IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SOUNDCLEAR TECHNOLOGIES LLC, Plaintiff, v. AMAZON.COM, INC.; AMAZON.COM SERVICES LLC; and AMAZON WEB SERVICES, INC., Defendants.	Case No. 1:24-cv-01283-AJT-WBP **JURY TRIAL DEMANDED**

MEMORANDUM IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS UNDER RULE 12(b)(6)

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INTRODUCTION

This is the second patent infringement case filed by the plaintiff, SoundClear Technologies LLC, against the same Amazon defendants. In the first case, which Plaintiff filed on May 1, 2024, Plaintiff alleged that Amazon infringes three patents relating to sound processing and volume control for walkie-talkies. Amazon moved to dismiss Plaintiff's claims for two of the three asserted patents in that case. (*See* Dkt. 31, *SoundClear Techs. LLC v. Amazon.com, Inc.*, Case No. 2:24-cv-00320-AWA-LRL.) That motion is pending before Judge Allen in Norfolk.

Less than 3 months after filing the first case ("*SoundClear I*"), Plaintiff filed this second case, accusing the same defendants of infringing three different patents.[1] As in *SoundClear I*, Plaintiff did not invent the technology at issue here, did not file the patent applications that led to the patents, and does not manufacture or sell any products that use the patented technology. Rather, Plaintiff is a "non-practicing entity." Such entities exist solely to acquire patents—often older patents of questionable validity and bearing little relevance to today's technologies—and assert them in litigation to extract settlement or royalty payments, thereby providing a return on the investment made to acquire the patents. This case is yet another stage of Plaintiff's campaign to monetize the patents it acquired.[2]

Plaintiff was formed in 2023 and acquired the asserted patents in 2024. All three patents, like the three patents asserted in *SoundClear I*, were filed and obtained by Japanese electronics maker JVC Kenwood ("JVC"). JVC never asserted the patents against Amazon.

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[1] The asserted patents are U.S. Patent Nos. 11,069,337 ("the '337 patent"), 11,244,675 ("the '675 patent"), and 9,223,487 ("the '487 patent").

[2] Plaintiff also filed two lawsuits against Google, Inc., alleging infringement of the same patents.

JVC's failure to assert the patents against Amazon is unsurprising: the patents are facially invalid and bear no resemblance to the Amazon products that Plaintiff now accuses of infringement. The claims of the '337 and '675 patents can be summarized in three basic steps: (1) collecting voice and distance data; (2) analyzing the data to classify the voice as a "first voice" or a "second voice;" and (3) outputting a tailored response based on the classification. The inventors did not invent a new way to collect voice or distance data, analyze that data, or output responses. Nor did they invent any new equipment for performing these steps. Under the Supreme Court's 2014 decision in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014), the claims are invalid as a matter of law. Thus, the Court should dismiss Plaintiff's infringement claims based on the '337 and '675 patents.

The '487 patent is also invalid under *Alice*. That patent relates to using the common "pinching" gesture on a touchscreen to perform a particular function: selecting the objects inside a rectangle, defined by the initial touch points, so that the objects can be moved or deleted. Such claims are not eligible for patenting and are invalid.

The Court should also dismiss all of Plaintiff's infringement claims for an independent reason: Plaintiff fails to state a plausible claim for infringement, as required under *Twombly/Iqbal*. Plaintiff fails to allege facts sufficient for the Court to reasonably infer that the accused devices tailor audio responses based on the distance between the user and the device (as required by the '337 and '675 patents) or that the accused touchscreen devices select objects based on a pinching gesture. The Court should also dismiss Plaintiffs' infringement claims because Plaintiff fails to specifically identify the allegedly infringing products for each asserted claim.

Lastly, if the Court does not dismiss the complaint entirely, the Court should dismiss Plaintiff's unsupported allegations of willful infringement and its request for enhanced damages.

ARGUMENT

I. ALL ASSERTED CLAIMS ARE INVALID UNDER 35 U.S.C. § 101.

The complaint fails to state a claim upon which relief can be granted because the claims of the asserted patents are invalid under § 101 as a matter of law. *Va. Innovation Sciences Inc. v. Amazon.com, Inc.*, 227 F. Supp. 3d 582, 591 (E.D. Va. 2017) (a "plausible" claim for relief in a patent infringement case "necessarily requires a valid patent").

A. *Alice* Governs Patent Eligibility Under Section 101.

Section 101 of the Patent Act describes the subject matter eligible for patent protection, and "contains an important implicit exception" that prohibits patenting "abstract ideas." *Alice*, 573 U.S. 208, 216 (2014). The Supreme Court's two-step *Alice* framework governs whether patent claims are impermissibly abstract under § 101. *Id.* at 217-227.

Because patent eligibility is a "question of law," it is often resolved "at the motion to dismiss stage based on intrinsic evidence" from the patent itself. *Secured Mail Sols. LLC v. Universal Wilde, Inc.*, 873 F.3d 905, 912 (Fed. Cir. 2017); *see also SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1166 (Fed. Cir. 2018) (patent eligibility "may be, and frequently has been, resolved on a Rule 12(b)(6) or (c) motion"); *Yu v. Apple Inc.*, 1 F.4th 1040, 1046 (Fed. Cir. 2021) ("[P]atent eligibility can be determined at the Rule 12(b)(6) stage without the aid of expert testimony."). Courts in this District routinely invalidate patents under § 101 on the pleadings. *See, e.g.*, *DriverDo LLC v. Social Auto Transport, Inc.*, 2024 WL 1376218, *25 (E.D. Va. Mar. 29, 2024); *Geoscope Techs. Pte. Ltd. v. Google LLC*, 692 F. Supp. 3d 566, 570 (E.D. Va. 2023); *Brunswick Corp. v. Volvo Penta of the Americas, LLC*, 640 F. Supp. 3d 498, 501 (E.D. Va. 2022); *Va. Innovation Sciences*, 227 F. Supp. 3d at 595-605.

1. *Alice* Step One

At *Alice* step one, the Court determines whether the claims are directed to an abstract idea despite their use of technological components. 573 U.S. at 217-18. To determine whether a claim is "directed to" such an idea, the Court looks at "the focus of the claimed advance over the prior art." *Trinity Info Media, LLC v. Covalent, Inc.*, 72 F.4th 1355, 1361 (Fed. Cir. 2023). The Court may then compare the claims' focus to several "familiar classes" of subject matter that the Federal Circuit has recognized as abstract. *In re Killian*, 45 F.4th 1373, 1382 (Fed. Cir. 2022).

