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SOUTHERN DISTRICT OF CALIFORNIA

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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 DR SYSTEMS, INC.,

12 Plaintiff,

13 vs.

14 AVREO, INC., *et al.*,

15 Defendants.

CASE NO. 11-CV-0932 BEN (WVG)

**ORDER GRANTING COACTIV'S  
MOTION TO DISMISS IN PART THE  
FIRST AMENDED COMPLAINT**

[Docket No. 163]

16 Presently before the Court is Defendant CoActiv, LLC's Motion to Dismiss in Part the First  
17 Amended Complaint. (Docket No. 163.) For the reasons stated below, the Motion is **GRANTED**.

18 **BACKGROUND**

19 Plaintiff DR Systems, Inc. is the named assignee of U.S. Patent No. 5,452,416. The '416  
20 patent, entitled "Automated System and Method for Organizing, Presenting and Manipulating Medical  
21 Images," was issued on September 19, 1995. A reexamination certificate confirming the validity of  
22 the patent issued on April 26, 2001.

23 On May 2, 2011, Plaintiff initiated the present action for patent infringement against sixteen  
24 corporate defendants, including Defendant CoActiv, LLC. CoActiv manufactures and sells medical  
25 imaging systems. In the First Amended Complaint (the operative complaint), Plaintiff alleges that  
26 CoActiv has infringed claims 17, 21, 23, 27, and 29 of the '416 patent. Specifically, Plaintiff alleges  
27 (1) direct infringement under 35 U.S.C. § 271(a), (2) induced infringement under 35 U.S.C. § 271(b),  
28 and (3) contributory infringement under 35 U.S.C. § 271(c) against CoActiv.

1 Presently before the Court is CoActiv's Motion to Dismiss in Part the First Amended  
2 Complaint. Being fully briefed, the Court finds the Motion suitable for determination on the papers  
3 without oral argument, pursuant to Civil Local Rule 7.1.d.1.

#### 4 DISCUSSION

5 Under Federal Rule of Civil Procedure 12(b)(6), dismissal is appropriate if the complaint fails  
6 to state a claim upon which relief may be granted. Rule 8(a)(2), which governs pleading requirements,  
7 states that a pleading must contain "a short and plain statement of the claim showing that the pleader  
8 is entitled to relief." The Supreme Court has interpreted this as requiring a showing of facial  
9 plausibility. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-50 (2009); *Bell Atl. Corp. v. Twombly*, 550  
10 U.S. 544, 556 (2007). On the other hand, Form 18 in the Appendix to the Federal Rules of Civil  
11 Procedure, entitled "Complaint for Patent Infringement," provides an example for an allegation of  
12 direct infringement, and requires little more than a conclusory statement that the defendant infringed  
13 the plaintiff's patent. Form 18, however, does not address induced infringement or contributory  
14 infringement.

15 The Federal Circuit has held that under *Twombly*, a plaintiff alleging direct infringement "need  
16 only plead facts sufficient to place the alleged infringer on notice as to what he must defend." *McZeal*  
17 *v. Sprint Nextel Corp.*, 501 F.3d 1354, 1357 (Fed. Cir. 2007) (relying on then Form 16, which is now  
18 Form 18). Writing separately, Judge Timothy Dyk explained that because Rule 84 requires a court to  
19 accept as sufficient any pleading that conforms to the Forms, a court must find a bare allegation of  
20 direct infringement made in accordance to the present Form 18 to be sufficient under Rule 8(a)(2).  
21 *Id.* at 1360; *see also Microsoft Corp. v. Phoenix Solutions, Inc.*, 741 F. Supp. 2d 1156, 1162-63 (C.D.  
22 Cal. 2010); *Elan Microelects. Corp. v. Apple, Inc.*, No. C 09-01531 RS, 2009 WL 2972374, at \*2 (N.D.  
23 Cal. Sept. 14, 2009). *But see Bender v. LG Elecs. U.S.A., Inc.*, No. C 09-02114 JF (PVT), 2010 WL  
24 889541, at \*6 (N.D. Cal. Mar. 11, 2010). On the other hand, because Form 18 does not address  
25 induced infringement or contributory infringement, the heightened pleading standard of *Twombly* and  
26 *Iqbal* apply to allegations of induced infringement and contributory infringement. *Halton Co. v.*  
27 *Streivor, Inc.*, No. C 10-00655 WHA, 2010 WL 2077203, at \*3 (N.D. Cal. May 21, 2010); *Elan*, 2009  
28 WL 2972374, at \*2.

