

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

FLEXIWORLD TECHNOLOGIES, INC.,

Plaintiff,

v.

BROTHER INTERNATIONAL CORPORATION,

Defendant.

C.A. Nos.: 2:22-cv-02236-JPM-tmp
2:22-cv-02237-JPM-tmp
2:22-cv-02250-JPM-tmp
2:22-cv-02251-JPM-tmp

Jury Trial Demanded

**MEMORANDUM IN SUPPORT OF DEFENDANT BROTHER INTERNATIONAL
CORPORATION'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

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TABLE OF CITATION ABBREVIATIONS

Abbreviation	Description
-2236	Refers to documents docketed in <i>Flexiworld Techs., Inc. v. Brother Int'l Corp.</i> , No. 2:22-cv-02236.
-2237	Refers to documents docketed in <i>Flexiworld Techs., Inc. v. Brother Int'l Corp.</i> , No. 2:22-cv-02237.
-2250	Refers to documents docketed in <i>Flexiworld Techs., Inc. v. Brother Int'l Corp.</i> , No. 2:22-cv-02250.
-2251	Refers to documents docketed in <i>Flexiworld Techs., Inc. v. Brother Int'l Corp.</i> , No. 2:22-cv-02251.
-2236 FAC	First Amended Complaint, <i>Flexiworld Techs., Inc. v. Brother Int'l Corp.</i> , No. 2:22-cv-02236 (June 21, 2022), Dkt. No. 21.
-2237 FAC	First Amended Complaint, <i>Flexiworld Techs., Inc. v. Brother Int'l Corp.</i> , No. 2:22-cv-02237 (June 21, 2022), Dkt. No. 21.
-2250 FAC	First Amended Complaint, <i>Flexiworld Techs., Inc. v. Brother Int'l Corp.</i> , No. 2:22-cv-02250 (June 21, 2022), Dkt. No. 21.
-2251 FAC	First Amended Complaint, <i>Flexiworld Techs., Inc. v. Brother Int'l Corp.</i> , No. 2:22-cv-02251 (June 21, 2022), Dkt. No. 21.
-2236 SAC	Second Amended Complaint, <i>Flexiworld Techs., Inc. v. Brother Int'l Corp.</i> , No. 2:22-cv-02236 (Aug. 5, 2022), Dkt. No. 38.
-2237 SAC	Second Amended Complaint, <i>Flexiworld Techs., Inc. v. Brother Int'l Corp.</i> , No. 2:22-cv-02237 (Aug. 5, 2022), Dkt. No. 38.
-2250 SAC	Second Amended Complaint, <i>Flexiworld Techs., Inc. v. Brother Int'l Corp.</i> , No. 2:22-cv-02250 (Aug. 5, 2022), Dkt. No. 37.
-2251 SAC	Second Amended Complaint, <i>Flexiworld Techs., Inc. v. Brother Int'l Corp.</i> , No. 2:22-cv-02251 (Aug. 5, 2022), Dkt. No. 37.

Plaintiff Flexiworld Technologies, Inc. (“Flexiworld”) accuses Defendant Brother International Corporation (“Brother”) of infringing fifteen patents across four cases.¹ In response to Brother’s Motion to Dismiss the First Amended Complaint (“FAC”), Flexiworld filed a Second Amended Complaint (“SAC”) in each case. Brother now moves to dismiss aspects of each of Flexiworld’s SACs that fail to meet the pleading standard. Specifically, Brother moves to dismiss Flexiworld’s amended allegations for direct infringement of the method claims beyond allegations of “use” for the ’402, ’233, and ’798 Patents. For all Asserted Patents, Brother also moves to dismiss Flexiworld’s claims that implicate third-party products where Flexiworld fails to allege the required joint enterprise between Brother and end users. Finally, Brother moves to dismiss Flexiworld’s claims for contributory infringement of the ’181, ’071, ’856, ’178, ’871, ’056, ’073, and ’791 Patents.²

INTRODUCTION

Flexiworld purports to fix certain pleading deficiencies identified by Brother in its first Motion to Dismiss. But the SACs leave many of these deficiencies either unaddressed or only partially addressed. Thus, multiple claims remain deficient under *Iqbal/Twombly*. Brother seeks to dismiss from these cases those claims that suffer from three such pleading defects, so that the Court and parties can efficiently resolve the remaining claims.

