

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

SOUNDCLEAR TECHNOLOGIES LLC,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Case No. 2:24-cv-00321-EWH-DEM

JURY TRIAL DEMANDED

**PLAINTIFF SOUNDCLEAR'S RESPONSE BRIEF  
IN OPPOSITION TO DEFENDANT'S PARTIAL MOTION TO  
DISMISS PLAINTIFF'S COMPLAINT UNDER RULE 12(b)(6)**

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## **I. Introduction**

Google knows its motion (D.I. 13, with its brief at D.I. 14, the “Motion”) has little chance of succeeding. Even if successful, it will not resolve the case or meaningfully narrow discovery. Google apparently believes this Court’s time and attention—and a few hours of attorney work—are justifiable costs for its own unilateral extension of time.

In terms of validity under *Alice*, Google cites cases in which such motions were granted at the pleadings’ stage. But it declines to apply those cases, or the legal standards they articulate, to the factual issues implicated in this case. Google does not address the apparent need for claim construction or facts that might underlie that process. Google improperly oversimplifies, mischaracterizes, and omits substantial portions of, the claimed inventions of the ’374 patent. It rests on the conclusory assertion that claim 9 is representative. It ignores the ’374 patent’s express disclosure that the inventions constitute specific, tangible improvements to existing technology. And its analysis of the claims in the ’374 patent, and in its cited cases, is superficial.

In terms of non-infringement, Google relies on attorney argument that directly contradicts the allegations of the Complaint. It premises arguments on factual issues that lie well outside the pleadings (e.g., operation of the accused devices). It attempts to read limitations from the specification into the claims without claim construction. And it omits the specific legal doctrines that would otherwise be necessary to limit the scope of the claims in the manner it suggests.

## **II. Legal standard**

### **A. Patent Validity Under 35 U.S.C. § 101**

Google sets out the two-step *Alice* test. Opening Br., 4-5. In that context, determining patent eligibility requires a full understanding of the basic character of the claimed subject matter. *MyMail, Ltd. v. ooVoo, LLC*, 934 F.3d 1373, 1379 (Fed. Cir. 2019). The *Alice* inquiry can, and often does, end at “Step One.” Indeed, the U.S. Patent Office added a specific

“streamlined eligibility analysis (Pathway A)” to prevent self-evident improvements to technology from being subject to doubt and uncertainty. *See* MPEP § 2106.06 (9th ed. 2022).

Courts need only proceed to Step Two if Step One is met. The Federal Circuit is unequivocal that Step Two involves a question of fact, subject to (1) the presumption that issued patents are valid and (2) a clear and convincing burden of proof. “The question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018); 35 U.S.C. § 282; *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1364 (Fed. Cir. 2018). “Any fact, such as this one, that is pertinent to the invalidity conclusion must be proven by clear and convincing evidence.” *Berkheimer*, 881 F.3d at 1368.

Additionally, “it will ordinarily be desirable—and often necessary—to resolve claim construction disputes prior to a § 101 analysis, for the determination of patent eligibility requires a full understanding of the basic character of the claimed subject matter.” *Bancorp Servs., LLC v. Sun Life Assurance Co. of Can.*, 687 F.3d 1266, 1273-74 (Fed. Cir. 2012). And claim construction is a question of law with underlying questions of fact. *Wasica Fin. GmbH v. Cont’l Auto. Sys., Inc.*, 853 F.3d 1272, 1278 (Fed. Cir. 2017).

## **B. 12(b)(6) Standard**

Regional circuit law applies to the motion to dismiss standard. *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362 (Fed. Cir. 2015); *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1314 (Fed. Cir. 2019). A Rule 12(b)(6) motion “generally cannot reach the merits of an affirmative defense . . . .” *Goodman v. Praxair, Inc.*, 494 F.3d 458, 464 (4th Cir. 2007). And “a challenge to patent eligibility on § 101 grounds is an affirmative defense to a claim of patent infringement.” *Mobile Acuity Ltd. v. Blippar Ltd.*, No. 2022-2216, 2024 U.S. App. LEXIS 19573, at \*14 (Fed. Cir. Aug. 6, 2024). Courts must accept as true the facts set forth in the

exhibits attached to the complaint. *See* Fed. R. Civ. P. 10(c); *Eastern Shore Mkts., Inc. v. J.D. Assocs. Ltd. P'ship*, 213 F.3d 175, 180 (4th Cir. 2000). Indeed, “[t]he purpose of Rule 12(b)(6) is to test the sufficiency of a complaint” and not to “resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999) (cleaned up). For this reason, a Rule (b)(6) motion should not be granted “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Presley v. City of Charlottesville*, 464 F.3d 480, 483 (4th Cir. 2006) (citation omitted); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002). “A Rule 12(b)(6) motion should only be granted if, after accepting all well-pleaded allegations in the plaintiff’s complaint as true, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief.” *Migdal v. Rowe Price-Fleming Int’l Inc.*, 248 F.3d 321, 325 (4th Cir. 2001) (emphasis added).

### III. Summary of the ’374 Patent

The ’374 patent discloses and claims an improved “Communication Apparatus.” ’374 patent, Title.<sup>1</sup> As the title notes, it is an improvement on known technology. ’374 patent, 1:22-28 (devices that communicated voice signals) and 1:29-32 (noise cancellation using multiple microphones). The inventors—Konishi-san and Onoda-san—identified a problem: current noise-cancellation systems were not effective. *Id.*, 1:24-29, 1:47-51. And they provided a solution: “an audio input apparatus, a communication apparatus and a condition notification method that achieve transmission of clear voice sounds with an effective noise-cancellation function.” *Id.*, 1:55-58. Indeed, “[t]he signal processing technique achieves appropriate processing even if the noise cancellation function is not working effectively.” *Id.*, 38:8-10.

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<sup>1</sup> The application that issued as that ’374 Patent derived from Japanese patent applications.

The patent expressly articulates the differences between the known technology discussed above and the claimed improvements. They lie in the specific way signal components are processed and how real-time feedback is communicated to the user. The feedback is provided via a simple light-emitting device, in real-time (throughout operation of a device that allows a user to adjust positioning in real time), and in a specific manner (three specific types of notifications in terms of light-on, light-off, or light-blinking). The patent explains the improvements:

[I]mprovement in speech quality is achieved with the prevention of misrecognition of the communication mode through notification to a user of the current communication mode (the state of a voice sound being transmitted) in a simplex communication apparatus for which the communication mode is switched between the transmission mode and the standby mode.

For example, in the case of a hand microphone equipped with an LED, whether a voice sound is drowned out by the surrounding noise depends on how a user is holding the microphone, the distance between the user's mouth to the microphone, the level of voice sound, etc. In order to solve such a problem, the communication apparatus according to the present invention is provided with the determination unit for determining whether a user's voice sound is being clearly transmitted based on the information on the noise cancellation process, the information on a voice sound, etc.

*Id.*, 36:48-65 (emphasis added); *see also id.*, 36:65-37:8.

As described above in each embodiment, the present invention achieves transmission of clear voice sounds with the enhanced noise-cancellation function by instructing a user to use a noise cancellation microphone correctly. In other words, the purpose of speech quality notification by means of an LED or the like is not indicating the performance of noise cancellation but instructing a user to use a noise cancellation microphone correctly.

*Id.*, 37:33-40 (emphasis added); *see also, e.g., id.*, 1:59-62, 37:61-38:13.

