

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NL GIKEN INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

C.A. No. 24-13-MN

**PLAINTIFF NL GIKEN INC.'S ANSWERING BRIEF
IN OPPOSITION TO DEFENDANT APPLE INC.'S
MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(6)**

Date: April 22, 2024

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In 2008, Masahide Tanaka, inventor of U.S. Patent No. 9,948,968 (the “’968 patent”), developed a novel receiving apparatus and designation software controller configured to automatically designate the next episode of a video to display it to the viewer. This invention addressed two newly-developing problems in the burgeoning field of Internet streaming in the 2000s: viewer difficulties in finding the next piece of related content, and the streamers’ battle for viewer eyeballs. Exs. 5-6. Mr. Tanaka’s insight proved extraordinarily valuable, with Netflix’s lead developer crediting it as having the *largest impact in company history*. Exs. 25, 27. Yet now, over a decade later, Apple seeks to dismiss this invention as no more than the abstract idea of “bookmarking.” Motion to Dismiss (D.I. 20-21, “Br.”). As explained below, Apple’s motion should be denied, as the ’968 patent sets forth patent-eligible technology.

I. NATURE AND STAGE OF THE PROCEEDINGS

NL Giken filed its Complaint (D.I. 1) on January 5, 2024, alleging infringement of eight patents, including the ’968 patent. On February 26, Apple moved to dismiss the count relating to the ’968 patent (D.I. 10-11), arguing that it is invalid under § 101. On March 18, NL Giken amended its complaint, mooted the prior motion and providing detailed factual allegations showing the ’968 claims are patent-eligible. D.I. 18 (“Am. Comp.”) ¶¶ 113-56; D.I. 19. Apple nonetheless again moved to dismiss Count VII of the Amended Complaint (the portion pertaining to the ’968 patent) arguing that the ’968 patent is invalid under § 101. Br. at 4.

II. SUMMARY OF ARGUMENT

Apple attacks a straw man: Its motion redefines the patent claims to cover what Apple wishes they covered rather than what they actually cover. Apple’s alleged “abstract idea” is “bookmarking digital moving image content and displaying the content from the bookmarked position.” Br. at 1. *But the ’968 patent’s claims do not even cover that idea.* That concept instead relates to a different, unasserted NL Giken patent, U.S. Patent No. 9,762,964 (the “’964

patent”) (Ex. 28). The ’968 claims are directed to finding the next chapter or episode of digital moving image content, not “bookmarking” a video part-way through in order to resume watching from that point at a later time. *See* ’964 claim 1 (designating and resuming viewing of the “same” content “again”); ’968 claim 1 (no “same” content “again”). This basic claim construction error dooms Apple’s motion, and renders most of its arguments irrelevant. *Thales Visionix Inc. v. United States*, 850 F.3d 1343, 1349 (Fed. Cir. 2017); *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1128-29 (Fed. Cir. 2018).

Once properly considered, the ’968 claims are not directed to an abstract idea under *Alice* Step One. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 227 (2014). They instead claim a set of five interrelated technological components that work together to give the viewer the ability to locate the next episode in a networked data stream. As explained in the Declaration of Kevin Almeroth¹ (Ex. 1) (“Dec.”) ¶¶ 72-86, the ’968 patent discloses structures and functions that constitute improvements in computer functionality, thus distinguishing the patent from ones found to be directed to abstract ideas. Indeed, the PTO—no stranger to § 101 rejections—did not at *any* point in the prosecution process reject *any* of the claims of the ’968 patent under § 101. Ex. 29. Rather, the PTO acknowledged that the ’968 claims are directed to an improvement in computer functionality via a specific technique in the particular streaming context that had not previously existed, and which is not abstract. *See, e.g., Ancora Techs., Inc. v. HTC Am., Inc.*, 908 F.3d 1343, 1345 (Fed. Cir. 2018).

As Apple has not shown that Step One of the *Alice* test is met, the Court need not even reach Step Two; but in any event, the claims also satisfy *Alice* Step Two. The claim limitations

¹ Dr. Almeroth is a University of California Professor Emeritus, an expert with multiple degrees in Computer Science, over 30 years of experience in the delivery of multimedia content and data between computing devices, and almost 200 publications. Dec. ¶¶ 6-30; Ex. 2.

show an inventive concept. Apple’s arguments to the contrary commit the classic error of treating claim limitations in isolation, disregarding the Federal Circuit’s guidance that an inventive concept can exist in a “non-conventional and non-generic arrangement of known, conventional pieces,” as it does here. *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016).

In sum, the level of abstraction employed by Apple is improper and fatal to its motion. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016) (rejecting § 101 defense that “describ[ed] the claims at such a high level of abstraction and untethered from the language of the claims”). Apple’s piecemeal plucking of isolated words from the claim limitations cannot meet its burden as the moving party. *See Internet Patents Corp. v. Active Net., Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015) (“[T]he claims are considered in their entirety to ascertain whether their character as a whole is directed to excluded subject matter.”).

III. STATEMENT OF FACTS

Apple’s statement of facts focuses on repeating the ’968 patent’s specification and claim language, while ignoring the broader context and background of the invention. Br. at 3-6.

