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

PLAINTIFF SOUNDCLEAR'S RESPONSE BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS UNDER RULE 12(b)(6)

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I. Introduction

Amazon's motion[1] includes a familiar bid for snap judgments based upon stereotypes and first-blush assertions. It begins by implying that SoundClear is a "patent troll." Opening Br., 1. That implication is prejudicial and wrong. JVC Kenwood created the asserted patents as part of hundreds of millions of dollars spent in research and development.[2] They are valuable assets. They did not lose their value on assignment to SoundClear. And they still constitute foundational technology.

Amazon is a prominent brand that sells many products. A small subset are smart devices with which users interact. They rely on the specific improvements recited in the claims-at-issue.

Amazon's defenses fail on the merits as well. Its *Alice* grounds suffer from the necessary-but-not-sufficient fallacy. Amazon relies on select quotes from numerous cases. Those quotes establish at most that (1) certain portions of the claims in those cases recited abstract ideas and (2) those certain portions were not enough alone to maintain eligibility. Neither is dispositive nor illuminating in this case. To establish ineligibility, it is necessary that at least some elements of a claim rely on abstract ideas; but that fact alone is not sufficient for ineligibility.[3]

Amazon's "kitchen sink" approach to infringement is even more problematic. Infringement is an issue that can rarely be decided as a matter of law, even on a full summary judgment record.[4] And yet Amazon seeks a dispositive ruling on four different grounds, based

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[1] D.I. 31, along with its brief at D.I. 32 ("Opening Br."), the "Motion."

[2] https://www.jvckenwood.com/content/dam/pdf/jkwd_ar_2011_en_fs.pdf at 28.

[3] *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014) ("At some level, all inventions . . . embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.")

[4] *United States v. 8.929 Acres*, 36 F.4th 240, 266 (4th Cir. 2022); *Mannington Mills, Inc. v. Armstrong World Indus., C.A.*, No. 00-876, 2002 U.S. Dist. LEXIS 18502, at *4 (D. Del. June

upon three-and-a-half pages of briefing. *Id.* (*see* subsections II.B-II.D.2). Amazon assumes facts related to the operation of Amazon devices. It usurps the role of experts to opine on such facts. And it assumes that it has already prevailed on its implicit claim construction positions.

The concluding matters Amazon raises contradict its approach to infringement and are minor, procedural issues that the parties can resolve in discovery.

II. Legal standard

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

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor . . . ." 35 U.S.C. § 101. "At some level, all inventions . . . embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Alice*, 573 U.S. at 217 (citations omitted) (emphasis added).

As Amazon recognizes, *Alice* set out a two-step test for eligibility. Opening Br., 3-6 (citing *Alice*, 573 U.S. at 217). In that context, determining patent eligibility requires a full understanding of the basic character of the claimed subject matter. *MyMail, Ltd. v. ooVoo, LLC*, 934 F.3d 1373, 1379 (Fed. Cir. 2019). "Even what seem like small technical details could loom large in the final eligibility analysis . . . ." *AML IP, LLC v. Am. Eagle Outfitters, Inc.*, No. 6:21-cv-00823-ADA, 2022 U.S. Dist. LEXIS 190623, at *15 (W.D. Tex. Oct. 19, 2022) (emphasis added). That is "because there is often only a very thin line between a patent that is directed at an abstract idea and a patent that is directed to improving, for example, a computer program or system." *Id.* (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016)).

6, 2002); *Remington Arms Co. v. Modern Muzzleloading, Inc.*, No. 2:97CV00660, 1999 U.S. Dist. LEXIS 25613, at *16 (M.D.N.C. Feb. 9, 1999).

Indeed, "the practice of 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 § 101 swallow the rule." *Contour IP Holding LLC v. GoPro, Inc.*, 2024 U.S. App. LEXIS 22825 (Fed. Cir. Sept. 9, 2024) (precedential) at *13 (citing *Enfish*, 822 F.3d at 1337). *Alice* should be limited to the occurrence where a claim "abstractly covers results without regard to a specific process or machinery for achieving those results" and thus "would prohibit all other persons from making the same thing by any means whatsoever." *Id.* (cleaned up).

The USPTO even provides a "streamlined eligibility analysis (Pathway A)" to allow self-evident improvements to issue as patents. *See* MPEP § 2106.06 (9th ed. 2022). That is because improvements—even to general purpose computers—can pass muster at Step One. *Uniloc USA, Inc. v. LG Elecs. USA, Inc.*, 957 F.3d 1303, 1306–07 (Fed. Cir. 2020) (citing *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359, 1364 (Fed. Cir. 2020)).

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

Additionally, "it will ordinarily be desirable—and often necessary—to resolve claim construction disputes prior to a § 101 analysis, for the determination of patent eligibility requires

a full understanding of the basic character of the claimed subject matter." *Bancorp Servs., LLC v. Sun Life Assurance Co. of Can.*, 687 F.3d 1266, 1273-74 (Fed. Cir. 2012). And claim construction is a question of law with underlying questions of fact. *Wasica Fin. GmbH v. Cont'l Auto. Sys., Inc.*, 853 F.3d 1272, 1278 (Fed. Cir. 2017).

B. Rule 12(b)(6) Standard

A Rule 12(b)(6) motion "generally cannot reach the merits of an affirmative defense . . ." *Goodman v. Praxair, Inc.*, 494 F.3d 458, 464 (4th Cir. 2007). And "a challenge to patent eligibility on § 101 grounds is an affirmative defense to a claim of patent infringement." *Mobile Acuity Ltd. v. Blippar Ltd.*, 110 F.4th 1280, 1289 (Fed. Cir. 2024). Courts must accept as true the facts set forth in the exhibits attached to the complaint. *See* Fed. R. Civ. P. 10(c); *Eastern Shore Mkts., Inc. v. J.D. Assocs. Ltd. P'ship*, 213 F.3d 175, 180 (4th Cir. 2000). Indeed, "[t]he purpose of Rule 12(b)(6) is to test the sufficiency of a complaint" and not to "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999) (cleaned up).

Through the plausibility lens of *Iqbal* and *Twombly*, motions to dismiss should only be granted in narrow instances: where "after accepting all well-pleaded allegations in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff's favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief." *Paradise Wire & Cable Defined Ben. Pension Plan v. Weil*, 918 F.3d 312, 317-18 (4th Cir. 2019) (quotation omitted) (emphasis added) (relying also on *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also DivX, LLC v. Netflix, Inc.*, 2019 U.S. Dist. LEXIS 227426 (C.D. Cal., Nov. 4, 2019) at *10, *28-31 (finding that factual issues precluded dismissal under 101 of claims directed to "producing a protected stream of compressed video content").

