THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

SOUNDCLEAR TECHNOLOGIES LLC,	§	
	§	
Plaintiff,	§	
	§	**Civil Action No. 2:24-cv-00321-EWH-DEM**
v.	§	
	§	
GOOGLE LLC,	§	
	§	
Defendant.	§	
	§	

REPLY BRIEF IN SUPPORT OF GOOGLE LLC'S
PARTIAL MOTION TO DISMISS PLAINTIFF'S COMPLAINT UNDER RULE 12(b)(6)

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I. INTRODUCTION

SoundClear wrongly seeks to delay the inevitable. The ’374 patent claims are directed to an abstract idea and involve nothing more than admittedly conventional, well-known technology. Nothing in the Opposition changes this basic conclusion. Under controlling law, there is no need to engage in expensive discovery, time consuming claim construction, or a futile search for inventiveness in dependent claims to avoid resolving this issue. The issue is ripe, and the Court should address it now to streamline this litigation. Similarly, given the clear implausibility of the allegations for the ’819 patent, as gatekeeper, this Court should dismiss the defective claim at this stage to avoid unnecessary expense and effort in this complex litigation.

SoundClear’s Opposition repeatedly misstates the law and its application. For example, SoundClear cites the old “no set of facts” standard explicitly rejected by the Supreme Court in *Twombly* and *Iqbal* and relies on that wrong law in its arguments. Dkt. 23 (“Opp.”) 3, 18-19.

As to the ’374 patent, SoundClear leads with procedure, urging this Court to postpone its decision on patent eligibility because other, non-asserted claims exist (Opp. § IV.A), claim construction has not happened yet (Opp. § IV.B), the asserted claims include structure (Opp. § IV.C), and the Patent Office found the claims novel over the prior art (Opp. § IV.D). Each of SoundClear’s arguments contradict Federal Circuit precedent. None of those procedural points preclude dismissal, as evidenced by the scores of cases in the past decade that granted motions to dismiss on patent ineligibility grounds, unless SoundClear articulates how they impact the § 101 analysis. As discussed below, SoundClear has not done so. SoundClear then turns to substance but has very little to say other than the asserted claims have a lot of words and appear complex.

Similarly, with regard to its implausible infringement claim for the ’819 patent, SoundClear again relies on procedure, wrongly arguing that discovery and claim construction are necessary.

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But neither is necessary here because the plausibility question is simple: has SoundClear plausibly alleged that the Accused Products can be put into a "locked" state as required by the asserted claim? SoundClear's own Complaint shows the answer is "no." In its opposition brief, SoundClear appears to take the position that the volume is locked any time the user is not actively in the process of adjusting the volume, even though nothing prevents a user from adjusting the volume at any time. As explained in Google's opening brief, and more below, no plausible reading of the '819 patent claims support that theory.

Google moved to dismiss because wasteful litigation is unnecessary where, as here, the questions of patent eligibility and non-infringement are ripe for resolution in Google's favor. Dismissing the '374 and '819 patents now will meaningfully streamline this case, and dismissal now is the correct result on the merits.

II. THE '374 PATENT CLAIMS ARE INELIGIBLE UNDER 35 U.S.C. § 101

A. SoundClear's procedural points should be rejected.

Representative claim. SoundClear faults Google's focus on Claim 9 of the '374 patent, Opp. 5, but overlooks a key fact: this is the *only* claim of the '374 patent that SoundClear asserted in the Complaint. Dkt. 1 ¶¶ 59, 77. Even setting that aside, SoundClear fundamentally misapprehends its burden in this context. Once Google makes "a prima facie showing that the group of claims are 'substantially similar and linked to the same' ineligible concept," the burden shifts to SoundClear "to present non-frivolous arguments as to why the eligibility of the identified representative claim cannot fairly be treated as decisive of the eligibility of all claims in the group." *Mobile Acuity Ltd. v. Blippar Ltd.*, No. 2022-2216, 2024 U.S. App. LEXIS 19573, at *17 (Fed. Cir. Aug. 6, 2024). *See also Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1352 (Fed. Cir.

