

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

Concurrent Ventures, LLC and
XtreamEdge, Inc.,

Plaintiffs,

v.

Advanced Micro Devices, Inc. and
Pensando Systems, Inc.,

Defendants.

Civil Action No. 1:24-cv-335-DII

JURY TRIAL DEMANDED

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PURSUANT
TO 35 U.S.C. § 101 AND FED. R. CIV. P. 12(b)(6)**

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Plaintiffs Concurrent Ventures, LLC and XstreamEdge, Inc. (“Plaintiffs”) submit this opposition to Defendants Advanced Micro Devices, Inc. and Pensando Systems, Inc.’s (“Defendants”) Motion To Dismiss (Dkt. 23) (“Motion” or “Mot.”).

I. INTRODUCTION

Defendants’ scattershot Motion relies on a foundation of factual and legal misstatements. First, Defendants allege that U.S. Patent No. 10,944,634 (the “’634 patent”) is directed to the abstract idea of “initiating an action based on matching a geographical area” and is thus patent ineligible. Defendants ignore the key innovation of the ’634 patent: a novel architecture that adds a new network component, the “tuner server,” that is distinct from the endpoints. This innovation is a technological solution to a technological problem, and not abstract under Federal Circuit law.

Second, Defendants argue that the Complaint does not state a claim of direct infringement for U.S. Patent Nos. 8,924,596 (the “’596 patent”), 10,873,753 (the “’753 patent”), 10,985,943 (the “’943 patent”), and 9,529,767 (the “’767 patent”). The crux of Defendants’ argument is that the Complaint does not explain how each claim element is met. But this Court has already rejected Defendants’ argument when Defendants’ counsel previously made it. *Competitive Access Sys. v. Oracle Corp.*, 1:23-cv-286-DII, WL 3910262, at *4 (W.D. Tex. June 7, 2023) (“CAS”). And for good reason—the Federal Circuit unequivocally stated that a plaintiff is not required to plead infringement on an element-by-element basis. In any event, the Complaint does allege, with pages of explanation and evidence, how each element is met.

Third, Defendants argue that Plaintiffs do not plead the requisite knowledge for willful and indirect infringement. Defendants’ argument does not withstand scrutiny. Defendants do not even dispute that the Complaint alleges *post-suit* knowledge. And the Complaint also makes specific allegations that, in their totality, plausibly show that Defendants knew of the patents and their infringement *pre-suit*. No more is required at this stage.

II. THE '634 PATENT IS PATENT ELIGIBLE UNDER SECTION 101.

A. The '634 Patent Claims a Technological Innovation in Network Architecture.

The '634 patent claims an innovative technological architecture that improves network connectivity. The specification explains that, before the '634 patent, “[a] TCP/IP (transmission control protocol/Internet protocol) network connection between two endpoints starts off without knowledge of the performance of the connection and the effect of bandwidth realized between the peers.” '634 pat., 1:6-9. In other words, each new network connection was unaware of the network connections that had come before, and thus could not benefit from the lessons learned from those previous connections about the optimal bandwidth to use. *Id.* If the new network connection sends data too quickly (bandwidth is too high), then it will exceed the “capabilities in the network[] and/or the endpoint[], in which case packets get dropped.” *Id.*, 3:35-41. If it sends data too slowly (bandwidth is too low), then “data throughput suffers” and the network has “long upload, download or other communication speeds,” which “are inadequate.” *Id.*, 3:41-45.

In order to determine the appropriate bandwidth before the '634 patent, “various algorithms” had to be used once a network connection was created. '634 pat., 1:9-11. When a connection was terminated and re-created, the process to determine the optimal bandwidth had to begin again. *Id.* But performing these algorithmic calculations for each connection came with significant costs, namely in time and computational resources. *Id.*, 1:11-23. “Many algorithms induce considerable time loss in order to average out to the effect of bandwidth, and may take many seconds or even minutes to reach full effective bandwidth capacity.” *Id.*, 1:11-15. Other algorithms could reach full operational capacity sooner “but are compute intensive and more difficult to implement.” *Id.*, 1:15-18. “These time delays and sub-optimal transmission bandwidth have significant effect in situations where the network connection involves set up, transfer of data, then tear down, and is repeated over and over again” *Id.*, at 1:18-23.

Network connections thus suffered from the combination of two inherent features: (1) each connection has no memory of previous connections and (2) connections are frequently “set up” and “t[orn] down.” *Id.*, 1:6-23, 3:35-45. These features created a unique technological problem.

The '634 patent solves this problem with a specific networking architecture. In a typical network connection, the system only includes the network endpoints between which the connection runs. '634 pat., 1:6-9. The '634 patent's innovative solution adds a whole new piece to the network system: a tuner server (also referred to as a “tuning” server) that is distinct from the network endpoints.¹ Crucially, because the tuning server is distinct² from the network endpoints, it “has a higher level view of the network traffic” which allows it to “offload[] the calculations” and “incorporate knowledge of the higher level view of the network topology to enhance congestion control over/among the network(s).” *Id.*, 5:5-9. The tuner server's novel position within the network architecture (i.e., a server distinct from the endpoints) means it has access to the necessary data, and can perform the required calculations and algorithms, to allow networks to achieve full bandwidth quickly. *Id.* “[T]he tuning server 302 . . . is better positioned and equipped to have a broader view of network connections than could any single endpoint.” *Id.*, 4:44-46.