A. The Science of Streaming

The ’968 patent relates to the field of “a digital contents receiving apparatus.” ’968 patent at 1:18-21. The years leading up to the time of the invention (September 2008) were ones of significant change for networked computing in general, and streaming in particular. Dec. ¶¶ 59-60. In the late 1990s, less than half of U.S. households even had a computer; but by 2007 well over half the nation had access to broadband Internet. *Id.*; Exs. 3-4. This rapid penetration allowed streaming of large multimedia files, but came with a downside: although “the increase of options may enrich the world of digital contents receiving apparatuses, it puts ordinary and majority of users, who cannot fully appreciate them, into confusion at the same time.” ’968

patent at 1:54-57. The profusion of options and locations in distributed computer networks in general—and streaming in particular—created (often too) many possibilities for where the next piece of related content would be. *Id.*; Dec. ¶ 61; D.I. 18 ¶¶ 114-18.

This problem interacted with a different, new one: the battle for viewer eyeballs. Dec. ¶ 62; Exs. 5-6. Keeping a consumer’s limited time focused on a particular source of video was important to streamers. Dec. ¶ 62. And these two interrelated problems were exacerbated by the rise of smartphones and apps in the mid- to late-2000s. Dec. ¶ 63; Exs. 7-15. When presented with a huge number of options, consumers faced significant new difficulties and confusion in finding content related to what they had already enjoyed (’968 patent at 1:54-57), while providers of such content likewise faced significant new difficulties in keeping those consumers’ attention. Dec. ¶ 63; D.I. 18 ¶¶ 119-20. Of relevance here, none of these specific technical issues existed in the same way outside the specific technological computer context that was developing in the mid-2000s with broadband computer access and streaming content (let alone, of course, in prior art brick-and-mortar stores). Dec. ¶ 64; Ex. 16; D.I. 18 ¶ 121.

B. Mr. Tanaka’s Invention

By 2008, the inventor of the ’968 patent, Mr. Tanaka, had worked for decades at leading Japanese and Korean companies, including Minolta, Nikon (where he headed a research and development team), and Samsung Aerospace. Around 2008, he developed several specific improvements in computer capabilities and functionality that (as discussed below) had enormous commercial impact. Dec. ¶ 65. The ’968 invention concerns a particular receiving apparatus and designation software controller configured to “automatically designate” a “succeeding part” (e.g., the next episode) of a “digital moving image contents” (e.g., a video) so as to “display” that next episode to the viewer. *See, e.g.*, ’968 patent, claim 1; *see also* ’968 patent, Fig. 4, steps S78-96; 1:54-67; 3:30-4:6; 6:2-5; 10:56-67; 11:17-59; Dec. ¶ 65; D.I. 18 ¶¶ 122-23. The PTO

considered the closest prior art, and determined that it does not “teach[] or suggest, alone or in combination, the particular combination of steps or elements as recited in the independent claims.” Ex. 29 at 25. The PTO never rejected the claims under § 101. Ex. 29.

This “play the next episode” invention neatly resolves both problems. Dec. ¶ 66. It reduces user “confusion” due to the “increase of options” by putting the next episode of the contents front and center before the viewer. ’968 patent at 1:54-59. It also helps in the “battle for eyeballs” by keeping the viewer locked into a streamer. Dec. ¶ 66; D.I. 18 ¶ 123.

C. The Post-Invention Value of “Play Next Episode” Functionality

The value of Mr. Tanaka’s invention emerged as it began to be adopted by streaming providers, and it had a tremendous impact once they fully implemented it. Dec. ¶ 67. Netflix, for example, moved into streaming and original content distribution between 2007-12. *Id.* ¶¶ 68-69; Exs. 5-6, 16-24. But Netflix did not begin developing its “play next episode” functionality until 2011-12, and did not fully roll it out until 2016. Dec. ¶ 70; Exs. 25-26. Once in place, this feature had ***“the largest impact in company history on customer retention and hours watched.”*** Ex. 25 at 4.² As Netflix’s developer explained, “Autoplay massively increased hours watched... by far the biggest increase... of any feature we ever tested.” Ex. 27 at 1. He even felt ***the need to say “Sorry?”*** for how much it affects viewers’ habits. Ex. 25 at 4; Dec. ¶ 71; D.I. 18 ¶¶ 124-28.

IV. LEGAL STANDARDS

For dismissal, Apple would need to prove that the complaint lacks “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)). A § 101 inquiry is proper at the pleading stage only if it is ***apparent from the patent’s face*** that the

² NL Giken adds emphasis and omits quotations and citations, except as noted.

asserted claims are **not** directed to eligible subject matter. *Cleveland Clinic Found. v. True Health Diagnostics LLC*, 859 F.3d 1352, 1360 (Fed. Cir. 2017).

“[I]t is not enough to merely identify a patent-ineligible concept underlying the claim; [the Court] must determine whether that patent-ineligible concept is what the claim is directed to.” *Thales*, 850 F.3d at 1349. If a claim is found to be directed to patent-ineligible subject matter, the court must next construe the claims in favor of the non-moving party and determine whether the limitations of the claims, individually or in an ordered combination, transform the limitations into an inventive concept. *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1298-99 (Fed. Cir. 2016).