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III. Problems Common to Each of Amazon's *Alice* Grounds

A. Failure to address the claims or apply caselaw

Amazon selects single quotes from many cases. *See, e.g.,* Opening Br, 9. Often those quotes follow, and merely summarize, what was otherwise a detailed analysis by the court. Such quotes do not constitute any *ratio decidendi*. They thus have no bearing out-of-context or to other cases—such as this one. Amazon also fails to compare the language of the "claims" of those cases to the language of the "claims" of this case—as the law requires. *Enfish,* 822 F.3d at 1334. In short, Amazon presents no grounds upon which the eligibility question could be decided—let alone at the motion-to-dismiss stage. *McRO*, 837 F.3d at 1313 ("[C]ourts 'must be careful to avoid oversimplifying the claims' by looking at them generally and failing to account for the[ir] specific requirements . . . ."); *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1255 (Fed. Cir. 2014) ("Distinguishing between claims that recite a patent-eligible invention and claims that add too little to a patent-ineligible abstract concept can be difficult, as the line separating the two is not always clear."); *AML IP*, 2022 U.S. Dist. LEXIS 190623, at *15 ("Even what seem like small technical details could loom large in the final eligibility analysis . . . ." (emphasis added)); *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1377 (Fed. Cir. 2017) (Linn, J. dissenting in part and concurring in part) ("[T]he contours of the abstract idea exception are not easily defined. For that reason, the abstract idea exception is almost impossible to apply consistently and coherently.") Therein also lies the necessary-but-not-sufficient fallacy. Amazon's citations and arguments establish at most that some claims, in some cases, included certain elements that were not enough—by themselves—to pass muster at Step One of *Alice*. They say nothing about the specific claims in this case.

B. Amazon omits a required part of the proper *Alice* Step Two analysis.

Amazon acknowledges that at Step Two of *Alice,* "[t]he elements of each claim are considered '<u>both</u> individually' and 'as an ordered combination' to determine whether the additional elements" beyond the abstract idea provide an "inventive concept." Opening Br, 5 (citing *Alice*, 573 U.S. at 217)) (emphasis added). In other words, even if every element of a claim were conventional, the specific way they are arranged could make the claim patent-eligible.

Amazon also acknowledges the need to consider the ordered combination of claim elements. But it never actually does. It simply applies the first part of the test (albeit in conclusory fashion) and restates the second part. The following constitute Amazon's entire substantive arguments as to each of the patents—addressing the components, not any ordered combination.

- "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." Opening Br., 12.
- "As a matter of law, such conventional components fail to supply an inventive concept. [case citations]. Thus, [conclusion that simply restates the law]." *Id.*, 16.
- "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. [case citation]. Thus, [conclusion that simply restates the law]." *Id.*, 23.

IV. The '337 patent is valid under 35 U.S.C. § 101.

A. Improved "voice control device"

The '337 patent and its claims are directed to an improved "voice-content control" device and method. '337 patent, Abstract. The inventor (Naganuma-san) identified problems with conventional voice processing devices. Those problems resulted from the inability to adapt a response and volume level based upon the identity and distance (from the device) of a specific user. *Id.*, 1:29-42. Naganuma-san invented a solution to this problem: a voice-content control

method/device that uses, e.g., a distance value calculated from a detection result of a proximity sensor to analyze and classify the voice spoken by the user "as either one of a first voice or a second voice." *Id.*, 1:48-52; 7:51-9:8, 9:38-57; 15:22-54. The subsequent response output by the device can vary depending on how the received voice was analyzed and who the speaker was. *Id.* It also modulates volume based upon the user and distance to avoid annoyance. *Id.*, 1:29-42.

Amazon addresses only claim 4. That claim sets forth a specific method of controlling voice content (i.e., "a voice-content control method"). *Id.*, 19:22-20:9. The claimed method includes a particular sequence of steps that involve several features described in the specification as solutions to the identified problems. For example, claim 4 recites:

- "calculating a distance between a user and a voice-content control device;"
- "analyzing the acquired voice to classify the acquired voice as either one of a first voice and a second voice based on the distance…;"
- "generating …a first output sentence … when the acquired voice has been classified as the first voice,"
- "[generating] … a second 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,"
- "adjusting the sound volume of voice data [to different volumes for a first output sentence and a second output sentence]."

Id., 19:22-20:9. Thus, the patent specification unquestionably explains what the claims recite: specific improvements to conventional voice processing devices. The elements and method steps work together to improve the functionality of then-existing voice processing devices by enabling them to automatically provide an output with different characteristics based on a calculated distance between the user and the device.

B. Claim 4 is not directed to an abstract idea.

Claim 4 is valid at *Alice* Step One for a simple reason: improvements to devices that use specific processes for achieving those results are eligible. *Contour*, 2024 U.S. App. LEXIS 22825 at *11-12; *Enfish*, 822 F.3d at 1335; *McRO,* 837 F.3d at 1314-15; *CardioNet,* 955 F.3d at 1373; *Mentone Solutions LLC v. Digi Int'l Inc.*, 2021 U.S. App. LEXIS 33793 at *8 (Fed. Cir. 2021); *Uniloc*, 957 F.3d at 1306-07; *Customedia*, 951 F.3d at 1364; *Orbcomm Inc. v. Calamp Corp.*, Civil Action No. 3:16CV208, 2016 U.S. Dist. LEXIS 96264, at *7-10, *19-20 (E.D. Va. July 22, 2016) (rejecting the argument that "a method for monitoring the location and status of feels of vehicular construction equipment" entailed "nothing more than the abstract idea of gathering, storing, processing, and transmitting data" because they improved a "particular apparatus"). Claim 4 details the specifics of the claimed invention. And it solves a specific technical problem associated with multiple voices when conducting speech detection and providing responses. *Id*.

Amazon's arguments under Step One (Opening Br., 8-12) fail for at least four reasons.

First, Amazon asserts that claim 4—the only claim it addresses—is directed to an abstract idea. *Id.*, 8-9. It relies on only a few words contained in the claim. It ignores context and all other details. Courts repeatedly caution against such an approach. *See, e.g., MyMail*, 934 F.3d at 1379. Doing so "overgeneraliz[es] claims . . . at a high level of abstraction that is untethered from the language of the claims." *See TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1293 (Fed. Cir. 2020) (cleaned up) (quoting *Enfish*, 822 F.3d at 1337); *Contour*, 2024 U.S. App. LEXIS 22825 at *12-16; *Diamond v. Diehr*, 450 U.S. 175, 189 (1981). If allowed, Amazon's approach would "all but ensure[] that the exceptions to § 101 swallow the rule." *Id*. Under Amazon's logic, any claim having any element that processes, analyzes, or presents information would be invalid. Established precedent precludes that result. *See, e.g., Uniloc*, 957 F.3d at 1306-07; *Customedia*,

951 F.3d at 1364; *Finjan, Inc. v. Blue Coat Sys.,* 879 F.3d 1299, 1304 (Fed. Cir. 2018); *Ancora Techs. v. HTC Am., Inc.,* 908 F.3d 1343, 1349 (Fed. Cir. 2018).