First, a claim is abstract if it focuses on merely collecting information, analyzing it, and presenting results. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353-54 (Fed. Cir. 2016). These information-based activities are abstract because "[i]nformation as such is an intangible." *SAP*, 898 F.3d at 1167. Our patent laws protect new *technology*—not new ways of manipulating abstract information. A patent claim that merely uses conventional technology to manipulate information is invalid under § 101.

Second, a claim is abstract if it provides "only a result-oriented solution, with insufficient detail for how a [machine] accomplishes it." *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1342 (Fed. Cir. 2017) ("*Intellectual Ventures I*"); *see also Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1343 (Fed. Cir. 2018) (a claim must have sufficient specificity to transform it from "one claiming only a result to one claiming a way of achieving it"). The Federal Circuit routinely invalidates such result-oriented (or "functional") patent claims. *E.g.*, *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (claims are abstract if they recite merely "generic functional language to achieve [the] purported solutions" without claiming "*how* the desired result is achieved"); *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1244 (Fed. Cir. 2016) ("a claim that merely describes an 'effect or result dissociated from any method by which [it] is accomplished' is not [patent-eligible]"); *Elec. Power*, 830

F.3d at 1351 (a claim is abstract if it recites "a desirable information-based result" but is "not limited to inventive means of achieving the result").

Third, patent claims are abstract when they are analogous to activities people performed without electronics. For example, computer-based claims related to tailoring advertisements based on a user's location were abstract by analogy to the long-standing practice of changing newspaper inserts based on location. *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369 (Fed. Cir. 2015) ("*Capital One*"). The case law is replete with additional examples. *E.g.*, *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (holding check-processing claims abstract because "humans have always performed these functions"); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1314 (Fed. Cir. 2016) (holding email filtering claims abstract by analogy to practices of "people receiving paper mail"); *Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1270 (Fed. Cir. 2016) (holding that claims related to media streaming were abstract by analogy to "dial-a-joke" services, "which were available long before the invention of … the Internet."); *People.ai, Inc. v. Clari Inc.*, No. 2022-1364, 2023 WL 2820794, at *8 (Fed. Cir. Apr. 7, 2023) (invalidating claims where analogy showed they were "directed to automation of a long prevalent manual process").

2. *Alice* Step Two

Once the Court concludes that claims are directed to an abstract idea, it must then consider "what else" the claims recite. *Alice*, 573 U.S. at 217. The elements of each claim are considered "both individually and 'as an ordered combination' to determine whether the additional elements" beyond the abstract idea provide an "inventive concept." *Id.* at 217-18. An inventive concept is an element or combination of elements that "transform the nature of the claim" and ensure that the patent "amounts to significantly more" than just the abstract idea. *Id.* Importantly, any inventive concept must be recited in the claim itself. *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d

1138, 1149 (Fed. Cir. 2016). Features described in the specification but absent from the claims are irrelevant to the § 101 analysis. *Id.*

Claim limitations that implement an abstract idea using merely generic components or "well-understood, routine, conventional activities" are not inventive. *Alice,* 573 U.S at 225. Nor are limitations that merely confine the claims to a "particular field of use or technological environment." *Capital One*, 792 F.3d at 1366. Rather, claims contain an inventive concept when they recite a technology-specific solution to a technology-specific problem. *See Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1351 (Fed. Cir. 2016) (claims reciting "a technology-based solution … to filter content on the Internet that overcomes existing problems with other Internet filtering systems" were inventive).

Alice's second step is designed to ensure that patent-eligibility does not "depend simply on the draftsman's art." *Alice*, 573 U.S. at 224 (quoting *Parker v. Flook*, 437 U.S. 584, 593 (1978)). Allowing patentees to own an abstract idea merely by drafting claims to describe the idea in connection with conventional electronic components would "eviscerat[e] the rule that . . . abstract ideas are not patentable." *Id.* (internal quotation marks omitted).

B. The '337 Patent is Invalid Under 35 U.S.C § 101.

The '337 patent describes a device, such as a smart speaker, phone, or tablet, that detects the voice of a user and outputs an audio response. ('337 patent (Dkt. 1-2), 2:62-3:1, 3:17-21.)[3] The device includes a "voice detecting unit" 10 (i.e., a microphone) and a "voice output unit" 12 (i.e., a speaker), among other conventional components. ('337 patent, Fig. 2, 3:22, 3:31-32.)

After receiving the user's voice, the device uses a "proximity sensor" to determine a distance between the device and the user. (*Id.*, 8:20-26.) Based on this distance, the device classifies

[3] Citations to the patent are provided in column:line format.

the voice as either a "first voice" or a "second voice." (*Id.*) If the voice is classified as a "first voice," then the device provides certain information ("first output sentence"). (*Id.*, 8:60-63.) If the voice is classified as a "second voice," then the device provides different information ("second output sentence"). (*Id.*, 9:38-41.) For example, the device may receive a voice request to turn a light on, classify the voice as Voice 1, and respond with, "Yes, the processing has been accepted." (*Id.*, 13:31-42.) If the same request is made by the voice is classified as Voice 2, then the device may respond with a simpler, "Yes." The device also alters the output volume based on whether the voice is classified as the first or second voice. (*Id.*, 13:56-65.)

The purported improvement offered by the patented device is that it reduces "the influence of the output voice to people other than the user." (*Id.*, 1:39-42; *see also id.*, 15:22-54.)

1. The '337 Patent Claims Are Directed to an Abstract Idea.

Plaintiff asserts claim 4 of the '337 patent. (Dkt. 1 ¶59.) That claim is directed to the abstract idea of classifying a voice based on distance and tailoring output based on that classification. The claim recites:

> 4. A voice-content control method, comprising:
>
> [a] *calculating* a distance between a user and a voice-content control device;
>
> [b] *acquiring* a voice spoken by a user;
>
> [c] *analyzing* the acquired voice to classify the acquired voice as either one of a first voice and a second voice based on the distance between the user and the voice-content control device;
>
> [d] *analyzing* the acquired voice to execute processing intended by the user;
>
> [e] *generating*, based on content of the executed processing, output sentence that is text data for a voice to be output to the user; and
>
> [f] *adjusting* a sound volume of voice data obtained by converting the output sentence thereinto, wherein
>
> [g] at the generating,
>
> [g1] a first output sentence is generated as the output sentence when the acquired voice has been classified as the first voice, and

> [g2] a second output sentence is generated as the output sentence in which a part of information included in the first output sentence is omitted when the acquired voice has been classified as the second voice, wherein
>
> [h] at adjusting the sound volume of voice data, further adjusting the sound volume of voice data such that the sound volume of voice data obtained by converting the first output sentence thereinto differs from the sound volume of voice data obtained by converting the second output sentence thereinto.

Claim 4 is directed to an abstract idea because the limitations reflect nothing more than collecting information, analyzing the information, and presenting results.