¹ U.S. Patent Nos. 9,036,181 (“the ’181 Patent”); 10,140,071 (“the ’071 Patent”); 10,873,856 (“the ’856 Patent”); 7,609,402 (“the ’402 Patent”); 10,140,073 (“the ’073 Patent”); 10,481,846 (“the ’846 Patent”); 10,761,791 (“the ’791 Patent”); 10,037,178 (“the ’178 Patent”); 10,768,871 (“the ’871 Patent”); 10,841,798 (“the ’798 Patent”); 11,096,056 (“the ’056 Patent”); 9,965,233 (“the ’233 Patent”); 10,642,576 (“the ’576 Patent”); 10,846,031 (“the ’031 Patent”); RE42,725 (“the ’725 Patent”) (collectively, the “Asserted Patents”).

² For the Court’s convenience, a table showing the requested grounds of dismissal is attached as Exhibit A.

First, Flexiworld’s allegations of direct infringement of the method claims beyond allegations of “use” fail for the ’402, ’233, and ’798 Patents. Like Flexiworld’s FACs, its SACs continue to allege that Brother infringes method claims by making, using, selling, offering for sale, and importing the Accused Products—even though “use” is the only act available for direct infringement of a method claim. All other allegedly infringing acts for the asserted method claims should be dismissed. *See infra* Part I.

Second, Flexiworld fails to adequately plead infringement based on third-party products for all Asserted Patents. Here, Flexiworld alleges that Brother infringes when unnamed end users use the Accused Products with third-party software, provided by Apple, Google, and Mopria, and with third-party hardware, such as iPhones and tablets. Such allegations amount to allegations of joint infringement, and liability can only be attributed to Brother based on a joint enterprise theory. *See infra* Section II.A. Flexiworld, however, has only provided allegations of a joint enterprise directed to third-party service providers, failing to reach the use by end-user customers of the Brother Accused Products. Thus, Flexiworld’s direct infringement allegations based on third-party products should be dismissed to the extent Flexiworld attempts to establish a joint enterprise beyond the third-party servicers. *See infra* Section II.B.

Third, Flexiworld’s indirect infringement allegations still suffer from fatal defects. On contributory infringement, for the ’181, ’071, ’856, ’178, ’871, ’056, ’073, and ’791 Patents, Flexiworld continues to generally allege “indirect infringement” and fails to allege any facts to support a specific claim for contributory infringement. Thus, any claim for contributory infringement of these patents should be dismissed. *See infra* Part III.

FACTUAL BACKGROUND

Brother manufactures and sells printers. Brother invests heavily in research-and-development, and its printers have been widely recognized for being easy to use, reliable, robust,

and high-quality. Some of Brother's printers include wireless functionality. It is this wireless functionality, not the core printing functionalities for which Brother is known, that Flexiworld targets in these cases.

Flexiworld filed the original Complaints on April 15 and 21, 2022, naming the incorrect defendant, Brother Industries (U.S.A.), Inc. (*See* -2236 Compl.; -2237 Compl.; -2250 Compl.; -2251 Compl.) Flexiworld was granted leave to file amended complaints, which dropped Brother Industries (U.S.A.), Inc. and named Brother International Corporation as the sole defendant. (*See* -2236 Dkt. No. 19; -2237 Dkt. No. 19; -2250 Dkt. No. 19; -2251 Dkt. No. 19.) On June 21, 2022, Flexiworld filed a First Amended Complaint ("FAC") in each case. (*See* -2236 FAC; -2237 FAC; -2250 FAC; -2251 FAC.) On July 21, 2022, Brother moved to dismiss multiple claims from the FAC. (*See* -2236 Dkt. No. 35.) In view of that motion, Flexiworld amended the FACs, filing its SAC in each case on August 5, 2022. (*See* -2236 SAC; -2237 SAC; -2250 SAC; -2251 SAC.)