V. ARGUMENT: THE CLAIMS ARE PATENT-ELIGIBLE

A. *Alice* Step 1: The '968 Claims Are Not Directed to an Abstract Idea.

1. Apple Makes a Fundamental Claim Construction Error.

The lynchpin of Apple's brief is that the '968 “claims are directed to the abstract idea of bookmarking digital moving image content and displaying the content from the bookmarked position.” Br. at 1. But they are not. *The '968 patent's claims do not even cover that idea.* Instead, a different patent, **not asserted** here (the '964 patent) has claims directed to that concept. This central claim construction error alone dooms Apple's motion.

a. The '968 Claims Relate to Finding the Next Chapter or Episode of Digital Moving Image Content, Not “Bookmarking” Content to Resume From That Spot.

The '968 claims do not cover interrupting a video part-way through to later resume that same video from that point (Apple's alleged “abstract idea”). Instead, the '968 claims are directed to enabling a user to find the next episode in a digital data stream from multiple sources available over a network. '968 patent, Abstract; 1:16-21; 6:26-40; 11:13-59; claims 1, 5, 9. As courts in this and other districts have held, finding the right next piece of related digital content

solves a technical problem rooted in technology, and is not abstract. *See, e.g., Vehicle IP, LLC v. AT&T Mobility LLC*, No. 09-1007, 2016 WL 5662004, at *5-6 (D. Del. Sep. 29, 2016) (finding patent-eligible claims requiring “upon recognizing that it has reached one way point, the claimed mobile unit must select a next way point and be capable of audibly communicating information regarding that way point,” as the “claims do not merely recite a formula for estimated time of arrival and add the words ‘apply it,’” but instead “reflect deliberate choices about which equipment plays which part in the overall system.”); *Ask Sydney, LLC v. Amazon.com Servs., LLC*, No. 23-108, 2023 WL 5216815, at *9 (W.D. Tex. Aug. 14, 2023) (“adjusting the weights of tags and using those weighted tags to select the next image solved a technical problem rooted in technology” and was thus patent-eligible).³ Apple sidesteps the actual invention at issue here, and instead points to unclaimed “bookmarking.”

To be sure, there is an apparatus discussed in the specification that (among other features) involves designating a particular digital moving image content, designating “the *same* digital moving image content *again*,” then storing that information when the unit is turned off and recalling it when the unit is turned back on. ’968 patent at 2:65-3:13. The apparatus then “designate[s] a succeeding part of the *same* digital moving image content” such that when “a digital moving image content which has been enjoyed when [the] manually operable unit turns off the receiving apparatus will be automatically designated *again* when the manually operable unit turns on the receiving apparatus afterward.” *Id.* at 2:65-3:13; 3:38-41. If a user is watching a video and turns the device off part-way through, that position is saved and retrieved so the viewer can resume that “same” video where she left off. If anything in the specification relates to

³ *See also Nazomi Commc’ns, Inc. v. Samsung Telecommc’ns, Inc.*, No. 10-5545, 2012 WL 967968, at *3 (N.D. Cal. Mar. 21, 2012) (denying summary judgment because the “claims here are clearly more specific than Kyocera’s generalized description.”).

Apple's supposed "bookmarking" abstract idea, it is this embodiment. *See, e.g.*, Br. at 8-11.

But that embodiment is *not claimed in the '968 patent*. The '968 patent does not claim the "same" digital moving image content, or any of the other specific features of the apparatus discussed in 2:65-3:13 and 3:38-41. *See* '968 patent, claims 1, 5, 9.

That apparatus is instead claimed in *a different, unasserted patent* in the same family, the '964 patent. Ex. 28. The '964 patent's independent claims each have limitations directed to designating "the *same* digital moving image contents *again*" and "a succeeding part of the *same* digital moving image contents." Ex. 28 at 17:26-52. The '968 patent, by contrast, *never claims the "same" digital moving image contents*, never claims designating that same contents "*again*," nor any of the other features of this embodiment. *Compare* '964 claims 1, 5, and 9 with '968 patent at 2:65-3:13, 3:38-41, and claims 1, 5, and 9.

The '968 patent's file history confirms this point. In response to an indefiniteness rejection, Mr. Tanaka amended his claims to add the requirement of a "*succeeding*" part of digital moving image contents to the fourth and fifth limitations of each independent claim, leading to allowance. Ex. 29 at 4, 14-20. The applicant thus focused the '968 claims on the "succeeding part of the digital moving image contents," that is, the next episode. He did not claim the succeeding part of the "same" digital moving image contents, as in the '964 patent.