First, the claim recites the step of calculating the distance between the user and the device. Because "calculating" requires numerical inputs, which are a type of information, this step requires analyzing information to determine a distance.[4] *See Elec. Power*, 830 F.3d at 1354 ("analyzing information … by mathematical algorithms" is abstract).

Second, the claim recites the step of "acquiring a voice spoken by a user." This step merely collects information of a particular type (i.e., a user's voice).

Third, the claims require "analyzing the acquired voice" to (a) classify the voice as a first voice or second voice based on distance, and (b) "execute processing intended by the user." These steps reflect merely analyzing the previously collected information.

Next, at steps [e] and [g], the claim recites "generating" information (an "output sentence") for the user that is tailored depending on the voice classification. Thus, these steps are merely presenting the results of the recited analysis to the user.

At steps [f] and [h], the claim recites tailoring the volume of the audio output based on the

[4] The only method described in the specification for obtaining the information necessary to calculate the distance is by using some unspecified "proximity sensor." ('337 patent, 8:20-26.) But that sensor is not recited in claim 4. And the specification does not explain how the proximity sensor operates.

voice classification. This is also presenting information based on the results of the analysis.

Because the claim focuses on merely collecting information, analyzing it, and presenting results, it is directed to an abstract idea. *Elec. Power*, 830 F.3d at 1353-54. The fact that the information presented is tailored to the user does not make the claims any less abstract. *Impact Engine, Inc. v. Google, LLC*, 2024 WL 3287126, *6 (Fed. Cir. July 3, 2024) (claims ineligible where their focus is "processing information—turning user-provided input into user-tailored output—and not any improved concrete tools or methods by which that processing functionality is achieved"); *Broadband iTV, Inc. v. Amazon.com, Inc.*, No. 2023-1107, 2024 WL 4018253, *8-10 (Fed. Cir. Sept. 3, 2024) (analyzing data to generate a "viewer-individualized electronic program guide" is abstract); *Capital One*, 792 F.3d at 1369 ("tailoring" website content based on user location is an abstract idea and requiring the use of software "tasked with tailoring information and providing it to the user" does not confer patent eligibility); *Brit. Telecommunications PLC v. IAC/InterActive Corp*., 813 F. App'x 584, 587 (Fed. Cir. 2020) ("tailoring the provision of information to a user's characteristics, such as location, is an abstract idea"). The fact that the information presented is based on the collected information's "classification" also does not make the claims non-abstract. *In re TLI Comm'ns LLC*, 823 F.3d 607, 612 (Fed. Cir. 2016) (claims to the abstract idea of "classifying an image and storing the image based on its classification" invalid).

Claim 4 is abstract for a second reason: it fails to specify *how* to achieve the results the claims recite. *See Intellectual Ventures I*, 850 F.3d at 1342 ("[T]he claim language here provides only a result-oriented solution, with insufficient detail for how a computer accomplishes it. Our law demands more."). For example, the claim recites calculating a distance without reciting how. The claim recites "analyzing the acquired voice" to "classify" the voice based on distance and "execut[ing] processing intended by the user," also without reciting how the analysis or processing

is performed. Then, information is purportedly generated and the volume is adjusted but, again, the claim never specifies *how* these steps are performed. Rather, the patent claim recites only the desired results: calculate distance, classify the voice, execute processing, generate information, and adjust volume. Such claims are directed to abstract ideas rather than technological solutions. *Ericsson Inc. v. TCL Commc'n Tech. Holdings Ltd.*, 955 F.3d 1317, 1328 (Fed. Cir. 2020) (holding claims abstract because they recited "functions in general terms, without limiting them to technical means for performing the functions"); *Interval Licensing*, 896 F.3d at 1343; *Two-Way Media*, 874 F.3d at 1339 (claims are abstract if they recite merely "generic functional language to achieve [the] purported solutions" without claiming "*how* the desired result is achieved"); *Apple*, 842 F.3d at 1244; *Elec. Power*, 830 F.3d at 1351.

A third reason confirms claim 4 is abstract: there is a clear non-technical analog. *Beteiro, LLC v. Draftkings Inc.*, 104 F.4th 1350 (Fed. Cir. 2024) (analogy "to longstanding 'real-world' … activities" showed claims' abstractness); *Parus Holdings, Inc. v. Sallie Mae Bank*, 137 F. Supp. 3d 660, 671 (D. Del. 2015), *aff'd*, 677 F. App'x 682 (Fed. Cir. 2017) (claims involving speech recognition held abstract due to "pre-Internet analogs"). The claim here is analogous to a listener choosing how to respond to a friend. The friend asks the listener, "did you hear me?" and the listener responds in one of two ways. If the friend is close by, the listener responds at a normal volume, "Yes, I heard you" (a first output sentence spoken at a normal volume). If the friend is far away, the listener simply shouts, "Yes" (a second output sentence spoken at a louder volume). As in claim 4, the volume and the output sentence both depend on the distance to the speaker.

This analogy demonstrates that claim 4 focuses on a fundamental practice that humans have long used to communicate: tailoring the amount of information provided and the volume of a response based on the other person's proximity. Thus, the claims do nothing more than take a

longstanding practice and instruct the user to "do it on a computer." Such claims are abstract. *Univ. of Fla. Rsch. Found., Inc. v. GE Co.*, 916 F.3d 1363, 1366 (Fed. Cir. 2019). Moreover, the claims are directed to using some unspecified device to perform a common mental practice: determining the distance between you and another person and responding appropriately. This is another "telltale sign of abstraction." *Trinity Info*, 72 F4th at 1361-62.

The Federal Circuit's decision in *Capital One* is instructive. That case involved claims to a system "for providing web pages accessed from a web site in a manner which presents the web pages tailored to an individual user." *Capital One*, 792 F.3d at 1369. The web page was tailored based on a "user's personal characteristics," which could include the user's address or location. *Id.* The Federal Circuit held that the claims were directed to an abstract idea because "this sort of information tailoring is a fundamental practice long prevalent in our system." *Id.* (cleaned up). The Federal Circuit explained that this tailoring was analogous to how "newspaper inserts" were often tailored based on a customer's location. *Id.*; *see also Affinity Labs*, 838 F.3d at 1271. Just as tailoring written content based on where a user lives is abstract, so too is tailoring audio output based on the distance to the user.

