

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

GENERAL VIDEO.,

Plaintiff,

v.

DELL TECHNOLOGIES INC. and
DELL INC.,

Defendants.

CIVIL ACTION NO. 5:24-cv-124-RWS

JURY TRIAL DEMANDED

**DEFENDANTS' MOTION TO DISMISS IN PART PLAINTIFF'S
COMPLAINT FOR FAILURE TO STATE A CLAIM**

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Defendants Dell Technologies Inc. and Dell Inc. (collectively “Dell”) respectfully request that the Court dismiss the Complaint of Plaintiff General Video LLC (“General Video”) in part pursuant to Rule 12(b)(6) for failure to state a claim. Specifically, Dell requests that the Court dismiss the following claims of General Video as to all asserted patents: (1) all claims for pre-lawsuit damages for failure to plead compliance with the marking statute, (2) all claims for pre-lawsuit damages for indirect infringement; and (3) all claims for willful infringement.

General Video filed this lawsuit in August 2024.¹ *See* ECF 1. General Video’s Complaint accuses Dell of directly and indirectly infringing six patents: U.S. Patent No. 6,584,443 (“the ’443 Patent”), U.S. Patent No. 7,069,224 (“the ’224 Patent”), U.S. Patent No. 7,225,282 (“the ’282 Patent”), U.S. Patent No. 7,359,437 (“the ’437 Patent”), U.S. Patent No. 9,036,010 (“the ’010 Patent”), and U.S. Patent No. 9,843,786 (“the ’786 Patent”) (together, the “Asserted Patents”). The six patents were originally issued to Matsushita (aka Panasonic), Philips, and Silicon Image, but General Video alleges that it now owns the patents. As identified below, three of the Asserted Patents were expired when the lawsuit was filed:

Patent	Original Assignee	Expired at Filing?
6,854,443	Panasonic	Yes
7,069,224	Panasonic	Yes
7,225,282	Silicon Image	No
7,359,437	Silicon Image	Yes
9,036,010	Philips	No
9,843,786	Philips	No

¹ This motion is being filed in the Eastern District of Texas on December 12, 2024 in compliance with the order setting the due date for Dell’s response to the Complaint. *See* ECF 13. On November 22, 2024, the Court granted a joint motion to transfer this action to the Austin Division of the Western District of Texas. *See* ECF 15. Pursuant to the Local Rules of the Eastern District of Texas, this case is held in the Eastern District of Texas for twenty days, which period expires on December 12, 2024. Accordingly, Dell recognizes that this motion will likely be resolved after this action is transferred to the Western District of Texas.

In its Complaint, General Video has accused Dell of infringing apparatus claims of certain patents and method claims of other patents. General Video must plead and prove compliance with the marking statute to recover damages for any pre-lawsuit infringement of any patent with an asserted apparatus claim. General Video, however, has not plead that General Video and its predecessors complied with the marking statute, thereby foreclosing any pre-lawsuit damages for any patent with asserted apparatus claims, including at least the '224, '010, and '786 patents.

General Video has also accused Dell of two forms of indirect infringement: induced infringement under Section 271(b) of the Patent Statute, and contributory infringement under Section 271(c) of the Patent Statute. *See* 35 U.S.C. § 271. Both forms of indirect infringement require that Dell have both knowledge of the patent and the intent to cause another to infringe the patent. General Video, however, has not plausibly plead that Dell had pre-lawsuit knowledge of any Asserted Patent or the required intent to infringe. General Video's claims for pre-lawsuit indirect infringement therefore fails as to all Asserted Patents.

Finally, General Video has alleged that Dell is a willful infringer regarding all Asserted Patents. Because General Video has not plausibly plead that Dell had knowledge of the Asserted Patents before General Video filed the lawsuit and because General Video has not plead that Dell acted with the type of culpability required for willful infringement, General Video has not plead a claim for willful infringement of any Asserted Patent.

I. SUMMARY OF GENERAL VIDEO'S ALLEGATIONS

Knowledge of the Patents. One common failure of General Video's pleadings for marking, indirect infringement, and willfulness is that General Video does not set out distinct and factual allegations of notice or intent for any Asserted Patent. Instead, General Video relies on an omnibus standalone section titled "Dell's Knowledge of the Asserted Patents." Compl. ¶¶ 61-65.