2016) (plaintiff failed to present "any meaningful argument for the distinctive significance of any claim limitations other than those included in claim 12"). SoundClear has failed to meet its burden.

Here, Google demonstrated that *all* claims of the '374 patent are substantially similar to and linked to the same abstract idea as Claim 9. Dkt. 14 ("Mot.") 5-8, 15-16; Mot., Ex. 1. In response, SoundClear did not offer any arguments as to why Claim 9 cannot fairly be treated as representative. Instead, SoundClear simply lists dependent claims and asserts that it "is clear" that the additional limitations are material to the *Alice* analysis. Opp. 5. It is not. SoundClear did not articulate what about those dependent claims changes the character of the claims as a whole or constitutes a saving inventive concept. Therefore, this Court can–and should–treat Claim 9 as representative.

Claim construction. SoundClear argues that dismissal is premature before claim construction. Opp. 6-7. SoundClear's arguments err on every level. SoundClear starts by suggesting that claim construction is almost always necessary. Opp. 2 (citing *Bancorp Servs., LLC v. Sun Life Assurance Co. of Can.*, 687 F.3d 1266, 1273-74 (Fed. Cir. 2012)). But the immediately preceding sentence makes clear that the actual rule is the exact opposite. *Bancorp Servs.*, 687 F.3d at 1273 ("claim construction is not an inviolable prerequisite to a validity determination under § 101.").

More recent authority re-emphasizes that the § 101 inquiry "may be, and *frequently has been*, resolved on a Rule 12(b)(6) or (c) motion where the undisputed facts, considered under the standards required by that Rule, require a holding of ineligibility under the substantive standards of law." *PersonalWeb Techs. LLC v. Google LLC*, 8 F.4th 1310, 1314 (Fed. Cir. 2021) (emphasis added). Indeed, the Federal Circuit has "*repeatedly* affirmed § 101 rejections at the motion to dismiss stage, before claim construction or significant discovery has commenced." *Trinity Info*

Media, LLC v. Covalent, Inc., 72 F.4th 1355, 1360 (Fed. Cir. 2023) (quoting *Cleveland Clinic Found. v. True Health Diagnostics LLC*, 859 F.3d 1352, 1360 (Fed. Cir. 2017) (collecting cases)) (emphasis added).

Then, SoundClear identifies its burden–to explain how a claim construction dispute will impact the § 101 analysis–and chooses to shirk it, asserting only that the issues are "self-evident." Opp. 7, n.3. They are not. SoundClear's arguments are contrary to Federal Circuit precedent:

> A patentee must do more than invoke a generic need for claim construction or discovery to avoid grant of a motion to dismiss under § 101. Instead, the patentee must propose **a specific claim construction** or identify **specific facts** that need development and **explain why those circumstances must be resolved** before the scope of the claims can be understood for § 101 purposes.

Trinity, 72 F.4th at 1360-61 (emphasis added) (citing *Cleveland Clinic*, 859 F.3d at 1360). *See Simio, LLC v. Flexsim Software Prods.*, 983 F.3d 1353, 1365 (Fed. Cir. 2020) (plaintiff failed to explain "how it might benefit from any particular term's construction under an *Alice* § 101 analysis"); *Elec. Commc'ns Techs., LLC v. ShoppersChoice.com, LLC*, 958 F.3d 1178, 1183-84 (Fed. Cir. 2020) (plaintiff failed to explain "how this construction could affect the analysis."); *Sanderling Mgmt. v. Snap Inc.*, 65 F.4th 698, 704 (Fed. Cir. 2023) (plaintiff "failed to explain why any proposed constructions were not frivolous or how its constructions would make any difference to the *Alice* analysis.").