The claim here is also analogous to the claims invalidated in *Dialware Commc'ns, LLC v. Hasbro, Inc.*, Civil Action No. 16-9012-R, 2017 WL 3453298 (C.D. Cal., Mar. 22, 2017), *aff'd*, 718 F. App'x 974 (Fed. Cir. 2018). In *Dialware*, a patent at issue claimed "a method comprising 'generating a sound; receiving the sound' by a second device; 'analyzing' the sound based on three possible features; and 'responding' with a 'physical response.'" *Id.* at *1. The *Dialware* court explained that such a claim does "not state a means by which to communicate, but rather [is] directed at the abstract process of communication itself." *Id.* at *2. The court also found that the claim was abstract because it relied on "generic descriptors," such as "generating" and

"analyzing," instead of "technical elements." *Id.* at *3. Here, claim 4 relies on the same generic descriptors and is similarly directed to collecting information, analyzing it, and responding. In other words, claim 4 is directed to "the abstract process of communication itself." *Id.* at *2.

2. Claim 4 Recites No Inventive Concept.

Claim 4 recites no hardware. It is a technology-agnostic method where every step is a part of the abstract idea of classifying a voice based on distance and tailoring output based on that classification. Thus, the elements of the claim, whether considered individually or as ordered combination, do nothing more than recite an abstract idea. As a result, there is "nothing else" in the claim for the Court to consider under Step Two. The claim recites no inventive concept.

Any hardware described in the specification cannot save the claims because the hardware is not recited in claim 4. But even if claim 4 had recited some hardware, the specification confirms that only conventional components, such as a microphone, speaker, and CPU are used to perform the claimed methods. ('337 patent, 3:22-23, 3:31-34, 3:50-51.) As a matter of law, such conventional components fail to supply an inventive concept. *See Hawk Tech. Sys., LLC v. Castle Retail, LLC*, 60 F.4th 1349, 1359 (Fed. Cir. 2023) ("[M]erely reciting an abstract idea performed on a set of generic [electronic] components … would not contain an inventive concept."); *TLI*, 823 F.3d at 613-615 (physical components that operate "according to their ordinary use" do not provide an inventive concept). Thus, claim 4 is invalid under § 101.

3. Claim 4 is Representative.

Courts may use representative claims in the § 101 analysis as long as the defendant has "explained how the other claims in the Asserted Patents are substantially similar to the representative claims[.]" *Mobile Acuity Ltd. v. Blippar Ltd.*, 110 F.4th 1280, 1291 (Fed. Cir. 2024). Using a representative claim is permissible, for example, where "the other claims' additional limitations only 'tack on generic computer components … or introduce conventional computer activities' –

and are all directed to the same abstract idea." *Id.*

Here, the '337 patent contains only five claims. Claim 4 is representative of the other claims because those claims are directed to the same abstract idea and add nothing inventive. Independent claim 5 simply recites a "non-transitory storage medium" containing instructions to perform the same method steps as claim 4. Independent claim 1 recites a device comprising generic electronic components such as a "proximity sensor," an "output controller," and various unspecified, functionally defined generic "units" to perform the method of claim 4. Dependent claims 2 and 3 recite additional generic "units" for analyzing and collecting information.

Like claim 4, the other claims recite functional limitations directed to the same abstract idea, and they fail to specify *how* to achieve the recited results. Thus, all other claims are substantially similar to claim 4. Any additional limitations merely tack on generic computer components (e.g., unspecified "units") for performing conventional computer activities. *TLI*, 823 F.3d at 614-15 ("telephone unit," "image analysis unit," and "control unit" insufficient to transform the abstract idea into a patent-eligible invention). Thus, claim 4 is representative and all claims are invalid.

C. The '675 Patent is Invalid Under 35 U.S.C. § 101.

The '675 patent is very similar to the '375 patent. Indeed, Figures 1-7 of the '675 patent are identical to the '337 patent. As in the '337 patent, the '675 patent's device relies on conventional components such as a microphone, speaker, and processor. ('675 patent (Dkt. 1-3), 3:27-28, 3:36-39, 3:55-56.) The device uses a proximity sensor to determine a distance between the user and the device and classifies the user's voice as either a first or a second voice based on the distance. (*Id.*, 10:32-38.) As in the '337 patent, the device tailors its output based on the voice classification, e.g., it replaces one word with another. For example, if a user asked where a meeting was taking place, the device might output the "Tokyo building" if the voice is classified as Voice 1 or output the "T bldg." if the voice is classified as Voice 2. (*See id.*, 14:51-65.)

1. Claim 6 of the ’675 Patent is Directed to an Abstract Idea.

Plaintiff asserts claim 6 of the ’675 patent. (Dkt. 1 ¶ 72.) Claim 6 is very similar to claim 4 of the ’337 patent discussed above. Claim 6, however, specifies that the distance between the device and the user is calculated by a generic “proximity sensor.” And, claim 6 eliminates the requirement of altering the volume of the output depending on the voice classification:

> 6. An output-content control method comprising:
>
> [a] *acquiring* a voice spoken by a user;
>
> [b] *calculating* a distance between the user and an output-content control device by a proximity sensor to classify the voice into either a first voice or a second voice based on the calculated distance;
>
> [c] *analyzing* the acquired voice to detect intention information indicating what kind of information is wished to be acquired by the user;
>
> [d] *acquiring* notification information which includes content information as a content of information to be notified to the user based on the intention information; and
>
> [e] *generating*, when the voice is determined to be the first voice, a first output sentence in which at least one word selected among words included in the content information of the notification information is replaced with another word; and
>
> [f] *generating*, when the voice is [] determined to be the second voice, a second output sentence which includes all of the intention information and the content information.[5]

Like claim 4 of the ’337 patent, claim 6 of the ’675 patent is directed to the abstract idea of classifying a voice based on distance and tailoring output based on that classification. Again, the claim is directed to nothing more than collecting information, analyzing the information, and presenting results. Although the claim recites a “proximity sensor” for collecting the distance information, the patent does not identify the proximity sensor as a focus of the claimed advance over the prior art. Indeed, the specification provides no explanation of how the sensor operates.

[5] This recitation reflects changes made by a certificate of correction. (*See* D.I. 1-3 at 21.)

('675 patent, 10:32-39.) The sensor is undisputedly conventional and generic. Accordingly, the claim is not "directed to" the sensor at *Alice* step one. *Trinity Info*, 72 F.4th at 1361.

Like claim 4 of the '337 patent, claim 6 recites "acquiring a voice spoken by a user[,]" which is merely collecting information of a particular type (i.e., voice).

Second, the claim recites the same step of calculating the distance between the user and the device. Thus, this step also reflects merely collecting information and analyzing that information to calculate a distance.

Third, the claims recite "analyzing the acquired voice" to "detect intention information[.]" The claims do not provide any detail on how this analysis occurs. Thus, this step merely analyzes the collected information.

Fourth, claim 6 recites "acquiring notification information" based on the analysis of the acquired voice. This step simply refers to collecting additional information.