1 CoActiv moves to dismiss Plaintiff's claims for induced infringement and contributory  
2 infringement against it. Each claim will be addressed in turn.

3 **I. INDUCED INFRINGEMENT**

4 In regards to Plaintiff's claim for induced infringement against CoActiv, the First Amended  
5 Complaint alleges:

6  
7 CoActiv has indirectly infringed and continues to indirectly infringe, without  
8 limitation, claims 17, 21, 23, 27, and 29 of the '416 patent under 35 U.S.C. § 271(b)  
9 by knowingly and actively inducing infringement of those claims. Upon information  
10 and belief, CoActiv has actual knowledge of the '416 patent. CoActiv has knowingly  
11 and intentionally induced infringement . . . through, among other things, the sale, offer  
12 for sale, and importation into the United States of its accused medical imaging systems,  
13 including the CoActiv Exam-PACS system. The direct infringers that are being  
14 induced by CoActiv include, without limitation, the physicians who use CoActiv's  
15 infringing medical imaging systems.

16 CoActiv's acts of inducement include selling and supplying its accused medical  
17 imaging systems to customers and end-users with the intent that the products be used  
18 in an infringing manner; encouraging customers and end-users to use the products in  
19 an infringing manner; providing operating manuals instructing customers and end-users  
20 to use the products in an infringing manner; and advertising, marketing, and promoting  
21 the use of the products in an infringing manner.

22 (First Am. Compl. ¶¶ 22, 23.)

23 "Whoever actively induces infringement of a patent shall be liable as an infringer." 35 U.S.C.  
24 § 271(b). "To prove inducement, the patentee must show direct infringement, and that the alleged  
25 infringer knowingly induced infringement and possessed specific intent to encourage another's  
26 infringement." *i4i Ltd. P'ship v. Microsoft Corp.*, 598 F.3d 831, 851 (Fed. Cir. 2010) (internal  
27 quotation marks omitted), *aff'd*, 131 S. Ct. 2238 (2011). To induce infringement, a defendant must  
28 have "actively and knowingly aided and abetted another's direct infringement." *DSU Med. Corp. v.*  
*JMS Co., Ltd.*, 471 F.3d 1293, 1305 (Fed. Cir. 2006) (internal quotation marks omitted). To survive  
a motion to dismiss, a complaint must allege sufficient facts "for the Court to *infer* that the defendants  
had knowledge of [plaintiff's] patents and that their products infringed on those patents." *Trading*  
*Techs. Int'l, Inc. v. BCG Partners, Inc.*, No. 10c715, 2011 U.S. Dist. LEXIS 99415, at \*13-14 (N.D.  
Ill. Sept. 2, 2011).

Here, Plaintiff has not alleged sufficient facts showing that CoActiv had knowledge of the '416  
patent. Plaintiff alleges only that CoActiv "has actual knowledge of the '416 patent," and "knowingly

1 and intentionally induced infringement.” (First Am. Compl. ¶¶ 22.) Such conclusory allegations of  
2 CoActiv’s knowledge of the ’416 patent are insufficient. *See Trading Techs. Int’l, Inc.*, 2011 U.S.  
3 Dist. LEXIS 99415, at \*14 (a general allegation that defendants had actual knowledge of the patents  
4 at issue, by itself, “would likely be too conclusory and not set out a plausible claim”).

5 Plaintiff argues that from its allegations that CoActiv sold infringing products and showed  
6 customers how to use those products, “it can also be inferred that CoActiv acted ‘knowingly and  
7 intentionally,’” citing *Trading Technologies International, Inc. v. BCG Partners, Inc.* and *Brocade*  
8 *Communications Systems, Inc. v. A10 Networks, Inc.* (Opp. at 5.) In *Trading Technologies*, however,  
9 the plaintiff alleged specific facts that allowed the court to infer that the defendants knew about the  
10 plaintiff’s patents. For instance, the plaintiff alleged that plaintiff and defendant were competitors in  
11 the business of electronic trading software, the plaintiff marked its products with the patent number,  
12 and the defendant had notice of the patents at issue through the filing of multiple lawsuits. *Trading*  
13 *Techs. Int’l, Inc.*, 2011 U.S. Dist. LEXIS 99415, at \*14-15. Plaintiff alleges no such facts here.