The '968 claims thus are not directed to—and do not cover—the type of bookmarking that Apple claims is "abstract." "Bookmark" or "bookmarking" appears nowhere in the claims. In fact, the phrase "book mark" only ever appears in the '968 specification in an unrelated context, as Apple itself admits. Br. at 11. In connection with Figures 7-8 relating to URLs containing content that may expire, column 17 says that "download of the content data itself may not be actually carried out provided that the expiration date of the content data on the server is

securely confirmed. Instead in this case, information such as [a] ‘book mark’ necessary for accessing again the content data is merely recorded so that actual download is to be automatically carried out when the expiration date comes close or becomes unclear.” ’968 patent at 17:4-15; *see also* Figs. 7-8 & 14:20-15:34 (discussing “expiration date” of URLs). This discussion of “book marks” refers to bookmarking websites, such as by web browsers. It has nothing to do with bookmarking a time in a video to return to that point for later viewing. Apple tries to tie this passage in 17:4-15 to general aims in column 3, but does not explain how these two unrelated embodiments are supposedly connected. Br. at 11.

In sum, Apple’s argument fails Step One: “it is not enough to merely identify a patent-ineligible concept underlying the claim; we must determine whether that patent-ineligible concept is what the claim is directed to.” *Thales*, 850 F.3d at 1349. The concept does not underlie the ’968 claims, and they are not directed to it—indeed they do not even cover it.⁴

b. Apple’s Error Renders Most of Its Brief and Caselaw Irrelevant.

Apple’s foundational claim construction error infects its entire brief. The word “bookmark[-ed, -ing]” appears on almost every page, and Apple analogizes to past cases involving digital bookmarking part-way through content. Br. at 1, 8-10. But under the correct construction, these arguments and caselaw are irrelevant. None of the cases cited on pages 8-10 of Apple’s brief involve the actual matter to which the ’968 claims are directed: finding the next chapter or episode of digital moving image contents. The claims are not directed to Apple’s proposed abstract idea. *See Thales*, 850 F.3d at 1349; *Aatrix*, 882 F.3d at 1128-29.

⁴ Should Apple have some claim construction theory under which it plans to contend that the claims do have such a scope, it would then, at minimum, be premature to rule now on the § 101 issue before claim construction. *See, e.g., Aatrix*, 882 F.3d at 1125, 1128-29 (reversing § 101 dismissal as there was “a need for claim construction... on remand”). *See* § V.A.1.c below.

c. Apple's Theory Would at Most Present an Issue To Be Resolved at *Markman*, Not on a Motion To Dismiss.

If Apple plans to argue in reply that its alleged “abstract idea” does apply to the ’968 patent, or that the ’968 claims do cover “bookmarking” despite the contrary claim language, specification, file history, and the unasserted ’964 patent, then it would at most be raising a claim construction dispute. But on a § 101 motion to dismiss, the Court “must proceed by adopting the non-moving party’s constructions.” *Aatrix*, 882 F.3d at 1125. And Apple’s positions on bookmarking “read like classic *Markman* arguments,” which are improper grounds to dismiss. *Nalco Co. v. Chem-Mod, LLC*, 883 F.3d 1337, 1349 (Fed. Cir. 2018). *See also BASCOM*, 827 F.3d at 1349-50 (“On this limited record, this specific method of filtering internet content cannot be said, as a matter of law, to have been conventional or generic.”). As this Court has previously held, any such dispute should be resolved either at *Markman* or a subsequent case stage.⁵

2. The Claims, Specification, and Caselaw Confirm That the ’968 Patent Is Not Directed to an Abstract Idea.

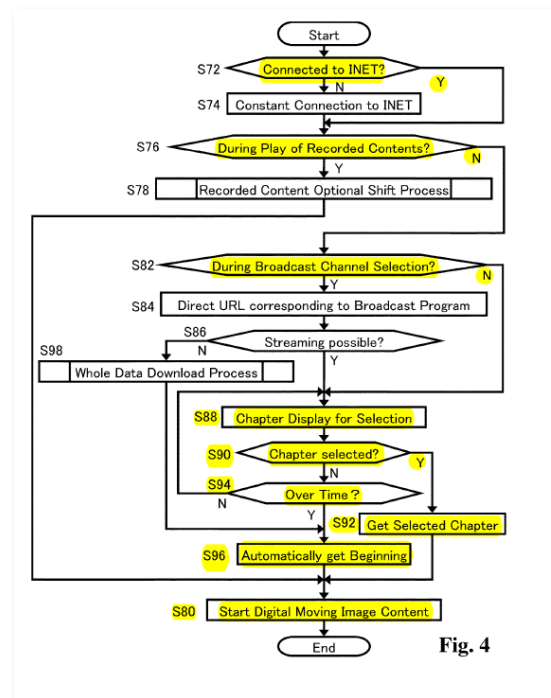
Rather than the abstract idea of “bookmarking,” the ’968 invention relates to a receiving apparatus, system, and method that enables a user to find the next episode in a digital data stream from multiple sources available over a network. ’968 patent, Abstract; 1:16-21; 6:26-40; 11:13-59. It is directed to a complex set of five interrelated components that, working together, give the user the ability to locate the next episode (see Dec. ¶¶ 72-86; D.I. 18 ¶¶ 130-42):

First, the apparatus includes a “processor” that executes instructions “to designate a part