Fifth, as in the '337 patent, the claim requires "generating" output information (an "output sentence") to provide to the user. The output is generated based on the analysis of the voice and how the voice is classified—certain information is provided if the voice is classified as a "first voice" and additional information is provided if the voice is classified as a "second voice." These steps are merely analyzing information and presenting the results to the user. Thus, the claim as a whole focuses on collecting information, analyzing the information, and presenting the results. As discussed for claim 4 of the '337 patent, such claims are abstract. *Elec. Power*, 830 F.3d at, 1353-54. And, the fact that the information provided is tailored based on classification or distance does not make the claims any less abstract. *Impact Engine*, 2024 WL 3287126, at *6; *Capital One*, 792 F.3d at 1369; *Brit. Telecommunications*, 813 Fed. App'x at 587; *TLI*, 823 F.3d 607 at 610-11; *Affinity Labs*, 838 F.3d at 1271.

Claim 6 is also abstract because, like the claims in the '337 patent, it fails to specify *how* to achieve the results that the claim recites. *Intellectual Ventures I*, 850 F.3d at 1342. The claim recites calculating a distance "to classify the voice," "analyzing the acquired voice," "acquiring notification information," and "generating" first and second output sentences, but never explains how any of these functions are performed.

The claim also has a clear non-technical analog and reflects a mental process. As with the '337 patent claims, this claim is analogous to a listener choosing how to respond to a friend's question. The friend asks where the listener would like to meet. If the friend is close, the listener responds that they are meeting at "the Alexandria courthouse" (first output sentence). If the friend is far away, the listener responds that they are meeting at "the A.C." (second output sentence). This allows the listener to shout without informing other people who could hear where the two are meeting. As in claim 6, the response is chosen by classifying a voice based on distance. Because the claim is analogous to human activity and mental processes, it is abstract. (*Supra*, § I.A.B.1.)

2. Claim 6 Recites No Inventive Concept.

As explained above, every step of claim 6 is part of the abstract idea of classifying a voice based on distance and tailoring output based on that classification. Claim 6 adds nothing to the abstract idea beyond a conventional "proximity sensor." Indeed, the inventors believed that a proximity sensor was so conventional and well-understood that they did not provide any details about it in the specification. (*See* '675 patent, 10:32-38.) As a matter of law, such conventional components fail to supply an inventive concept. *SAP Am.*, 898 F.3d at 1170 (functionality that is "not even asserted to be an invention of [the patentee]" cannot provide an inventive concept at *Alice* step two); *Hawk*, 60 F.4th at 1359; *TLI*, 823 F.3d at 613-615. Thus, the elements of the claim, whether considered individually or as ordered combination, do nothing more than recite an abstract idea. Accordingly, claim 6 is invalid under § 101.

3. Claim 6 is Representative.

The ’675 patent contains only seven claims. Claim 6 is representative of the other claims because those claims are directed to the same abstract idea and add nothing inventive. Independent claim 7 merely recites a “non-transitory storage medium” containing instructions to perform the same method as claim 6. Claim 1 recites a device that uses generic computer components (“units”) to perform the same method as claim 6.

Dependent claims 2-4 specify additional details about the information, analysis, or output content. Such details change nothing about the claims’ character because all of them remain focused on collecting, analyzing, and presenting information. Dependent claim 5 recites further classifying the voice based on whether the voice “is a whisper.” This limitation is also abstract because it (a) is directed to analyzing information, (b) does not recite how this whisper-recognizing function is accomplished, and (c) is a fundamental, long prevalent aspect of human communication. Because this step is itself abstract, it does not make the claim patent-eligible. *SAP Am.*, 898 F.3d at 1169 (additional claim limitations that are “themselves abstract” fail to satisfy § 101). Accordingly, claim 6 is representative and all claims in the ’675 patent are invalid under § 101.

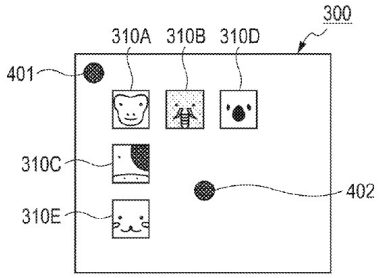
D. The ’487 Patent is Invalid Under 35 U.S.C § 101.

The ’487 patent describes a way of interacting with a conventional touchscreen device, such as a smartphone or tablet computer. (’487 patent, 1:48-2:9, 8:9-15.) Specifically, the patent describes using a particular gesture to designate an area of the computer screen and “select” the icons within that area. (*Id.*, 8:42-47.) Once the area is designated, the user can “move, delete, or copy an icon or icons in the designated partial area.” (*Id.*)

The ’487 patent describes a touchscreen gesture for achieving this selecting function: the common “pinching” gesture. Figures 4A-4C illustrate how a user selects multiple items. First, as show in Figure 4A, the computer detects two touch positions (401 and 402) on a screen displaying

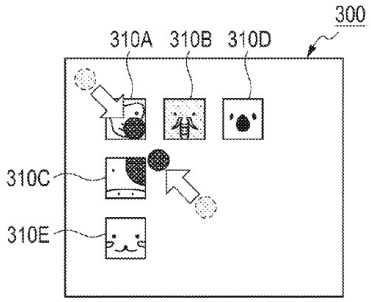
multiple icons (310A-E):

FIG. 4A



(*Id.*, Fig. 4A; 9:39-44.) Next, the system determines whether the touch positions are approaching each other in a line, indicating that the user is drawing two fingers together (pinching):

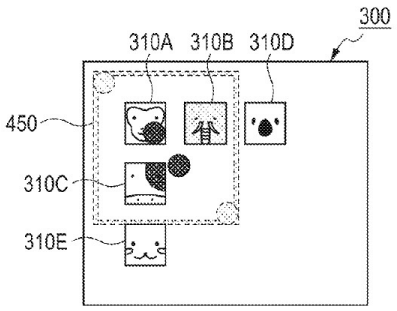
FIG. 4B



(*Id.*, Fig. 4B; 9:58-10:23.) To the determine whether the touch positions are approaching each other in a straight line, the system determines whether the distance between the touch points is decreasing and whether the angle at which the touch points are approaching each other is close to a straight line. (*Id.*, 10:1-23.)

Third, the computer sets a rectangular area 450 based on the initial touch positions and selects the icons 310A-C within the area:

FIG. 4C



(*Id.*, Fig. 4C; 10:40-60.) Once the icons have been selected, the user can interact with the icons by issuing commands such as "delete" or "copy." (*Id.*, Fig. 19A, 19B, 18:51-55).