14 Plaintiff’s citation to *Brocade Communications Systems* is similarly unconvincing. In *Brocade*  
15 *Communications Systems*, the court concluded that two defendants, Lee Chen and Rajkumar Jalan,  
16 “had intimate knowledge of the patents in suit and set about designing the accused AX series products  
17 ‘with full knowledge’ of these patents.” *Brocade Commc’n Sys., Inc. v. A10 Networks, Inc.*, No. 10-  
18 CV-03428-LHK, 2011 U.S. Dist. LEXIS 30227, at \*23 (N.D. Cal. Mar. 23, 2011). In that case, the  
19 plaintiff alleged that Chen supervised the named inventors of the patents in suit, and Jalan was a  
20 named inventor of one or more of the patents in suit. *Id.* at \*5-6. Chen and Jalan had strong  
21 connections to the patents at issue, making it reasonable to conclude they had knowledge of those  
22 patents. Plaintiff has alleged no such connection here.

23 Accordingly, Plaintiff’s claim for induced infringement against CoActiv is **DISMISSED**  
24 **WITHOUT PREJUDICE.**

## 25 II. CONTRIBUTORY INFRINGEMENT

26 In regards to Plaintiff’s claim for contributory infringement against CoActiv, the First  
27 Amended Complaint alleges:

28 CoActiv has also indirectly infringed and continues to indirectly infringe,  
without limitation, claims 17, 21, 23, 27, and 29 of the ’416 patent under 35 U.S.C.

1 § 271(c) through, among other things, the sale, offer for sale and importation into the  
2 United States of its accused medical imaging systems, including the CoActiv Exam-  
3 PACS system, features of which constitute a material part of the patented inventions  
4 of one or more of the claims of the '416 patent and are not a staple article of commerce  
5 suitable for non-infringing uses. CoActiv knows that the features of its accused  
6 medical imaging systems are especially made or adapted for use in an infringement of  
7 one or more of the claims of the '416 patent and are not a staple article of commerce  
8 suitable for non-infringing uses. The direct infringers for CoActiv's contributory  
9 infringement under 35 U.S.C. § 271(c) include, without limitation, the physicians who  
10 use CoActiv's infringing medical imaging systems.

11 CoActiv sells and offers to sell its accused medical imaging systems to  
12 customers and end-users. CoActiv has contributed and continues to contribute to its  
13 customers' and end-users' infringement by selling and offering to sell the accused  
14 medical imaging systems. Moreover, CoActiv has advertised and promoted its accused  
15 medical imaging systems as a material component of the patented invention, and  
16 encouraged and provided instructions to its customers and end-users for using its  
17 accused medical imaging systems as a material component of the patented invention.

18 (First Am. Compl. ¶¶ 24, 25.)

19 "Whoever offers to sell or sells within the United States or imports into the United States a  
20 component of a patented machine, manufacture, combination or composition, or a material or  
21 apparatus for use in practicing a patented process, constituting a material part of the invention,  
22 knowing the same to be especially made or especially adapted for use in an infringement of such  
23 patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use,  
24 shall be liable as a contributory infringer." 35 U.S.C. § 271(c). To establish contributory  
25 infringement, a plaintiff must show the following elements: "1) that there is direct infringement, 2) that  
26 the accused infringer had knowledge of the patent, 3) that the component has no substantial  
27 noninfringing uses, and 4) that the component is a material part of the invention." *Fujitsu Ltd. v.*  
28 *Netgear Inc.*, 620 F.3d 1321, 1326 (Fed. Cir. 2010).

Because Plaintiff has not alleged sufficient facts showing that CoActive had knowledge of the  
'416 patent, as explained above, Plaintiff has not established one of the required elements of  
contributory infringement. Accordingly, Plaintiff's claim for contributory infringement against  
CoActiv is **DISMISSED WITHOUT PREJUDICE**.

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**CONCLUSION**

For the reasons stated above, the Court **GRANTS** CoActiv's Motion to Dismiss in Part the First Amended Complaint. Specifically, Plaintiff's claims for induced infringement and contributory infringement against CoActiv are **DISMISSED WITHOUT PREJUDICE**. Plaintiff is **GRANTED** thirty (30) days from the date of this Order to file a Second Amended Complaint.

**IT IS SO ORDERED.**

DATED: March 29, 2012

  
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HON. ROGER T. BENITEZ  
United States District Court Judge