Even for the two claim construction "non-limiting examples" that SoundClear provides ("pick-up state" and "speech quality valuation [sic] [step/unit]"), SoundClear never even attempts to explain why its proposed constructions change the § 101 analysis or conclusion. The Federal Circuit says this failure warrants rejecting SoundClear's argument.[1]

[1] Even adopting SoundClear's proposed constructions for "pick-up state" and "speech quality valuation [step/unit]" (for the purposes of this Motion only), neither alter the § 101 analysis. *See Two-Way Media Ltd v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1336 (Fed. Cir. 2017)

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Structural limitations. SoundClear argues that the Court cannot dismiss the '374 patent yet because Google has somehow oversimplified the claims and glossed over "material" details in the claims. Opp. 1, 7-9. In particular, SoundClear points to "structural portions" of Claim 9, *e.g.*, "first pick-up unit," "transmitter," "light emission device," etc. Opp. 7-8.

Setting aside that each of these "structural portions" were in fact addressed in Exhibit 1 to Google's opening brief, SoundClear's arguments are again premised on an erroneous understanding of § 101 law, which is clear that simply including tangible components does not save the claims from patent ineligibility.

In *Alice* itself, the Supreme Court specifically rejected the argument that the claimed invention's tangible structure somehow automatically rendered it patent eligible:

> The fact that a computer "necessarily exist[s] in the physical, rather than purely conceptual, realm," Brief for Petitioner 39, is beside the point. There is no dispute that a computer is a tangible system (in § 101 terms, a "machine"), or that many computer-implemented claims are formally addressed to patent-eligible subject matter. But if that were the end of the § 101 inquiry, an applicant could claim any principle of the physical or social sciences by reciting a computer system configured to implement the relevant concept.

Alice Corp. Pty. Ltd. v. CLS Bank Int'l, 573 U.S. 208, 224 (2014). Reciting concrete, tangible components does not insulate the claims from patent ineligibility. *See, e.g.*, *TLI Commc'ns LLC v. AV Auto., L.L.C.*, 823 F.3d 607, 611 (Fed. Cir. 2016) (claims reciting "concrete, tangible components such as 'a telephone unit' and a 'server'" held patent ineligible); *Yu v. Apple Inc.*, 1 F.4th 1040, 1043-44, 1044 n.2 (Fed. Cir. 2021) (claims reciting image sensors, lenses, analog-to-digital converting circuitry, memory, and a processor held patent ineligible).

(claims ineligible even under plaintiff's proposed constructions). It is unclear how SoundClear's "pick-up state" construction is different from limitation 9[h] (addressed in Google's analysis). And SoundClear's "speech quality valuation [step/unit]" construction simply says compare the volume or, vaguely, "other feature" to a reference level. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 714-15 (Fed. Cir. 2014) (step of comparing to a value in an activity log did not change § 101 analysis).

Inventiveness. SoundClear argues that because the '374 patent purports to solve a problem in the art and "distinguishes between conventional technology and the claimed improvements," that alone creates a fact issue precluding dismissal. Opp. 3-4, 8, 18-19.

Once again, SoundClear's arguments are premised on an erroneous understanding of § 101 law. First, patent ineligibility does not depend on utility, *i.e.*, solving a problem. *In re Elbaum*, No. 2023-1418, 2023 U.S. App. LEXIS 33719, at *5 (Fed. Cir. Dec. 20, 2023) ("[E]ven if Mr. Elbaum is correct that the claimed method provides a practical solution to a problem faced by online sellers, the utility of an abstract idea is insufficient to confer patent eligibility."); *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1380 (Fed. Cir. 2016) (rejecting plaintiff's argument that the claims were useful and thus patent eligible as having "no basis in case law or in logic").

Second, patent ineligibility does not depend on novelty–*i.e.*, whether that purported solution improved on the prior art. SoundClear's argument that the claims are patent eligible because they are inventive over the prior art conflates abstractness with novelty and has been directly rejected by the Federal Circuit. *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) ("[A] claim for a *new* abstract idea is still an abstract idea."); *Intell. Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1315 (Fed. Cir. 2016) ("The 'novelty' of any element or steps in a process, or even of the process itself, is of *no relevance* in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.").