The '634 patent's novel architecture improves network connection functionality by offloading data and bandwidth calculations to the tuner server, thereby improving network speeds and efficiency. In particular, the endpoints “continuously or periodically communicate relevant bandwidth information and/or statistics to the tuning server 302,” keeping the “tuning server 302 up to date and well informed.” *Id.*, 4:46-50, 2:61-65, 3:3-5. The tuner server “us[es] past or recent

¹ The specification discloses two embodiments: one with a tuning server and one without. *See, e.g.*, '634 pat., 3:58-63. However, the '634 patent only *claims* the embodiment with a tuner server, and thus only the tuner server embodiment is relevant to the present Motion.

² The tuner server can be *physically* located at or near the endpoints, or elsewhere. '634 pat., 5:9-11. Regardless, the claims are clear the tuner server must be “distinct” from the endpoints.

tuning results when the same network connection or another network connection in a similar geographic area . . . is made” and “communicates bandwidth information back to the endpoint that sent connection information to the tuning server, so that the endpoint can use the initial bandwidth when making the next connection to another endpoint.” *Id.*, 2:65-3:2. As a result, “an endpoint can shorten the startup time.” *Id.*, 2:52-57, 3:50-58 (the invention “improve[s] the rapidity with which the transmitting endpoint 103 achieves the desired average bandwidth . . . by storing and accessing information about past network connections to set the initial transmission bandwidth.”).

The ’634 patent thus solves a problem inherent in network connections: how to efficiently determine optimal bandwidth for network connections that lack knowledge of past connections.

B. The Claims of the ’634 Patent Satisfy *Alice* Step One.

Under *Alice* step one, courts “determine whether the claims at issue are directed to a patent-ineligible concept.” *Alice Corp. Pty. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014). Where “the focus of the claim is a specific and concrete technological advance, for example an improvement to a technological process . . . the claim is eligible.” *ADASA Inc. v. Avery Dennison Corp.*, 55 F.4th 900, 908 (Fed. Cir. 2022); *SRI Int’l v. Cisco Sys. Inc.*, 930 F.3d 1295, 1303 (Fed. Cir. 2019) (claims that are “necessarily rooted in computer technology in order to solve a specific problem in the realm of computer networks” are patent eligible); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016) (claims directed to a solution to a technological problem eligible at step one). The crux of the inquiry is “what the patent asserts to be the focus of the claimed advance over the prior art.” *TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1292 (Fed. Cir. 2020) (cleaned up).

The ’634 patent solves a technological problem—network endpoints being unable to determine the proper bandwidth—using a “specific and concrete technological advance”: a tuner server distinct from the endpoints to match geographic areas of a network connection to determine bandwidth. *See* Section II.A; *ADASA Inc.*, 55 F.4th at 908; *Enfish, LLC*, 822 F.3d at 1336.

Each independent claim explicitly recites the '634 patent's technological solution: (1) "a tuner server," (2) "distinct from the first endpoint device and the further endpoint devices," (3) at which there is a "determinati[on]" "that a next network connection from the first endpoint device to a second endpoint device matches a geographical area of a past network connection," where (4) the "next network connection" is "initiat[ed]" "based on the determination at the tuner server," with (5) "a transmission bandwidth based on the parameter values for the past network connection." '634 pat., claims 1, 8, 15. And just like the claims in *SRI* and *Packet Intelligence*, the '634 patent claims are "necessarily rooted in computer technology" and "meet a challenge unique to computer networks" since a distinct "tuner server" only makes sense in the context of computer networks, where endpoints are unaware of previous connections. *See* Section II.A; *SRI Int'l*, 930 F.3d at 1303; *Packet Intel. LLC v. NetScout Sys., Inc.*, 965 F.3d 1299, 1309 (Fed. Cir. 2020). These claims are also like those in *Finjan*, which enabled a computer system to do things it could not do before. *Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299, 1305 (Fed. Cir. 2018). Here, the '634 patent enables more efficient network optimization by leveraging the tuner server-based architecture.

The '634 patent's specification also shows that the patent presents a technological solution to a technological problem. *See Packet Intel. LLC*, 965 F.3d at 1310 ("The specifications likewise explain how the elements recited in the claims refer to specific technological features functioning together to provide that granular, nuanced, and useful classification of network traffic, rather than an abstract result."); *Mentone Sols. LLC v. Digi Int'l Inc.*, 2021 WL 5291802, at *13-14 (Fed. Cir. Nov. 15, 2021). The tuner server's "broad[] view" of the network and knowledge of previous tuning results allows it to leverage prior connections to enable shorter startup times. *See* '634 pat., 2:52-57, 5:4-9; Section II.A; *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1303 (Fed. Cir. 2016) ("The written description explains that the distributed architecture allows the

system to efficiently and accurately collect network usage information”). And during prosecution, the patentee distinguished prior art based on the “tuner server,” further showing it is a concrete advancement. Ex. 16 at 8, 11; *see Ancora Techs., Inc. v. HTC Am., Inc.*, 908 F.3d 1343, 1349 (Fed. Cir. 2018) (“The prosecution history reinforces what the patent itself indicates”).