The claims of the '374 patent capture those improvements. *See* Section IV.F.3 *infra*.

#### **IV. Argument**

Google's Motion omits required procedural, legal, and factual support. SoundClear expects Google will attempt to fill many gaps on reply. Any new arguments or evidence should be disregarded. *DNT, LLC v. Sprint Spectrum, LP*, 750 F. Supp. 2d 616, 630 (E.D. Va. 2010).

**A. Google does not establish that claim 9 is representative**

Google flatly asserts that claim 9 of the '374 patent is representative. *See* Opening Br., 3 and 6. SoundClear does not agree. *See Berkheimer*, 881 F.3d at 1365-66. Google's argument is a single, conclusory footnote. Opening Br., 6 n.4. Such a conclusory statement gives the court "almost no argument or way to meaningfully analyze whether [that] . . . statement[] . . . [is] truly correct." *Diogenes Ltd. v. Draftkings, Inc.*, 2022 U.S. Dist. LEXIS 126516, at \*18 (D. Del. Jul. 18, 2022). It is not "directly tethered to the claim language." *Solutran, Inc. v. Elavon, Inc.*, 931 F.3d 1161, 1168 (Fed. Cir. 2019). And substantive arguments presented in footnotes are waived. *See, e.g., SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1320 (Fed. Cir. 2006).

Nonetheless, the dependent claims of the '374 patent recite additional limitations that are material to the *Alice* analysis. That materiality is clear in the specification, which discloses nine separate embodiments to address patentably distinct subject matter. Some examples include:

- controlling the light-emitting device based upon specific modes of operation (claims 2 and 10, roughly);
- a second pick-up and an additional unit (noise cancellation) that provides an additional input to, and thus improves, the speech quality evaluation unit and also improves the feedback to the user via the light-emitting unit (claims 4 and 11, roughly);
- another additional unit (microphone-direction determination unit) that analyzes a phase difference of voice sounds picked up by two pick-up units and further improves the speech-quality evaluation unit (claims 6 and 12, roughly);
- controlling the light-emitting device based upon factors such as standby-mode, transmission mode, whether a speech signal is a speech segment, and whether speech quality is evaluated as good or bad (claims 7 and 13, roughly);
- converting a signal into a unit of specific length in the frequency domain and determining whether the signal carries a voice component or noise component based upon a spectrum component of the converted signal (claims 8 and 15, roughly); and
- physical arrangement of a main microphone and sub-microphone (claim 14, roughly).

*See generally* '374 patent, 42:40-46:17 (the "Dependent Claim Limitations").

## B. Google ignores claim construction issues

Google omits any discussion of claim construction.<sup>2</sup> That is especially notable, as Google asserts that representative claim 9 contains purely functional language. Opening Br., 11. Google seems to imply—carefully avoiding any mention of claim construction—that those elements could be interpreted in means-plus-function form. If so, every function it identifies in claim 9 would first have to be mapped to corresponding structure (algorithmic or physical) disclosed in the specification. *Globetrotter Software, Inc. v. Elan Computer Grp., Inc.*, 236 F.3d 1363, 1367-68 (Fed. Cir. 2001); *MyMail*, 934 F.3d at 1379. And Google would have had to conduct that process (at this pleadings’ stage) in a manner most favorable to SoundClear. *See, e.g., Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). The results of that analysis—the identity of structures, and their equivalents—would be crucial to the *Alice* issues.

For example, at least two potential construction questions could arise in connection with claim 9 alone. The specification discloses specific detail, algorithms, and structure corresponding to the speech-quality evaluation units. *See, e.g.*, ’374 patent, 9:4-10:60. It introduces an unconventional component that operates in an unconventional manner: “a sound pick-up state determination[/evaluation] unit.” *See, e.g., id.*, 18:8-18, 19:23-40, 38:62-39:14, and/or 41:3-19. To the extent the quoted terms have no established meaning in the relevant art, they will have to be construed. *Cf. O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008).

As non-limiting examples, a “pick-up state” might include “a feature of the speech signal to be transmitted from the transmitter unit, based upon the result of determination of a speech

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<sup>2</sup> If Google contends that any terms require construction, it should have identified them.

segment and evaluation of speech quality.”<sup>3</sup> Or a “speech-quality valuation [step/unit]” might include “a step/unit in which the quality of a signal is analyzed by comparing the volume, or other feature, of the voice sound portion of the signal to a reference level.” We will not know the answer without a full claim construction record. Neither party has begun that process (e.g., disclosing terms and potential constructions, analyzing intrinsic and extrinsic evidence in support, and meeting and conferring). And Google has not analyzed any such details under *Alice*. Thus, the mere possibility of such constructions alone renders Google’s motion premature. And that is without considering the dependent claims.

### **C. Google fails to address material disclosures and claim limitations**

Google ignores the vast majority of the ’374 patent’s disclosure. Google relies primarily upon Figures 13 and 14. Opening Br., 6-8. Figure 13 simply lists “communication modes” and the end result of a complex process. ’374 patent, 3:8-10, 19:41. Figure 14 describes only one embodiment, which relates to one limitation of claim 9 (the “control unit”). *Id.*, 3:11-13. It references “a transmission instruction signal” (*id.*, Fig. 1); but it neither describes the contents of that signal nor how it is generated. Overall, there are eight limitations of claim 9 alone, and nine embodiments disclosed in the ’374 patent.

Google also disregards material portions of every claim limitation. Google admittedly addresses only what it labels as functional language in claim 9. Opening Br., 7 (addressing “determining a ‘pick-up state’”; “determining whether the speech signal to be transmitted “is a speech segment . . . .”; “evaluat[ing] speech quality of the first speech signal to be transmitted . .

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<sup>3</sup> The factual and claim construction issues are self-evident. *VB Assets, LLC v. Amazon.com, Inc.*, 2020 U.S. Dist. LEXIS 169078, at \*15 (D. Del. Sept. 16, 2018) (stating “parties making such arguments about claim construction [are required] to explain the dispute and how the dispute will impact the analysis in order to prevail.”). SoundClear nonetheless provides potential constructions to demonstrate how construction is sure to alter the scope of the claims.

. .”; and “controlling an LED by turning the light on, off, or on-and-off repeatedly, depending on the results of the analysis.”). Google ignores the following structural portions of claim 9:

- “first pick-up unit;”
- “transmitter;”
- “communication-mode switching unit;”
- “sound-pick-up state determination unit;”
- “light emission device;”
- “control unit;”
- “speech-quality evaluation unit; and”
- “speech-segment determination unit”

*See e.g.*, ’374 patent, 44:6-42.

#### **D. Google does not contest allegations of inventiveness**

As discussed above, the ’374 patent expressly distinguishes between conventional technology and the claimed improvements. *See* Section III *supra*; *Goodman v. Praxair, Inc.*, 494 F.3d at 464 (Exhibits to pleadings constitute “part of the pleading.”)

Google does not point to anything in the record that refutes such statements—let alone in a way that would preclude any potential claim for relief under the 12(b)(6) standard. Thus, its Motion fails to establish ineligibility under either Step of the *Alice* test for this reason alone.

