufacturing tire cord in ways that infringe the Asserted Patents. Id. Hyosung Advanced acknowledged receipt of the letter on March 10, 2021. Id.

## II. LEGAL STANDARDS

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state “enough facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has “facial plausibility” if the plaintiff pleads facts that “allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

In resolving a Rule 12(b)(6) motion under Twombly, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678. Most succinctly stated, a pleading must

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set forth allegations that have “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* Courts “are not bound to accept as true a legal conclusion couched as a factual allegation.” *Id.* (quoting *Twombly*, 550 U.S. at 555). “In keeping with these principles[,] a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.” *Iqbal*, 556 U.S. at 679.

Second, assuming the veracity of well-pleaded factual allegations, the Court must “determine whether they plausibly give rise to an entitlement to relief.” *Id.* at 679. This determination is context-specific, requiring the Court to draw on its experience and common sense, but there is no plausibility “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.” *Id.*

### III. DISCUSSION

#### A. Sufficiency of Direct Infringement Pleadings

A complaint must “place the alleged infringer on notice of what activity is being accused of infringement.” *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1352 (Fed. Cir. 2021). A plaintiff must “do more than merely allege entitlement to relief; it must support the grounds for that entitlement with sufficient factual content.” *Id.* The “level of detail required” will “vary depending upon a number of factors, including the complexity of the technology, the materiality of any given element to practicing the asserted claim(s), and the nature of the allegedly infringing device.” *Id.*

Here, as to direct infringement, the FAC does not provide adequate notice of Kolon’s infringement position to the Hyosung Defendants at least because it fails to sufficiently identify the accused product it depicts.

Kolon identifies Defendants’ “two-ply HTC composed of one ply of aramid and one ply of nylon” as the accused product. FAC ¶ 97. Elsewhere in the FAC, Kolon alleges that aramid and nylon HTC existed before Kolon filed its patent applications:

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16. Use of both aramid and nylon together in a hybrid structure was developed in an effort to address these drawbacks. Before Kolon’s inventions, due to the differences in the physical properties of aramid and nylon, the primary twist numbers and twist directions of the aramid and nylon yarns were quite different to try to make the physical properties of nylon more prominent during initial deformation and those of aramid more prominent afterward. Generally, aramid was primarily twisted at a higher twist number than the nylon, and the two were twisted in opposite directions. For example, the aramid was primarily twisted at a higher twist number in the opposite direction of the secondary twist, the nylon was primarily twisted at a lower but still high twist number in the same direction as the secondary twist, and the aramid was twisted around the nylon in the resulting structure.

17. The conventional HTC was typically manufactured using ring twisters, which twist each yarn and then twist the yarns together in distinct steps. Using a ring twister involved a three-step process of primarily twisting the aramid yarn, primarily twisting the nylon yarn, and secondarily twisting them together. This manufacturing process had limitations that included low productivity, high variability of physical properties, and high defect rates.

Id. ¶¶ 16-17.

At first glance, it is not clear whether the accused “two-ply HTC composed of one ply of aramid and one ply of nylon” is like the prior art HTC or whether it includes the specific twisting that Kolon contends is the claimed invention. The fact that the accused product is an aramid and nylon HTC, alone, is not sufficient to demonstrate infringement. The claims of the Asserted Patents are not so broad. Rather, they disclose specific methods of manufacture and HTCs having specific twist metrics. For instance, claim 1 of the ’663 Patent discloses:

1. A method of manufacturing a hybrid tire cord comprising:
  - a first step of primarily twisting an aramid filament yarn in a first direction to form an aramid primarily twisted yarn;
  - a second step of primarily twisting a nylon filament yarn in a second direction

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to form a nylon primarily twisted yarn, the second step and the first step being conducted simultaneously; and  
a third step of secondarily twisting the aramid primarily twisted yarn and the nylon primarily twisted yarn in a third direction to form a plied yarn, the third step being conducted continuously with the first and second steps, wherein the first, second and third steps are conducted by one twister, the second direction is the same as the first direction, the third direction is opposite to the first direction, and tension applied to the nylon filament yarn in the second step is higher than tension applied to the aramid filament yarn in the first step in such an amount that, if the secondary twist of the hybrid tire cord with a predetermined length were untwisted, the aramid primarily twisted yarn would be 1.005 to 1.025 times longer than the nylon primarily twisted yarn.

