

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
MIDLAND/ODESSA

AVANT LOCATION TECHNOLOGIES  
LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

Civil Action No. 7:25-cv-00445-ADA

~~FILED UNDER SEAL~~

**JURY TRIAL DEMANDED**

**ORAL ARGUMENT REQUESTED**

**PUBLIC VERSION**

**APPLE INC.'S MOTION TO DISMISS**

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## **I. INTRODUCTION**

Apple Inc. (“Apple”) respectfully requests that the Court dismiss the first amended complaint’s allegations of pre-suit indirect and willful infringement under Federal Rule of Civil Procedure 12(b)(6). Indirect and willful infringement require, among other things, knowledge of the asserted patents and knowledge of the alleged infringement. The first amended complaint fails to plausibly allege that Apple had such knowledge before Plaintiff Avant Location Technologies LLC (“Avant”) served Apple with a prior complaint for patent infringement on September 18, 2024 in the Eastern District of Texas. The allegations of pre-suit knowledge in the first amended complaint rest entirely on a single, unsolicited email sent to an attorney at the Kilpatrick Townsend law firm, not anyone at Apple. The complaint pleads no facts plausibly alleging that Apple received that correspondence or was otherwise aware of the asserted patents before Avant sued Apple. Nor has Avant plausibly alleged that Apple had any pre-suit knowledge of its alleged infringement. The pre-suit correspondence discussed in the complaint did not accuse Apple of infringement and, in fact, distinguished Apple’s technology from the patents-in-suit. Moreover, that pre-suit correspondence did not mention the Find My feature that Avant has accused of infringement in this lawsuit.

Avant has already amended its complaint once to supplement its indirect and willful infringement allegations. Following that amendment, Apple informed Avant that its pre-suit indirect and willful infringement allegations remain deficient and requested that Avant voluntarily dismiss those claims with leave to re-plead once fact discovery begins. Avant, however, refused to dismiss with leave to re-plead. And in any event, given the lack of any facts plausibly suggesting that Apple had pre-suit knowledge of the asserted patents or its alleged infringement, any further

amendment would be futile. Apple therefore respectfully requests that the Court dismiss Avant's allegations of pre-suit indirect and willful infringement with prejudice.

## II. BACKGROUND AND PROCEDURAL HISTORY

This is the second time that Avant has sued Apple for patent infringement. Avant filed a first lawsuit in the Eastern District of Texas on September 13, 2024. *See* Dkt. 19, First Am. Compl. ("FAC") ¶ 24. That first lawsuit accused Apple of infringing the same seven patents asserted in this case. *See id.* ¶¶ 6-13, 24. Apple was served with the complaint in the Eastern District of Texas case on September 18, 2024. *See Avant Location Techs. LLC v. Apple Inc.*, No. 2:24-cv-00757-JRG-RSP ("*Avant I*"), Dkt. 11, Application for Extension of Time (Sept. 19, 2024) (indicating date of service of complaint).

On November 22, 2024, Apple moved to dismiss Avant's complaint in the Eastern District of Texas for improper venue under Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1406(a) or, alternatively, moved to transfer to the Northern District of California under 28 U.S.C. § 1404(a). *Avant I*, Dkt. 33, Mot. to Dismiss (Nov. 22, 2024). On September 29, 2025, the court granted Apple's motion to dismiss for improper venue and transferred the case to the Northern District of Texas. *See Avant I*, Dkt. 93, Order Granting Mot. to Transfer (Sept. 29, 2025). On October 1, 2025, Avant voluntarily dismissed its originally-filed case. *See Avant Location Tech. LLC v. Apple Inc.*, No. 3:25-cv-02642-X, (N.D. Tex.), Dkt. 97, Notice of Voluntary Dismissal Without Prejudice (Oct. 1, 2025). Within hours of dismissing its original lawsuit, Avant filed a new complaint for infringement of the same seven patents in this District. *See* Dkt. 2, Corrected Compl. (Oct. 1, 2025).

Avant's original complaint filed in this case contained no allegation that Apple had pre-suit knowledge of the asserted patents or their alleged infringement. *See* Dkt. 2, Corrected Compl.

After Apple informed Avant that Apple intended to move to dismiss the complaint's indirect and willful infringement allegations for failure to state a claim, Avant filed an amended complaint on November 14, 2025. *See* FAC. The first amended complaint added an allegation that Apple became aware of the asserted patents and Avant's infringement allegations in connection with the Eastern District of Texas litigation. *Id.* ¶ 24. The first amended complaint further alleged that Apple had actual notice of the asserted patents "as of February 6, 2019 when Afirm Consulting & Technologies, S.L., the original assignee of the Asserted Patents, provided affirmative notice to Apple regarding Afirm's portfolio of 16 granted patents, including the Asserted Patents, along with a PowerPoint presentation, including introductory information, exemplary use cases, competitive IP analysis, a technical framework, and a business plan regarding the same." *Id.* ¶ 25. Besides paragraph 25, the first amended complaint contains no allegation that Apple was aware of the asserted patents prior to Avant initiating litigation.