Third, a statement that a patent improves on the prior art is not a magical talisman that can be added to every patent to ward it against § 101. The Federal Circuit has frequently affirmed claims as patent ineligible under § 101 despite patent language claiming to improve on the art. In *Yu*, 1 F.4th at 1042-44, for example, the representative claim recited "[a]n improved digital camera" and the specification "support[ed] the contention that the asserted advance in the claims

is the particular configuration of lenses and image sensors." The Federal Circuit explained that the representative claim's "solution to those problems is the abstract idea itself—to take one image and 'enhance' it with another." *Id.*; *see also Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1345 (Fed. Cir. 2015) (dismissal on § 101 despite specification's contention that the alleged invention improved on the prior art).

B. SoundClear's arguments on the merits are wrong.

1. The '374 patent claims are directed to an abstract idea (*Alice* Step One).

Google's opening brief showed the claims are directed to gathering sound data, analyzing that data to detect speech and evaluate its quality, and indicating the results of that analysis. Mot. 5-8. SoundClear disagrees, arguing the claims are directed to an improvement in computer capabilities. Opp. 8-9. But the claims do not recite any such improvement, and the law is clear that claims are ineligible where, as here, the claims merely use known technology as a tool. And SoundClear's claims still fail the three tests Google analyzed in its opening brief.

2. The claims of the '374 patent do not recite a specific asserted improvement in computer capabilities, but rather invoke known technologies merely as a tool.

It is true that not all cases involving computers and user interfaces are necessarily patent ineligible. *See* Opp. 9. But that is not the right question. The correct question in this case is whether *the asserted claims* are patent ineligible. To answer that, the Federal Circuit has explained the "inquiry often turns on whether the claims focus on specific asserted improvements in computer capabilities or instead on a process or system that qualifies [as] an abstract idea for which computers are invoked merely as a tool." *IBM Corp. v. Zillow Grp., Inc.*, 50 F.4th 1371, 1377 (Fed. Cir. 2022). The claims of the '374 patent here do not focus on asserted improvements in computer

capabilities suggested by *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). *See* Opp. 9. Rather, the claims merely invoke known technology as a tool.

IBM v. Zillow is instructive. There, the claims of one of the patents were directed to "responding to a user's selection of a portion of a displayed map by simultaneously updating the map and a co-displayed list of items on the map." 50 F.4th at 1377. The Federal Circuit explained that "'improving a user's experience while using a computer application is not, without more, sufficient to render the claims' patent-eligible at step one." *Id*. (quoting *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359, 1365 (Fed. Cir. 2020)). The claims failed to "recite any assertedly inventive technology for improving computers as tools" but rather were directed to "an abstract idea for which computers are invoked merely as a tool." *Id*. at 1377-78 (citations omitted). The court explained:

> **Identifying, analyzing, and presenting certain data to a user is not an improvement specific to computing.** "Merely requiring the selection and manipulation of information—to provide a 'humanly comprehensible' amount of information useful for users . . . by itself does not transform the otherwise-abstract processes of information collection and analysis." *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016). **We have repeatedly held claims "directed to collection of information, comprehending the meaning of that collected information, and indication of the results, all on a generic computer network operating in its normal, expected manner" to be abstract.** *In re Killian*, 45 F.4th 1373, 1380 (Fed. Cir. 2022); *see also Intell. Ventures I LLC v. Cap. One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017) (describing cases).

Id. at 1378 (emphasis added). As in *IBM v. Zillow*, the claims at best do nothing more than turn on a light if clear speech is being transmitted. SoundClear does not dispute that the claims of the '374 patent do not recite any improvement to computers, microphones, transceivers, lights, or push-to-talk buttons, but rather merely use those known technologies as tools. *See also Fitbit Inc. v. AliphCom*, No. 16-cv-00118-BLF, 2017 U.S. Dist. LEXIS 30721, at *28-30 (N.D. Cal. Mar. 2, 2017) (rejecting plaintiff's argument that claims directed to gathering activity data, analyzing that

data, and displaying the results to users using an LED constituted a specific improvement in computer capabilities). The claims of the '374 patent are directed to an abstract idea.