The claimed tuner-server architecture is thus “the focus of the claimed advance over the prior art” and non-abstract. *See TecSec, Inc.*, 978 F.3d at 1292; *see also Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1259 (Fed. Cir. 2017).

Defendants ignore this concrete solution, and instead argue that the claims are directed to the abstract idea of “initiat[ing] an action (a network connection) based on a geographical area match.”³ Mot., 4, 5. Defendants can only reach such a broad alleged abstract idea by impermissibly oversimplifying the claims and ignoring the patent’s claimed architecture. *See In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016) (cautioning against “oversimplifying the claims” by looking at them generally and failing to account for the specific claim requirements); *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1313 (Fed. Cir. 2016) (same).

Defendants do not engage with the claimed “distinct” “tuner server” and its impact on the step one analysis—Defendants’ brief does not even use the terms “distinct” or “tuner server” in its step one analysis except when reciting the claim language. Mot., 3-9. Instead, Defendants argue that claim 8 only recites a “series of steps,” reducing each claim element to its “Corresponding Step.” Mot., 3-5. But the claims do not just recite a “series of steps”—they recite an architecture that enables the performance of those steps. *See* Section II.A. Defendants disregard the patent’s concrete architecture to focus only on what that architecture achieves, rewriting the claims to

³ Having failed to address the “tuner server” in their Motion, Defendants cannot make new arguments or propose a new “abstract idea” in reply. *See Jones v. Cain*, 600 F.3d 527 (5th Cir. 2010).

ignore the patent’s key technical innovation. *See Enfish, LLC*, 822 F.3d at 1337 (“describing the claims at such a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to [Section] 101 swallow the rule”).

Defendants also argue that “[t]he patent does not purport to invent or reinvent network communication.” Mot., 2. That is irrelevant. The ’634 patent need not have invented network communication to pass *Alice* step one. Defendants also argue the claims do not “require the use of any specialized hardware.” Mot., 2. But the claims **do** require specialized hardware: a specialized tuner server with a number of requirements (*see supra*). And regardless, claims directed to a novel “network architecture” pass step one, even if that architecture is composed of conventional components. *Uniloc USA, Inc. v. ADP, LLC*, 772 F. App’x 890, 897 (Fed. Cir. 2019).

Defendants next allege that claim 8 only “use[s] computers as tools.” Mot., 9 (citing *SAP AM., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018)). But the claims here do not just “use computers as tools”—they fundamentally improve upon how a computer network operates. Nor do the claims apply a common idea “to a particular field of use or technological environment.” Mot., 8-9 (quoting *Intell. Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1366 (Fed. Cir. 2015)). The claims address the limitations of networking.

Defendants attempt to analogize the claims here to those previously found abstract but miss the mark. Each cited case concerns claims that **do not** recite the sort of technical architecture claimed by the ’634 patent, and thus Defendants can only assert their relevance by continuing to ignore the tuner server. For example, Defendants allege the claims in *Sanderling* and the ’634 patent both “perform a geographical area match” and “initiate an action” “based on that geographical area match.” Mot., 1, 5-6 (quoting *Mgmt. Ltd. v. Snap Inc.*, 65 F.4th 698, 701 (Fed. Cir. 2023)). Defendants’ comparison is superficial. The *Sanderling* claims **only** recited initiating

an action based on “match[ing] a GPS location indication with a geographic location.” 65 F.4th at 703. The ’634 patent *also* claims a network architecture that makes that matching more efficient. *See also CardioNet, LLC v. InfoBionic, Inc.*, 955 F.3d 1358, 1368 (Fed. Cir. 2020) (claims that “focus is on a specific means or method that improves [the underlying technology]” pass step one).

Defendants’ other cited cases are much the same. They cite *Front Row Techs., LLC v. Cisco Sys., Inc.* to argue that “the *Front Row* claim (which initiates an action based on determining the location of a user) and claim 8 here (which initiates an action based on determining whether there is a location match)” are equivalent. Mot., 7 (citing 2023 WL 11800705, at *6 (W.D. Tex. Sept. 13, 2023)). But again, Defendants wholly ignore the ’634 patent’s claimed architecture. Similarly, the court in *Q Techs., Inc. v. Walmart, Inc.* found that (unlike here) “[t]here is nothing in the patent to suggest the claimed [limitations] solve the problem in a materially different way.” 2024 WL 1146150, at *4, *5 (W.D. Tex. Mar. 6, 2024) (cited at Mot., 6). Here, there is. *See* Section II.A.

Defendants next cite *Intellectual Ventures I LLC v. Symantec Corp.* to argue that geographical area matching could be performed by a human. Mot., 7-8 (citing 838 F.3d 1307 (Fed. Cir. 2016)). The claims in *Intellectual Ventures* did not “improve the functioning of the computer itself” but only “use[d a] generic computer to perform generic computer functions.” *Id.* at 1315. The asserted claims here are not “generic computer functions” that could be performed by a human, but a novel network architecture that solves an inherent challenge in network connections.