Second, Amazon asserts that claim 4 merely recites "desired results" rather than "how the steps are performed." Opening Br., 9-10. But claim 4 is directed to a specific "voice-content control method." It states the precise steps that make it unique. *Mentone* is instructive here. 2021 U.S. App. LEXIS 33793 at *9-10, 12. The court found the following claim to be eligible. It is less detailed than claim 4 at issue. Below the *Mentone* claim is annotated with italics in the same manner Amazon annotated claim 4 in its brief (at 7-8):

> 5. A multiple access communication method in a mobile station, comprising the steps of:
> *receiving* an assignment of at least a first PDCH (packet data channel) and a second PDCH;
> *monitoring* an assigned PDCH to detect a USF [Uplink Status Flag]; and
> *transmitting* on an assigned PDCH corresponding to the USF, wherein (i) if shifted USF operation is not used then a first assigned PDCH is monitored to detect a USF corresponding to the first assigned PDCH and (ii) if the shifted USF operation is used then a second assigned PDCH is monitored to detect the USF corresponding to the first assigned PDCH and a USF corresponding to the second assigned PDCH.

Id. at *5-*6 (annotations added); *see also* upheld claims in Exhibit A.

The above annotations demonstrate the problem with Amazon's approach. It contradicts Federal Circuit law. Amazon would have invalidated the *Mentone* claim above simply because certain limitations begin with the words "*receiving*," "*monitoring*," or "*transmitting*." Amazon's error is more acute in this case. It addresses (italicizes) only a small portion of limitations [a]-[f] of claim 4 of the '337 patent at issue. And, yet more problematically still, Amazon completely ignores other limitations: [g1], [g2], and [h].

McRO is also instructive. In that case, the "patents relate[d] to automating part of a preexisting 3-D animation method." 837 F.3d at 1303. The pre-existing version of the claimed method included "morph weights," "phonemes," "times," "sequence[s]," and "transitioning

between [] keyframes." *Id*. at 1305-08. The representative claim recited obtaining "a first set of rules that define output morph weight set stream as a function of phoneme sequences" and obtaining "a timed data file having a plurality of sub-sequences". 837 F.3d at 1307-08; *see also* Ex. A. It further recited creating two streams of morph weights. The first was created "by evaluating said plurality of sub-sequences against said first set of rules." The second was created by applying a "frame rate" and "transition parameters." It concluded by reciting "produc[ing] lip synchronization and facial expression control. . . ." As shown in Exhibit A, only a subset of the limitations of claim 4 of the '337 patent is necessary to match that level of detail. It recites calculating a specific distance, acquiring voice spoken by a user, and classifying the voice as a first or second voice based on the distance. It further recites the generation of two output sentences. The first is based upon whether "the acquired voice has been classified as the first voice . . . ." The second is generated when "the acquired voice has been classified as the second voice . . . ." It does so by omitting "a part of information included in the first output sentence . . . ." The claim concludes by "adjusting the sound volume of voice data . . . ." in a manner that the sound volume of the output sentences differs from one another. In other words, claim 4 is even more detailed than the representative claim of *McRO* in terms of what specific data is acquired, how it is analyzed, and how the outputs are adjusted.

Contour and *CardioNet* also support eligibility. The *Contour* court upheld a claimed improvement to a digital camera. 2024 U.S. App. LEXIS 22825, at *5-6 (claim 11). Claim 11 in that case recited a standard camera operating in a standard way. Ex. A (limitations [a], [b], [d], [e] in the *Contour* claim). The improvement came in creating a second, lower-resolution video stream from a standard video stream. *Id.* (limitations [c], [f]-[i]). The lower-resolution (smaller)

video stream was sent to a mobile device; the user viewed that stream and input settings to control the video camera (e.g., color, resolution, or "audio setting[s]"). *Id.* (limitation [g]).

CardioNet involved an electronic device that detected the timing of heart beats. The claims recited an electronic device that used computer logic to "determine a variability in the beat-to-beat timing" and "generate[d] an event." *CardioNet*, 955 F.3d at 1365. Claim 4 at issue in this case is even more specific. It recites analyzing the voice sound of multiple voices. And it generates a specific and tangible result: modified output sentences at different volumes.

Amazon selects quotes from the string of cases cited on page 9 of its brief. But they serve no end, for the reasons addressed in Section III.A above. The cases are also distinguishable in that none addressed claims reciting particular improvements to specific devices that use specific processes for achieving those results. *See* cases cited above (p. 8-9). For example, the *Impact Engine, Inc. v. Google, LLC* ruling followed "two claim-construction orders" and expert testimony 2024 U.S. App. LEXIS 16254 at *7, *12-13, 2024 WL 3287126 (Fed. Cir. July 3, 2024). The patents there described systems for creating the same communications a "professional graphic designer" would have created for marketing purposes. *Id.* *3. "The focus of the claims" was "the abstract idea of processing information—turning user-provided input into user-tailored output. . . ." *Id.* at *18. Even then, it was not simply the generic elements and creation of conventional communications that doomed the claims. It was that the claims contained no meaningful limitations; they were not focused on "any improved or concrete tools by which th[e recited] processing functionality [wa]s achieved." *Id.* One claim, for example, recited storing "assets" and "templates"—nothing more (other than a generic computer). *Id.* at *4. Claim 4 at issue in this case, by contrast, recites "acquiring" and "analyzing" a "voice spoken by a user" and outputting text data (limitations [b]-[e]). Only interactive, voice-controlled types

of devices can do those things. The *Impact Engine* claim "assembl[ed]" a nondescript "communication" based upon a "template" and "user preferences." Those three objects could be anything—"presentations, banner advertisements, websites, or brochures" or ideas associated with them. *Id.,* at *2 (cleaned up). Claim 4 at issue, by contrast, collects, classifies, and analyzes something specific: voice sounds. It is an ordered process that generates specific outputs, containing different content (the two sentences recited in limitations [g1], [g]2), that leads to a tangible result, on a physical device (automatically adjusting the sound volume of voice data, recited in limitation [h]), that improves the ability of multiple users to hear relevant information from it.