Thus, the patent describes the same icon-selecting function that desktop computers have provided for decades when a user clicks a mouse button, drags the mouse, and then releases the button. The difference is that, rather than using a mouse, the user can use a pinching gesture.

The patent admits that using multi-touch gestures to select icons using a touchscreen was known. (*Id.*, 1:19-44.) Thus, the patent's purported advance lies in recognizing a *pinching gesture*, as distinguished from other common gestures such as tapping.

1. Claim 11 of the '487 Patent is Directed to an Abstract Idea.

Plaintiff asserts claim 11 of the '487 patent. (Dkt. 1 ¶ 83.) Claim 11 is directed to the abstract idea of detecting a user's touches, determining if the touches are a pinching motion, and determining what objects are selected based on the detected pinching motion. These information-based steps are performed using entirely conventional electronic components. The claim recites:

> 11. A method of controlling an electronic apparatus, comprising the steps of:
>
> [a] indicating objects on a display;
>
> [b] detecting user's touches to a touch panel superposed on the display and acquiring positions of the user's touches to the touch panel as touch positions;
>
> [c] deciding whether or not first and second touch positions are acquired by the detecting and acquiring step;
>
> [d] calculating a distance between the first and second touch positions;
>
> [e] deciding whether or not the calculated distance between the first and second touch positions decreases in accordance with the lapse of time; and
>
> [f] setting a rectangular area with respect to the display and selecting an object or objects contained in the rectangular area in cases where it is decided that the first and second touch positions are acquired and the distance between the first and second touch positions decreases in accordance with the lapse of time;

> [g] wherein two opposite corners of the rectangular area are respectively coincident with the first and second touch positions occurring at an initial stage of the user's touches to the touch panel;
>
> [h] wherein the setting and selecting step comprises deriving a first vector extending from the first touch position occurring at a first moment to the first touch position occurring at a second moment after the first moment, deriving a straight line connecting the first and second touch positions occurring at the first moment, deriving a second vector extending from the second touch position occurring at the first moment to the second touch position occurring at the second moment, calculating a first angle between the first vector and the straight line, calculating a second angle between the second vector and the straight line, deciding whether or not the first angle is smaller than a prescribed angle, and deciding whether or not the second angle is smaller than the prescribed angle; and
>
> [i] wherein the setting and selecting step further comprises setting the rectangular area and selecting the object or objects contained in the rectangular area in cases where it is decided that the distance between the first and second touch positions decreases in accordance with the lapse of time, the first angle is smaller than the prescribed angle, and the second angle is smaller than the prescribed angle.

Claim 11 is abstract because it is directed to collecting and analyzing information.

First, the claims require "detecting user's touches to a touch panel" and "acquiring positions of the user's touches to the touch panel as touch positions." The claims do not require any particular method or structure for detecting or acquiring. This limitation merely collects information of a particular type (touch positions).

Second, the claims recite:

> [c] deciding whether or not first and second touch positions are acquired by the detecting and acquiring step;
>
> [d] calculating a distance between the first and second touch positions;
>
> [e] deciding whether or not the calculated distance between the first and second touch positions decreases in accordance with the lapse of time; and

These steps simply analyze the touch positions and decide whether they are getting closer together.

The claims then recite, in limitations [h] and [i], the analysis the computer performs to determine whether the user performed a "pinching" gesture: the computer generates a straight line between the original touch points and a vector indicating the direction of movement for each touch point, analyzes the angles between the vectors and the line and, if the angles are below a threshold, it considers the gesture a pinching gesture. These limitations merely use mathematics to analyze the acquired touch positions. The Federal Circuit has repeatedly explained that analyzing information using mathematics is abstract. *SAP*, 898 F.3d at 1167 ("selecting certain information, analyzing it using mathematical techniques, and reporting or displaying the results of the analysis" is abstract); *Elec. Power*, 830 F.3d at 1354 ("we have treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category"). Mathematical analysis remains abstract even if the math is purportedly new. *SAP*, 898 F.3d at 1163.

Lastly, the claim recites the analysis performed by the computer to determine what objects have been selected: if a pinching gesture occurred, the claim requires "setting a rectangular area" defined by the original touch positions and "selecting an object or objects contained in the rectangular area." This limitation simply recites more mathematical analysis—simple geometry.

Thus, the claim recites nothing more than collecting data (touch positions) and analyzing the data to identify objects within a rectangle defined by a pinching gesture. Such a claim is abstract. *See Thunder Power New Energy Vehicle Dev. Co. v. Byton N. Am. Corp.*, 340 F. Supp. 3d 922, 929-930 (N.D. Cal. 2018), *aff'd*, 777 F. App'x 517 (Fed. Cir. 2019) (claim directed to recognizing a user's gestures was abstract as merely collecting and analyzing information); *Elec. Power*, 830 F.3d at, 1353-54.

Claim 11 is also abstract because it is analogous to human activity. Indeed, the claim recites a method of determining if a user is making a pinching gesture in the same manner as a human would do. For example, the claim recites determining if the "distance between the first and second touch positions decreases in accordance with the lapse of time." But this is the same as a human being observing a pinching motion and determining that the fingers making the motion are approaching each other. The claim also recites determining whether the "angle" that the fingers are approaching each other is smaller than a "prescribed angle." Again, this is how a human would determine whether fingers are approaching each other in a line—by determining that the angle the fingers were approaching each other at was close enough to straight for the gesture to be a pinch (as compared to, for example, fingers that are not getting closer, such as for a rotation gesture). That the claim recites activity analogous to human mental processes shows the claim is abstract. *Trinity Info Media*, 72 F.4th at 1362.

Thunder Power is instructive. There, the court considered whether claims related to detecting gestures from a driver to control the user interface of a car were abstract. *Thunder Power*, 340 F. Supp. 3d at 927. The claims were directed to "the ability to receive signals from two people, determine if they are inconsistent, and if so, perform an operation based on the signal from one of the people." *Id.* at 928. The court found the claims were directed to an abstract idea because the claims merely recited "collecting information," "analyzing information by steps people go through in their minds," and "presenting the results." *Id.* at 929. Here, the claims are similarly directed to a supposed improvement to a user interface that merely collects and analyzes information based on a gesture. The claims are directed to an abstract idea.