LEGAL STANDARD

A complaint must 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). 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." *Id.* at 570. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although all well-pleaded allegations in a complaint are taken as true, they must be supported by factual allegations. *See id.*; *see also Twombly*, 550 U.S. at 555 ("Factual allegations must be enough to raise a right to relief above the speculative level[.]"). Courts are not required to accept sweeping legal conclusions disguised in the form of factual allegations, unwarranted

inferences, or unsupported conclusions. *See Iqbal*, 556 U.S. at 678; *Ass'n of Cleveland Fire Fighters v. City of Cleveland*, 502 F.3d 545, 548 (6th Cir. 2007).

ARGUMENT

I. FLEXIWORLD'S ALLEGATIONS OF METHOD CLAIM DIRECT INFRINGEMENT CANNOT EXTEND BEYOND USE.

Flexiworld's claims for direct infringement of method claims fail because Flexiworld still pleads infringement theories—making, selling, offering for sale, and importing—that are unavailable for method claims.

A complaint must set forth plausible allegations that the accused infringer itself “actually perform[s] the steps in the method claim.” *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1221 (Fed. Cir. 2014) (collecting cases). Indeed, a method claim cannot be directly infringed by making, selling, offering for sale, or importing—only “use” suffices. *See Joy Techs., Inc. v. Flakt, Inc.*, 6 F.3d 770, 773–74 (Fed. Cir. 1993). And the complaint must allege that the accused infringer itself uses the steps of the method claim. *See Ericsson*, 773 F.3d at 1221.

Here, the deficiencies from the FACs were left unaddressed by Flexiworld in the SACs, particularly with respect to the '402 Patent—a patent containing *only* method claims. Flexiworld alleges direct infringement of the method claims of the '402 Patent based on “making, using, selling, offering for sale, and/or importing” the Accused Products for all claims. (-2237 SAC ¶ 68.) But Brother cannot directly infringe a method claim through the acts of making, offering to sell, selling, and importing. And here, where it is Brother's *users* that are alleged to “actually perform the steps” of the claims of the '402 Patent, it cannot have directly infringed the claims. *See Ericsson*, 773 F.3d at 1221.

The same is true for the charted claims of two other Asserted Patents. Flexiworld charts only method claims for the '798 Patent and the '233 Patent. (*See* -2250 SAC ¶¶ 87–89, Ex. 7; -2251

SAC ¶¶ 68–70, Ex. 5.) Once again, these claims can only be infringed by use. For this reason, Flexiworld’s allegations that Brother infringes the method claims of these patents by making, offering to sell, selling, and importing cannot stand. Thus, the Court should dismiss Flexiworld’s allegations of method claim direct infringement to the extent they rely on these inapplicable theories.

II. FLEXIWORLD’S INFRINGEMENT ALLEGATIONS EXTEND TO THIRD-PARTY PRODUCTS BUT FAIL TO ADEQUATELY ALLEGE USE BASED ON A JOINT ENTERPRISE WITH END USERS.

For all Asserted Patents, Flexiworld’s infringement allegations extend to third-party software including Apple AirPrint, third-party Mopria³-compliant applications, and Google Cloud Print.⁴ The allegations likewise include third-party hardware comprising “Android or iOS devices” such as cell phones and tablets. Flexiworld alleges that infringement of these patents occurs when end users use these third-party products with the Accused Products. These allegations require pleading joint infringement with supporting facts to satisfy the direction or control standard. *See infra* Section II.A. But, Flexiworld’s added joint enterprise allegations are limited to “onsite service, testing, and/or use of the Accused Products” performed by third-parties. (-2236 SAC ¶ 44; -2237 SAC ¶ 51; -2250 SAC ¶ 51; -2251 SAC ¶ 51.) The SACs contain no allegations about a joint enterprise with end users, *e.g.*, customers—Brother thus cannot be liable for direct infringement based on use by end users and any joint infringement theory on this point must be dismissed. *See infra* Section II.B. Thus, Flexiworld’s infringement allegations for all Asserted Patents should be dismissed as far as they extend to any joint enterprise beyond one with the third-party servicers.

³ Mopria is an industry alliance that aims to provide universal standards for scanning and printing. (*See* <https://mopria.org/mopria-alliance>.)