Finally, Defendants cite several disparate cases without analysis, none of which apply here. *See* Mot., 8-9; *In re Rosenberg*, 813 F. App’x 594, 597 (Fed. Cir. 2020) (claims that just “make assessments more quickly to provide instructions” are abstract because that is “not a technical improvement, given the broad, non-specific nature of the claim.”); *NexusCard, Inc. v. Kroger Co.*, 173 F. Supp. 3d 462, 467 (E.D. Tex. 2016) (claims simply “describe a problem, announce purely

functional steps that purport to solve the problem, and recite standard computer operations to perform some of those steps”); *In re Rudy*, 956 F.3d 1379, 1384 (Fed. Cir. 2020) (claims ineligible where “all that is required of the angler is observation, measuring, and comparison with a predetermined chart.”); *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1342 (Fed. Cir. 2017) (the claim recite “routine steps of data collection and organization using generic computer components and conventional computer data processing activities”).

C. The Claims of the ’634 Patent Satisfy *Alice* Step Two.

If the Court determines the ’634 patent is directed to an abstract idea, it satisfies *Alice* step two. At *Alice* step two, courts “consider the elements of each 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.” *Alice*, 573 U.S. at 218. (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78-79 (2012)). Step two is “a search for an ‘inventive concept’—i.e., an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 573 U.S. at 217-18 (alteration in original) (quoting *Mayo*, 566 U.S. at 72-73). “[U]seful improvements to computer networks are patentable regardless of whether the network is comprised of standard computing equipment.” *Coop. Entm’t, Inc. v. Kollektive Tech., Inc.*, 50 F.4th 127, 135 (Fed. Cir. 2022); *see also Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018).

“[W]hether 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” that “must be proven by clear and convincing evidence.” *Berkheimer*, 881 F.3d at 1368. “[P]atentees who adequately allege their claims contain inventive concepts survive a § 101 eligibility analysis under Rule 12(b)(6).” *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1127 (Fed. Cir. 2018) (citing *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1352 (Fed. Cir. 2016)).

There is a genuine question of material fact regarding whether the '634 patent claims recite the required "inventive concept," foreclosing Defendants' Motion. If the claims are directed to "initiat[ing] an action (a network connection) based on a geographical area match" as Defendants allege (they are not), then the claims plainly recite "significantly more" than just that idea. The claims require a specific network architecture (with endpoints, and a tuner server distinct from those endpoints) that improves the process of matching the current network geography with past connections and initiating the network connection based on that match. The '634 patent explains that its novel network architecture did not exist in the prior art and is not "well-understood, routine, and conventional." '634 pat., 1:6-29; *see* Section II.A. Those allegations are sufficient at this stage to show the claims recite a "useful improvements to computer networks," *Coop. Entm't*, 50 F.4th at 135, and a "specific implementation of th[e] concept," satisfying *Alice* step two. *See Weisner v. Google LLC*, 51 F.4th 1073, 1086 (Fed. Cir. 2022); *Aatrix Software, Inc.*, 882 F.3d at 1128.

Defendants cannot show otherwise. They first analyze the claimed elements individually and out of context. Mot., 10-12. Defendants' analysis falls prey to the same flaw that infects their step one analysis: focusing on the result of the claimed architecture while ignoring the architecture itself. For example, Defendants allege that element "[8b]'s recitation of a 'tuner server,'" is not an inventive concept because it "merely consists of conventional components." *Id.*, 10. Defendants' argument misses the point. The addition of the tuner server into the network (and the creation of a concrete, novel architecture) is an "inventive concept." *See Amdocs (Israel) Ltd.*, 841 F.3d at 1301 (the invention "purposefully arranges the components in a distributed architecture to achieve a technological solution to a technological problem specific to computer networks.")).

Moreover, Defendants overlook the limitations inherent in network connections before the '634 patent: endpoints knew nothing of previous connections. In the pre-'634 patent system, the

endpoints could not “determin[e] . . . that a next network connection from the first endpoint device to a second endpoint device matches a geographical area of a past network connection.” Thus, the claimed “matching” can only occur by using the “distinct” “tuner server” (as opposed to the old “well-understood, routine, and conventional” network architectures). *SRI*, 930 F.3d at 1304.

It is much the same for the “initiating” limitation (element 8[c]), which Defendants assert “is merely background technology” and “abstract.” Mot., 12. The “first endpoint” device can only “initiat[e] the next network connection” with a transmission bandwidth *based on the parameter values for the past network connection* by using the claimed “tuner server.” *See supra*, II.A.

Even when Defendants purport to analyze claim 8 as a whole, the analysis suffers from the same flaw. Defendants assert that “the ordering of the elements of claim 8 . . . comprises a simple series of steps” and thus “cannot supply an inventive concept.” Mot., 12. Defendants’ argument makes no sense. How can the ’634 patent merely recite “a simple series of steps” performed on “generic computer components,” when the patent requires an undisputedly novel architecture made up of multiple components (endpoints and the tuner server) to perform those steps? As before, Defendants can only reach their conclusion by ignoring the words in the claim.