In sum, the inventors listed on the '487 patent did not invent the touchscreen device or a new way of detecting a touch—the device described in the '487 is a ubiquitous "smartphone" or

"tablet computer." ('487 patent, 1:48-2:9, 8:9-15.) Nor did they invent the idea of defining an area on a display and selecting icons within that area, functionality that has been performed on computers for decades. And, the inventors certainly did not invent the pinching gesture. Instead, the inventors merely invoke a touchscreen computer to implement an abstract idea: that a pinching gesture should signal a selection of the objects within the area defined by the gesture. In other words, the inventors took well-known, conventional ideas and then did "nothing more than spell out what it means to 'apply it on a [touchscreen] computer.'" *Capital One*, 792 F.3d at 1370. This cannot confer patent eligibility. *Id.*

2. Claim 11 Recites No Inventive Concept.

Every step of Claim 11 is directed to the abstract idea of detecting a users' touches, determining if the touches are a pinching motion, and determining what objects are selected based on the detected pinching motion. Claim 11 recites that these steps are performed with a "display" and a "touch panel" ('487 patent, 20:64-67), but these components were undisputedly conventional (*id.*, 1:19-44 (describing widespread use of touch-panel input)). The specification confirms that only conventional components, such as those found in a "smartphone," are used to perform the claimed methods. (*Id.*, 8:9-10.) As a matter of law, such conventional components fail to supply an inventive concept. *Hawk*, 60 F.4th at 1359. Thus, the elements of the claim, whether considered individually or as ordered combination, do nothing more than recite an abstract idea. Accordingly, claim 11 is invalid under § 101.

3. Claim 11 is Representative.

The '487 patent contains twelve claims. Claim 11 is representative of the other claims because those claims are directed to the same abstract idea and add nothing inventive. Specifically, all claims are directed to detecting a user's touches, determining if the touches are a pinching motion, and performing an operation based on the detected pinching motion. All independent

claims of the '487 patent recite substantially the same limitations. Independent claim 12 recites a "non-transitory computer readable medium" that contains instructions to perform the method of claim 11. Claim 1 recites a generic "electronic apparatus" performing the method of claim 11.

The dependent claims recite additional abstract steps (e.g., further analyzing touch points) and performing conventional computer functionality (e.g., to moving, deleting, or copying digital objects after they have been selected). These steps are either abstract themselves or add only well-understood, routine, and conventional computer functionality, which is non-inventive as a matter of law and does not change the § 101 analysis. Thus, the Court should find that Claim 11 is representative and invalidate all claims of the '487 patent.

II. THE COURT SHOULD DISMISS ALL COUNTS FOR FAILURE TO STATE A PLAUSIBLE CLAIM FOR INFRINGEMENT

All counts in the complaint should be dismissed under Rule 12(b)(6) for a second, independent reasons: no count provides factual allegations that would plausibly support a finding that Amazon infringes the asserted patent.

A. Legal Standard

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Plausibility requires "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Rather, the complaint must contain "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

It is well settled that "each element of a claim is material and essential," and that, to show infringement, a plaintiff must show the presence of every element. *Tegal Corp. v. Tokyo Electron*

Ltd., No. CIV.A. 3:98CV318, 1999 WL 33910703, at *5 (E.D. Va. Feb. 10, 1999) (quoting *London v. Carson Pirie Scott & Co.*, 946 F.2d 1534, 1538 (Fed. Cir. 1991) (internal quotations omitted). Thus, a patent infringement complaint must: (1) identify the specific claims alleged to be infringed; (2) specify the features of the allegedly infringing product that correspond to each limitation of each asserted claim; and (3) identify with particularity how each allegedly infringing feature infringes any of the named patents. *Jenkins v. LogicMark, LLC*, No. 3:16-CV-751-HEH, 2017 WL 376154, at *3 (E.D. Va. Jan. 25, 2017). Further, the factual allegations must be supported by evidence. *See Cellcontrol, Inc. v. Mill Mountain Cap., LLC*, No. 7:21-CV-246, 2022 WL 598752, at *3 (W.D. Va. Feb. 28, 2022) (infringement allegations implausible where the allegations were inconsistent with the evidence upon which Plaintiff founded its allegations). Courts in this District routinely dismiss complaints that fail to clearly articulate a plausible infringement theory. *See, e.g.*, *Macronix Int'l Co. v. Spansion Inc.*, 4 F. Supp. 3d 797, 804 (E.D. Va. 2014); *Mician v. Catanzaro*, No. 2:17-CV-548, 2018 WL 2977398, at *4 (E.D. Va. June 13, 2018); *Asghari-Kamrani v. United Servs. Auto. Ass'n*, No. 2:15-CV-478, 2016 WL 1253533, at *4 (E.D. Va. Mar. 22, 2016).

B. Plaintiff Fails to Plausibly Plead Infringement of the '337 Patent.

The asserted claim of the '337 patent requires (1) classifying a voice based on the distance between the user and the device (element 4[c]); (2) "generating … output sentence that is text data for a voice to be output to the user" (element 4[e]); and (3) changing the "output sentence" based on the voice classification (element 4[g]). The complaint does not plausibly allege that the accused products meet these limitations.

The complaint alleges two theories of infringement. First, the complaint alleges that the accused devices classify voices using Amazon Voice ID (Dkt. 1 ¶ 63) and then output different responses based on the Voice ID (*id.* ¶ 67). This infringement theory is implausible because the complaint admits that Voice ID classifies voices "based on a voice profile … associated with

individual users." (*Id.* ¶ 63; *see also id.* ¶ 67 ("Alexa generates personalized voice and/or visual responses using Voice ID and Alexa (using Voice ID) recognizes a user by their voice[.]").) Plaintiff never alleges that the accused devices classify voices using Voice ID *based on a calculated distance between the user and the device*, as required by the patent's claims. Thus, this theory does not state a plausible claim of infringement.

Second, the complaint alleges that the accused devices use the "adaptive content feature" or "SIR beam selection" to classify a voice as "near" or "far." (*Id.* ¶ 63.) According to the complaint, certain devices may then use "Adaptive Content" to "display more or less information depending on whether an acquired voice has been classified as one that corresponds to a nearby/close user or a far/distant user[.]" (*Id.* ¶ 67.) This theory does not state a plausible claim for infringement because, as the complaint admits, Adaptive Content relates to content *displayed* on a screen, not *audio* content. Thus, it cannot satisfy the limitation in the '337 patent that requires "generating … output sentence that is text data *for a voice to be output to the user*." ('337 patent, claim element 4[e] (emphasis added).)