#### **E. The ’374 Patent claims are valid at *Alice* Step One**

##### **1. Google’s approach is superficial and unsupported**

Google fails to conduct a proper subject matter analysis under *Alice*. It repeatedly asserts that every claim is limited to the following: “Gathering Sound Data, Analyzing that Data to Detect Speech and Evaluate its Quality, and Indicating the Results of that Analysis.” Opening Br., 6; *see also generally id.* The Federal Circuit has “cautioned that courts ‘must be careful to

avoid oversimplifying the claims’ by looking at them generally and failing to account for the specific requirements of the claims.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1313; *see also TecSec, Inc. v. Adobe, Inc.*, 978 F.3d 1278, 1293 (Fed. Cir. 2020). Indeed, “too loose an approach to Step One could eviscerate patent law because all inventions at some level embody abstract ideas.” *Dialect, LLC v. Amazon.com, Inc.*, No. 1:23-cv-581, 2023 U.S. Dist. LEXIS 201180, at \*7 (E.D. Va. Nov. 8, 2023) (internal quotations omitted).

Google’s entire *Alice* position rests on Exhibit 1 to the Motion—a table and legend devoid of analysis or record cites. Google simply applies labels to the claim limitations in *ipse dixit* fashion. In its brief, Google deploys those labels—again with no developed argument or support. It also omits the structural elements discussed above. For example, Google asserts that “limitation 9[h] functionally requires determining whether the speech signal to be transmitted ‘is a speech segment . . . .’” Opening Br., 7. It does not mention the “speech-segment determination unit,” and omits some 48 of 67 words with ellipses. *See* ’374 patent, 44:34-42.

## 2. Improvements to computer technology and user-interfaces are valid

Claims that recite improvements to computers or existing technological processes do not necessarily “succumb to the abstract idea exception.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (citing *Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 223 (2014)). Indeed, two categories of inventions are patentable:

1. “Indeed, some improvements in computer-related technology when appropriately claimed are undoubtedly not abstract, such as a chip architecture, an LED display, and the like.” *Enfish*, 822 F.3d at 1335 (emphasis added);
2. “Software can make non-abstract improvements to computer technology just as hardware improvements can.” *Id.*

All claims of the ’374 patent recite a specific, novel use of a light-emitting device. They fit the first *Enfish* category for that reason alone. And they are specific in that regard. They recite

a specific method of controlling the light-emitting device. And they recite three specific operational states (on, off, and on-and-off). Additionally, the second *Enfish* category sweeps in concepts that might seem generalized at first blush, and that simply recite a general-purpose computer:

A data storage and retrieval system for a computer memory, comprising:

means for configuring said memory according to a logical table, said logical table including:

a plurality of logical rows, each said logical row including an object identification number (OID) to identify each said logical row, each said logical row corresponding to a record of information;

a plurality of logical columns intersecting said plurality of logical rows to define a plurality of logical cells, each said logical column including an OID to identify each said logical column; and

means for indexing data stored in said table.

*Id.* at 1336. And yet they are eligible.

Google's labels and broad strokes are simply too generalized to capture the level of detail *Enfish* requires. Under Google's reductionist analysis, the *Enfish* claims would be ineligible. For that reason alone, Google's Motion fails to apply the applicable *Alice* standard.

### **3. Applicable caselaw affirms validity**

The caselaw cited by the parties provides helpful categories of increasing eligibility:

1. ineligible claims, as in *ENCO Sys., Inc. v. DaVincia, LLC*, 845 F. App'x 953 (Fed. Cir. 2021).
2. multiple types of valid claims. *Enfish*, 822 F.3d 1327; *McRO*, 837 F.3d 1299; *CardioNet, LLC v. InfoBionic, Inc.*, 955 F.3d 1358, 1368 (Fed. Cir. 2020); or *Nuance Communs., Inc. v. MModal LLC*, Civil Action No. 17-1484-MN-SRF, 2018 U.S. Dist. LEXIS 210715, at \*1, 27-34 (D. Del. Dec. 14, 2018) (two eligible patents).
3. claims that are valid on more than one of the grounds in 2.

The claims in *ENCO* recited a purely human process that simply used a generic computer as a tool. *ENCO*, 845 F. App'x at 957. The claims in *CardioNet* improved a user device by “generat[ing] an event.” *CardioNet*, 955 F.3d at 1365. The claims in *Enfish*, *Nuance*, and *McRO* used generic computers. But the claims in *Enfish* improved the computing device itself—more than using it incidentally as a tool. *Enfish*, 822 F.3d at 1338. The claims in *McRO* transformed a subjective human process to one driven by specific mathematical rules. *McRo*, 837 F.3d at 1314-15. And the upheld claims in *Nuance* provided real-time user feedback to alter and improve a traditionally manual task. *Nuance*, 2018 U.S. Dist. LEXIS 210715 at \*29-32.

The claims of the '374 patent lie in category 3. They improve a specific device, as in *Enfish*. They transform a subjective human process into one based upon mathematical rules, as in *Nuance* and *McRO*. They provide a real-time user feedback mechanism—as in *Nuance* and *CardioNet*. Not only that, but they are more specific in terms of the recited feedback (three operations modes of light-emitting device).

The technological field in *CardioNet* was distinct from the case at bar. But the way the technology was improved—the solution offered to users—is similar. The claims in that case “describe[d] cardiac monitoring systems and techniques for detecting and distinguishing atrial fibrillation and atrial flutter from other various forms of cardiac arrhythmia.” *CardioNet*, 955 F.3d at 1362. They used “electrical signals” as inputs. *Id.* They detected beats (via those signals) and identified aspects of those signals. *Id.* at 1365. Any they recited a somewhat generalized and non-specific result/output: “generat[ing] an event” based on that analysis. *Id.*

The '374 patent is more specific. The language of claim 9 of the '374 patent interleaved (bolded in brackets) with the *CardioNet* court's discussion demonstrates the similar specificity:

In particular, the language of claim 1 indicates that it is directed to a device that detects beat-to-beat timing of cardiac activity [**“picks up voice sounds”**], detects premature ventricular beats [**“determines a pick-up state of the voice sound”**], and determines the relevance of the beat-to-beat timing to atrial fibrillation or atrial flutter [**“evaluate[s] speech quality of the voice”**], taking into account the variability in the beat-to-beat timing caused by premature ventricular beats identified by the device’s ventricular beat detector [**“based on a determination result at the speech-segment determination unit and an evaluation result at the speech-quality evaluation unit.”**].

Compare *id.* at 1368 with ’374 Patent Claim 9, 44:6-42; see also Ex. A attached hereto.

Claim 9 does not stop there. It recites even more. It provides for simple, “real-time” feedback of a complex task. *Cf. CardioNet*, 955 F.3d at 1366 (“The device is also ‘well-adapted to real-time monitoring of arrhythmia patients. . . .” (emphasis added)).

As a factual matter, the *CardioNet* court determined that “there [wa]s . . . no suggestion in the . . . patent’s written description that doctors were ‘previously employing’ the techniques performed on the claimed device.” *Id.* at 1370. “[N]othing in the record” supported that finding. *Id.* And “it [wa]s difficult to fathom how doctors mentally or manually used ‘logic to identify the relevance of the variability in the beat-to-beat timing using a non-linear function” as required in one of the dependent claims. *Id.* at 1371 (cleaned up).