After receiving the first amended complaint, Apple asked Avant to provide the correspondence referred to in paragraph 25. In response, Avant provided a single email sent from Sergio Sánchez of Ballester IP to Michael Bertelson of the Kilpatrick Townsend law firm dated February 6, 2019 along with two attachments. *See* Exs. 1-3.<sup>1</sup> The email was an unsolicited outreach seeking to sell a portfolio of patents that included the patents-in-suit and invited Apple to explore a possible IP transaction to acquire the patents. The email was not sent to anyone at Apple, but states that it was sent to Mr. Bertelson, who is a patent attorney at a law firm that has represented Apple on patent prosecution matters, as the purported "representatives of Apple for patent matters in the US." Ex. 1 at LAFUENTE00000281. The amended complaint alleges no

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<sup>1</sup> Apple has filed these exhibits under seal because Avant has designated these documents as confidential. However, there is not any proper basis to treat these materials as confidential, which were sent through an unsolicited email without any obligation of confidentiality by the recipient.

facts suggesting this correspondence was sent to anyone at Apple or that anyone responded to this unsolicited outreach.

After receiving the correspondence underlying paragraph 25 of the amended complaint, Apple informed Avant that it intended to move to dismiss the pre-suit indirect and willful infringement allegations in the amended complaint for failure to state a claim. Consistent with the Court's standing order, Apple asked whether Avant would be willing to voluntarily dismiss its pre-suit indirect and willful infringement claims with leave to re-plead should it have a basis to do so after fact discovery opens. Avant, however, refused to dismiss with leave to re-plead with the benefit of discovery. Given Avant's position, Apple now moves to dismiss the pre-suit indirect and willful infringement allegations from the amended complaint with prejudice.<sup>2</sup>

### III. LEGAL STANDARD

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), “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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). For a claim to be plausible on its face, a plaintiff must plead facts that allow the court to draw a “reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* A court must accept factual allegations as true, but legal conclusions are not entitled to the assumption of truth. *Id.* at 680.

On a motion to dismiss, a court may consider documents that a defendant attaches to a motion to dismiss if they are referred to in the plaintiff's complaint and are central to the plaintiff's claim. *Sligh v. City of Conroe, Tex.*, 87 F.4th 290, 297 (5th Cir. 2023).

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<sup>2</sup> Apple is concurrently moving to stay this litigation pending a resolution of Apple's petitions for *inter partes* review, which Apple filed before Avant filed the current case in the Western District of Texas. Those petitions challenge all asserted claims of all asserted patents.

#### IV. ARGUMENT

Indirect and willful infringement require, among other things, that the defendant has (1) knowledge of the asserted patents; and (2) knowledge of the alleged infringement. *See Provisur Techs., Inc. v. Weber, Inc.*, 119 F.4th 948, 956 (Fed. Cir. 2024) (willful infringement); *Bio-Rad Lab'ys, Inc. v. Int'l Trade Comm'n*, 998 F.3d 1320, 1335 (Fed. Cir. 2021) (indirect infringement); *Atlas Glob. Techs., LLC v. Sercomm Corp.*, 638 F. Supp. 3d 721, 725 (W.D. Tex. 2022) (indirect and willful infringement). A complaint that does not plausibly plead the defendant had knowledge of the asserted patents and knowledge of the alleged infringement fails to state a claim for indirect or willful infringement. *See Atlas Glob. Techs.*, 638 F. Supp. 3d at 729 (“Because [plaintiff’s] Complaint does not plead sufficient facts that would support an allegation of pre-suit knowledge, the Court GRANTS [the] motion to dismiss [plaintiff’s] pre-suit indirect and willful infringement claims.”); *Motion Offense, LLC v. Dropbox, Inc.*, Civil No. 6:23-CV-303-ADA, 2024 WL 5185355, at \*2 (W.D. Tex. Aug. 26, 2024) (similar for willful infringement).