Third, Amazon's analogies are unhelpful and inapt. Opening Br., 10-12. The mere fact that Amazon must proffer two analogies to argue one claim is telling. Amazon likens claim 4 to a human "listener choosing how to respond to a friend." But it cannot help but to describe two different analogies, taking place in two different instances: one in which a friend is "close by" and another in which a friend is "far away." In neither event does the "listener," for example, listen to two people or generate two output sentences. Nor does the listener distinguish between two friends, measure any distances, or change outputs based upon the identity of either friend. Such are the reasons the Federal Circuit cautioned that "deciding whether or not a particular claim is abstract can feel subjective and unsystematic, and the debate often trends toward the metaphysical, littered with unhelpful analogies and generalizations." *See CLS Bank Int'l v. Alice Corp. Pty*, 717 F.3d 1269, 1277 (Fed. Cir. 2013).

Amazon does not just draw unhelpful analogies; its entire position is based on a mischaracterization of the focus of the one claim it addresses. Amazon asserts that claim 4 is directed to the abstract idea of "classifying a voice based on distance and tailoring output based

on that classification." Opening Br., 7. But claim 4 recites "[a] voice-content control method"—not a distance calculation method. The distance calculation is just one of nine elements (using Amazon's designations on pages 7-8 of its Opening Brief) of the claim.

Fourth, *McRO* also defeats Amazon's argument that the claims merely recite a longstanding practice that is "do[ne] on a computer." Opening Br., 10-11. *McRO* addressed a claim drawn to a task that humans actually did perform (unlike the claimed voice control and analysis devices) on a general-purpose computer (again, unlike the more specific claims at issue). The defendants in *McRO* asserted that "the claims simply use[d] a computer as a tool to automate conventional activity." *Compare* 837 F.3d at 1314 *with* Opening Br., 10-11. The *McRO* court found no evidentiary support in the record (including the specification of the patent) to support that assertion. 837 F.3d at 1314. The court determined that "The computer . . . is employed to perform a distinct process to automate a task previously performed by humans." *Id.* at 1314 (emphasis added). Specifically, a human's process "was driven by subjective determinations rather than specific, limited mathematical rules." *Id.* Claim 4 is eligible for the same reason. It improves a tangible device using specific, limited, analytical processes.

C. Claim 4 recites unconventional features.

Alternatively, claim 4 is valid at *Alice* Step Two. It recites unconventional features, including a specifically programmed "voice-content control device" and specific, unique steps of improving speech detection devices. *See Section* IV.A *supra* (citing '337 patent, 1:29-42, 1:48-52; 7:51-9:8, 9:38-57, 15:22-54). The specification identifies the technical problems that existed at the time of the invention. And it articulates the difference between the claimed steps and conventional approaches. Amazon cannot contest those facts—especially at the pleadings stage. *See, e.g., Cosmokey Sols. GMBH & Co. KG v. Duo Sec. LLC*, 15 F.4th 1091, 1098 (Fed. Cir. 2021) ("nothing in the specification or anywhere else in the record supports the district court's

suggestion that the last four claim steps . . . [we]re conventional" where those steps included "check[ing] . . .," "ensuring . . .," "ensuring . . .," and "thereafter ensuring . . . ."); Exs. A-B.

The elements of claim 4 also are arranged in a specific array of inputs, processes, and outputs (e.g., "analyzing the acquired voice to classify [it] . . . based on the [calculated] distance," "generating[] a first output sentence . . . when the acquired voice has been classified as the first voice," and "generating[] . . . a second output sentence . . . when the acquired voice has been classified as the second voice . . . ."). Amazon does not purport to address such aspects of claim 4. Thus, the record is certain; and the specification, uncontested. Claim 4's exemplary ordered combination alone constitutes an inventive concept.

Amazon's assertions to the contrary are undeveloped. It asserts that claim 4 "recites no hardware" and that "every step [of the claim] is a part of the abstract idea." Opening Br, 12. Each assertion contradicts the claim language and relevant case law. Claim 4 expressly recites hardware: a "voice content control device." Given the preamble, the claim in view of the specification makes clear that the claimed method is being performed using the voice content control device. *See Contour*, 2024 U.S. App. LEXIS 22825, at *12 (claims tied to a specific process and machinery are eligible). Further, even if directed to an abstract idea, the unconventional hardware, steps, and ordered combination of claim 4 sufficiently transform it into a practical application.

D. Claim 4 is not representative.

Amazon curtly asserts that claim 4 is representative of all claims of the '337 patent. Opening Br., 12-13. But, here again, its argument is undeveloped. Claim 2, for instance, introduces unconventional claim elements directed to "extract[ing] intention information indicating an intention of the user based on the voice acquired," "acquir[ing] acquisition content information which is notified to the user based on the extracted intention information, and

"generat[ing] text data including the acquisition content." '337 patent, 19:4-17. Those limitations are not present in any other claim of the '337 patent. Amazon fails to address those or any other limitations. Thus it fails to establish that claim 4 is representative of at least claim 2. *Solutran, Inc. v. Elavon, Inc.*, 931 F.3d 1161, 1168 (Fed. Cir. 2019); *see also Diogenes Limited v. DraftKings, Inc.*, 2022 WL 2802391, at *18 (D. Del., July 18, 2022). Amazon cites *Mobile Acuity*. 110 F.4th at 1291. But that case does not support the type of perfunctory analysis Amazon provides; it requires a prima facie showing. *Id.* at 1290.

V. The '675 patent is valid under 35 U.S.C. § 101

A. Improved "voice control device"

The '675 patent and its claims are directed to an improved "output-content control" device and method focused on "Word Replacement in Output Generation for Detected Intent by Voice Classification." '675 patent, Title, 1:14-16. The same inventor (Naganuma-san) identified problems with conventional voice processing devices. Those problems, again, resulted from the inability to adapt a response and notifications based upon the identity and distance (from the device) of the user. *Id.* 1:24-37. Naganuma-san invented a solution to this problem: an output-content control method/device that uses a distance value calculated from a detection result of a proximity sensor to analyze and classify the voice spoken by the user based upon whether it is a "first voice" or "second voice". *Id.*, 9:58-16:30, 19:24-30, 20:42-49, claims 1-7. The subsequent response output by the device varies depending on how the received voice was analyzed and classified. *Id*.

Amazon addresses only claim 6. It sets forth a specific method of controlling voice content (i.e., "an output-content control method"). *Id.*, 22:8-28. The claimed method includes a particular sequence of steps that involve several features described in the specification as solutions to the identified problems. For example, claim 6 recites, among other limitations:

- "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;"
- "analyzing the acquired voice to detect intention information indicating what kind of information is wished to be acquired by the user;"
- "generating, when the voice is determined to be the first voice, a first output sentence in which at least one word … is replaced with another word;"
- "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."