Finally, Defendants allege the “specification” does not suggest “anything inventive.” Mot., 13. That is false. The specification explains how the previous technology was deficient and how the claimed architecture solves the deficiencies to improve network optimization. *See* Section II.A.

D. Claim 8 of the ’634 Patent is not Representative.

Defendants argue that claim 8 is representative of all claims in the ’634 patent and urges dismissal of every claim of the ’634 patent on that basis. Mot., 13-15. Defendants bear the burden of demonstrating that claim 8 is representative. *PerformancePartners, LLC v. FlashParking, Inc.*, 697 F. Supp. 3d 678, 683 (W.D. Tex. 2023). Defendants fail to meet their burden. In addition to the “tuner server,” other claim limitations confer patent eligibility:

- Dependent claims 10 and 11 recite additional requirements for the novel architecture, such as the tuner server, instead of the first endpoint, performing the “determining” and “initiating” steps.
- Dependent claims 9, 12, and 13 claim specific types of data sent and used. *See SRI*, 930 F.3d at 1304 (finding eligible claims that recite generating and receiving data reports of anomalous activity); *DDR Holdings, LLC v. Hotels.com*, 773 F.3d 1245, 1258 (Fed. Cir. 2014) (same).

III. THE COMPLAINT PLEADS DIRECT INFRINGEMENT.

Defendants argue that the Complaint does not adequately allege direct infringement of four of the patents. Mot., 16. The crux of Defendants’ argument is that the Complaint fails to explain how each claim element is met. That argument is wrong as a matter of law and fact.

Federal Circuit law is clear: “A plaintiff is not required to plead infringement on an element-by-element basis.” *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1352 (Fed. Cir. 2021) (“a blanket element-by-element pleading standard for patent infringement” “is unsupported and goes beyond the standard the Supreme Court articulated in *Iqbal* and *Twombly*.”). Instead, a complaint need only “place the alleged infringer ‘on notice of what activity . . . is being accused of infringement.’” *Id.* (quoting *Lifetime Indus., Inc. v. Trim-Lok, Inc.*, 869 F.3d 1372, 1379 (Fed. Cir. 2017)); *see Disc Disease Sols. Inc. v. VGH Sols., Inc.*, 888 F.3d 1256, 1260 (Fed. Cir. 2018).

The Complaint does not just “recit[e] the claim elements and merely conclude[e] that the accused product has those elements.” Mot., 16. It places Defendants on notice of what is being accused of infringement, including by expressly identifying the accused products, Dkt. 1 (“Compl.”), ¶¶29, and citing dozens of websites, videos, and tutorials about Defendants’ products, *Id.*, ¶¶36-43, 51-56, 64-69, 89-95. Defendants cannot claim that they do not know what is accused.

This Court has already rejected the substance of Defendants’ argument. In *CAS*, Defendants’ counsel (representing Oracle) argued that the patentee “fails to plausibly allege that the Accused Products contain” certain elements. 2023 WL 3910262, at *4. This Court rejected that argument, holding that plaintiff “need not list each element and sub-element of the claims and map them on the Accused Products” because “[a]t this stage of the litigation [plaintiff] need only ‘place the alleged infringer on notice of what activity . . . is being accused of infringement.’” *Id.* Plaintiffs’ Complaint put Defendants on notice of what is accused of infringement. That is sufficient.

Regardless, Plaintiffs’ Complaint does map each claim element to the Accused Products.

’596 Patent: Defendants argue that the Complaint does not identify the claim element, “a reservation register implemented in hardware” because “[t]he Complaint accuses a ‘DRAM-based qstate record’ that purportedly tracks available space” while the ’596 patent distinguishes DRAM-type shared available space count variable in memory from its hardware reservation register. Mot., 16-17. As an initial matter, Defendants’ highly technical argument demonstrates why their motion should be dismissed. Defendants do not truly contend that the Complaint fails to identify what it is accusing. Indeed, Defendants’ own argument demonstrates they know precisely what is accused. Rather, Defendants disagree that they infringe. But the question of whether a “DRAM-based qstate record” meets the claim limitation is a factual dispute inappropriate for resolution at this stage.⁴

In any event, the Complaint identifies several other aspects of the Accused Products that also meet the “reservation register” requirement. Compl., ¶40. The Complaint alleges that this element is met and then states: “For example, the *doorbells* for the *hardware queues* initiate the scheduler to inject P4 pipeline tokens and this doorbell mechanism allows objects to be added to

⁴ Notably, Defendants do not support their numerous fact and claim construction assertions. *See, e.g.*, Mot., 17 (“DRAM. . . refers to Dynamic Random Access Memory”) (DRAM is a “shared available space count variable in memory,” which falls outside the claims). That is likely because doing so would highlight that the questions they raise cannot be resolved on a motion to dismiss.

any queue.” *Id.*, ¶40, p. 14 (citing Ex. 1).⁵ The Complaint thus identifies the doorbell mechanism as an exemplary “reservation register implemented in hardware.” Screenshots show that the Accused Products contain “[d]oorbells for 16 million *hardware* queues” and “initiates multi-level scheduler.” Ex. 1. Defendants’ documentation describes the “Doorbell” as a “*register*” that either the driver or P4 program can update. Compl., ¶40, p. 16; Ex. 1; *see also* Compl., ¶40, p. 17 (showing the products’ “Scheduling”); Exs. 2, 3. The Complaint also points to another exemplary “reservation register implemented in hardware” disclosed by Defendants’ own documentation: the “register interface,” which is implemented in the Elba hardware. Compl., ¶40, p. 15.