However, there is no allegation that General Video itself (or any of its predecessors in ownership) told Dell that Dell was infringing the specific Asserted Patents before this lawsuit was filed.

The only allegations of pre-lawsuit notice in the Complaint concern a letter that was purportedly sent by MPEG LA in early 2015 and which never mentions any of the Asserted Patents. *Id.* ¶ 65 and Exhibit 7. MPEG LA is a licensing agent for certain patent pools, but MPEG LA does not itself own any of the patents in the patent pools. And, consistent with MPEG LA's role as an agent, General Video does not identify MPEG LA as a previous owner of the Asserted Patents. Further, the letter from MPEG LA of Exhibit 7 (which was sent to Lenovo and not Dell) does not identify any of the Asserted Patents. By General Video's own allegations, the Asserted Patents were not identified as being in the MPEG LA pool until 2016 or later. *See id.* ¶ 65 ('010 patent added March 2016; '282, '443, and '224 patents added December 2018; '437 patent added June 2021; and '786 patent added June 2024). General Video's allegations about a letter that identifies none of the Asserted Patents listed, from a licensing agent that was never an owner of the Asserted Patent, and without claim charts cannot plausibly put Dell on notice of infringement.

Marking. General Video accuses Dell of infringing apparatus claims in three patents: claims 3 and 5 of the '224 patent, claims 1 and 12 of the '010 patent, and claim 1 of the '786 patent. *See* Compl. ¶¶ 80, 124, 132. However, General Video never alleges that it and the previous owners of the Asserted Patents complied with the marking requirements of 35 U.S.C. Section 287. General Video also does not allege that licensees of the Asserted Patents complied with Section 287, despite also alleging that "almost 100 companies are licensed" to the pool of patents that includes the Asserted Patents. *See* Compl. ¶ 24.

Indirect Infringement. General Video alleges that Dell induced infringement of the Asserted Patents under 35 U.S.C. Section 271(b). Compl. ¶¶ 76, 92, 105, 119, 127, 135.

Mimicking the legal standard, General Video accuses Dell of “having knowingly induced consumers to use the Accused Dell Products within the United States in the ordinary, customary, and intended way,” and “having supplied such Accused Dell Products to customers within the United States and having instructed and encouraged such customers how to use the Accused Dell Products in the ordinary, customary, and intended way.” *Id.* ¶¶ 76, 92, 105, 119, 127, 135. General Video further accuses Dell of “encouraging and/or facilitating third-party infringement through having advertised, marketed, and disseminated the Accused Dell Products and components thereof,” and having “provided sales, promotional, and marketing materials; supporting materials; product manuals; user guides; and/or technical support and other information relating to the Accused Dell Products.” *Id.* ¶¶ 76, 92, 105, 119, 127, 135.

General Video also alleges that Dell is a contributory infringer under 35 U.S.C. Section 271(c). Compl. ¶¶ 77, 93, 106, 120, 128, 136. According to General Video, “Dell’s contributory infringement included, without limitation, Dell’s sale and provision of Accused Dell Products, including DisplayPort components thereof, to customers in the United States.” *Id.* ¶¶ 77, 93, 106, 120, 128, 136. Again, mimicking the legal standard, General Video alleges Dell sold products “knowing that such products and components were material to practicing the claimed inventions, were not staple articles or commodities of commerce suitable for substantial non-infringing use, and were especially made or especially adapted for use in an infringement of the [Asserted Patents].” *Id.* ¶¶ 77, 93, 106, 120, 128, 136. General Video’s allegations concerning pre-lawsuit inducement of infringement and contributory infringement are not sufficient. General Video has not plead any fact that would suggest that Dell had pre-lawsuit knowledge of the Asserted Patents or that Dell had the necessary intent to infringe the Asserted Patents.

Willful Infringement. For willful infringement, General Video restates the legal standard and alleges that “Dell knew of the [Asserted Patents] and MPEG LA’s assertion that Dell was an infringer,” or that “Dell should have known of the [Asserted Patents] and MPEG LA’s assertion . . . but was willfully blind to the existence of the [Asserted Patents].” *Id.* ¶¶ 78-79, 94-95, 107-08, 121-22, 129-30, 137-38. These sparse allegations similarly lack enough plausible facts to support a claim for willful infringement as to all Asserted Patents. General Video has not plead any facts suggesting that Dell had pre-lawsuit knowledge of the Asserted Patents or that Dell has engaged in deliberate infringement.