3. SoundClear's analyses under the three tests are cursory and incorrect.

Case law comparison test. SoundClear does not dispute that the challenged claims can fail *Alice* Step 1 by "compar[ing] claims at issue to those claims already found to be directed to an abstract idea in previous cases." Mot. 8 (citations omitted). *See also Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (court should examine "earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided").

But rather than relying on or distinguishing similar cases involving speech recognition, data processing, and indicating the results of that processing, SoundClear instead relies on *dissimilar* cases about heart arrhythmias, database structures, 3D animation of faces, and transcript cursors. In grasping to avoid the unfavorable results of similar cases, SoundClear fails to explain why this Court should ignore those similar cases in favor of dissimilar ones.

For example, SoundClear discusses *CardioNet* at length, but admits that "[t]he technological field in *CardioNet* was distinct from the case at bar." Opp. 11. The patent in *CardioNet* taught "systems and techniques determine the beat-to-beat variability in heart rate over a series of successive heartbeats." *CardioNet, LLC v. InfoBionic, Inc.*, 955 F.3d 1358, 1362 (Fed. Cir. 2020).[2] SoundClear's reliance on *CardioNet* is misplaced. Opp. 10-13. The '374 patent here

[2] The device in *CardioNet* "more accurately detects the occurrence of atrial fibrillation and atrial flutter—as distinct from V-TACH and other arrhythmias—and allows for more reliable and immediate treatment of these two medical conditions" and "demonstrated both high 'positive predictivity' of, and high 'sensitivity' to, atrial fibrillation and atrial flutter, meaning that it effectively avoids false positives and false negatives, respectively, in detecting these two conditions." *Id*. at 1368-69 (citation omitted). A far cry from a light on a speaker.

does not involve medical devices, detecting heart rate variability, or detecting heart arrhythmias–much less a specific more reliable way to detect arrhythmias. Tellingly, SoundClear fails to advance *any* persuasive argument why a patent for detecting heart arrhythmias is somehow more instructive than the cases of the same technology cited in Google's opening brief, including *Dialect*, a decision from the Eastern District of Virginia last year, which involved detecting speech, parsing and interpreting that speech, and deciding what to do depending on the result of that parsing and interpreting. *Dialect, LLC v. Amazon.com, Inc.*, No. 1:23-cv-581, 2023 U.S. Dist. LEXIS 201180, at *4-5 (E.D. Va. Nov. 8, 2023).

SoundClear fares no better with its other dissimilar cases. Opp. 9-13. *Enfish* involved a self-referential database, which was "a specific type of data structure designed to improve the way a computer stores and retrieves data in memory." *Enfish*, 822 F.3d at 1339. But the '374 patent does not involve computer databases, data structures, or new ways to store and retrieve data from memory. *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1303 (Fed. Cir. 2016), involved methods for automatically animating lip synchronization and facial expressions of animated 3D characters. *Enfish* and *McRO* are not remotely of "a similar or parallel descriptive nature" to the claims of the '374 patent, and certainly not more similar than *Dialect*.

SoundClear attempts to analogize to the two patents found valid in *Nuance* for correcting transcript errors. Opp. 13-14. But those patents were for "a method of editing text while synchronous playback mode is activated, using an audio cursor synchronized with a text cursor that can be positioned at an incorrect word" which allowed a user to "edit the text while the audio continues to play . . . ." *Nuance Commc'ns, Inc. v. MModal LLC*, 2018 U.S. Dist. LEXIS 210715, at *30 (D. Del. Dec. 14, 2018). The '374 patent, on the other hand, does not involve correcting transcripts or synchronizing text and audio cursors. Rather, the claims of the '374 patent are

directed to gathering sound data, analyzing that data to detect speech and evaluate its quality, and indicating the results of that analysis. Mot. 5-8. SoundClear does not explain why the wholly dissimilar transcript cursor patents are somehow more instructive than the ineligible patent for "receiving data, recognizing words using well-known [automated speech recognition] technology, and storing the data . . . ." *Nuance*, 2018 U.S. Dist. Lexis. 210715, at *23.