⁵ This Court has held in similar situations that at “this stage and on the limited record presently available and properly considered on a motion to dismiss, important issues of claim construction cannot be resolved in order for the Court to reach a finding.” *Blackbird Techs. v. Uber Techs., Inc.*, No. 19-561, 2020 WL 58535, at *6 (D. Del. Jan. 6, 2020) (Noreika, J.); *see also Execware, LLC v. BJ’S Wholesale Club, Inc.*, No. 14-233, 2015 WL 5734434, at *3 (D. Del. Sep. 30, 2015) (“Claim construction is necessary in this case before determinations can be made under either step of the *Alice* inquiry,” denying motion to dismiss with leave to seek summary judgment).

of the digital moving image contents” from a provider, which can be either “automatic[]” or “in response to a manual operation.” ’968 patent, claim 1. This designation requires specific information “to designate one of the digital contents in the outside source” as relating to the digital moving image contents the viewer wishes to watch. *Id.* at 2:1-13. The apparatus must do so consistently for the invention to work, to avoid a “mismatch.” *Id.* at 2:11-13, claim 1.

Second, the apparatus includes a “memory” to keep information necessary for the processor to “automatically designate a succeeding part” of the digital moving image contents, where that part succeeds a “viewed part” of the contents. ’968 patent, claim 1. The ’968 patent explains that the unit has hardware and software that allows the automatic designation of a succeeding part, for example the next “chapter” of digital moving image contents. The ’968 patent discusses this idea in more detail in an embodiment in Figure 4. *Id.* at Fig. 4, steps S72-80; 4:41-42; 10:41-54; 11:4-7; 11:17-59. This embodiment allows the automatic playing of the next chapter or episode of the video, a feature that Netflix (subsequent to the invention) found “had the largest impact in company history on customer retention and hours watched.” Ex. 25 at 4.



Third, the apparatus includes a “designation software controller” that is configured to:

- (a) “control the memory to keep the information in response to a termination of viewing the viewed part,” and
- (b) “control the processor to automatically designate the succeeding part”

when viewing resumes. ’968 patent, claim 1. This designation software controller is not an abstract, generic component, but reflects substantial programming work to determine exactly

what episode the viewer stopped viewing ('968 patent at Fig. 4, 11:17-22), how to designate the correct next episode (*id.* at 11:23-25), how to correctly make that next episode pull up and be available to the viewer (*id.* at 11:25-27), how to make that next episode automatically download or stream (*id.* at 11:27-31), and how to determine whether the time has passed “over a limit” so as to automatically play the next episode. *Id.* at 11:36-48, 58-59.⁶

Fourth, the apparatus includes a “receiver” of the “designated succeeding part” in response to the “designation by the processor.” ’968 patent, claim 1. Like the earlier limitations, making this receiver involves substantial hardware and software work to have the receiver properly receive the “designated succeeding part” of the digital moving image contents and to keep track of the information from the “designation by the processor” as to how that content relates to the previously-viewed content. Dec. ¶¶ 80; ’968 patent, Fig. 1; 4:33-35; 4:57-5:12.

Fifth, the apparatus includes a “display” to show “the succeeding part of the digital moving image contents received by the receiver.” ’968 patent, claim 1. This element, like the other four, is a physical implementation, not an abstract idea. ’968 patent, Fig. 1; 5:35-6:11.

For all these elements, separately and together, thousands of programming choices are involved in implementing the invention. Dec. ¶¶ 81-82.

“When considered as a whole, and in light of the specification,” these claims are not directed to an abstract idea, but “provide[] a specific solution to then-existing technological problems in computers” of allowing viewers to find the next episode, and streamers to win the battle for eyeballs. *Data Engine Techs. LLC v. Google LLC*, 906 F.3d 999, 1007-08 (Fed. Cir.

⁶ Apple cursorily suggests that “automatic” designation is irrelevant because the first limitation also allows “manual operation.” Br. at 14. Yet Apple ignores that the second and third limitations **require** “automatic” designation, and that dependent claim 4 refers back to the first independent limitation, not the second or third ones. ’968 patent, claims 1 & 4.

2018). Apple’s brief does not engage with or even acknowledge these detailed, specific claim elements. Br. at 8-15. Instead it generalizes (incorrectly) that the implementation of the claims amounts to nothing more than “bookmarking digital moving image content”—ignoring all the underlying, specifically-described, and claimed technology. The specification is full of details explaining *how* the claimed inventions are a technological advancement. *See, e.g.*, D.I. 18 ¶¶ 132-38; Dec. ¶¶ 72-86; ’968 patent, Abstract; Fig. 4, steps S78-96; 1:16-21; 1:54-67; 3:30-4:6; 6:2-5; 6:26-40; 10:56-67; 11:13-59. The invention thus enables a commercially valuable outcome in the field of digital moving image content by automatically designating the next episode in a way that was unknown before the streaming revolution.