II. LEGAL STANDARD

Fed. R. Civ. P. 8(a)(2) requires that a complaint contain a “short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotation marks omitted) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). To survive a Rule 12(b)(6) challenge, a complaint must allege “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. Statements in a complaint that parrot the language of the legal standard are not factual allegations and are insufficient to state a plausible claim for relief. *See Rojas v. Wells Fargo Bank, N.A.*, 571 F. App’x 274, 279 (5th Cir. 2014) (citing *Twombly*, 550 U.S. at 555–57).

A patentee seeking pre-lawsuit damages “bears the burden of pleading and proving he complied with § 287(a)’s marking requirement.” *Arctic Cat Inc. v. Bombardier Recreational Prod. Inc.*, 876 F.3d 1350, 1366 (Fed. Cir. 2017). “A patentee’s licensees must also comply with § 287.” *Id.* For “purposes of [S]ection 287(a), notice must be of ‘the infringement,’ not merely notice of the patent’s existence or ownership.” *Lubby Holdings LLC v. Chung*, 11 F.4th 1355, 1360 (Fed. Cir. 2021). Specifically, the patentee must inform the recipient “of the identity of the patent and

the activity that is believed to be an infringement, accompanied by a proposal to abate the infringement, whether by license or otherwise.” *Id.* at 1360. The notice from the patentee must be an “affirmative communication of a specific charge of infringement by a specific accused product or device.” *Amsted Indus. Inc. v. Buckeye Steel Castings Co.*, 24 F.3d 178, 187 (Fed. Cir. 1994).

A complaint alleging indirect infringement, either by inducement or contributory infringement, must allege knowledge of the asserted patent, and a specific intent for another to directly infringe the patent. *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 765–66 (2011). This requires more than mere knowledge that a patent *might* be infringed, and, instead, a party can only be liable for indirect infringement of a patent if the party knows (or is willfully blind to) the fact that certain actions would infringe that patent. *Commil USA, LLC v. Cisco Sys., Inc.*, 575 U.S. 632, 642 (2015). Additionally, the alleged knowledge must be of a particular patent, and “general knowledge of a patent portfolio without more is insufficient even to plausibly allege knowledge of a particular asserted patent.” *Kirsch Rsch. & Dev., LLC v. Tarco Specialty Prod., Inc.*, No. 6:20-CV-00318-ADA, 2021 WL 4555802, at *2 (W.D. Tex. Oct. 4, 2021) (internal quotation marks omitted).

Claims for enhanced damages require a showing of “subjective willfulness of a patent infringer.” *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 579 U.S. 93, 136 (2016). Subjective willfulness requires conduct that is “wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or ... characteristic of a pirate.” *Id.* at 103-04. To set out a claim for willful infringement, a plaintiff must allege facts plausibly showing that the accused infringer: “(1) knew of the patent-in-suit; (2) after acquiring that knowledge, it infringed the patent; and (3) in doing so, it knew, or should have known, that its conduct amounted to infringement of the patent.” *BillJCo, LLC v. Apple Inc.*,

583 F. Supp. 3d 769, 775 (W.D. Tex. 2022). For post-suit willfulness, even if filing a complaint provides knowledge of the asserted patents, “it does not provide the type of culpability required for willfulness.” *Datanet LLC v. Dropbox Inc.*, No. 622-cv-01142-OLG-DTG, 2023 WL 7118041, at *6 (W.D. Tex. Oct. 27, 2023).

III. ARGUMENT

General Video’s Complaint fails to state a claim for (1) pre-lawsuit damages for failure to plead compliance with the marking statute, (2) pre-lawsuit damages for indirect infringement, and (3) willful infringement. For pre-lawsuit damages, General Video’s complaint fails to allege that General Video or the licensees of the Asserted Patents have marked their products. General Video’s pleadings also do not include facts to allege that any previous owner of an Asserted Patent provided pre-lawsuit notice to Dell under Section 287. For indirect infringement, General Video fails to plausibly allege that Dell had notice of the Asserted Patents, much less that Dell believed it would be infringing those patents. Finally, for willful infringement, General Video also fails to plead facts setting out the type of culpable conduct required for willful infringement, both before and after General Video filed its complaint.