Id., 22:8-28. Thus, the patent specification unquestionably explains what the claims recite: specific improvements to conventional voice processing devices.

B. Claim 6 is not directed to an abstract idea.

Amazon advances the same arguments for the '675 patent as it does for the '337 patent. *See* Opening Br., 14-16. Those arguments fail for the same reasons addressed above. To be sure, the independent claims of the '675 patent do not recite volume adjustment. But they do recite, among other things, "content of information to be notified to the user" based on user intention and "replac[ing]" such content at least one other "word." Amazon fails to address those—or any other—differences in the claims. Instead, it focuses merely on the "proximity sensor." Even if proximity sensors were conventional at the time of the invention, the claims recite them as part of a specific "process or machinery" for achieving specific results. *Contour*, 2024 U.S. App. LEXIS 22825, at *12 (citing *McRO*, 837 F.3d at 1314); *see also* cases cited in Section IV.B *supra*; Exhibit B. The record lacks any suggestion that using proximity detectors to determine distance for the purpose of classifying a voice (and considering claim 6 as a whole) was conventional.

Further, claim 6 is valid at *Alice* Step One for one simple reason: improvements to devices that use specific processes for achieving those results are eligible. *See* cases cited in

Section IV.B *supra*. It details the technical specifics—not merely desired results—of the claimed invention; and it solves a specific technical problem associated with multiple voices when conducting speech detection and providing responses. *Mentone*, 2021 U.S. App. LEXIS 33793 at *9-10, 12; *McRO,* 837 F.3d at 1314; *CardioNet*, 955 F.3d at 1370.

C. Claim 6 recites unconventional features.

Alternatively, claim 6 is valid at *Alice* Step Two. It recites unconventional features, including a specifically programmed "output-content control device," and specific, unique steps of improving speech detection. *See* Section V.A *supra* (citing '675 patent, 9:58-16:30, 19:24-30, 20:42-49). The specification identifies the technical problems that existed at the time of the invention. And it articulates the differences between the claimed steps and conventional approaches. Amazon cannot contest those facts—especially at the pleadings stage. *Cosmokey*, 15 F.4th at 1098 (discussed *supra* p. 13).

Further, the elements of claim 6 are arranged in a specific array of inputs, processes, and outputs (e.g., "calculating a distance … to classify the voice," "generating, when the voice is determined to be the first voice, a first output sentence," and "generating, when the voice is determined to be the second voice, a second output sentence"). Amazon does not purport to address such aspects of event claim 6. Thus the record is certain, and the specification uncontested. Claim 6's exemplary ordered combination alone constitutes an inventive concept.

Amazon's *Alice* Step Two arguments for claim 6 of the '675 patent are similar to the arguments for claim 4 of the '337 patent. Opening Br., 16. They also fail for the same reasons. Even if "proximity sensor[s]" were conventional in some contexts—and Amazon identifies none—they were certainly not typically used in voice control devices. Further, claim 6 recites other hardware that certainly was unconventional: an "output-content control device." The claim's preamble and the specification state that the claimed method is performed using the

output-content control device. Further, as discussed above, claim 6 is not directed to an abstract idea. But even if it were, the unconventional hardware, steps, and ordered combination of them sufficiently transform them into a practical application of the idea—certainly Amazon has not demonstrated anything to the contrary.

D. Claim 6 is not representative.

Amazon concludes that the asserted claim (claim 6) is representative by ignoring critical claim language of other claims. *See* Opening Br., 17. There is some overlap in scope between the three independent claims (1, 6 and 7). But claims 2-5 introduce additional unconventional elements. For example, claim 3 recites that the output-content generating unit is "configured to read, on generating the first output sentence, relationship information including information of a first word that is a predetermined word and a second word that is associated with the first word, and to replace a word included in the notification information with the second word when the word included in the notification information matches with the first word." '675 patent, 21:31-40. Claim 5 recites "wherein the voice classifying unit is further configured to determine the voice to be the predetermined voice when the voice spoken by the user is a whisper." *Id.*, 22:4-7. Amazon does not address any of the foregoing details and thus fails to establish that claim 6 is representative of any other claim. *See* cases cited in Section IV.D *supra*.

VI. The '487 patent is valid under 35 U.S.C. § 101

A. Improved "electronic apparatus with a touch panel"

The '487 patent and its claims are directed to an improved "electronic apparatus with a touch panel, a method of controlling the apparatus, and a related computer program." '487 patent, 1:15-17. The inventor (Maeda-san) identified a problem with conventional touchscreen devices: their inability to select items (e.g., "icons") on a touch panel interface while also "giv[ing] a command" for what to do with the selected items without "the user need[ing] to take

troublesome actions." *Id.*, 1:19-44. Maeda-san invented a solution to this problem: a method of controlling an electronic apparatus that calculates a distance between two touch positions, and which uses the touch positions and multiple calculated vectors and angles to determine whether the distance between those touch positions decreases over time, set a rectangular area, and select the objects contained therein. *Id.*, 1:57-2:31, 9:62-11:38, 12:32-41, 20:17-23. The invention provides the benefit of "allow[ing] a user to give a command for a process by easy operation." *Id*., 5:18-22.

The '487 patent claims are specific and detailed, further indicating that are not merely abstract ideas. Amazon addresses only claim 11. That claim sets forth a precise method of controlling an electronic apparatus. *Id.*, 23:49-24:27. It recites a particular sequence of steps that involve several features that the specification describes as solutions to the identified problems. For example, claim 11 contains the following limitations, among other elements:

> [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;
>
> [f] setting a rectangular area with respect to the display and selecting … objects contained in the rectangular area where it is decided that the first and second touch positions are acquired and the distance between the … touch positions decreases in accordance with the lapse of time;
>
> [h] wherein the setting and selecting step comprises
>
> > [h1] 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,
> >
> > [h2] deriving a straight line connecting the first and second touch positions occurring at the first moment,
> >
> > [h3] 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,
> >
> > [h4] calculating a first angle between the first vector and the straight line,

> [h5] calculating a second angle between the second vector and the straight line,
>
> [h6] deciding whether or not the first angle is smaller than a prescribed angle, and
>
> [h7] 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 … objects contained in the rectangular area in cases where it is decided that the distance between the … 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.

Id., 23:49-24:27. The specification confirms the plain meaning of the claims; they recite improvements to both conventional touchscreen devices and their user interfaces.

B. Claim 11 is not directed to an abstract idea.

Claim 11 improves a specific tangible interface in a very precise way. It is eligible at *Alice* Step One.[5] For example, the following claim was upheld in *Core Wireless:*

> 1. A computing device comprising a display screen, the computing device being configured to display on the screen a menu listing one or more applications, and additionally being configured to display on the screen an application summary that can be *reached directly* from the menu, wherein the application summary displays a limited list of data offered within the one or more applications, each of the data in the list being selectable to launch the respective application and enable the selected data to be seen within the respective application, and wherein the application summary is displayed while the one or more applications are in an *unlaunched state*.