⁴ Flexiworld also includes allegations directed to Brother applications, such as Brother iPrint&Scan. Brother does not challenge these allegations at this time.

A. Flexiworld’s Infringement Allegations Implicate Joint Infringement and the Direction and Control Standard.

Divided infringement occurs when multiple actors collectively perform all the steps of a method claim, or use disparate elements of a system claim, such that no one party directly infringes. “[A]n entity [is] responsible for others’ performance of method steps in two sets of circumstances: (1) where that entity directs or controls others’ performance, and (2) where the actors form a joint enterprise.” *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 797 F.3d 1020, 1022 (Fed. Cir. 2015) (en banc) (per curiam). Direction and control can be found “when an alleged infringer conditions participation in an activity or receipt of a benefit upon performance of a step or steps of a patented method and establishes the manner or timing of that performance.” *Id.* at 1023. Claims for divided infringement should be dismissed where plaintiffs do “not provide any factual support” “to plausibly claim that [accused infringers] direct[] or control[] third party infringement.” *See Lone Star Tech. Innovations, LLC v. ASUSTeK Comp. Inc.*, No. 19-CV-00059, 2020 WL 6803249, at *7 (E.D. Tex. Jan. 14, 2020).

The Federal Circuit also applies the direction or control standard to system claims—particularly when they are close analogues to method claims from the same patent. *See Lyda v. CBS Corp.*, 838 F.3d 1331, 1339–40 (Fed. Cir. 2016) (treating system claims like comparable method claims when addressing joint infringement in a Rule 12 challenge); *cf. Centillion Data Sys. LLC v. Qwest Commc’ns Int’l, Inc.*, 631 F.3d 1279, 1284 (Fed. Cir. 2011) (analyzing system claims under a slightly different framework: “to ‘use’ a system for purposes of infringement, a party must put the invention into service, *i.e.*, control the system as a whole and obtain benefit from it”). Indeed, liability under 35 U.S.C. § 271(a) requires an infringer to make, use, sell, offer for sale, or import the *entire* invention that is alleged to infringe—not just a portion. *Decca Ltd. v. United States*, 640 F.2d 1156, 1168 (Ct. Cl. 1980) (holding that direct infringement can only occur

once all component parts are combined or integrated into the patented system). But when an alleged infringer “does not provide its customers with any hardware in conjunction with its accused software, [the alleged infringer] does not make, sell, or offer for sale the complete invention Nor does [the alleged infringer] directly infringe by ‘using’ the entire claimed system.” *Synchronoss Techs., Inc. v. Dropbox, Inc.*, 987 F.3d 1358, 1368–69 (Fed. Cir. 2021). Thus, the Federal Circuit has made abundantly clear that when inventions encompass both software and hardware components, “[s]upplying the software for the customer to use is *not* the same as using the system,” *Centillion*, 631 F.3d at 1286 (emphasis added). See *Synchronoss*, 987 F. 3d at 1368–69.

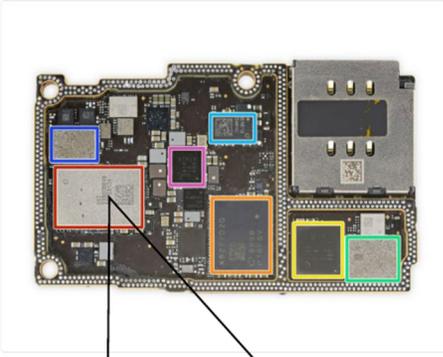
For these reasons, Flexiworld’s infringement allegations necessarily implicate joint infringement and the direction or control standard. The following are exemplary allegations from the claim chart for the ’181 Patent showing how Flexiworld’s allegations extend to the operation of third-party products:⁵

- “**AirPrint** is a wireless technology that allows you to print from your iOS supported devices including iPhone, iPad and iPod touch. This technology makes it simple to print your email, photos, web pages, and documents without installing drivers and software. In order to use this feature, **you must connect your Brother machine to a network.**” (-2236 SAC, Ex. 4 at 2 (emphasis added).)
- In order to print from an Apple device such as an iPad, iPhone, or iPod Touch, a user must “1. Make sure your Brother machine is turned on. 2. **Use Safari to open the page that you want to print.** 3. **Tap [export icons].** 4. **Tap Print.** 5. Make sure your Brother machine is selected. 6. If a different machine (or no printer) is selected, tap Printer. A list of available machines appears. 7. Tap your machine’s name in the list. 8. Select the desired options, such as the number of pages to print and 2-sided printing (if supported by your machine). 9. Tap Print.” (*Id.* at 41 (emphasis added).)