A. General Video Fails to Plead Compliance with 35 U.S.C. § 287(a)

General Video’s claims for pre-lawsuit damages fail because the Complaint does not plead and prove compliance with Section 287. A patentee cannot recover damages for pre-suit infringement unless the patentee can show either (1) that both it and its licensees provided constructive notice of the Asserted Patents by complying with the marking requirements of Section 287, or (2) that the patentee provided actual notice to the accused infringer. General Video has done neither.

There are no allegations that any party, including the “almost 100” licensees, has marked any practicing product in the past. The failure to mark prevents General Video from recovering any damages for alleged acts of infringement before General Video provided Dell notice of the alleged infringement. 35 U.S.C. § 287(a). General Video has also failed to plead any plausible pre-lawsuit notice to Dell. Although General Video alleged that Dell received pre-Complaint notice of the Asserted Patents based on a letter from MPEG LA, the letter does not meet several key requirements for notice under Section 287.

The letter is included in Exhibit 7 and is from MPEG LA to Lenovo. This alone makes General Video’s notice allegations insufficient. Even if Exhibit 7 had been sent to Dell, the letter from MPEG LA does not include specific charges of infringement for any of the Asserted Patents. Notice under Section 287 must be provided with an “affirmative communication of a specific charge of infringement by a specific accused product or device.” *Amsted Indus.*, 24 F.3d at 187. MPEG LA’s letter does not meet this requirement because it does not include any reference to the Asserted Patents, much less an allegation of infringement.

Although the letter does include a reference to a patent portfolio that is set out on an MPEG LA website, an instruction in a letter that a list of patent numbers can be found elsewhere does not provide a specific charge of infringement by a specific accused product or device. *See Lubby*, 11 F.4th at 1360. General Video also admits that the Asserted Patents were not included in MPEG LA’s online list of portfolio patents until years after the MPEG LA sent the letter. Compl. ¶ 65. The Complaint does not include any allegation that would constitute “an affirmative communication of a specific charge of infringement” as to a specific patent and a specific accused product or service. *See Amsted Indus.*, 24 F.3d at 187.

Beyond the insufficiency of the contents of the notice, the letter also fails to meet marking requirements because the party who sent the purported notice letter, MPEG LA, was not and has never been the patentee for any Asserted Patent. Compl. ¶ 64. “The correct approach to determining notice under [Section] 287 must focus on the action of the patentee, not the knowledge or understanding of the infringer.” *Lubby*, 11 F.4th at 1360. Courts have also rejected arguments that a licensing agency, like MPEG LA, can provide adequate notice for purposes of Section 287. See *Toshiba Corp. v. Imation Corp.*, 990 F. Supp. 2d 882, 899 (W.D. Wis. 2013). In *Toshiba*, the district court held that a patent licensing agency could not provide sufficient notice on a patentee’s behalf for Section 287 because the licensing agency did not have ultimate responsibility for licensing and enforcement. *Id.* at 899-900. Instead, the patent licensing agency could only license the entire package of patents on behalf of the entire portfolio, not individual patents, and it had no authority to sue on the patentee’s behalf. *Id.* Similar to the facts of *Toshiba*, General Video does not (and cannot) allege that MPEG LA had the “ultimate authority” over licensing and enforcement of the Asserted Patents at the time that it sent the letter in question; instead, General Video merely alleges that the Asserted Patents are “licensed or offered for license as part of the DisplayPort Patent Portfolio License.” Compl. ¶ 25. As such, the letter from MPEG LA cannot provide sufficient notice under Section 287 as a matter of law.

Because General Video’s pleadings with respect to marking compliance under Section 287 are deficient, General Video’s claims for pre-lawsuit damages should be dismissed. Moreover, the ’224 patent expired before the filing of General Video’s Complaint. Thus, because General Video cannot recover pre-lawsuit damages (failure to comply with the marking statute) or post-lawsuit damages (expired), the Court should dismiss General Video’s claim for infringement of the ’224 patent in its entirety.