Those assessments apply equally to the case at bar. There is no indication in the record that humans employed the techniques performed on the claimed device (e.g., processing of signal components and noise cancelation). In fact, the patent indicates otherwise. See Section III *supra*. Just as in *CardioNet*, it is “difficult to fathom” how a human could perform the speech-segment determination, speech-quality evaluation, or pick-up state determination—let alone perform all three; let alone in a manner that provides real-time feedback to a user of an audio transmission device. And that would just be claim 9. The Dependent Claim Limitations add further complex, multi-stage processes (e.g., claim 7), noise cancellation and addition processing thereafter (e.g.,

claim 11), or analysis of “a spectrum component of the signal component” after “conver[sion] into the frequency domain” (e.g., claim 8).

*CardioNet* also addressed the impropriety of 12(b)(6) relief under the present circumstances—where the patent provides affirmative support for inventiveness. The court held that “the district court erred by disregarding the written description’s recitation of the advantages of the claimed invention” at the motion-to-dismiss stage. *Id.* at 1371. It would similarly constitute reversible error to do so here.

In doing so, *CardioNet* court rejected the same approach Google takes here—including its reliance on *FairWarning*. The court made clear that generalizing the claims at too high a level, in the exact manner Google does, is improper:

Generalizing the asserted claims as being directed to collecting, analyzing, and reporting data is inconsistent with our instruction that courts “‘be careful to avoid oversimplifying the claims’ by looking at them generally and failing to account for the specific requirements of the claims.”

*CardioNet*, 955 F.3d at 1371 (citing *McRO*, 837 F.3d at 1313) (emphasis added); *compare id.* and *Enfish*, 822 F.3d at 1337 with Opening Br., 5-7.

Google relies heavily on *Nuance*.<sup>4</sup> That decision actually *supports* validity of the ’374 patent. The *Nuance* court addressed three patents: one it found invalid under *Alice* (the ’946 patent); two it found valid (the ’933 patent and ’034 patent). *Nuance*, 2018 U.S. Dist. LEXIS 210715 at \*2, 27-35.

The ’946 patent bears no relation to the ’374 patent for at least five reasons. First, the claims only tangentially related to speech recognition. *Id.* at \*4. The ’946 patent identified the

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<sup>4</sup> Google quote-cites a number of cases in its argument section. But it avoids addressing the actual claims in those cases or applying them to the case at bar. SoundClear addresses those on which Google focuses. If Google proffers new arguments on reply, they should be disregarded.

improvement to be a in “analyz[ing] and categoriz[ing] transcribed text,” not in any aspect of speech recognition. *Id.* Second, the representative claim at issue was drawn so broadly that it is not clear in what context the “computer implemented method for generating a report that includes latent information” was used. *Id.*; *cf. also id.* at \*27 (“the asserted claims of the ’946 Patent do not expressly restrict the invention to ASR computer systems.”). Third, the patent owner (Nuance) acknowledged that text analysis programs (natural language processing, or NLP) were known. *Id.* at \*15. Fourth, the patent owner “d[id] not challenge [the defendant/patent challenger’s] characterization of” many steps of the claim. *Id.* Indeed, it relied simply on whether “bounding” and “normalizing” steps “constitute[d] an improvement to computer functionality.” *Id.* at \*16-17. Fifth—and most importantly—the specification directly contradicted the patent owner’s approach. *Id.* It noted and described known methods for performing normalization. *Id.* It did not disclose how to achieve either the “normalizing” or “bounding” goal. *Id.* at \*17.

The ’295 and ’933 patents in *Nuance* are more relevant to the ’374 patent. As shown in Exhibit A, those claims simply recited modifications to text. The *Nuance* court noted that users often did that work outside of the claimed inventions, but it was “time-consuming” and error-prone. *Id.* at \*29-30. The claims corrected that. They employed real-time notifications to the user that are analogous to the ’374 claims. *See* Ex. A (text in red-bold-italics). For example, claim 8 of the ’034 patent recite a step in which “when displayed to the user, the audio cursor highlights the portions of the text information as the associated portions of the speech information are being acoustically played back[.]” *Nuance*, 2018 U.S. Dist. LEXIS 210715, at \*6-7 (emphasis added).

Google also relies on *Dialect, LLC v. Amazon.com, Inc.*, Case No. 1:23-cv-581, 2023 U.S. Dist. LEXIS 201180, \*2 (E.D. Va. Nov. 8, 2023) (hereinafter “*Dialect I*”). Google provides only

part of the story. As with *Nuance*, *Dialect I* stands for the proposition that motions to dismiss are improper in view of substantial factual questions. *See also Berkheimer*, 881 F.3d at 1368.

*Dialect I* addressed the eligibility of six patents. *Dialect*, 2023 U.S. Dist. LEXIS 201180 at \*2. In that case, this Court found only one of six could be disposed of at the 12(b)(6) stage. *Id.* It deferred the remaining *Alice* questions “until further proceedings, including discovery and claim construction.” *Id.* It reasoned that such proceedings were necessary, as they “may inform the *Alice* analysis . . .” *Id.*; *see also id.* at \*2, n.3 (citing “*McRO*, 837 F.3d at 1311; *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1126-27 (Fed. Cir. 2018)). The same reasoning applies here. Indeed, the other five patents eventually survived summary judgment. *See Dialect, LLC v. Amazon.com, Inc.*, Case No. 1:23-cv-581, 2024 U.S. Dist. LEXIS 140767, \*2-3 (E.D. Va. Jul. 30, 2024) (hereinafter “*Dialect II*”).

Additionally, the claims at issue in *Dialect I* are not “extremely similar” as Google asserts. Opening Br., 8. They were distinct for at least four reasons. First, as with the one ineligible patent in *Nuance*, the claims of the ’845 patent in *Dialect I* only tangentially related to speech recognition. 2023 U.S. Dist. LEXIS 201180, at \*4. Second, the ’845 patent did not claim any specific hardware, software, or instrumentality. *Id.* at \*5. Third, the ’845 patent did not claim any specific algorithm. *Id.* It merely recited processors that could be “programmed to execute one or more computer program instructions.” *Id.* at \*5-6. Fourth, the ’845 patent implicated “the primary concern driving § 101 jurisprudence”: preempting a large swatch of technology. *See McRO*, 837 F.3d at 1314. In *Dialect I*, the applicable claim “monopolizes [its] required functionality” by not being limited to “the method of deployment.” *Id.* at \*10. The ’374 patent is distinguishable on each of those grounds, as discussed above and in Section III *supra*.

#### 4. Google's functional test is incomplete

Google's rendition of its "functional test" is at best incomplete. The use of functional language is only one consideration in the *Alice* Step One analysis. *Uniloc USA, Inc. v. LG Elecs. USA, Inc.*, 957 F.3d 1303, 1308 (Fed. Cir. 2020).

Google's factual approach is also flawed. Determining patent eligibility requires a full understanding of the basic character of the claimed subject matter. *MyMail*, 934 F.3d at 1379. But Google ignores the primary structural portion of every limitation in the claims. *See* Section IV.C *supra*.

And Google's legal bases and procedural approach are incomplete. It fails to address claim construction in any manner. Thus, at baseline, the claim terms should be construed to have their plain and ordinary meaning. In that regard, Google omitted almost every structural limitation from claim 9—and thus failed the *MyMail* standard. To the extent Google implies that each one of those limitations should be interpreted in means-plus-function form, its Motion fails in more pronounced fashion. Google would have failed to identify any corresponding structure of any limitation, any equivalent of any structure, or analyze any of them in terms of *Alice*.