Core Wireless, 880 F.3d at 1359. And many software-based claims from six patents reciting user interfaces were ruled eligible in *Universal Elecs., Inc. v. Roku, Inc.*, 2019 U.S. Dist. LEXIS 74623 at *9-10 and 30-36 (C.D. Cal., Mar. 5, 2019). Indeed, the elements of claim 11 (reproduced and discussed above) recite more detailed and specific improvements to touchscreens than those eligible claims in *Core Wireless* and *Roku*.

[5] *Core Wireless*, 880 F.3d 1356; *Trading Techs. Int'l, inc. v. CQG, Inc.*, 675 F. App'x 1001 (Fed. Cir. 2017); *see also* cases cited in Section IV.B *supra*.

Amazon's approach to Step One suffers from the same flaws discussed above. Opening, Br., 17-23. It (1) oversimplifies the claim, (2) picks out and addresses only certain words in the claim, (3) ignores other details of the claim and its overall context, and (4) presents an unrelated human scenario as an analogy. Each is improper. *See* Sections III.A and IV.B *Supra*. For example, Amazon completely ignores limitations [f] and [g] of claim 11. That omission includes the seven steps in limitation [f]. And Amazon ignores the larger context of the claim even when it does address certain elements. Amazon also fails to address how limitations [h] and [i] work in concert with the seven steps of limitation [f]. Indeed, they are complex, specific, and directed to solving particular technological problems. *Enfish*, 822 F.3d at 1339; *Contour*, 2024 U.S. App. LEXIS, at *16; *McRO*, 837 F.3d at 1312.

Amazon argues, for example, that "the claims do not require any particular method or structure for detecting or acquiring." Opening Br, 20. That is incorrect. Claim 11 is a method that operates on a "touch panel superposed on [a] display." Its structure detects and acquires the user's touches. The structure is a tangible device improved using a specific process.

Amazon also argues that limitations [h] and [i] "merely use mathematics to analyze the acquired touch positions." *Id.* at 21. But it fails to acknowledge the precise set of technical processing steps recited in the "setting and selecting step."

Amazon's arguments also fail as a matter of law. Claim elements are not abstract ideas just because they rely on math or logic. *See, e.g., McRO*, 837 F.3d at 1314-15 (claims "driven by . . . specific, limited, mathematical rules" eligible); *Palo Alto Research Ctr., Inc. v. Facebook, Inc.*, 2021 U.S. Dist. LEXIS 80074 (C.D. Cal., Mar. 16, 2021) at *43-44 (rejecting the argument the claimed method "can be performed entirely by a human" and finding software claims eligible under 101 because "although a computer performs the same math as a human, a human cannot

always achieve the same results as a computer" therefore "a software solution does not become conventional simply because humans can do math"); *see also* Ex. A.

Amazon relies on a single sentence from *Thunder Power.* Opening Br., 21-22 (citing *Thunder Power New Energy Vehicle Dev. Co. v. Byton N. Am. Corp.,* 340 F. Supp. 3d 922, 929-30 (N.D. Cal. 2018)). But its argument there is undeveloped. Regardless, the claims in *Thunder* were not limited to gestures on any device at all.

C. Claim 11 recites unconventional features.

Alternatively, claim 11 is valid at *Alice* Step Two. It recites unconventional features—especially in connection with the intricate and detailed "setting and selecting step." It addresses technical problems that conventional devices suffered. The specification makes clear that those technical problems existed at the time of the invention. And it articulates the differences between the claims and the conventional approaches at the time. *See* Section VI.A *supra* (citing '487 patent, 1:57-2:31, 5:18-22, 9:62-11:38, 12:32-41, 20:17-23). Amazon cannot contest those facts—especially at the pleadings stage. *Cosmokey*, 15 F.4th at 1098 (discussed *supra* p. 13).

Claim 11 also includes elements that occur in a specific arrangement: e.g., "setting the rectangular area and selecting the object or objects contained in the rectangular area in cases where it is decided that [1] the distance between the first and second touch positions decreases in accordance with the lapse of time, [2] the first angle is smaller than the prescribed angle, and [3] the second angle is smaller than the prescribed angle" (emphasis added)). In other words, the claim recites three determinations (described earlier in the claim) in connection with setting the rectangular area and selecting the objects in that area. That ordered combination, alone, constitutes an inventive concept.

Amazon asserts that claim 11 fails Step Two of *Alice* based on three words (a "display" and a "touch panel"). Opening Br., 23. It ignores the vast majority of the claim elements—

certainly those mentioned above. Such omitted steps also include, for example, the "the setting and selecting step" of limitation [f]. They include the seven additional steps recited in limitation [h]. They include the further details recited in limitation [i]. And they include the specific manner in which the foregoing steps operate in concert. The foregoing, together, is the ordered combination that courts require to be assessed. Amazon ignores it all. Indeed, the plain language is clear; they recite a precisely ordered combination to address a specific practical application.

D. Claim 11 is not representative.

Claim 11 is not representative. For example, claim 4 adds "a deleting section for deciding whether or not the first and second touch positions are rotated in a same direction after the object or objects contained in the rectangular area are selected by the selecting section, and for deleting the selected object or objects in cases where it is decided that the first and second touch positions are rotated in a same direction." '487 patent, 22:10-16. Amazon did not address or contest the fact of those added limitations. *See* cases cited in Section IV.D *supra*.

Amazon addressed the other independent claims in conclusory fashion: "those claims are directed to the same abstract idea and add nothing inventive." Opening Br., 23-24. And it declined to address any specific dependent claim—let alone any limitations of them. It simply provided open-ended ("e.g.,") parenthetical list of terms. The *Mobile Acuity* case upon which Amazon relies requires a prima facie showing of representativeness. Amazon's parenthetical lists are insufficient for the simple reason that they contain no analysis that could possibly constitute a prima facie showing. *Mobile Acuity*, 110 F. 4th at 1290. That failure is especially acute given the depth and detail of the dependent claims. For example, dependent claims 2-10 are set out over two full columns of text in the '487 patent (21:44-23:48). That constitutes far more technical detail than Amazon's phrasing—"further analyzing touch points" and "moving, deleting, or copying digital objects after they have been selected"—could possibly address.