The *Alice* Step One inquiry involves “understand[ing] the problem facing the inventor and, ultimately, what the patent describes as the invention.” *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 767 (Fed. Cir. 2019). Here, “the focus of the claimed advance is on improving” user’s ability to find the next episode, “with the improvement assertedly being an efficient way” to automatically find such episodes in the wilds of the Internet. *TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1296 (Fed. Cir. 2020).⁷ Claim 1 therefore recites a “specific improvement” in the art. *Id.* at 1293; *Core Wireless Licensing S.A.R.L. v. LG Elecs. Inc.*, 880 F.3d 1356, 1362 (Fed. Cir. 2018) (“claims focused on various improvements of systems [are] directed to patent eligible subject matter.”).

As noted above, courts in this and other districts have held that finding the right next

⁷ Apple denigrates the invention as “mere...automation,” but “processes that automate tasks that humans are capable of performing are patent eligible if properly claimed.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1313 (Fed. Cir. 2016). “[A]utomation alone is not necessarily abstract.” *EcoSrvs., LLC v. Certified Aviation Srvs., LLC*, 830 F. App’x 634, 645 (Fed. Cir. 2020). *See also Inmar Brand Sols., Inc. v. Quotient Tech., Inc.*, No. 23-994, 2024 WL 1675036, at *6 (D. Del. Apr. 18, 2024) (denying motion to dismiss automation claims, as “technical improvement of a computer” is not a “*per se* test for patent eligibility.”).

piece of related digital content solves a technical problem rooted in technology, and is not abstract. *See, e.g., Vehicle IP*, 2016 WL 5662004, at *6; *Ask Sydney*, 2023 WL 5216815, at *9; *Nazomi*, 2012 WL 967968, at *3. Here, too, the '968 claims reflect deliberate choices about which equipment (e.g., the designation software controller) plays which part in the overall system, and thereby solve a technical problem rooted in computer network technology. Hence “the focus of the claimed advance is on a solution to a problem specifically arising in the realm of computer networks” and thus “the claim is properly characterized as identifying a specific improvement in computer capabilities or network functionality, rather than only claiming a desirable result or function.” *TecSec*, 978 F.3d at 1293.

3. Figure 4 Helps Demonstrate Non-Abstractness.

Apple suggests that Figure 4—which depicts one '968 embodiment—is irrelevant to the Section 101 analysis. Br. at 3, 10-11, 16-18. Not so. The specification is “always highly relevant” and “the single best guide to the meaning of a disputed term.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (*en banc*). As Apple elsewhere admits (Br. at 8), courts commonly consider the specification in determining a claim’s scope, which (as here) is often a preliminary step to determining whether the claim meets § 101. *See, e.g., Amdocs*, 841 F.3d at 1299 (“we examine the claims in light of the written description”) (collecting cases); *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1370 (Fed. Cir. 2018) (noting examples of embodiments that “according to the specification” showed certain claims were unconventional and patent-eligible). Here, Figure 4 is relevant to claim 1’s scope as it relates directly to all five limitations in claim 1, especially the “memory... to automatically designate” and “designation software controller.” D.I. 18 ¶¶ 131-39; Dec. ¶¶ 76-79. Apple cannot legitimately argue otherwise.⁸

⁸ Apple’s sole citation on this point is *Alice*, 573 U.S. at 217-18. Br. at 10-11, 16. But *Alice* simply summarizes the two-step framework of *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566

4. The '968 Patent Claims Do Not Reflect Conduct That Can Be Performed Mentally.

Apparently working its way through a check-list of Step One arguments, Apple lastly contends that the '968 claims reflect “conduct that can readily be performed by the human mind.” Br. at 15. But as in past cases, “[d]efendants do not [even] explain how a human could manually accomplish this feat. *Nor could they.*” *Sonos, Inc. v. D&M Holdings Inc.*, No. 14-1330, 2017 WL 971700, at *6 (D. Del. Mar. 13, 2017). *See Adasa Inc. v. Avery Dennison Corp.*, 55 F.4th 900, 909 (Fed. Cir. 2022) (rejecting theory that claims were “directed to nothing more than mentally ascribing meaning to a pre-existing data field” because it “is not a mere mental process, but a hardware-based data structure focused on improvements to the technological process.”) Here, likewise (as shown above), the '968 invention solves a new problem that did not exist before the Internet and distributed network computing—one that needed a new solution. D.I. 18 ¶¶ 114-42; Dec. ¶¶ 57-86; '968 patent, 1:54-59. The solution as claimed involves particular hardware and techniques, e.g., a “designation software controller,” “receiver,” and “display,” with specific features and functions that cannot be done in a person’s mind or by pencil and paper. '968 patent, claim 1; Dec ¶ 82. On Step One, “[i]t is not enough... to merely trace the invention to some real-world analogy.” *Data Engine*, 906 F.3d at 1011. And even if the claims covered “something that humans [could] do—theoretically—[that would] not automatically make the focus... an abstract idea.” *Inmar*, 2024 WL 1675036, at *6 (emphasis original).