#### 5. Google's "real-world analogy" is unhelpful and inapt

Patent challengers often prefer the analogistic approach to eligibility. It takes little effort to draw an abstraction at a level high enough to argue invalidity. Indeed, "deciding whether or not a particular claim is abstract can feel subjective and unsystematic, and the debate often trends toward the metaphysical, littered with unhelpful analogies and generalizations." *CLS Bank Int'l v. Alice Corp. Pty*, 717 F.3d 1269, 1277 (Fed. Cir. 2013).

*McRO* is instructive here. It addressed, and rejected, the same arguments Google makes. Namely, the defendants in *McRO* asserted that "the claims simply use[d] a computer as a tool to automate conventional activity." *Compare* 837 F.3d at 1314 *with* Opening Br., 12-14. Just as in

the present case, the *McRO* court found no evidentiary support in the record (including the specification of the patent) to support that assertion. 837 F.3d at 1314. The court determined that “The computer . . . is employed to perform a distinct process to automate a *task* previously performed by humans.” *Id.* at 1314 (emphasis added). Specifically, a human’s process “was driven by subjective determinations rather than specific, limited mathematical rules.” *Id.*

The same distinction applies to Google’s “real-world analogy test” vis-à-vis the ’374 claims. Instead of a purely subjective determination (e.g., “she determines whether she can sufficiently hear and understand her colleague to have a conversation”) (Opening Br., 13), the claims set forth specific rules (e.g., based upon speech-segment determination, speech-quality evaluation, pick-up state determination, noise-cancellation, etc.) to automate the tasks of interpreting speech and transmitting communications. *See, e.g.*, ’374 patent, claims 9-11. They operate in a manner humans could not.

The claims of the ’374 patent allow a user to improve a handheld communication device by reorienting it, in real-time, during operation, to improve its voice transmission function—including the ability to adjust on the fly when the noise-cancellation function fails. ’374 patent 37:33-39:32, claims 9-11, 15. That could never be accomplished with a pencil and paper. Nor could the required signal-component analysis or noise-cancellation—let alone in terms of converting signals into the frequency domain and analyzing noise characteristics of them. *Id.* Thus the subject matter is not abstract. *Trinity Info Media, LLC v. Covalent, Inc.*, 72 F.4th 1355, 1361–62 (Fed. Cir. 2023) (“A ‘telltale sign of abstraction’ is when the claimed functions are “mental processes that ‘can be performed in the human mind’ or ‘using a pencil and paper.’”).

Google also relies upon another refrain *McRO* rejects. The defendants in *McRO* asserted the claims did not “specifically claim[] particular rules.” *Compare* 837 F.3d at 1314 *with*

Opening Br., 7. Just a few portions of claim 9, however, include more inventive details than in *McRO*. Those portions are interleaved (bolded in brackets) with the *McRO*'s court's discussion:

[T]he claims themselves set out meaningful requirements for the first set of rules **[for controlling whether a light-emitting device is “turned off, turned on or repeatedly turned on and off”]**: they define a morph weight set stream **[“sound pick-up state determination”]** as a function of phoneme sequence **[“based on a determination result at the speech-segment determination unit”]** and times associated with said phoneme sequence **[“based on . . . an evaluation result”]**. . . . They further require “applying said first set of rules to each subsequence . . . of timed phonemes” **[further require controlling the light-emission device based upon “communication mode”]**.

Compare *McRO*, 837 F.3d at 1313 with '374 Patent Claim 9; see also Ex. A attached hereto.

#### F. The '374 Patent claims are valid at *Alice* Step Two

*Alice* Step Two presents a substantial problem for Google. The Federal Circuit is explicit and unequivocal that it involves a question of fact, which is applied under the presumption that issued patents are valid and under a clear and convincing burden of proof. *Berkheimer*, 881 F.3d at 1368; see also 35 U.S.C. § 282; *Core Wireless*, 880 F.3d at 1364. “Any fact, such as this one, that is pertinent to the invalidity conclusion must be proven by clear and convincing evidence.” *Berkheimer*, 881 F.3d at 1368 (emphasis added). Allegations “that aspects of the claims are inventive,” if “plausible and specific,” suffice to preclude dismissal. *Dialect I*, 2023 U.S. Dist. LEXIS 201180, at \*8 (citing *Cellspin*, 927 F.3d at 1317)).

##### 1. Fact issues preclude dismissal

The '374 patent unquestionably states that the claims are inventive. See Section III *supra*. Google has no record on which to contradict it. In fact, Google does not address the applicable 12(b)(6) standard at all. It does not assert, for example, that SoundClear “cannot prove any set of facts in support of [its] claim entitling [it] to relief.” *Migdal*, 248 F.3d at 325. And it definitely does not establish that position in a manner that makes it “appear[] certain” SoundClear's claims

will fail. *Id.* Other than quoting a case in the legal background section (which it never applies to the instant case), Google does not use the word “fact” in its *Alice* argument at all.<sup>5</sup>

Google recites cases in which the Federal Circuit affirmed motions to dismiss on *Alice* grounds. Opening Br., 5. But it never applies the cases to the facts at issue. And it does not cite the seminal case on *Alice* factual issues: *Berkheimer*. The *Berkheimer* court overturned summary judgment of invalidity under *Alice*. 881 F.3d at 1370. The court addressed a claim reciting “[a] method of archiving an item in a computer processing system.” *Id.* at 1366. That claim recited limitations of parsing, evaluating, and presenting object structures. *Id.* Even after a full discovery record (presumably) and claim construction, the *Alice* issue could not be resolved. For example, a material dispute remained as to whether the improvements disclosed in the specification “[we]re captured in the claims.” *Id.* at 1369.

Every circumstance here is less conducive to dispositive determination. The claims at issue are more specific, detailed, and inventive than the four-step method in *Berkheimer*. There has been no discovery. Google addresses only one claim. *See* Section IV.A *supra*. It hints at foundational claim construction issues, but does not address them. *See* Section IV.B *supra*. And it ignores large portions of the specification and claim limitations. *See* IV.C *supra*.

## **2. Google’s omission of key elements precludes its Motion**

Google acknowledges the necessity to “consider the elements of the claim both individually and as an ordered combination to determine whether the additional elements transform the nature of the claim into a patent-eligible application.” Opening Br., 14 (citations omitted) (emphasis added). But it fails to do either.

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<sup>5</sup> Other than as an adverb/discourse marker.

On the former, Google fails to consider each of the claimed elements. It asserts that the claims “do not incorporate anything beyond admittedly known, conventional components, such as microphones, transceivers, lights, and push-to-talk buttons.” Opening Br., 15. Google does not explain the implicit claim construction process by which Google applied those labels to the claims. Google does not attempt to demonstrate, for example, that the “communication-mode switching unit” is a generic “push-to-talk button.” Nor does it explain how it would obtain some form of broadening claim construction to cover all push-to-talk buttons in existence.

Nor does Google address, in any manner, at least the following limitations: “communication-mode switching unit”, “sound-pick-up state determination unit”, “control unit”, “speech-quality evaluation unit”, or “speech-segment determination unit.” In fact, Google’s component list (microphones, transceivers, lights, and push-to-talk buttons) only includes four terms—fewer than even the subset of claim 9 listed above. Google also declines to even assert that any of the above-listed limitations were known or conventional. *See* Opening Br., 15.