The first amended complaint fails to plausibly allege knowledge of the asserted patents before Apple was served with the complaint in the Eastern District of Texas litigation on September 18, 2024. While the complaint asserts that “Defendant had actual notice of the Asserted Patents as of February 6, 2019” (FAC ¶ 25), the complaint does not allege any facts that plausibly support that conclusion. The allegations of pre-suit knowledge rest entirely on a single, unsolicited email that was sent to an attorney at an outside law firm, not anyone at Apple. *See Exs. 1-3*. The complaint contains no factual allegations that would make it plausible that anyone at Apple received the email or was otherwise informed of the asserted patents. Avant may not plausibly plead that Apple had pre-suit knowledge of the asserted patents by relying on correspondence that was not sent to Apple. *See Flypsi, Inc. v. Google LLC*, 6:22-CV-0031-ADA, 2022 WL 3593053,

at \*4-5 (W.D. Tex. Aug. 22, 2022) (refusing to impute knowledge of a non-employee to defendant and dismissing pre-suit indirect and willfulness infringement claims); *Atlas Glob. Techs., LLC v. Oneplus Tech. (Shenzhen) Co.*, 661 F. Supp. 3d 643, 653-54 (W.D. Tex. 2023) (dismissing pre-suit indirect and willful infringement claims and noting that alleged pre-suit communications were sent to the wrong entity).

Avant's pre-suit indirect and willful infringement allegations also fail to state a claim for the independent reason that Avant has failed to plausibly plead that Apple had pre-suit knowledge of any alleged infringement. The pre-suit correspondence described in the first amended complaint did not accuse Apple of infringing any of the asserted patents. *See* FAC ¶ 25; Exs. 1-3. In fact, the presentation attached to the email referenced in paragraph 25 of the first amended complaint distinguished Apple's technology from the asserted patents. *See, e.g.*, Ex. 3 at LAFUENTE00000822, -825. Moreover, the pre-suit correspondence did not refer to Apple's Find My feature, which is what Avant has accused of infringing in this case. *See* FAC ¶ 22. Simply put, Avant has not pleaded any facts that Apple had pre-suit knowledge of its alleged infringement or was willful blind to it, which independently requires dismissal of Avant's claims for pre-suit indirect and willful infringement. *See Monolithic Power Sys., Inc. v. Meraki Integrated Cir. (Shenzhen) Tech., Ltd.*, Civil No. 6:20-CV-008876-ADA, 2021 WL 3931910, at \*5 (W.D. Tex. Sept. 1, 2021) (holding that knowledge of a patent and knowledge of infringement are "distinct elements"); *see also BillJCo, LLC v. Apple Inc.*, 583 F. Supp. 3d 769, 777 (W.D. Tex. 2022) (dismissing pre-suit willful and indirect infringement claims where complaint "does not allege that [presuit correspondence] notified Apple that it infringed the Asserted Patents or identified Apple products accused of infringement here"); *Bench Walk Lighting LLC v. LG Innotek Co.*, 530 F.

Supp. 3d 468, 492 (D. Del. 2021) (finding insufficient for pre-suit knowledge a letter that did not identify most of the accused products or how the defendant allegedly infringed).

Avant has already amended its complaint once to supplement its pre-suit knowledge allegations, and Avant declined to voluntarily dismiss its pre-suit indirect infringement and willfulness allegations with leave to re-plead after fact discovery opens. Given Avant's choice to proceed on its deficient allegations of pre-suit knowledge, and because there is no amendment that would cure these deficiencies, Avant's claims of pre-suit indirect and willful infringement should be dismissed with prejudice. *See mCom IP, LLC v. CSI, Inc.*, Civil No. W-21-CV-00196-ADA, 2025 U.S. Dist. LEXIS 104145, at \*5 (W.D. Tex. May 30, 2025) (dismissing with prejudice where the plaintiff did not explain how it could cure its pleading defects); *Flexiworld Techs., Inc. v. Indeed, Inc.*, Civil No. A-24-CV-01254-ADA, 2025 U.S. Dist. LEXIS 160762, at \*22 (W.D. Tex. Aug. 19, 2025) (a court can "dismiss an action with prejudice without giving an opportunity to amend upon finding the plaintiff alleged his best case or amendment would be futile").

## **V. CONCLUSION**

Apple respectfully requests that the Court dismiss Avant's claims of indirect infringement and willfulness prior to September 18, 2024 with prejudice.

Dated: December 8, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on December 8, 2025, all counsel of record are being served with a copy of this document by email.

/s/ Jason H. Liss  
Jason H. Liss

**CERTIFICATE OF CONFERENCE**

Pursuant to Local Rule CV-7(g), counsel for Defendant met and conferred with counsel for Plaintiff, and counsel for Plaintiff indicated that Plaintiff is opposed to the relief sought by this Motion.

/s/ Jason H. Liss  
Jason H. Liss