Defendants next argue that the Complaint does not identify “an input queue” or “output queue” “implemented in hardware.” Mot., 17. The Complaint states that the Accused Products “include numerous *hardware queues, such as host or ARM processes*, which initiate multi-level scheduler to inject P4 pipeline tokens” and “contain *input queues* (for example, *P4 RxDMA*) and *output queues* (for example, *P4 TxDMA*).” Compl., ¶37, p. 12; Exs. 4, 5.

’753 Patent: Defendants argue that the Complaint does not identify “packets each having a header with a chassis identifier, a board identifier, a module identifier, an instance identifier, and a type identifier.” Mot., 17. The Complaint clearly identifies the alleged “packets” and “headers”: Defendants’ DPU packets and headers, including those programmable using P4. Compl., ¶55, p. 22; Exs. 6 (“P4 allows for the customization of how a network device processes packets.”), 7, 8. The Complaint cites pages of materials describing the claimed packets and headers. Compl., ¶55, p. 23 (the “*header fields* and *populate a header vector*” which have “*six to eight* match action

⁵ All attached exhibits (except Exhibit 16, which is the ’634 patent’s file history) are websites cited in the Complaint. *See, e.g., Over Active Imaginations Inc. v. Amazon.com Inc.*, 2024 WL 2943969, at *3 (W.D. Wash. June 11, 2024); *Equal Emp. Opportunity Comm’n v. 98 Starr Rd. Operating Co., LLC*, 682 F. Supp. 3d 414, 420 (D. Vt. 2023); *Sonrai Sys., LLC v. AMCS Grp. Inc.*, 2017 WL 4281122, *8 (N.D. Ill. 2017).

stages”) (each “packet” has an “extended five-tuple that includes the basic five fields . . . and other information like input interface, MAC addresses, TCP flags, etc.”); Ex. 9; Ex. 6.

’943 Patent: Defendants argue that the Complaint does not identify “a programmable logic device (PLD)” and “user-definable programmable electronic circuits of the PLD.” In particular, Defendants argue that “the Complaint fails to allege any basis for inferring that the accused Pensando products include a PLD or any user-definable programmable electronic circuits.” Mot., 17. Defendants’ argument is perplexing, because the Complaint unequivocally states that “the AMD DSC [Distributed Services Card] is a programmable device.” Compl., ¶65; Exs. 8, 10. Whether that allegation is correct is a question for another day; now, the allegation is enough.

The Complaint also cites evidence to support its allegation. Ex. 8 (“Pensando’s physical products are called its ‘Distributed Services Card’. This card basically marries a high-speed network interface, with *a P4 programmable pipeline engine . . .*”); Ex. 10 (“the *fully programmable Pensando DPU*.”). And despite Defendants’ assertion that the Complaint does not prove “the cores contain electronic circuitry that the user can define,” Mot., 17—which is not even a claim element—it shows exemplary electronic circuitry. Compl., ¶65, pp. 26-27; Exs. 6, 8, 10.

Defendants also assert that the Complaint does not identify the “recited bridge or functionality.” Mot., 17-18. The Complaint states that “Accused DSC has a port that comprises” “a bridge,” and identifies the alleged “Ports” (which comprises the “bridge”). Compl., ¶68, pp. 29-31; Ex. 6. The Complaint points to the “data path,” “handshake,” and “key management,” and the PenTrust Subsystem and Root of Trust in the DSC Security Architecture, which show the bridge is “lockable” and “unlockable.” Compl., ¶68, pp. 30-31; Exs. 12, 13; Compl., Exs. 6, 7.

’767 Patent: Defendants argue that the Complaint does not identify the “abstraction protocol” because the Complaint includes “two screenshots from a product brief.” Mot. 18. The

exemplary abstraction protocol in the Complaint is the P4 language, as is evident from the fact that both screenshots focus on the Accused DPUs’ use of P4. Compl., ¶89, pp. 38-39; Exs. 3, 4. Defendants’ argument that they cannot fathom what is accused from these targeted, technology-specific screenshots because they contain “no explanation or highlighting” is willful blindness.