Google also fails to address the ordered combination of elements in the claims. Indeed, “[t]he inventive concept inquiry requires more than recognizing that each claim element, by itself, was known in the art. *BASCOM Glob. Internet Servs. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016). “As is the case here, an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.” *Id.*

Google cites the ultimate conclusions in *Two-Way Media Ltd. v. Comcast Cable Communs., LLC*, 874 F.3d 1329, 1338 (alleged improvements not tied to claims) and *Prism Techs. LLC v. T-Mobile USA, Inc.*, 696 F. App’x 1014, 1018 (Fed. Cir. 2017) (claims recited generic components that were “employed in a customary manner”). But when it applies those cases to the case at bar, Google simply reverts to its argument that the individual components

and functional are conventional. *See* Opening Br., 15-16. In other words, it introduces the ordered-combination concept, but never follows through on addressing it. It provides at most a single, conclusory sentence. That sentence asserts that sound data must be picked up in order to be analyzed. Opening Br., 16 (citing only limitation 9[d]). Sound need not be picked up to be analyzed; it could be accessed from storage or generated by a system. In any event, Google's statement bears no relation to claim 9 at large, other than that one limitation requires sound to be picked up. Indeed, one would have to discuss more than a single limitation to address an "order." Google thus concludes where it started: restating its inapplicable argument that "the claims use conventional technology, such as microphones, transceivers, lights, and push-to-talk buttons, to achieve the desired results." That is not enough. And Google's motion fails for this reason alone. *See, e.g., BASCOM*, 827 F.3d at 1349-50 (agreeing with the district court that "the limitation of the claims, taken individually, recite generic computer, network and Internet components, none of which is inventive by itself" but overruled the district court's 12(b)(6) ruling in view of "the non-conventional and non-generic arrangement of known, conventional pieces.")

### **3. The claims of the '374 patent are complex and unconventional**

Google was initially correct that the "the claims may seem to suggest complexity." Its posturing simply precluded an objective analysis. The claims are complex. A single limitation of claim 9 is demonstrative. It recites a precise, analytical process that produces real-time user feedback using multiple components, inputs, and processes:

a light emission device configured to emit light; a control unit configured to control the light-emitting device so that the light-emitting device is turned off, turned on or repeatedly turned on and off based on the [1] communication mode [2] switched by the communication mode switching unit, and [3] the pick-up state of the [4] voice sound [5] picked up by the first pick-up unit and [6] determined by the [7] sound pick-up state determination unit;

'374 patent, claim 9 (excerpted and annotated in brackets).

The information flow alone in the claims is complex. Figure 15 (annotated) provides an example of the arrangement of components (in boxes) and the data flow (highlighted arrows):

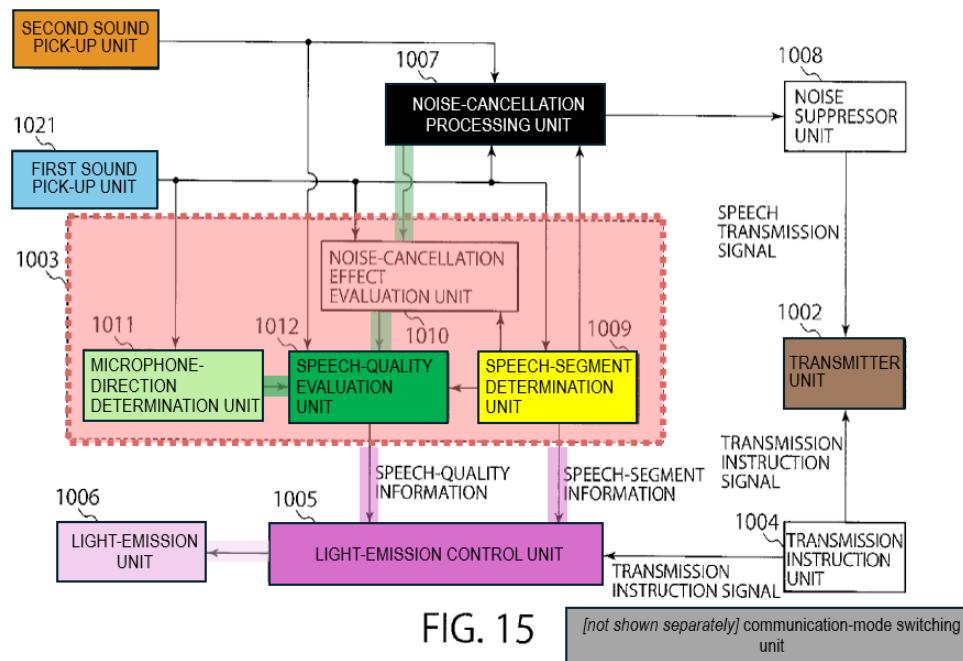


FIG. 15

9. A communication apparatus comprising:  
a first pick-up unit configured to pick up a voice sound;  
a transmitter unit configured to transmit the voice sound picked up by the first pick-up unit to outside as a first speech signal;  
a communication-mode switching unit configured to switch a communication mode between a standby mode in which the transmitter unit does not transmit the speech signal and a transmission mode in which the transmitter unit transmits the speech signal;  
a sound pick-up state determination unit configured to determine a pick-up state of the voice sound picked up by the first pick-up unit;  
a light emission device configured to emit light;  
a control unit configured to control the light-emitting device so that the light-emitting device is turned off, turned on or repeatedly turned on and off based on the communication mode switched by the communication mode switching unit, and the pick-up state of the voice sound picked up by the first pick-up unit and determined by the sound pick-up state determination unit;  
a speech-quality evaluation unit configured to evaluate speech quality of the first speech signal to be transmitted by the transmitter unit, wherein the sound pick-up state determination unit determines the sound pick-up state of the voice sound picked up by the first sound pick-up unit based on the speech quality of the speech signal evaluated by the speech-quality evaluation unit; and  
a speech-segment determination unit configured to determine whether or not the first speech signal to be transmitted by the transmitter unit is a speech segment, wherein, the sound pick-up state determination unit determines the sound pick-up state of the sound to be transmitted as the first speech signal based on a determination result at the speech-segment determination unit and an evaluation result at the speech-quality evaluation unit.

11. The communication apparatus according to claim 9 further comprising:  
a **second sound pick-up unit** configured to pick up a voice sound;  
a **noise cancellation unit** configured to perform noise cancellation to the first speech signal input from the first sound pick-up unit by using a second speech signal input from the second sound pick-up unit,

wherein the transmitter unit transmits a speech signal after the noise cancellation by the noise cancellation unit and the speech-quality evaluation unit evaluates speech quality of the speech signal after the noise cancellation.

12. The communication apparatus according to claim 11 further comprising a microphone-direction determination unit configured to determine a direction of a main microphone based on a phase difference of the voice sounds picked up the first and second sound pick-up units, respectively, the first sound pick-up unit including the main microphone, wherein, the speech-quality evaluation unit evaluates the speech quality of the speech signal to be transmitted by the transmitter unit based on the direction of the main microphone thus determined by the microphone-direction determination unit.

The specification explains the unconventionality of the claims. *See* Section III *supra*.

Google relies on the *Nuance* case. Opening Br., 15. But Google omits to mention that the patent owner in that case effectively gave up on *Alice* Step Two: “[Plaintiff] does not articulate a specific inventive concept.” *Nuance*, 2018 U.S. Dist. LEXIS 210715 at \*23.