⁵ Comparable allegations exist for each of the ’071, ’856, ’073, ’791, ’178, ’871, ’056, and ’233 Patents. (*E.g.*, -2236 SAC, Ex. 5 at 65, 75, 79; -2236 SAC, Ex. 6 at 54–55, 68, 104; -2237 SAC, Ex. 6 at 17, 37, 145–46; -2237 SAC, Ex. 8 at 56–57, 69, 71–73; -2250 SAC, Ex. 5 at 51, 65, 74; -2250 SAC, Ex. 6 at 48, 62, 71; -2250 SAC, Ex. 8 at 158, 193–94; -2251 SAC, Ex. 5 at 9, 18.)

- In order to wirelessly print, a user must connect its “information apparatus (Android & Apple devices) on a same wireless network which the Brother Printer [] is connected[.]” (*Id.* at 30.) To do this, a user must **“tap the settings icon” on its phone, “tap Wi-Fi,” turn on Wifi, find and tap the correct network.** (*Id.* at 31–34 (emphasis added).)
- **“Mopria® Print Service is a print feature on Android™ mobile** devices...[w]ith this service, **you can connect** to the same network as your machine and print without additional setup.” (*Id.* at 6 (emphasis added).)
- “Mopria® is a set of standards that enable printing from a mobile device to printers from different manufacturers or brands, including Brother...with [Mopria® Print Service], **you can connect and print** to any Mopria certified printer without additional set-up.” (*Id.* at 7 (emphasis added).)
- In order to use Mopria Print Service, a user must do the following: “1. **Download the Mopria application.** 2. Find a document or photo you want to print. 3. When your phone or tablet discovers your Brother printer, **just tap ‘print’.** 4. Pick up your printout!” (*Id.* at 48–49 (emphasis added).)
- **“Google Cloud Print™ is a Google service** that allows you to print to a printer registered to your Google account using a network-compatible device (such as a mobile phone or computer) without installing the printer driver on the device.” (*Id.* at 16 (emphasis added).)
- In order to “Print from Google Drive™ for Mobile” a user must do the following: “1. Make sure your Brother machine is turned on. 2. **Access Google Drive™ from your Android™ or iOS device’s web browser.** 3. **Open the document that you want to print.** 4. **Tap the menu icon.** 5. **Tap Print.** 6. Select your machine from the printer list. 7. Change print options, if needed. 8. Tap or Print.” (*Id.* at 61 (emphasis added).)
- “To use a printer through Cloud Print on Android” a user must **“Tap on Cloud Print,”** then **“tap the menu button** on the top right-hand corner and select add printer,” and then **“tap on your printer,”** and it should be connected and ready to go.” (*Id.* at 61–62 (emphasis added).)
- “Brother devices that support Google Cloud Print connect directly to the Google Cloud Print server. **You can send print jobs from anywhere using your mobile devices or computers.**” (*Id.* at 16 (emphasis added).)
- “Printing from Android™ apps requires **installing the Google Cloud Print™ app** from the Google Play™ Store.” (*Id.* (emphasis added).)