VII. The Complaint Adequately Pleads Infringement of the Patents-in-Suit

Amazon does not deny any of the allegations in the Complaint. It does not deny that its devices operate as the allegations suggest, or as described in the sources at the cited URLs. It even acknowledges that certain processes exist across the accused devices (e.g., VoiceID, Adaptive Content, SIR Beam selection). Its position is based entirely on assertions as to what the devices do "not" do. Opening Br., 26-27. The pleadings contain no such support for them.[6]

Amazon's arguments are simply non-infringement contentions masquerading as plausibility arguments. *See Bel IP LLC v. BoomerangIt Inc.*, 2011 U.S. Dist. LEXIS 164358, at *11 (E.D. Va. Sep. 27, 2011) ("Whether the accused products infringe is not an appropriate issue for a motion to dismiss."); *Bailey v. Va. Dep't of Alcoholic Bev. Control*, No. 2:18cv392, 2019 U.S. Dist. LEXIS 108051, at *6 (E.D. Va. Apr. 25, 2019) ("A motion to dismiss tests the sufficiency of a complaint without resolving factual disputes, and a district court "'must accept as true all of the factual allegations contained in the complaint' and 'draw all reasonable inferences in favor of the plaintiff.'" (citing *Kensington Volunteer Fire Dept. v. Montgomery Cty.*, 684 F.3d 462, 467 (4th Cir. 2012)). They cannot be supported at the pleadings stage.

In terms of the legal standard, Amazon argues that the Complaint does not "plead how any particular accused product infringes the claims." *Id.*, 28-29. Those arguments set an unrealistic standard for devices that run on inaccessible source code. But even setting that fact aside, SoundClear's Complaint still surpasses the required plausibility standard. "A patentee . . . is not [even] required to 'plead infringement on an element-by-element basis.'" *Safe Haven*

[6] Amazon's purported knowledge is apparently sufficient to make sweeping negative assertions about how the accused products operate. That indicates Amazon has already identified all the relevant portions of source code.

SoundClear Exhibit 2018
Amazon et al. v. SoundClear - IPR2025-00673

Wildlife Removal & Prop. Mgmt. Experts, LLC v. Meridian Wildlife Servs., No. 7:21-cv-00577, 2023 U.S. Dist. LEXIS 56543, at *10 (W.D. Va. Mar. 31, 2023). But SoundClear did.

A. The '337 patent

SoundClear's Complaint alleges infringement of the '337 patent on an element-by-element basis. D.I. 1 at 11-18. Each paragraph maps a claim element to the accused products. *Id.* Each contains additional explanation. And each cites publicly available evidence in support—including citing Amazon's own websites. *Id.* Those allegations contain more than "enough facts to raise a reasonable expectation that discovery will reveal evidence of [infringement]"—the standard for plausibility for federal pleadings. *See Orbcomm*, 2016 U.S. Dist. LEXIS 96264 at *20-24 (quoting *Twombly,* 550 U.S. at 556)). Indeed, "patent litigation involves complex subject matter," infringement allegations need not have a "granular particularity … to survive initial Rule 12(b)(6) scrutiny." *Id.* Amazon fails to consider such allegations, which directly contradict its position. Opening Br., 25-27. For example, Amazon asserts that SoundClear "never alleges that the accused devices classify voices using Voice ID *based on a calculated distance* . . . ." *Id.* But the Complaint expressly states "[o]n information and belief, in any one of the examples above, the classification of the acquired voice signal . . . is based on the distance between the user and the voice-content control device using"[7] specific mechanisms of the accused products that calculate such distances. D.I. 1, ¶¶61-63 (emphasis added).

As another example, Amazon asserts that "Adaptive Content relates to content displayed on a screen, not audio content." Opening Br., 26. It offers no support for that statement. It also argues that Adaptive Content "cannot satisfy the limitation . . . that requires 'generating . . . output sentence that is text data for a voice to be output to the user.'" *Id*. Again, it provides no

[7] Amazon's devices run on compiled source code. That code cannot be accessed publicly. Thus, certain allegations must be made upon "information and belief."

factual basis for that denial. Nor would it be appropriate to do so at this stage. More problematically, however, Amazon's attorney-argument again contradicts the allegations in the Complaint. For example, the Complaint states "[o]n information and belief and as an example, . . . [the accused products] output a response that is presented as a text string which can be further converted into an audio signal using a Text-to-Speech (TTS) unit and audibly output to the user" through the accused product. Compl. ¶65 (emphasis added). And again, Amazon does not deny that any function identified in the Complaint exists across the accused devices. The specific manner in how they interact will be the province of fact and expert discovery.

Finally, Amazon acknowledges the existence of "SIR beam selection." But it presents no argument contesting SoundClear's allegations related to it. Thus, those allegations, and the related theories of infringement, stand uncontested.

B. The '675 patent

SoundClear's Complaint pleads infringement of the '675 patent on an element-by-element basis. D.I. 1 at 18-24. It thus meets the minimum plausibility standard for the same reasons. *See Orbcomm*, 2016 U.S. Dist. LEXIS 96264 at *20-24. But Amazon, again, argues non-infringement. Opening Br., 27. And it does not address allegations that expressly assert that audio content is adjusted based upon distance. D.I. 1 at ¶¶77 ("[o]n information and belief and as an example, . . . [the accused products] output content information that is provided to the user via a display or text-to-speech process which consequently notifies the user about the information"), 79 ("[o]n information and belief and as an example, . . . [the accused products], in determining a user's status and/or proximity to the . . . device, can cause more/additional content information to be displayed and/or audibly transmitted" (emphasis added)). Thus, Amazon at most suggests a factual dispute that will require discovery to address.

C. The '487 patent

SoundClear's Complaint articulates its theories of infringement of the '487 patent on an element-by-element basis. D.I. 1 at 25-32. Each paragraph maps a claim element to the accused products. *Id.* Each paragraph contains additional explanation. And each cites publicly available evidence in support—including Amazon's own websites. *Id.* That is more than sufficient. *See Orbcomm*, 2016 U.S. Dist. LEXIS 96264 at *20-24.

Both of Amazon's non-infringement grounds as to the '487 patent are, again, premised on its own, unsupported statement as to how the accused devices operate:

(1) "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" (Opening Br., 28);

(2) "zooming out on a screen is unrelated to setting a rectangular area" (*Id.*)

Each is a factual assertion. Each likely requires analysis of source code and expert testimony. Each assumes that Amazon will succeed in limiting the terms "selecting" and "rectangular area" at claim construction.

Based the above assumptions, Amazon argues the Complaint does not plausibly allege "[selecting] an object or objects contained in the rectangular area" because "zooming out does not result in an Echo device 'selecting' any object . . . [it] simply adjusts the magnification level of the display." Opening Br., 27-28. Its arguments fail for five additional reasons.