**V. Alternatively, SoundClear should be allowed to amend its Complaint**

The ’374 patent makes clear that the recited claims are unconventional and inventive. The statements in Section III *supra* are sufficient to pass muster under *Alice* at the motion to dismiss stage. Indeed, they would support additional allegations of inventiveness that fact and expert discovery would also support.

**VI. The Complaint adequately pleads infringement**

Google contends that SoundClear has not stated a plausible claim of infringement of the ’819 patent. It asserts that SoundClear has not shown how the accused Google Products perform a feature allegedly required by claim 8. Opening Br., 17-23. That is a hasty and unsupported conclusion. It omits potential claim construction, fact discovery, and expert discovery issues.

**A. Google’s Motion relies on attorney argument contradicting the Complaint and evidence outside the pleadings**

“Whether the accused products infringe is not an appropriate issue for a motion to dismiss.” *Bel IP LLC v. BoomerangIt Inc.*, 2011 U.S. Dist. LEXIS 164358, at \*11 (E.D. Va. Sep. 27, 2011); *cf.* Fed. R. Civ. P. 12(d). Instead, “[t]he Court looks only at the factual allegations in the Complaint . . . .” *Id.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678-682 (2009)).

Google might cite to the Complaint, but its arguments are directed to the accused products and whether they infringe. In fact, Google only cites the Complaint for the purpose of flatly contradicting the allegations in it—an approach that actually acknowledges its plausibility.

Google states that “it is without question that the Google Products have no locked state . . .” and “the Google Products cannot be fixed into an unchangeable constant volume level state . . .” Opening Br., 23. Each directly contradicts the Complaint, which alleges that the accused products operate “in a locked state . . . in which the volume level of the audio is fixed by a constant lock value.” Compl., ¶ 84. Google also asserts that “the Google Products do not have a ‘constant’ lock value.” Opening Br., 21. Again, contradicting paragraph 84 of the Complaint.

In other instances, Google makes statements about the accused products that have no support in the Complaint. *See, e.g.*, Opening Br., 20 (“Google devices do not have a locked state where the volume is both set by the user and constant”), 22 (“Ambient IQ and Media EQ do not rely on the user setting their volume level at all ...”), 22-23 (“Ambient IQ and Media EQ cannot be a ‘non-locked’ state, as they do not involve or permit ‘a user operation’ to set the operation volume value”). Those constitute pure attorney argument; they can only be tested via discovery.

Each approach alone defeats Google’s Motion. *See, e.g., Nielsen Co. (US), LLC v. comScore, Inc.*, 819 F. Supp. 2d 589, 595 (E.D. Va., Aug. 19, 2011) (declining to conclude that plaintiff failed to state a claim for direct infringement “at this early stage in this matter, in which discovery has only recently begun and claim construction has not yet taken place”); *Nalco Co. v. Chem-Mod, LLC*, 883 F.3d 1337, 1350 (Fed. Cir. 2018) (finding the district court’s failure to credit plaintiff’s infringement allegations as true was “reversible error”); *Shibumi Shade, Inc. v. Beach Shade LLC*, LEXIS 230581 (E.D.N.C., Dec. 29, 2023) at \*33 (finding a question of infringement “should be deferred for a stage in the litigation when the parties have had an opportunity to conduct discovery”). “The ‘purpose of a motion to dismiss is to test the sufficiency of the complaint, not to decide the merits.’” *Nalco*, 883 F.3d at 1350 (quoting *Gibson v. City of Chi.*, 910 F.2d 1510, 1520 (7th Cir. 1990)).

**B. The infringement allegations for the '819 patent set forth in SoundClear's complaint meet the plausibility standard for federal court pleadings.**

Google's Motion is not really about plausibility. Google only addresses implausibility in terms of the words "locked" and "non-locked." It asserts that SoundClear's allegations are "counterintuitive." Opening Br., 20. Many inventions operate in a manner that is. And the accused devices are complex in their own right. Google implies as much. Opening Br., 1.

Given that complexity—and that much of it is hidden in source code SoundClear cannot access publicly—SoundClear did as much as the public record allows in drafting its Complaint. It identified exemplary states of the accused products. Notably, Google does not contest the fundamental allegations; e.g., that volume controls operate differently between such states. The discovery record, including source code and expert testimony, will elucidate the finer points. It will explain how the locked and non-locked states operate in the accused, smart products—even if it might seem counterintuitive at first blush.

In this regard, it is worth noting that Google's challenges go beyond the required pleading standard. That is because SoundClear's Complaint both meets and exceeds them. At baseline, SoundClear's complaint "contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570 (cleaned up)); see also *Audio MPEG, Inc. v. HP Inc.*, 2016 U.S. Dist. LEXIS 181710 (E.D. Va., June 29, 2016) at \*31 (quoting same). "The plausibility standard does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence to support the plaintiff's allegations." *Nalco*, 883 F.3d at 1350 (quoting *Twombly*, 550 U.S. at 556 (cleaned up)); *Safe Haven Wildlife Removal & Prop. Mgmt. Experts, LLC v. Meridian Wildlife Servs.*, 2023 U.S. Dist. LEXIS 56543 (W.D. Va., Mar. 31, 2023) at \*10 (notice of allegedly infringing activity is sufficient).

“A patentee . . . is not required to ‘plead infringement on an element-by-element basis.’” *Safe Haven*, 2023 U.S. Dist. LEXIS 56543 at \*10. But SoundClear did so anyway. It conducted an element-by-element analysis. And it supported that analysis with public information. Specifically, paragraphs 84-89 of SoundClear’s Complaint cite public information describing the functionality of the accused Google products. It explains in detail how that information demonstrates infringement of the claimed “locked state” and “non-locked state.” It explains that in the context of the accused products, a “non-locked state” is an “operating mode when the volume level is automatically adjusted by volume control bypass software (e.g., Ambient IQ, Media EQ) independent of the volume level set by the user through a user operation.” Compl., ¶84. It explains that a “locked state” is a “default operating mode when the volume control bypass software (e.g., Ambient IQ, Media EQ) is not activated and/or is otherwise *not* independently adjusting the volume level set by the user.” *Id.* Those explanations are supported by the following—among others: (1) a cite to a website owned and maintained by Defendant which describes the technical functionality of the Ambient IQ feature, (2) language from that Google website, and (3) additional explanation describing how that website and quoted language demonstrates infringement of the claim limitations. *Id.*, ¶¶81-87.

The detail SoundClear provides should not be used against it. Google asserts—albeit without expressly admitting it—that Google might assert claim construction and non-infringement positions to contest certain specific allegations. But those disputes are steeped in fact and must be addressed at a more granular level than plausibility requires.

The cases Google relies on are far afield of the present circumstances. For example, in *Bot M8*, the court concluded that plaintiff’s allegations contradicted infringement. In this case, in stark contrast, it is the defendant’s (Google’s) statements that contradict the allegations. *See*

Section III.A *supra*. But Google’s statements are not operable at the motion-to-dismiss stage; the plausibility of the pleadings is. *Bot M8* also confirms that, if anything, SoundClear surpassed the pleading standard. 4 F.4th at 1352-53 (emphasizing that pleading infringement on an element-by-element basis “goes beyond the standard the Supreme Court articulated in *Iqbal* and *Twombly*”). Notably, the Federal Circuit reversed the district court’s dismissal of infringement allegations that (like SoundClear’s Count III allegations) already included detailed explanations of the infringement theory citations to specific evidence. It determined that “the [district] court simply required too much.” *Id.* at 1353, 1355-56.