Functional test. The claims of the '374 patent still fail the functional test. SoundClear's brief analysis of the functional test offers no actual rebuttal on the substance. For example, SoundClear never disputes that "[n]one of these steps offer a particular, non-abstract way of performing the functions; they do not provide the 'how.'" Mot. 11. Rather, SoundClear avoids the question and simply states the obvious fact that just using functional language somewhere in a patent claim is not dispositive of *Alice* Step One. *See* Opp. 16. That does not address Google's argument that explained and relied on the functional test described in *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1337 (Fed. Cir. 2017), and many other Federal Circuit and district court cases. *See, e.g.*, *Beteiro, LLC v. DraftKings Inc.*, 104 F.4th 1350, 1356 (Fed. Cir. 2024) (claims "drafted using largely (if not entirely) result-focused functional language . . . are *almost always* found to be ineligible for patenting under Section 101.") (emphasis added). SoundClear does not dispute that those cases apply or provide any concrete answer to the "how" question these cases raise.

Then, SoundClear simply harkens back to its procedural arguments, all of which are addressed above. Opp. 16.

Real-world analogy test. Unable to dispel the clear problems presented by the real-world analogy test, SoundClear argues that electronics use "rules" whereas humans use "subjective determinations." Opp. 16-18. But that is just applying an old, real world process using machines,

similar to people subjectively sorting through mail being compared to characterizing email. *See Beteiro, LLC*, 104 F.4th at 1356 (citing *Intell. Ventures I v. Symantec*, 838 F.3d at 1314 (claims directed to analyzing and characterizing email had an obvious pre-existing, real world analog—people sorting through their postal mail)); *Esignature Software, LLC v. Adobe Inc.*, No. 2023-1711, 2024 U.S. App. LEXIS 16253, at *5-7 (Fed. Cir. July 3, 2024) (rejecting plaintiff's arguments about *digitally* signing *electronic* documents because signing documents was a longstanding business practice). Again, what is clear is that the '374 patent uses generic computers to accomplish what humans have done for centuries.

Failing any *one* of these three tests fails *Alice* Step One, and these claims fail all *three*.

C. There is no inventive concept in the claim elements individually or as an ordered combination (*Alice* Step Two).

SoundClear identifies no inventive concept, and SoundClear's arguments at *Alice* Step Two should be rejected.

1. SoundClear misstates the legal standard.

SoundClear applies the old "no set of facts" standard that is no longer good law to argue fact issues preclude dismissal. Opp. 18. SoundClear also suggests that *Alice* Step Two inherently involves factual issues precluding dismissal. *See* Opp. 18. But the very case cited by SoundClear to argue that point of law recognized that "not every § 101 determination contains genuine disputes over the underlying facts material to the § 101 inquiry." *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018). Where, as here, the specification admits what was well-known and conventional, the Federal Circuit has said "it will be difficult, if not impossible, for a patentee to show a genuine dispute." *Riggs Tech. Holdings, LLC v. Cengage Learning, Inc.*, No. 2022-1468, 2023 U.S. App. LEXIS 942, at *11 (Fed. Cir. Jan. 17, 2023) (citations omitted).

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2. SoundClear failed to articulate the alleged inventive concept.

Significantly, SoundClear's *Alice* Step 2 analysis never articulates what the alleged inventive concept is, much less how that concept is evident in the claims. *Ficep Corp. v. Peddinghaus Corp.*, No. 2022-1590, 2023 U.S. App. LEXIS 21842, at *17 (Fed. Cir. Aug. 21, 2023) ("To save a patent at step two, an inventive concept must be evident in the claims.") (citations omitted). SoundClear cannot reasonably expect this Court to find the abstract claims are saved by an inventive concept when SoundClear fails to say what that concept is and where it is in the claims. SoundClear's empty contention that there is an inventive concept cannot carry the day. As for the claim elements as an ordered combination, SoundClear attempts to rely on that concept, but critically fails to articulate what about the ordering here provides an inventive concept. *Compare* Opp. 20-21 *with Bozeman Fin. LLC v. FRB of Atlanta*, 955 F.3d 971, 980 (Fed. Cir. 2020) ("But [plaintiff] fails to identify what about the ordering of the steps in claim 1 provides an inventive concept."). SoundClear has thus failed to rebut Google's showing of patent ineligibility or identify any inventive concept in the claims. *See Intell. Ventures I LLC v. Erie Indem. Co.*, 711 F. App'x 1012, 1018 n.3 (Fed. Cir. 2017).