First, Amazon fails to address the plausibility standard. It is at least plausible that objects within a rectangular area are selected during the zoom-out function of the accused products. *Safe Haven*, 2023 U.S. Dist. LEXIS 56543 at *9 ("A claim has facial plausibility when a plaintiff pleads factual matter allowing the court to draw a 'reasonable inference that the defendant is liable for the misconduct alleged.'" (citing *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 570)).

Second, it is plausible that the objects within the rectangular area established by the two touch positions are selected as part of the zoom function. For example, objects in the rectangular area of the screen will be demagnified during the pinch to zoom gesture. That result, zooming out, is consistent with the'487 patent. *See, e.g,*'487 patent, 11:31-53 (non-limiting discussion of the "select[ing]" function, including selecting "a desired portion of an image").

Third, Amazon presents no evidentiary support for its attorney argument that the accused products actually do not perform the claimed "selecting" step.

Fourth, Amazon alleges that the Complaint does not plausibly allege "[setting] a rectangular area" because "zooming out is unrelated to setting a rectangular area." Opening Br., 28. But it is at least plausible that zooming in or out involves setting a rectangular area. *Safe Haven,* 2023 U.S. Dist. LEXIS 56543 at *9. It is also plausible that using a pinch to zoom gesture involving two touch positions inherently involves setting a rectangular area (e.g., the area of the displayed in the screen at various magnification levels).

Fifth, each of Amazon's positions relies on the assumption that it will prevail in seeking its desired claim constructions for the terms "selecting" and "rectangular area."

D. The accused products

Amazon's arguments about identification of accused products directly contradict its non-infringement position. It addressed them collectively when making negative assertions as to how they operate. In other words, Amazon presumed each is representative of the other. And Amazon does not contest other unifying ties among the accused products, such as that many carry the same brand ("Echo"), or run the same software ("Alexa"). D.I. 1 at ¶¶15-23, 60-68, 73-79.

Further, SoundClear's Complaint articulates a specific set of accused products based upon the best information available to it. D.I. 1 at ¶¶15-16. In paragraph 16, SoundClear identifies particular features and functionality that public information indicates are present in at

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least some of the accused products. It alleges, on information and belief, that all of the accused products include that infringing functionality. *Id.*, ¶¶15-16, 69, 80, 94. Those allegations suffice. *Safe Haven*, 2023 U.S. Dist. LEXIS 56543 at *10; *Bailey*, 2019 U.S. Dist. LEXIS 108051, at *6 (citing *Kensington*, 684 F.3d at 467); *Orbcomm*, 2016 U.S. Dist. LEXIS 96264 at *20-24 (quoting *Twombly,* 550 U.S. at 556). Amazon does not address those allegations. Opening Br., 29. It simply repeats assertions of non-infringement instead of applying the plausibility standard. *See Bel IP*, 2011 U.S. Dist. LEXIS 164358, at *11 ("Whether the accused products infringe is not an appropriate issue for a motion to dismiss.").

Amazon cites *CTD Networks LLC v. Microsoft Corp*. It does not apply. In that case, the complaint identified three separate and distinct products as performing three functions that the claim required be performed by a single claim element. 2023 U.S. Dist. LEXIS 147010 at *13-15 (W.D. Tex., Aug. 22, 2023). SoundClear's allegations do not do that. In fact, SoundClear's Complaint (¶16) does what the court in *CTD Networks* suggested that the plaintiff do. *See* 2023 U.S. Dist. LEXIS 147010 at *14 ("support a theory that the various products somehow work together or in concert to perform the claims as written, but that is not CTD's allegation" (cleaned up)). In *WirelessWerx IP LLC v. OnStar, LLC*, the complaint "defin[ed] the 'Accused Products' as 'OnStar's products,'"; the plaintiff did "not even attempt to specifically identify any accused product, system or service offering." 2024 U.S. Dist. LEXIS 67609 at *11, 22-23 (E.D. Mich., Apr. 12, 2024). Here, Amazon admits that "Plaintiff defines 'the Amazon Products and Services' as over 40 different accused products, including various Amazon Echo, Kindle and Fire products." Opening Br., 28-29 (emphasis added).

Amazon's argument about Count III of the Complaint is a red herring. Opening Br., 29. Specifically, Amazon argues that Count III "does not allege that any or all of the accused

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products contain" the "pinch-to-zoom-out" feature accused of infringement "because many of the accused products do not contain any kind of display screen," citing Paragraph 60 of the complaint for support. *Id.* That is wrong. Paragraph 60 of the Complaint includes allegations for Count I for the '337 patent—not Count III which pertains to the '487 patent. And the reference cited in Paragraph 60, upon which Amazon relies, is not cited anywhere in Count III.

VIII. SoundClear's Prayer for Relief is Supported by the Complaint

SoundClear's prayer for relief is proper. The Complaint provides the basis for post-suit willful infringement. *See e.g.*, Compl. ¶¶69-70 (asserting current and ongoing infringement of the well-pleaded claim); Compl. ¶¶80-81 (asserting the same); Compl ¶¶94-95 (asserting the same); *Eko Brands, LLC v. Adrain Rivera Maynez Enterprises, Inc.*, 946 F.3d 1367, 1378 (Fed. Cir. 2020) (A claim for willful infringement requires knowledge of the asserted patents and "no more than deliberate or intentional infringement." (quoting *Halo Elecs. v. Pulse Elecs, Inc.*, 579 U.S. 93, 105 (2016)); Alleging knowledge via filing of a complaint and ongoing infringement is sufficient. *See Geoscope Techs. PTE. Ltd. v. Google LLC*, 2023 U.S. Dist. LEXIS 223229, *18-19 (E.D. Va. Feb. 15, 2023); *USA, Inc. v. Mediatek USA, Inc.*, 2022 U.S. Dist. LEXIS 45815, *12-13 (E.D.T.X. Mar. 15, 2022); *Billjco v. Cisco Systems*, 2021 U.S. Dist. LEXIS 251455, *23-25 (E.D.T.X. Nov. 30, 2021). Amazon's reliance on *Bushnell Hawthorne, LLC v. Cisco Sys. Inc.* No. 1:18-cv-760, 2019 WL 8107921, at *1 (E.D. Va. Feb. 26, 2019), is misplaced. "Egregiousness" is part of the standard for enhanced damages. *Halo*, 579 U.S. at 103-04; *Eko Brands,* 946 F.3d at 1378. Allegations of willfulness need "no more than deliberate or intentional infringement." *Id.*

IX. Conclusion

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

Respectfully submitted,

Dated: September 27, 2024

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CERTIFICATE OF SERVICE

I certify that on September 27, 2024, I electronically filed the foregoing Plaintiff SoundClear's Response Brief in Opposition to Defendants' Motion to Dismiss Under Rule 12(b)(6) with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

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