B. Alice Step 2: The '968 Claims Recite an Inventive Concept.

As the claims do not recite an abstract idea under *Alice* Step One, the Court need go no further. But even if the Court reaches Step Two, the claims set out an “inventive concept

U.S. 66 (2012), and says nothing about the specification being irrelevant to either step. *Alice* itself relies on the specification to understand the claims. 573 U.S. at 212-13.

sufficient to transform the claimed abstract idea into a patent-eligible application.” *Alice*, 570 U.S. at 221. Step Two thus provides a separate and independent ground to deny the motion.⁹

1. The ’968 Patent Claims a Specific Way of Finding the Next Chapter or Episode in a Digital Data Stream That Was Not Routine or Conventional.

These same designating, receiving, and displaying limitations also provide the inventive steps that make the claims of the ’968 patent eligible. D.I. 18 ¶¶ 143-50; Dec. ¶¶ 87-97. The PTO examiner recognized that the combination of all five limitations in the independent claims discloses a specific technique for receiving digital moving image contents in a way not routine or conventional in the prior art. Ex. 29 at 20-26. So did Netflix; indeed, its lead developer said this feature had “*the largest impact in company history on customer retention and hours watched.*” Ex. 25 at 4. The invention was thus not routine or conventional; indeed, it was of enormous commercial value once implemented. *Id.* Hence the claims of the ’968 recite inventive concepts under *Alice* Step Two. Dec. ¶¶ 87-94. Apple’s brief does not address this evidence, or the reasons for allowance. Br. at 15-20. NL Giken has made “specific, plausible factual allegations about why aspects of its claimed inventions were not conventional.” *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1317-18 (Fed. Cir. 2019). D.I. 18 ¶¶ 143-50.

2. To the Extent Conventional Components Are Involved, They Are Arranged in Non-Conventional and Non-Generic Ways.

Apple criticizes claim 1 for reciting allegedly “conventional” or “known” components, and repeatedly analogizes it to the claims in *Erie*. Br. at 1-4, 8-10, 15-20. *Erie* is inapposite. The problem with the claims in *Erie* was that they “do not sufficiently recite how the inclusion of

⁹ See *Peloton Interactive, Inc. v. Echelon Fitness, LLC*, No. 19-1903, 2020 WL 3640064, at *3 (D. Del. July 6, 2020) (“Plaintiff’s amended complaint plausibly pleads that the ’590, ’315, and ’026 patents claim an inventive concept at *Alice* step two. Thus, I need not and do not decide whether the patents are directed to an abstract idea at *Alice* step one.”).

XML tags or metadata leads to an improvement in computer database technology through some ‘non-conventional and non-generic arrangement of known, conventional pieces.’” *Intell. Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1329 (Fed. Cir. 2017). By contrast, claim 1 does trace how the “receiving apparatus configured to receive digital movable image contents” leads to a non-conventional (indeed previously unknown) technological solution to the problems of user confusion in finding the next episode of streaming content through a specific technique of designating, receiving, and displaying such content that the PTO found absent from any prior art. D.I. 18 ¶¶ 143-50; Dec. ¶¶ 87-94; Ex. 29 at 20-26. As in *Amdocs*, “this claim entails an unconventional technological solution... to a technological problem” that “necessarily requires that... generic components operate in an unconventional manner to achieve an improvement in computer functionality.” 841 F.3d at 1300-01 (reversing judgment that claims were invalid under *Alice*). As in *DDR*, the ’968 patent’s inventive concept “recite[s] a specific way” to solve a “particular Internet-centric problem,” with the solution being “necessarily rooted in computer technology,” so the result “is not merely the routine or conventional use of the Internet.” *DDR Holdings, LLC v. Hotels.Com, L.P.*, 773 F.3d 1245, 1257-59 (Fed. Cir. 2014).¹⁰

Apple engages in surgical selection of limitations within the ’968 claims, either providing threadbare assertions that the limitations are generic (Br. at 10-11, 15-19), or assessing them in isolation, failing to address the inventive concepts recited in the ordered combination. *See BASCOM*, 827 F.3d at 1349 (noting that “[t]he inventive concept inquiry requires more than recognizing that each claim element, by itself, was known in the art”). Such assertions do not

¹⁰ Apple’s analogy of this case to *Erie*’s indexing claims oversimplifies the steps and components involved. Br. at 9-10. The Federal Circuit has cautioned that “courts must be careful to avoid oversimplifying the claims.” *McRO*, 837 F.3d at 1313. *See Attentive Mobile Inc. v. 317 Labs, Inc.*, No. 22-1163, 2023 WL 6215825, at *4 (D. Del. Sep. 25, 2023) (similar).

provide the meaningful analysis required under Step Two. *See Cronos Techs., LLC v. Expedia, Inc.*, No. 13-1538, 2015 WL 5234040, at *3 n.6 (D. Del. Sep. 8, 2015) (denying § 101 motion, noting that a meaningful analysis “should include more than mere legal conclusions combined with quotations of the claim language.”). Like in *BASCOM* and contrary to Apple’s position (Br. at 18), “[a]n inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.” *BASCOM*, 827 F.3d at 1350.