Although the complaint makes a bare allegation that the accused products "can also provide a voice response with more or less information consistent with the more or less information that is visually displayed," it does not allege that the voice response contains the same content that is displayed by the Adaptive Content or that this voice response is in anyway related to the distance between the user and the device. To the contrary, the complaint cites a document that describes Adaptive Content as optimizing "home screen content" on Echo Show devices and never mentions altering the content of audio output. Thus, this allegation is insufficient for the Court to reasonably infer that Echo Show devices with Adaptive Content generate different audio responses to the user based on their proximity to the device. *See Cellcontrol*, 2022 WL 598752, at *3. The complaint

therefore does not plausibly allege that the accused products meet the "output sentence" limitation of the claims.[6]

C. Plaintiff Fails to Plausibly Plead Infringement of the '675 Patent.

Like claim 4 of the '337 patent, claim 6 of the '675 requires classifying a voice based on the distance between the user and the device and then generating an output sentence that changes based on the classification. The complaint alleges the same two theories of infringement for these patents as discussed with regards to the '337 patent (Dkt. 1 ¶ 78) and fails for the same reasons. First, the complaint alleges that Voice ID infringes but this theory is implausible because the complaint admits that Voice ID classifies voices based on voice profiles, not distance. Second, the complaint identifies Adaptive Content as infringing, but Adaptive Content relates to content *displayed* on a screen, not *audio* content.

As with the '337 patent, the complaint makes the bare allegation that the accused products "can also provide a voice response with more or less information consistent with the more or less information that is visually displayed." (*Id.*) But again, the complaint fails to allege that the voice response is the same as the content that is displayed on the screen or that this voice response is dependent upon the distance between the user and the device. Thus, the complaint fails to plausibly allege that the accused products meet these claim limitations.

D. Plaintiff Fails to Plausibly Plead Infringement of the '487 Patent.

1. Selecting "an Object or Objects Contained in the Rectangular Area"

In its complaint, Plaintiff alleges that a pinch-to-zoom-out feature of Amazon's touchscreen devices meets the claim limitations. (*Id.* ¶ 90 (the products "perform a 'zoom out'

[6] As discussed further below, Plaintiff's allegations are also implausible because many of the accused products do not contain displays at all and thus cannot plausibly include Adaptive Content.

function on the display when the distance between the two touch positions decreases over time").) Plaintiff's allegations fail to state a plausible claim of infringement.

The claims require the device to "select[] an object or objects contained in the rectangular area." Plaintiff asserts that the Amazon products "perform the zoom function by setting a rectangular area with respect to the display and selecting an object or objects contained in the rectangular area[.]" (*Id.*) This allegation is implausible because zooming out does not result in an Echo device "selecting" any object. Zooming out simply adjusts the magnification level of the display—it does not select objects within any rectangular area defined by the touch points.

Plaintiff does not identify how the pinch-to-zoom-out function allows the users to select any objects. Thus, Plaintiff fails to plausibly allege that the pinch-to-zoom-out feature satisfies the "selecting an object or objects" limitation recited by the claims.

2. Plaintiff Fails to Plausibly Plead that the Allegedly Infringing Products Set a "Rectangular Area."

In its complaint, Plaintiff also alleges that the pinch-to-zoom-out feature meets the claim limitations that require the device to set a "rectangular area." (Dkt. 1 ¶ 90). This allegation is implausible because zooming out on a screen is unrelated to setting a rectangular area. Plaintiff's only allegation regarding setting a rectangular area is "[o]n information and belief, Amazon Products and Services thus perform the zoom function by setting the rectangular area." (*Id.* ¶ 93.) But this bare recitation does not make a plausible allegation. None of the citations provided by Plaintiff reference a rectangular area. (*Id.*) Further, Plaintiff does not explain why changing the magnification of a display would identify a rectangular area at all. Plaintiff's allegations are insufficient.

III. THE COMPLAINT FAILS TO STATE A PLAUSIBLE CLAIM OF INFRINGEMENT FOR THE ACCUSED PRODUCTS.

Plaintiff alleges that "the Amazon Products and Services" infringe the asserted patents. (Dkt. 1 ¶ 15.) Plaintiff defines "the Amazon Products and Services" as over 40 different accused

products, including various Amazon Echo, Kindle and Fire products. (*Id.*) Plaintiff also defines "the Amazon Products and Services" as all products or services that use the products, any combination of products or services that comprise the accused products, and "all other current or legacy products and services" that operate in a similar manner. (*Id.*) Plaintiff never alleged that the various accused products are representative of each other or even operate in the same manner.

Further, in the individual counts, Plaintiff does not allege any particular product infringes any particular claim. Instead, Plaintiff generally alleges that "the Amazon Products and Services" infringe and identifies various disparate features or services as infringing. For example, for Counts I and II, as discussed above, Plaintiff argues the "Adaptive Content" feature is infringing. (*Id.* ¶¶ 68, 73.) But Plaintiff does not allege that any of the accused products contain that feature, much less that all of them do. Similarly, for Count III, as discussed above, Plaintiff argues that the pinch-to-zoom-out feature infringes. But again, Plaintiff does not allege that any or all of the accused products contain that feature. Indeed, Plaintiff cannot make any such allegation, because many of the accused products do not contain any kind of display screen, which both Adaptive Content and pinch to zoom out require. (*See e.g.*, *id.* ¶ 60 (citing an Amazon Echo teardown showing an Amazon Echo without a display screen).) Plaintiff's failure to plead how any particular accused product infringes the claims is ground for dismissal. *See CTD Networks LLC*, v. *Microsoft Corp.*, Civil Case No. W-22-CV-01049-XR, 2023 WL 5417141, *3 (W.D. Tex., Aug. 22, 2023) (dismissing complaint that was "mixing and matching" products without showing how an individual product infringed); *WirelessWerx IP LLC, v. OnStar, LLC*, Civil Case No. 2:23-cv-11501-MAG-APP, 2024 WL 1607018, *9 (E.D. Mich., Apr. 12, 2024) (dismissing complaint that "cobble[d] together an infringement allegation" by picking and choosing software features of multiple products).

IV. THE COURT SHOULD STRIKE SOUNDCLEAR'S PRAYER FOR ENHANCED DAMAGES FOR WILLFUL INFRINGEMENT.

A plaintiff "must plead facts showing willfulness" to avoid dismissal of a willful infringement claim. *Bushnell Hawthorne, LLC v. Cisco Sys., Inc.*, No. 1:18-CV-760, 2019 WL 8107921, at *1 (E.D. Va. Feb. 26, 2019). For example, the complaint must allege that the defendant had knowledge of the patent. *Id.* at *1 (citing *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1341 (Fed. Cir. 2016)). In its Prayer for Relief, Plaintiff requests "enhanced damages for willful infringement." (Dkt. 1 at 32.) However, the complaint contains no allegations of willful infringement and no allegations pertaining to Amazon's knowledge of the patents or intent to infringe. Accordingly, the Court should strike Plaintiff's prayer for enhanced damages for willful infringement.

September 13, 2024

Respectfully submitted,

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SoundClear Exhibit 2013
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CERTIFICATE OF SERVICE

I certify that on September 13, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will then send notification of such filing (NEF) to all counsel of record.

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