'663 Patent, Claim 1.

Kolon argues that it provides an element-by-element comparison of the accused product to a claim of each Asserted Patent, complete with pictures and measurement data. Dkt. No. 62 at 6. For instance, Kolon alleges, "Hyosung's Accused Product has an aramid filament yarn primarily twisted in a first direction, as shown in the picture below." FAC ¶ 100. The picture shows a yarn filament and includes a measurement key stating "500 µm" in the bottom right hand corner. Kolon then pleads "there is a second step of primarily twisting a nylon filament yarn in a second direction to form a nylon primarily twisted yarn. Hyosung's Accused Product has a nylon filament yarn primarily twisted in a second direction." *Id.* ¶ 101. Kolon then cites to Hyosung's published patent application (U.S. Patent Appl. Pub. No. 2021/0114414 (the "'414 Appl.'")) as evidence that Hyosung manufactures its product by performing these two twisting steps simultaneously. *Id.* ¶ 102. Kolon goes on to address other limitations of claim 1 of the '663 Patent in a similar manner. *See id.* ¶¶ 103-108. Kolon addresses claim 4 of the '731 Patent and claim 1 of the '765 Patent in a similar way.

Kolon's pleadings are insufficient for the reasons discussed below. In sum, the

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pleadings adequately establish that the products depicted in the FAC plausibly infringe the claims of the Asserted Patents. However, due to inconsistencies in the pleadings, it is not clear that the FAC depicts the allegedly infringing products that Kolon elsewhere identifies.

1. Sufficiency of Pictures and Accompanying Fact Pleadings

First, Kolon adequately alleges infringement of the three twisting steps by referring to the pictures of the accused product. The pictures show the direction of twisting and show the aramid and nylon filaments twisted together. In addition to the three twisting steps, claim 1 of the '663 Patent requires that "the first, second and third steps are conducted by one twister," and that "tension applied to the nylon filament yarn in the second step is higher than tension applied to the aramid filament yarn in the first step in such an amount that, if the secondary twist of the hybrid tire cord with a predetermined length were untwisted, the aramid primarily twisted yarn would be 1.005 to 1.025 times longer than the nylon primarily twisted yarn." '663 Patent, Claim 1. Kolon adequately alleges infringement of these elements.

Kolon alleges that the Hyosung Defendants manufacture their products using one twister based on disclosures in the '414 Patent. FAC ¶¶ 104-05. The '414 Patent discloses a "direct cabler" which appears to perform this function. '414 Appl. ¶ [0010]. Kolon also alleges that "[m]easurement of a sample of Hyosung's Accused Product has shown, for example, that the aramid primarily twisted yarn is about 1.014 times longer than the nylon primarily twisted yarn when a predetermined length of the Accused Product is untwisted, which is indicative that Hyosung practices this step of the method," and again alleges that the '414 Appl. discloses these measurements. *Id.* ¶¶ 107-08. The '414 Appl. discloses that "aramid yarn is injected 5 to 100 mm / m longer than that of nylon 6,6 or nylon 6 yarn at the time of applying the ply twist for producing the raw cord." '414 Appl. ¶ [0095]. Here the Court finds Kolon's pleadings plausible. It is not unreasonable to think that the Hyosung Defendants manufacture their HTC consistent with disclosures in the '414 Appl., as Kolon pleads. Moreover, the Hyosung Defendants abandoned the '414 Appl. after receiving a final rejection based on the '633 Patent. Thus, the prosecution history is not inconsistent with Kolon's pleadings. There is no reason to think that the '414 Appl. is directed to non-

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infringing methods or product. On the contrary, it appears that the '663 Patent could potentially be prior art to '414 Appl..

For the foregoing reasons, the Court finds the pleadings technically sufficient. Though the Court only considers the allegations for claim 1 of the '663 Patent, the discussion here is largely applicable to the Hyosung Defendants' remaining challenges.<sup>1</sup>

## 2. Identification of the Depicted Products

Even though Kolon's pleadings plausibly show that the depicted product meets the limitations of the asserted claims, it is not clear what product the pictures show. While the Court agrees that Kolon need not identify the accused product by name, there are other problems here. At a minimum, Kolon's pleadings must allege that (1) the depicted product is in fact a picture of Hyosung's allegedly infringing HTC product, and (2) that the depicted product was made, sold, offered for sale, or imported into the United States during the relevant time period. Kolon's pleadings do not sufficiently and clearly allege these facts.