B. General Video Fails to Adequately Plead Facts Showing Pre-lawsuit Knowledge or Specific Intent as Required for Indirect Infringement Claims

Dell respectfully requests that the Court dismiss General Video’s claims for indirect infringement because the Complaint does not allege any facts plausibly suggesting that Dell had pre-lawsuit knowledge of the Asserted Patents, nor any facts plausibly suggesting that Dell had the necessary intent to infringe the Asserted Patents. The Complaint includes only conclusory allegations that parrot the legal standard, asserting that Dell “knowingly induced consumers to use the Accused Dell Products within the United States in the ordinary, customary, and intended way,” and that “Dell sold the Accused Dell Products to customers knowing that the customers’ operation of such products directly infringed [the Accused Patents] when used for their normal and intended purpose.” Compl. ¶¶ 76-77, 92-93, 105-06, 119-20, 127-28, 135-36. These allegations parroting the legal standard do not state a plausible claim for relief under *Twombly*. *Rojas*, 571 F. App’x at 279.

General Video’s sole alleged fact in support of its claims for pre-lawsuit knowledge is the previously discussed MPEG LA letter — sent to Lenovo — in Exhibit 7 of General Video’s Complaint. But, even if sent to Dell, the MPEG LA letter could not have provided Dell with the necessary knowledge of the Asserted Patents, because, as acknowledged by General Video, the Asserted Patents were not listed in the letter and were not even identified as part of MPEG LA’s patent pool until after the letter was sent. Compl. ¶ 65. Moreover, General Video’s pleadings do not allege that Dell ever actually received or viewed an updated list of patents in MPEG LA’s patent pool. General Video’s only assertion that Dell had notice of the expanded patent list is based solely on terms of a proposed license agreement. Compl. ¶ 64.

Further, a list of patents is not sufficient to provide pre-lawsuit notice for indirect infringement. “[G]eneral knowledge of a patent portfolio without more is insufficient even to

plausibly allege knowledge of a particular asserted patent.” *Kirsch Rsch. & Dev.*, 2021 WL 4555802, at *2 (internal quotation marks omitted). Because MPEG LA’s letter and website merely list a large number of patents, these lists cannot provide Dell with advanced knowledge of the specific Asserted Patents in this action.

Indirect infringement also requires more than knowledge of the patent. General Video must further allege that Dell intends for another actor to infringe the Asserted Patents. *See Commil USA*, 575 U.S. at 642. General Video has failed to allege any facts plausibly suggesting that Dell intended for anyone to infringe the Asserted Patents. The Amended Complaint contains only broad and conclusory allegations that Dell “with specific intent to encourage the infringement, having knowingly induced consumers to use the Accused Dell Products within the United States in the ordinary, customary, and intended way.” Compl. ¶¶ 76, 92, 105, 119, 127, 135. Notably missing are any facts suggesting that Dell acted with the required knowledge and specific intent to cause infringement. *See Monolithic Power Systems, Inc. v. Meraki Integrated Circuit (Shenzhen) Technology, Ltd.*, No. 6-20-cv-00876-ADA, 2021 WL 3931910, *5 (W.D. Tex. Sep. 1, 2021) (dismissing a claim for indirect infringement where the allegations “do not contain any facts, other than mere recitations of the elements[.]”). This type of “threadbare recital[.]” does not satisfy the *Twombly/Iqbal* pleading standard. *See De La Vega v. Microsoft Corp.*, No. W-19-CV-00612-ADA, 2020 WL 3528411, at *2 (W.D. Tex. Feb. 11, 2020) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009)).

General Video also cannot rely on the concept of “willful blindness” to cure the defect in its indirect infringement allegation. *See* Compl. ¶¶ 79, 95, 108, 109, 122, 123, 130, 131, 138, 139. Willful blindness requires that “(1) the defendant must subjectively believe that there is a high probability that a fact exists and (2) the defendant must take deliberate actions to avoid learning of

that fact.” *Global–Tech*, 563 U.S. at 769. Although General Video generically refers to willful blindness in its Complaint, General Video does not allege facts demonstrating a subjective belief by Dell about the Asserted Patents or any deliberate actions taken by Dell to avoid learning of the Asserted Patents or alleged infringement. Allegations about the MPEG LA letter and website are again insufficient because “awareness of a plaintiff’s patent portfolio is not enough to support a willful blindness claim to defeat a motion to dismiss.” *Affinity Labs of Texas, LLC v. Blackberry Ltd.*, No. W:13-CV-362, 2014 WL 12551207, at *5 (W.D. Tex. Apr. 30, 2014). In sum, because the Complaint does not include plausible allegations that Dell has pre-lawsuit knowledge of the asserted patent or the required intent to cause another to infringe the Asserted Patents, Dell respectfully requests that the Court dismiss General Video’s claims for pre-lawsuit damages for inducement of infringement or contributory infringement.

