

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CORRIGENT CORPORATION, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 22-497-RGA
 :
 ARISTA NETWORKS, INC., :
 :
 Defendant. :

MEMORANDUM ORDER

Defendant filed a motion to dismiss. (D.I. 9). It raises a limited issue. It has been fully briefed. (D.I. 10, 16, 18).

The only issue seriously in dispute is whether I should dismiss the claims of contributory infringement for a lack of factual support for the legal conclusion that the accused Arista 7500R Series Switches are “especially made or especially adapted for use in an infringement and not a staple article or commodity of commerce suitable for substantial non-infringing use.” (*E.g.*, D.I. 1, ¶ 43).

I previously stated my understanding of the relevant law.

“The Federal Circuit has ruled that affirmatively pleading the absence of substantial non-infringing uses renders the claim plausible if the pleadings do not undermine that allegation.” *Merck Sharp & Dohme Corp. v. Teva Pharma USA, Inc.*, 2015 WL 4036951, at *7 (July 1, 2015) (citing *In re Bill of Lading*, 681 F.3d [1323, 1339 (Fed. Cir. 2012)]).

Express Mobile, Inc. v. Squarespace, Inc., 2021 WL 3772040, at *4 (D. Del. Aug. 25, 2021).

In the present case, the pleadings do undermine the claim. There are four asserted patents from what appear to be four different patent families. The accused products are switches. The

description of the switches (other than the specific infringement contentions) is limited. (D.I. 1, ¶ 36). And, it seems, Plaintiff concedes that it could do more. (D.I. 16 at 13).

In view of the above, the motion to dismiss (D.I. 9) is GRANTED. The allegations of pre-suit indirect infringement are DISMISSED without prejudice.¹ The allegations of post-suit contributory infringement are DISMISSED without prejudice. As to post-suit contributory infringement, Plaintiff is given leave to amend its complaint so long as Plaintiff does so within fourteen days.

IT IS SO ORDERED this 3rd day of March 2023.

/s/ Richard G. Andrews
United States District Judge

¹ I reject Defendant's request that any of the dismissals be with prejudice. In particular, plaintiffs sometimes discover information that they do not already possess. If they obtain such information, they may, depending upon circumstances, seek to amend their complaint.