Apple commits other analytical errors, such as arguing that the specification “admits” certain things were “not new” in the art—a point irrelevant to the question of abstractness. Br. at 1, 4, 17-18. Even if some piece of a claim limitation were known in the art, that “does not mean it was well-understood, routine, and conventional.” *Berkheimer*, 881 F.3d at 1369. As this Court has recognized, “*Berkheimer* tells me that if Plaintiff plausibly alleges ***factual allegations that are not contradicted by the patent specification***, then I have to let the case go forward.” *VB Assets, LLC v. Amazon.com Servs. LLC*, No. 19-1410, 2020 WL 5549088, at *10 (D. Del. Sep. 16, 2020) (Noreika, J.). Indeed, “the specification need not expressly list all the reasons why this claimed structure is unconventional.” *Cellspin*, 927 F.3d at 1317. While Apple’s § 102/103 analysis is improper here, Apple nevertheless does not—and cannot—allege that the specific arrangement of components and their function as an ordered combination was known at the time of the invention—especially where the PTO found otherwise. Ex. 29 at 20-26.

Courts in this District have readily rejected Apple’s approach: “Defendants seem to ignore [the Federal Circuit’s] instruction from *BASCOM*. Instead, they continually note that each[] claim element... standing alone, [was] well known at the time. But *BASCOM*’s point is that even claims that use many individual technological components that themselves were conventional can still be patent eligible if the particular ordered combination of those known

elements are used in an unconventional way.” *Attentive Mobile*, 2023 WL 6215825, at *8.

In light of the Complaint’s allegations, which must be deemed true—and which are backed up by the sworn expert testimony of Dr. Almeroth—describing the originality of the ’968 invention (e.g., D.I. 18 ¶¶ 143-50; Dec. ¶¶ 87-94), Apple’s conclusory analysis does not meet its burden. At minimum, any remaining contention that such devices with these configurations were “conventional” is an issue of fact to be determined later. “[P]atentees who adequately allege their claims contain inventive concepts survive a § 101 eligibility analysis under Rule 12(b)(6).”

Aatrix, 882 F.3d at 1126-27; *see also Mayer v. Belichick*, 605 F.3d 223, 229 (3d Cir. 2010) (on 12(b)(6), court must accept well-pleaded factual allegations as true and view them in light most favorable to plaintiff). NL Giken’s “amended complaint supplies numerous allegations related to the inventive concepts present in the claimed [streaming] technology [D.I. 18 ¶¶ 115-28]. It describes the development of the patented invention, including the problems present in prior art [id. ¶¶ 129-39]. It then presents specific allegations directed to improvements and problems solved by the [NL Giken] patented inventions [id. ¶¶ 143-50].” *Aatrix*, 882 F.3d at 1127-28. These are “concrete allegations regarding the claimed combination’s improvement to the functioning of the computer.” *Id.* at 1128. “We have previously held patent claims eligible at step two when they provided [such] a specific solution to an Internet-centric problem.” *Weisner v. Google LLC*, 51 F.4th 1073, 1087 (Fed. Cir. 2022). *See* Dec. ¶¶ 89-91.

Apple’s final point is that the amended complaint supposedly “do[es] not allege that the ’968 patent discloses an ‘inventive concept.’” Br. at 19-20. Apple is wrong. The amended complaint devotes eight detailed paragraphs to this specific issue. D.I. 18 ¶¶ 143-50. The expert further explains how the ’968 claims disclose an inventive concept. Dec. ¶¶ 87-94. To the extent Apple objects to any particular wording, § 101 requires no “magic words.” *See, e.g., Execware*,

2015 WL 4275314, at *5 (“a Section 101 eligibility challenge” should be resolved on the merits, “not whether or not Plaintiff invoked any particular ‘magic words’ in its Complaint.”).

C. Claim 1 Is Not Representative.

Apple’s motion fails for the further reason that claim 1 is not representative of all the ‘968 patent’s claims. Dec. ¶¶ 98-100. There are material distinctions between the independent and dependent claims. Claims 2, 6, and 10 add the limitation of being configured “to designate the part of the digital moving image contents by selecting the provider,” wherein that part “is provided by the selected provider.” Claims 3, 7, and 11 require being configured to “designate a part of the digital moving image contents provided by the provider by streaming technology in accordance with a program schedule table.” Claims 4, 8, and 12 add the limitation of being configured to designate an “optional part” of the digital moving image contents “in response to the manual operation” of the independent claims. These additional, tangible functionalities do not appear in, and are not represented by, independent claim 1. Nor do they involve any alleged “bookmarking.” Dec. ¶ 99. Like the dependent claims in *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1259 (Fed. Cir. 2017), these dependent claims further confine the bounds of the invention, and focus the claims to specific inventive applications that were not well-understood, routine, or conventional, and that do not preempt any field. Dec. ¶¶ 99-100; D.I. 18 ¶¶ 154-56.

Apple mentions these claims only in passing (Br. at 5, 16), and just repeats their language and the bare assertion that they do not change the claim 1 analysis. But as that claim is not representative, Apple’s analysis is fatally flawed, and its motion may be denied for this reason alone without reaching the *Alice* analysis. *See, e.g., Cronos Techs.*, 2015 WL 5234040, at *3 n.6.

VI. CONCLUSION

For the above reasons, Apple’s motion should be denied.

Respectfully submitted,

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