First, Kolon identifies the depicted product as "Hyosung's two-ply HTC composed of one ply of aramid and one ply of nylon." This would seem to meet the first requirement. However, elsewhere in the FAC, Kolon alleges that the Hyosung Defendants have sold "aramid and nylon HTC" to tire manufacturers. *Id.* ¶ 55. Kolon alleges that the Hyosung Defendants sold their HTC to Hankook Tire & Technology Co., Ltd. ("Hankook"), a South Korean company. *Id.* Kolon alleges that the HTC is then incorporated into Hankook's tires, bound for sale in the United States. *Id.* ¶ 56-60. It is not clear from the FAC that the same product incorporated into the Hankook tires or other tires ultimately sold in the United States is in fact the depicted product, described above. Again, the fact that the accused product is an aramid and nylon HTC, alone, is not sufficient to demonstrate infringement. Thus, Kolon must plausibly allege that the depicted and allegedly infringing product is the same product used in the tires.

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<sup>1</sup> The Court provides a representative analysis based on claim 1 of the '663 Patent. The Court understands that Hyosung USA also specifically challenges the pleading of a particular step of claim 4 of the '731 Patent. *See* Dkt. No. 45 at 12. Given the findings herein, the Court declines to address that specific challenge. However, this decision is without prejudice. Hyosung USA may renew this challenge to the extent appropriate based on subsequent pleadings.

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Kolon also identifies a Hyosung product marketed under the trademark ALKEX. *Id.* ¶ 63. Hyosung Advanced argues that this product cannot infringe because it was developed in 2003, before Kolon filed the asserted patents. Dkt. No. 48 at 4 (citing Declaration of Tae Jung Lee, Dkt. No. 48-1 ¶ 3). The Court cannot accept Hyosung’s position as true at this stage, as the Lee Declaration is outside the pleadings. Still, it is not clear whether the product depicted in the FAC is the ALKEX product or some other product. Kolon must allege whether or not it is the ALKEX product to provide sufficient notice of its position to Hyosung Advanced. Though the Court accepts Kolon’s allegations at this stage, there is a fact dispute as to whether the ALKEX product infringes. Thus, to provide sufficient notice to the Hyosung Defendants, Kolon needs to state whether or not it contends this product infringes in the manner described with reference to the pictures.

Finally, Kolon alleges that the Hyosung Defendants imported their HTCs into the United States. *Id.* ¶ 54. However, from the FAC, it is not clear where Kolon obtained the depicted product and whether the depicted product was in fact imported into the United States. Moreover, Kolon attached import records to its complaint showing only that the Hyosung Defendants imported “100% ARAMID FILAMENT YARN” into the United States. *See* Dkt. No. 37-1. These records do not show that the Hyosung Defendants imported HTC comprising aramid and nylon, as Kolon alleges. They further do not show that the Hyosung Defendants imported an infringing HTC comprising aramid and nylon. In this way, the import records, which are part of the complaint, create an inconsistency. Absent plausible allegations that the Hyosung Defendants imported the depicted HTC product, the FAC fails to provide sufficient notice of infringement. To be clear, the Court does not require Kolon to disclose where it obtained the depicted product to cure these deficiencies. Rather, Kolon must plausibly allege that the Hyosung Defendants imported products, like the one depicted, into the United States.

Due to the inconsistencies described above, the Court finds Kolon’s infringement pleadings insufficient. Still, it appears that Kolon can amend its pleadings to cure these deficiencies. For instance, Kolon could amend its complaint to confirm that the accused product is used in tires bound for the United States. This could potentially support Kolon’s induced infringement claim. Thus, amendment is not futile. Accordingly, the Court allows Kolon leave to amend its FAC.

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**B. Indirect Infringement, Willfulness, and Pre-Suit Damages**

Each of these claims depends on an underlying claim of direct infringement. Accordingly, the Court would dismiss these claims at least for the reasons stated above. Given the above ruling, the Court declines to evaluate the Hyosung Defendants' remaining arguments at this time. However, the Hyosung Defendants may renew their arguments, to the extent necessary, in connection with subsequent pleadings.

**IV. CONCLUSION**

The Court **GRANTS** the Hyosung Defendants' motion and dismisses the FAC without prejudice. Kolon shall file a second amended complaint within 14 days of this Order.

**IT IS SO ORDERED.**