*Ottah v. Bracewell LLP* is inapposite here. The allegations in that case were problematic at a much more foundational level. The plain language of the claim was specifically directed to a “book holder . . . for supporting a book.” That language was unquestionably distinct from the entire basis for infringement: a “camera mounting system.” 2022 U.S. App. LEXIS 30894 at \*6.

The other cases cited by Google also included infirmities that go well beyond any claim of counter-intuitiveness. In *Chan Soo Kim v. Green Tea Ideas, Inc.*, the district court dismissed the infringement allegations because the plaintiffs’ allegations were a copy-and-pasted photograph of the accused product” without any analysis or specificity. 2018 U.S. Dist. LEXIS 37068 at \*4-5. In *Walton Glob. Invs., Ltd. v. Bowman Consult. Grp., Ltd.* (which is not a patent case), the district court dismissed the complaint (without prejudice). The allegations were so generalized that the court did not know where to even begin. It could not even determine “what claims [we]re being asserted and what the source of law [wa]s.” 2023 U.S. Dist. LEXIS 108612 at \*18. In short, the circumstances of each of those cases were so problematic that they support the sufficiency of SoundClear’s complaint by comparison.

### C. Google mischaracterizes the claimed invention

The Court need not address the finer details of the claimed invention at this stage of the proceedings—for the reasons discussed above. Nonetheless, it is worth identifying Google’s mischaracterizations.

Google’s arguments<sup>6</sup> about the claimed “locked state” and “non-locked state.” Opening Br., 17-19. But these arguments are based on details that are not part of claim 8 or the disclosure of the ’819 patent. For example, Google’s fundamental allegation (notably without a citation to the ’819 patent) is that “[t]he locked state must . . . prevent subsequent user adjustment of the volume level.” *See id.*, 17. Neither the claims nor specification of the ’819 patent include any such requirement—much less in the context of the claimed “locked state.”

Google’s position is not possible without claim construction. Google relies upon several statements from the specification. *See* Opening Br., 17-19 (citing ’819 patent, 3:49-54, 5:7-14, 5:25-26, 5:46-50, 10:50-11:8, 12:17-41). But selective statements from the patent specification cannot be used to read limitations into the claims. “The words of a claim are generally given their ordinary and customary meaning as understood by a person of ordinary skill in the art when read in the context of the specification and prosecution history.” *Thorner v. Sony Comput. Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012) (citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc)). “There are only two exceptions to this general rule: 1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution.” *Id.* (citing *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1580 (Fed. Cir. 1996)).

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<sup>6</sup> As an initial matter, Google’s arguments about these terms are claim construction positions inappropriate for resolution at Rule 12 (as discussed further below).

Claim construction is not Google’s only problem. Its reliance on the specification is misplaced from a technical standpoint. SoundClear’s interpretation of the claimed “locked state” and “non-locked state” is fully consistent with the ’819 patent, including the excerpts Google cites. So is the Complaint. A few examples suffice. The user can change the volume using the “operating key group.” ’819 patent, 5:26-50. The “lock value” can also change under a variety of other circumstances. *See, e.g., id.* 5:59-7:11; Fig. 3. Any value can be registered as the “lock value.” *See, e.g., id.*, 5:51-52.

#### **D. Claim construction is necessary**

Google and SoundClear disagree on the proper meaning and scope of the “lock state” and “unlocked state” terms. The mere existence of such a disagreement requires claim construction. *See, e.g., Nalco*, 883 F.3d at 1349 (“[d]efendants’ arguments boil down to objections to ... [the plaintiff’s] proposed claim construction ... [of a claim term], a dispute not suitable for resolution on a motion to dismiss.”); *see also Audio MPEG*, 2016 U.S. Dist. LEXIS 181710 at \*45-46 (citing *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996)). “[C]laims ‘must be read in view of the specification, of which they are a part.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995)). Google cannot wish away a claim construction dispute with attorney argument. *See Shibumi*, 2023 U.S. Dist. LEXIS 230581 at \*32 (“Before deciding infringement, the court must determine the meaning of the disputed claim term according to the detailed process for claim construction mandated by patent law”) (citing *Bell Atl. Network Servs. v. Covad Comms. Grp.*, 262 F.3d 1258, 1279 (Fed. Cir. 2001)).

Indeed, none of the cases that Google relies on for its arguments have dismissed an infringement claim where (as here) the complaint presented adequate factual allegations of

infringement and the meaning of a claim term was in dispute. Google's non-infringement arguments cannot be resolved at the Rule 12 stage. Thus, dismissal would be inappropriate here.

## **VII. SoundClear's Prayer for Relief is supported by the allegations in the Complaint**

SoundClear's prayer for relief is proper for at least two reasons. First, the Complaint provides the basis for post-suit willful infringement. *See e.g.*, Compl. ¶¶56-57 (asserting current and ongoing infringement of the well-pleaded claim); Compl. ¶11 (asserting the same); Compl. ¶¶90-91 (asserting the same); *Eko Brands, LLC v. Adrain Rivera Maynez Enterprises, Inc.*, 946 F.3d 1367, 1378 (Fed. Cir. 2020) (A claim for willful infringement requires knowledge of the asserted patents and "no more than deliberate or intentional infringement." (quoting *Halo Elecs. v. Pulse Elecs, Inc.*, 579 U.S. 93, 105 (2016))); *Bayer HealthCare LLC v. Baxalta Inc.*, 989 F.3d 964, 988 (Fed. Cir. 2021); *Arigna Tech. Ltd. v. BMW AG*, 2022 U.S. Dist. LEXIS 38211, \*19-22 (E.D.T.X. Jan. 24, 2022). Alleging knowledge via filing of a complaint and ongoing infringement is sufficient. *See Geoscope Techs. PTE. Ltd. v. Google LLC*, 2023 U.S. Dist. LEXIS 223229, \*18-19 (E.D. Va. Feb. 15, 2023); *USA, Inc. v. Mediatek USA, Inc.*, 2022 U.S. Dist. LEXIS 45815, \*12-13 (E.D.T.X. Mar. 15, 2022); *Billjco v. Cisco Systems*, 2021 U.S. Dist. LEXIS 251455, \*23-25 (E.D.T.X. Nov. 30, 2021).

Second, Google's reliance on *Bushnell Hawthorne, LLC v. Cisco Sys. Inc.* No. 1:18-cv-760, 2019 WL 8107921, at \*1 (E.D. Va. Feb. 26, 2019) is misplaced. "Egregiousness" is part of the standard for enhanced damages. *Halo*, 579 U.S. at 103-04; *Eko Brands*, 946 F.3d at 1378. Allegations of willfulness need "no more than deliberate or intentional infringement." *Id.*

## **VIII. Conclusion**

In view of the foregoing, Plaintiff respectfully requests that Defendant's motion to dismiss be denied.

Respectfully submitted,

Dated: August 19, 2024

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**CERTIFICATE OF SERVICE**

I certify that on August 19, 2024, I electronically filed the foregoing Opposition to Defendant's Partial Motion to Dismiss Plaintiff's Complaint Under Rule 12(b)(6) with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

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