D. SoundClear's request for leave to amend should be denied.

As a last resort, SoundClear asks for leave to amend its complaint with citations to the '374 patent along with attorney argument. Opp. 3-4, 23. SoundClear's request should be denied as futile. First, the '374 patent claims and specification are already before the Court, and "[n]o amendment to a complaint can alter what a patent itself states." *Sanderling Mgmt. v. Snap Inc.*, 65 F.4th 698, 706 (Fed. Cir. 2023). Second, converting mere attorney argument into factual allegations does not make the '374 patent any more patent eligible. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("on a motion to dismiss, courts 'are not bound to accept as true a legal conclusion couched

as a factual allegation'"). *See also Simio*, 983 F.3d at 1364 (amendment futile because "new factual allegations in the [proposed amended complaint] did not save the asserted claims from ineligibility at the pleadings stage."); *Data Scape Ltd. v. W. Dig. Corp.*, 816 F. App'x 461, 465 (Fed. Cir. 2020) ("Nothing in [plaintiff's] proposed amendments would create a factual issue sufficient to overcome a motion to dismiss, rendering the amended complaint futile.").

III. SOUNDCLEAR FAILS TO STATE A PLAUSIBLE CLAIM FOR DIRECT INFRINGEMENT OF THE '819 PATENT

Google's non-infringement position with regard to the '819 patent is simple: the Accused Products have no locked state to prevent changing the volume. To create an infringement theory where none exists, SoundClear argues that even though nothing prevents a user from adjusting the volume at any time in the Accused Products, any time the user is not in the process of adjusting the volume, then the volume is in the claimed locked state. No plausible reading of the '819 patent claims supports that theory. If the Court credits SoundClear's factual allegations as to how the volume control feature of the Accused Products works, as it should, Count III cannot survive the pleading stage. The Accused Products have no locked volume state that prevents the user from changing the volume level.

SoundClear wrongly argues that because the accused devices are complex, its infringement allegations are contingent on further discovery to "elucidate the finer points." Opp. 25. While the overall system and range of functions of the Accused Products may be technologically sophisticated, the specifically accused feature is not. Cutting through the verbosity of SoundClear's Complaint, SoundClear's theory regarding infringement of the '819 patent boils down to this: (1) the claimed "locked state" is the time the user is not actively changing the volume level; and (2) the claimed "unlocked state" is the time Ambient IQ and Media EQ automatically

override the user's volume level setting when ambient noise is detected in the room. These simple operations - manual volume level adjustment, and an automatic overriding of that volume level - are plainly evidenced and observable by mere operation of the device. The underlying details, such as source code implementing the features, and expert testimony (*id.*), are unnecessary and irrelevant to the ultimate determination whether the Accused Products perform these basic user functions. No amount of discovery will change SoundClear's implausible theory of infringement.

Nor would claim construction rescue SoundClear's infringement theories. Claims 1 and 8 of the '819 patent describe the locked and non-locked states in terms of user operation. Claim construction is not needed to construe terms or otherwise confirm that the claimed locked state requires the volume remain in a set position that the user cannot change ("fixed by a constant lock value"). ('819 patent, 10:56-57 (claim 1), 12:27-28 (claim 8)). As Google explained in its opening brief, the claims recite an "operating value," which is the volume at which sound is played by the device. The operating value is set by the user: "a volume operating unit configured to output an operating value indicating a volume level of the audio according to a user operation." ('819 patent, 10:50-52 (claim 1), 12:17-19 (claim 8)). The claim provides that in a locked state, the volume is set at a "constant lock value," which cannot be updated by the user using the "operating value." *See id.* at 10:50-11:8, 12:17-41 ("output an operating value indicating a volume level of the audio according to a user operation," "updating the lock value with the operating value and switching the non-locked state to the locked state"). SoundClear ignores the "operating value" claim term in its Opposition to wrongly argue that there is no claim requirement that the locked state must prevent subsequent user adjustment. Opp. 28-29.