Finally, Defendants allege that the limitation requiring that “the edge controller further comprises at least one other master controller further in communication with at least one other edge controller” is not met because “Plaintiffs provides no explanation of how a DPU can be both an edge controller and another master controller.” Mot. 18. This again is a matter for fact and expert discovery and claim construction. The *allegations* are perfectly clear. The Complaint alleges that “AMD’s DPU edge controllers can contain an element acting as a master controller for communication with other edge controllers.” Compl., ¶94, p. 43. In the network, DPUs attached to storage media (e.g., edge controllers) can act as master controllers to yet other DPUs attached to storage media (other edge controllers). *Id.* The Complaint identifies evidence showing how the edge controller acts as a master controller to other DPUs. Compl., ¶94, pp. 43-44; Exs.14, 15.

IV. THE COMPLAINT PLEADS WILLFUL AND INDIRECT INFRINGEMENT.

Defendants seek sweeping dismissal of Plaintiffs’ willful and indirect infringement claims. Mot., 18-20. They first argue there is no “underlying act of infringement” for four of the asserted patents. *Id.*, 18. As explained in Section III, the Complaint states a claim for direct infringement.

Defendants next argue that “Plaintiffs . . . fail to allege pre-suit knowledge of the patents or any infringement of those patents.” Mot., 18-20. Defendants’ argument does not hold water. As an initial matter, Defendants only allege that Plaintiffs “fail to allege *pre-suit* knowledge.” *Id.* There is no dispute the Complaint alleges *post-suit* knowledge. *See* Compl., ¶31. Nor could there be, as this Court has previously held that a well-pleaded complaint satisfies the “knowledge” element. *Softex LLC v. HP Inc.*, 2023 WL 2392739, at *2 (W.D. Tex. Mar. 7, 2023) (“[Plaintiff’s]

complaint and claim charts sufficiently support its claim for post-suit willfulness to survive a motion to dismiss.”); *see, e.g., BillJCo, LLC v. Apple Inc.*, 583 F. Supp. 3d 769, 778-79 (W.D. Tex. 2022). Defendants’ motion should be denied as to the *post-suit* claims.

Plaintiffs also plead facts to plausibly show *pre-suit* knowledge. “[P]re-suit knowledge” is determined from “the totality of the circumstances.” *Textile Comput. Sys., Inc. v. Broadway Nat’l Bank*, 620 F. Supp. 3d 557, 567 (W.D. Tex. 2022) (quoting *WCM Indus., Inc. v. IPS Corp.*, 721 F. App’x 959, 970 (Fed. Cir. 2018) (“[W]hether an act is ‘willful’ is by definition a question of the actor’s intent, the answer to which must be inferred *from all the circumstances.*”) (emphasis in original)). “[T]he plausibility requirement is not akin to a ‘probability requirement at the pleading stage; it simply calls for enough fact[s] to raise a reasonable expectation that discovery will reveal that the defendant is liable for the misconduct alleged.” *Lifetime Indus., Inc.*, 869 F.3d at 1380. “[T]he bar set by the Federal Circuit for stating a claim for willful infringement is not high.” *Glob. Sessions, LP v. JPMorgan Chase & Co.*, 2013 WL 12086369, at *3 (W.D. Tex. Nov. 18, 2013).

The Complaint states that AMD and Concurrent Ventures’ agent HellaStorm held “detailed technical discussions” in June 2014, before the Complaint was filed. Compl., ¶30; Mot. 19. In particular, HellaStorm met with AMD’s (1) Corporate Vice President of Products and (2) General Manager and Corporate Vice President for the “data center group.” Compl., ¶30. HellaStorm provided AMD with the “specifics of Concurrent Ventures’ technology”—the technology that became the Asserted Patents. *Id.* AMD was then sent a proposal for implementing Concurrent Ventures’ technology. *Id.*, ¶31. These discussions were covered by a Non-Disclosure Agreement signed by AMD’s “Senior Vice President and General Counsel” that stated the discussions were for AMD’s “internal evaluation and/or testing” of the now-patented technology. *Id.*, ¶30.

Moreover, the Complaint alleges that Defendants’ eventual technology is similar to Plaintiffs’ patented technology, even adopting a similar name for their product. *See* Compl., ¶5 (“Pensando Systems Inc. pursued similar solutions as XstreamEdge—years after XstreamEdge—but called its product a Data Processing Unit (‘DPU’).”). The Complaint alleges that there are striking “similarities between Defendants’ Accused Products and their marketing and the Plaintiffs’ patented technology and marketing” further giving rise to a plausible inference that Defendants remained aware of Plaintiffs’ technology and patents after the 2014 meetings.

This inference is particularly plausible because, as the Complaint alleges, the DPU industry is “small” in terms of the number of players; Plaintiffs have played a “pioneering role in that market;” and Defendants were in “direct competition against Plaintiffs.” Compl., ¶31. Additionally, AMD clearly had a specialized interest in the small DPU market (and plausibly paid special attention to it), as it eventually acquired Pensando for \$1.9 billion. Compl., ¶5; Ex. 8.