C. General Video Fails to Plead Facts Showing Willful Infringement

General Video’s claims for willful infringement should also be dismissed. For all of the reasons addressed above, the Complaint does not allege any facts plausibly suggesting that Dell had pre-lawsuit knowledge of the Asserted Patents. There is no allegation that Dell ever had notice of MPEG LA’s list of patents in the MPEG LA patent pool, and even if Dell somehow had notice of the list, notice of a large portfolio is not sufficient to support an allegation of willful infringement of the specific Asserted Patents. *See Kirsch Rsch. & Dev.*, 2021 WL 4555802, at *2 (“Multiple district courts, post-*Halo*, have held that general knowledge of a patent portfolio without more is insufficient even to plausibly allege knowledge of a particular asserted patent.” (cleaned up)).

As for post-lawsuit willful infringement, the pleadings merely include the conclusory allegation that, since receiving the Complaint, any infringement by Dell “continues to be willful and deliberate.” Compl. ¶¶ 109, 123, 131, 139. However, courts in this district have recognized that, although filing a complaint may provide “sufficient knowledge of the patents, it does not

provide the type of culpability required for willfulness.” *Datanet*, 2023 WL 7118041 at *6. Other than cursory statements regarding the filing of its Complaint, General Video has not plead any facts alleging the required “wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or . . . characteristic of a pirate,” behavior demonstrating subjective willfulness under *Halo*. 579 U.S. at 103-104. Accordingly, General Video’s claims for willful infringement should be dismissed for all Asserted Patents.

IV. CONCLUSION

For the foregoing reasons, Dell respectfully requests that the Court dismiss (1) all claims for pre-lawsuit damages for failure to plead compliance with the marking statute, (2) all claims for pre-lawsuit damages for indirect infringement; and (3) all claims for willful infringement.

Dated: December 12, 2024

Respectfully submitted,

/s/ Roger Fulghum

Roger Fulghum
Baker Botts LLP
910 Louisiana Street
Houston, Texas 77002
Telephone: (713) 229-1707
Facsimile: (713) 229-2707
Email: roger.fulghum@bakerbotts.com

Mark Speegle
Baker Botts LLP
401 South First Street, Suite 1300
Austin, Texas 78704
Telephone: (512) 322-2536
Facsimile: (512) 322-3636
Email: mark.speegle@bakerbotts.com

Deron Dacus
The Dacus Firm, PC
821 ESE Loop 323, Suite 430
Tyler, Texas 75701
Telephone: (903) 705-1117
Facsimile: (903) 581-2543
Email: ddacus@dacusfirm.com

Attorneys for Defendants Dell Inc. and Dell
Technologies Inc.

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served this 12th day of December 2024, with a copy of this document via the Court's CM/ECF system.

/s/ Roger Fulghum
Roger Fulghum

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

GENERAL VIDEO, LLC,

Plaintiff,

v.

DELL INC. and DELL TECHNOLOGIES
INC.,

Defendants.

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Civil Action No. 5:24-cv-124-RWS

**ORDER ON DEFENDANTS' MOTION TO DISMISS IN PART PLAINTIFF'S
COMPLAINT FOR FAILURE TO STATE A CLAIM**

Before the Court is the Defendants' Motion to Dismiss in Part Plaintiff's Complaint for Failure to State a Claim. Having considered the motion, the Court finds that it should be GRANTED. It is hereby ORDERED that the following claims in Plaintiff's Complaint be dismissed without prejudice: (1) all claims for pre-lawsuit damages for failure to plead compliance with the marking statute; (2) all claims for pre-lawsuit damages for indirect infringement; and (3) all claims for willful infringement.