With this sleight of hand, SoundClear alleges that the volume level is locked at any instant of time when the user is not actively adjusting volume despite the user's ability to change the

volume level at any time. SoundClear's theory ignores the claims' requirement that the operating value, otherwise controlled by the user, is "constant" - preventing user control - in the locked state. SoundClear's theory also defies common sense. A volume lock state is exactly that - a state in which the volume is locked and not adjustable by the user. The "operating value" and "constant lock value" are explicit claim limitations that cannot be conveniently ignored to escape dismissal on the pleadings. No resort to the specification is necessary (*Id.* at 28-29) to understand the claims, and no amount of claim construction can remove or alter the limitations.

SoundClear quibbles in its Opposition about the particular facts of case law on Rule 12(b)(6) dismissals cited by Google. But the law is clear and not disputed. It is improper to waste time on discovery and claim construction if the plaintiff's simple infringement theory lacks any plausible route to a finding of liability. Accepting plaintiff's factual allegations as true, the volume level of the Accused Products can never be placed into the required locked state. All of the citations to Google's own websites and other technical information cited in SoundClear's Complaint about the Accused Products confirms the user is free to change the volume level manually at any time, which is exactly contrary to the claimed volume "locked state." Opp. 26 *citing* Compl. ¶¶ 81-87. Count III of SoundClear's Complaint must be dismissed.

IV. SOUNDCLEAR FAILS TO STATE A PLAUSIBLE CLAIM FOR BOTH PRE-SUIT AND POST-SUIT WILLFUL INFRINGEMENT

SoundClear concedes it made no attempt to argue that it has pleaded pre-suit willful infringement. Opp. 30. SoundClear's Prayer for Relief for damages based on pre-suit willfulness therefore must be dismissed.

SoundClear's argument that it has pleaded a case for post-complaint willfulness is facially wrong and should likewise be dismissed. *Id.* The very case law cited by SoundClear makes clear

that a claim for willful infringement requires the pleading of knowledge of the asserted patents and "deliberate or intentional infringement." *Eko Brands, LLC v. Adrain Rivera Maynez Enterprises, Inc.,* 946 F.3d 1367, 1378 (Fed. Cir. 2020). Opp. 30. Yet, SoundClear admittedly alleged only "current and ongoing infringement" and nowhere in the Complaint alleges that Google deliberately or intentionally infringed those patents. *Id.*

Moreover, SoundClear's argument that alleging knowledge via filing of a complaint and ongoing infringement to plead willful infringement is not enough to survive dismissal. Whether a complaint can supply the necessary knowledge to support a claim of willful infringement is a question that has divided district courts. In this Division, Judge Walker, following precedent established in other districts, held that a complaint cannot provide the notice necessary to establish knowledge for willful infringement observing that there is:

> no area of tort law other than patent infringement where courts have allowed a plaintiff to prove an element of a legal claim with evidence that the plaintiff filed the claim. The limited authority vested in our courts by the Constitution and the limited resources made available to our courts by Congress counsel against encouraging plaintiffs to create claims by filing claims. It seems to me neither wise nor consistent with principles of judicial economy to allow court dockets to serve as notice boards for future legal claims for indirect infringement and enhanced damages.

Security First Innovations, LLC v. Google LLC, No. 2:23-cv-00097, ECF No. 125 at 22 (E.D. Va. Nov. 15, 2023) (citing *ZapFraud, Inc. v. Barracuda Networks, Inc.*, 528 F. Supp. 3d 247, 250 (D. Del. 2021)). Here too it would be unwise and inconsistent with principles of judicial economy and fairness to allow SoundClear to use the Court's docket as a notice vehicle for an enhanced damages claim against Google. This is especially true, where, as here, two of the three Asserted Patents are dismissible at the pleading stage. SoundClear's allegations of willful infringement should be denied in whole.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2024, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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