Defendants’ piecemeal arguments fail to address the Complaint’s allegations in totality. Defendants first argue that the 2014 meetings are irrelevant because the Asserted Patents had not yet issued. But knowledge of patent applications can, in combination with other allegations, show knowledge of the patents. *See WCM Indus., Inc.*, 721 F. App’x at 970 (knowledge of a pending patent application can support a finding of willfulness); *Blitzsafe Tex., LLC v. Volkswagen Grp. of Am., Inc.*, 2016 WL 4778699, at *6 (E.D. Tex. Aug. 19, 2016), *report and recommendation adopted*, 2016 WL 4771291 (E.D. Tex. Sept. 13, 2016). That makes sense, because “***pre-patent conduct may also be used to support a finding of willfulness.***” *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1581 (Fed. Cir. 1992); *see also Kaufman Co. v. Lantech, Inc.*, 807 F.2d 970, 978-79, (Fed. Cir. 1986). Defendants were not only aware of the applications; there are plausible allegations that they were still aware of them when they issued.

Defendants next argue that the Complaint does not show that Plaintiffs provided Defendants with patent numbers or charts showing their infringement. Mot., 19. Defendants demand more than is required. The Complaint alleges facts that, in sum, give rise to a plausibility that Defendants were aware of the patents and their infringement. Defendants also argue that the Complaint “accuse[s] only Pensando products of infringement” and “Pensando did not even exist at the time of the 2014 meeting.” Mot., 19. But AMD acquired Pensando (and thus began making, using, and selling infringing products) with knowledge of the patents. It makes no difference when Pensando was founded. Similarly, Defendants note that “AMD could not have been selling the accused products until at least 8 years after the 2014 meeting.” *Id.* But the amount of time between AMD first learning of the patented technology and its first infringement is no defense.

Finally, Defendants’ cited cases do not move the needle. First, Defendants’ reliance on *Neonode* is misplaced. Mot., 20 (citing *Neonode Smartphone LLC v. Samsung Elecs. Co.*, 2023 WL 5426743, at *3 (W.D. Tex. June 27, 2023)). Crucially, in *Neonode* there was no “indicat[ion] that Samsung gained actual knowledge of the” patent. In contrast, here, the Complaint specifically alleges that Defendants had knowledge of Plaintiffs’ technology from the 2014 meetings, and that they were aware of the issuance of the Asserted Patents given the small DPU market, Defendants’ intense interest in it, and the striking similarities between Defendants’ and Plaintiffs’ technologies.

BillJCo is similarly inapposite. Mot., 20 (quoting 583 F. Supp. 3d at 776). In *BillJCo*, the complaint did not allege that the defendant was aware of the issued patents. Here, the Complaint states “Defendants have been on notice of the Asserted Patents . . . ***since their issuance.***” Compl., ¶31. And *CTD Networks* only stands for the proposition that “mere knowledge of the Patents-in-Suit is insufficient to establish” awareness of infringing activity. *CTD Networks LLC v. Cisco Sys., Inc.*, 2023 WL 5282394, at *7 (W.D. Tex. Aug. 16, 2023). Here, the Complaint does not simply

allege that AMD was aware of the patents, but sets forth detailed allegations regarding Defendants' knowledge of their infringement. *See, e.g.*, Compl., ¶31.

Knowledge is about Defendants' state of mind, and Plaintiffs cannot provide (without discovery) direct evidence conclusively establishing Defendants' intentions. But that is not the standard. At Rule 12, the Court takes well-pled allegations as true and resolves inferences in favor of Plaintiffs. Here, Plaintiffs met with Defendants to discuss the technology that would later ripen into the Asserted Patents so that Defendant could "evaluate" and "test[]" that technology. Defendants plausibly stayed aware of the limited set of players in the DPU market (including Plaintiffs), as they eventually purchased one of them. And Defendants' resulting technology is inexplicably similar to the technology Plaintiffs discussed with Defendants. These allegations "raise a reasonable expectation that discovery will reveal that the defendant is liable for the misconduct alleged." *Lifetime Indus., Inc.*, 869 F.3d at 1380. Courts regularly deny motions to dismiss similar pleadings. *See, e.g., Yeti Coolers, LLC v. Rtic Coolers, LLC*, 2016 WL 5956081, at *11 (W.D. Tex. Aug. 1, 2016) ("YETI has pled the Jacobsens and RTIC's products . . . 'are confusingly similar imitations of YETI's own products.'"); *Glob. Sessions, LP*, 2013 WL 12086369, at *3; *Voip-Pal.com, Inc. v. Facebook, Inc.*, 2022 WL 1394550, at *2 (W.D. Tex. May 3, 2022); *HOYA Corp. v. Alcon Inc.*, 2021 WL 4476739, at *2 (N.D. Tex. Sept. 30, 2021).

To the extent Plaintiffs' allegations do not put Defendants on adequate notice, Plaintiffs request leave to amend their Complaint. *See BillJCo, LLC*, 583 F. Supp. 3d at 782 ("the Court permits [plaintiff] to amend its Complaint after the start of fact discovery . . . to re-plead contributory infringement and pre-suit indirect and willful infringement claims, if able.").

V. CONCLUSION

For these reasons, AMD's motion should be denied.

Dated: July 22, 2024

Respectfully Submitted,
/s/ Michael Matulewicz-Crowley

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CERTIFICATE OF SERVICE

I certify that the forgoing document was served upon all counsel of record via the Court's ECF system.

Dated: July 22, 2024

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