The claim charts also include references to iPhones, Wifi chips, laptops, and Android devices. Two examples from the claim chart attached to the SAC for the '056 Patent are reproduced below.⁶

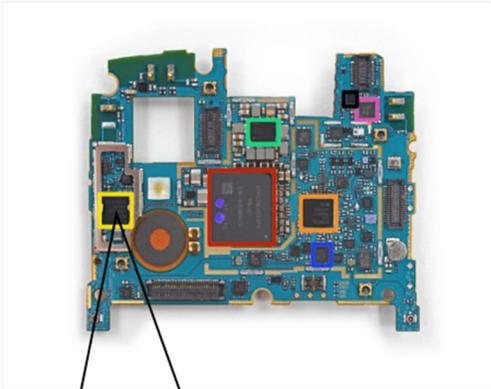


- More chips than you can shake a stick at, but we're shaking as fast as we can. Here's the RF board:
- Apple/AUS1 339500648 WiFi/Bluetooth SoC
- Intel X927YD2Q (likely XMM7660) modem
- Intel 5765 P10 A15 08B13 H1925 transceiver
- Skyworks 78223-17 PAM
- 81013 - Qorvo Envelope Tracking
- Skyworks 13797-19 DRx
- Intel 6840 P10 409 H1924 baseband PMIC

Most of the Apple products (e.g., iPhone 11 Pro max) uses Wi-Fi/Bluetooth SOC (i.e., wireless communication unit) which helps for establishing Wi-Fi connection

SOURCE:
<https://www.ifixit.com/Teardown/iPhone+11+Pro+Max+Teardown/126000>

The Mobile Information Apparatus – Android devices (LG phone, Nexus)



- That's some scrumptious silicon! Feast your eyes on these ICs:
- Sandisk SDIN8DE4 16 GB NAND flash
- Qualcomm WTR1605L LTE/HSPA+/CDMA2K/TDSCDMA/EDGE/GPS transceiver
- Qualcomm PM8841 power management IC
- **Broadcom BCM4339 5G Wi-Fi combo chip with integrated power and low-noise amplifiers (the updated version of the BCM4335).**
- Avago RFI335
- InvenSense MPU-6515 six-axis (gyro + accelerometer) MEMS MotionTracking device
- Asahi Kasei AK8963 3-axis electronic compass

Most of the Android devices (e.g., Nexus 5) uses Wi-Fi Chip (i.e., wireless communication unit) for Wi-Fi connection

(-2250 SAC, Ex. 8 at 197–98.)

⁶ Comparable allegations exist for each of the '402, '846, '798, '576, '031, and '725 Patents. (See, e.g., -2237 SAC, Ex. 5 at 20, Ex. 7 at 69; -2250 SAC, Ex. 7 at 46, 48; -2251 SAC, Ex. 6 at 18, Ex. 7 at 41, Ex. 8 at 76.)

Indeed, the claim charts attached to the SACs show that these third-party products are necessary to use the Accused Products to print wirelessly. (*See* -2236 SAC, Ex. 4 at 6, 16; -2250 SAC, Ex. 8 at 46, 132.)

Similar allegations are made for both the method and system claims, making it proper to treat these claims together at the Rule 12 stage. *See Lyda*, 838 F.3d at 1339–40 (treating comparable method and system claims identically at Rule 12).

B. Flexiworld’s Joint Enterprise Theory is Limited to Third-Party Servicers.

The SACs add two sentences to allege the existence of a joint enterprise. Flexiworld alleges that if “onsite service, testing, and/or use of the Accused Products is done via a third-party, on information and belief such third-party is contractually obligated (via a contract with Brother) to perform said service, testing, and/or use of the Accused Products” and such actions are “done under the direction or control of Brother.” (-2236 SAC ¶ 44; -2237 SAC ¶ 51; -2250 SAC ¶ 51; -2251 SAC ¶ 51.) Flexiworld also “alternatively” alleges that if any of these actions occur, Brother and the servicers “are acting as a joint enterprise for the provisioning of such service, testing, and/or use of the Accused Products.” (-2236 SAC ¶ 44; -2237 SAC ¶ 51; -2250 SAC ¶ 51; -2251 SAC ¶ 51.) None of these allegations of a joint enterprise extend beyond the service providers. Thus, Brother moves to dismiss any claim for direct infringement that implicate use by end user customers of the Accused Products with third-party products.

Flexiworld admits that these third-party software products are not provided by Brother and instead must be downloaded by end users, for example, via the Google Play Store. (*See, e.g.*, -2236 SAC, Ex. 4 at 6, 16.) Going further, Flexiworld concedes that these third-party software products operate according to functionality programmed by third-parties. (*See, e.g., id.*, Ex. 4 at 42 (“iOS devices have an inherent service discovery mechanism called Bonjour. Bonjour has the wireless

service identifying capability known as mDNS (multicast DNS).” (emphasis omitted)); *id.* (“AirPrint utilizes some extensions to the existing Bonjour specification to allow iOS and OS X [] devices to search specifically for AirPrint-capable printers and multifunction devices.” (emphasis omitted)).) Likewise, Brother does not make, use, sell, offer for sale, or import any of the third-party hardware. Flexiworld does not—indeed, it cannot—make any factual allegations to the contrary. These are wireless hardware devices that are made and sold by third-parties such as Apple, not by Brother. Thus, Flexiworld still does not adequately allege that Brother is liable for the actions of any end-user customers that use the Brother Accused Products with any of these separately sold software or hardware products. *See Sapphire Crossing LLC v. Abby USA Software House, Inc.*, 497 F. Supp. 3d 762, 767 (N.D. Cal. 2020) (granting dismissal because “mere guidance or instruction is insufficient to show conditioned benefit” in demonstrating direction and control over others’ performance of the claimed method).

On top of that, Flexiworld’s SACs contain no allegations about direction or control of third-party end users. *See Lone Star*, 2020 WL 6803249, at *7 (granting motion to dismiss claim for divided infringement that was pled without factual support); *Lyda*, 838 F.3d at 1339–40 (dismissing method and system claims alike under Rule 12 because plaintiff failed to plead joint infringement and direction or control). Nor do the SACs allege that Brother establishes the timing of any use by end users of the Accused Product, (*cf. Akamai*, 797 F.3d at 1022), or that Brother puts the claimed invention into service.⁷ *See Centillion*, 631 F.3d at 1284. Indeed, the SACs plead no facts that “use” by end users can be attributed to Brother. *See Ericsson*, 773 F.3d at 1222 (“Because Ericsson cannot point to any evidence in the record that D-Link performed the

⁷ Insofar as the *Centillion* standard applies to the system claims here, Flexiworld provides no allegations that Brother “put[s] the [claimed] invention into service.” *Centillion*, 631 F.3d at 1284. Third-party end users would do that, if at all.

infringing steps, or that any of its customers were under its direction or control, the jury did not have substantial evidence to find direct infringement of [the asserted claims.]”). Therefore, any claim for direct infringement that includes use of third-party products by end users has been inadequately pled and should be dismissed.

III. CLAIMS FOR CONTRIBUTORY INFRINGEMENT FOR WHICH FLEXIWORLD PLEADS NO SUPPORTING FACTS MUST BE DISMISSED.

Flexiworld broadly seeks a judgment that Brother “indirectly infringed [] one or more claims of each of the Patents-in-Suit.” (-2236 SAC at 18; -2237 SAC at 21; -2250 SAC at 21; -2251 SAC at 22.) But “indirect infringement” is not a claim under the Patent Act. It is merely a shorthand reference to the independent claims of induced infringement under § 271(b) and contributory infringement under § 271(c). As far as Flexiworld seeks to bring claims under both subsections of the Patent Act, it must plead each one. Yet Flexiworld attempts only to plead induced infringement for the ’181, ’071, ’856, ’073, ’791, ’178, ’871, and ’056 Patents. (*See* -2236 SAC ¶¶ 64, 67, 73, 76, 82, 85; -2237 SAC ¶¶ 81, 84, 101, 104; -2250 SAC ¶¶ 89, 92, 100, 103.) Brother raised this issue in its Motion to Dismiss the FACs, and Flexiworld acknowledged the deficiency in its pleading by amending certain of its allegations to include facts that might support a claim for contributory infringement. (*See* -2250 SAC ¶¶ 93–94.) However, as noted above, there remain other insufficient allegations of indirect infringement. Brother’s challenge here is directed to the remaining allegations that plead no facts in support of a claim for contributory infringement. Thus, for these patents, the Court should dismiss the SACs to the extent they bring claims under § 271(c).

CONCLUSION

For these reasons, the Court should grant Brother’s motion to dismiss. (*See* Ex. A.)

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on September 2, 2022 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

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