

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SOUNDCLEAR TECHNOLOGIES LLC,) Case 1:24-cv-1283
Plaintiff,)
v.) Alexandria, Virginia
AMAZON.COM, INC., *et al.*,) November 01, 2024
Defendants.) 10:08 a.m.
Pages 1 - 84

TRANSCRIPT OF DEFENDANTS' MOTION TO DISMISS
AND MOTION TO TRANSFER
BEFORE THE HONORABLE ANTHONY J. TRENGA
UNITED STATES DISTRICT COURT JUDGE

Amazon v. SoundClear
US Patent 11,244,675
Amazon EX-1203

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 AUSTIN CIUFFO, ESQUIRE, *PRO HAC VICE*
4 KEVIN H. SPRENGER, ESQUIRE
5 STEVEN J. REYNOLDS, ESQUIRE, *PRO HAC VICE*
6 DAIGNAULT IYER LLP
8229 Boone Boulevard, Suite 450
Vienna, Virginia 22182
(703) 799-5641

7 FOR THE DEFENDANTS:

8 COLIN B. HEIDEMAN, ESQUIRE, *PRO HAC VICE*
9 LOGAN P. YOUNG, ESQUIRE, *PRO HAC VICE*
10 WILLIAM O. ADAMS, ESQUIRE, *PRO HAC VICE*
11 KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, 14th Floor
Irvine, California 92614
(949) 760-0404

12 WILLIAM R. POYNTER, ESQUIRE
13 KALEO LEGAL
4456 Corporation Lane, Suite 135
14 Virginia Beach, Virginia 23462
(757) 238-6383

15

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 THE COURTROOM DEPUTY: The Court calls
3 *SoundClear Technologies LLC v. Amazon.com, Inc., et*
4 *al.*, Case No. 1:24-cv-1283.

5 May I have appearances, please, first for the
6 plaintiff.

7 MR. SPRENGER: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. SPRENGER: Kevin Sprenger of the law firm
10 of Daignault Iyer LLP representing SoundClear
11 Technologies, LLC.

12 And with me today are my colleagues, Steven
13 Reynolds and Austin Ciuffo.

14 THE COURT: All right. Welcome.

15 MR. POYNTER: Good morning, Your Honor. My
16 name is Billy Poynter. I'm Virginia counsel for the
17 Amazon defendants of the law firm Kaleo Legal.

18 With me are Colin Heideman, William Adams,
19 and Mr. Young from the Knobbe Martens law firm.
20 Mr. Heideman and Mr. Adams will be addressing the Court
21 today.

22 THE COURT: All right. Welcome to everyone.

23 We're here on a number of motions, including
24 Amazon's motions to dismiss and to have this matter
25 transferred out to California. I've reviewed the

1 briefing and would be pleased to hear further from
2 counsel. Let me hear you on the motions to dismiss.

3 Let me just ask the question more out of
4 curiosity. You have multiple patents from multiple
5 patent owners all challenging basically the same
6 technology from Amazon pending all over the country.
7 Have any of these lawsuits with respect to any of these
8 patents actually gone to final judgment anywhere?

9 MR. ADAMS: I'm not sure how to -- which
10 lawsuits are you referring to, Your Honor?

11 THE COURT: Well, the challenges to the same
12 technology, the Alexa, the Echo, the Kindle, the Fire
13 technology.

14 MR. ADAMS: Your Honor, there are patent
15 infringement cases filed against Amazon around the
16 country.

17 THE COURT: Right.

18 MR. ADAMS: Many of them go to trial. Many
19 of them were resolved on 12(b)(6) motions like this one
20 where the patents are being asserted against Amazon.

21 THE COURT: Right.

22 MR. ADAMS: It's obviously common for people
23 to either have their own patents or acquire patents and
24 assert them against big tech companies, you know, in an
25 effort to make money. And Amazon is often in courts

1 around the country defending itself against those
2 patent infringement claims. And they sometimes go to
3 trial. Like I said, they're often dismissed at the
4 pleading stage in cases like this.

5 THE COURT: All right. Have any gone to the
6 appeals courts?

7 MR. ADAMS: Many have, Your Honor. We cited
8 some in our brief.

9 THE COURT: Okay. All right. I will be
10 pleased to hear from you.

11 MR. ADAMS: Okay. I just have, Your Honor, a
12 couple of slides. If I may approach?

13 THE COURT: All right.

14 MR. ADAMS: Your Honor, it's just a very
15 basic set of slides that just has the claim language of
16 the three independent claims, one representative claim
17 from each patent, in case we need to refer to the claim
18 language as we talk today.

19 And so I'll start with the Section 101
20 invalidity issue. And just taking a step back, the
21 briefs talk and apply a test from the Supreme Court's
22 decision in *Alice*, which was decided in 2014.

23 THE COURT: All right.

24 MR. ADAMS: That was maybe the most important
25 patent law decision of the past 30, 40, 50 years. And

1 that's because in the '90s and the 2000s and the 2010s,
2 people were filing for patents on all kinds of uses of
3 computers. And the Supreme Court finally stepped in
4 and said, no, you can't get patents on all of these
5 different uses of conventional computers.

6 So there were different types. If you're
7 just going to claim the use of a computer to collect
8 and analyze information, that's not patentable subject
9 matter. If you're just going to use it to claim
10 achieving some result with a computer, you can't do
11 that. That's not patent eligible subject matter. And
12 if you're just going to claim something that people
13 have always done in business, in commerce, and you're
14 going to claim doing that on a computer, that's not
15 patent eligible either.

16 And so this was a huge decision in patent law
17 in 2014. And over the last ten years, the Federal
18 Circuit has delineated and explained what it means to
19 be -- for claims to be directed to an abstract idea.

20 The Supreme Court in *Alice* laid out the
21 two-step test that the parties address in the brief.
22 It's relatively straightforward in that there's a first
23 step where you look at the claim language and you
24 decide is this claim directed to an abstract idea.

25 If so, you go to the second step. And in the

1 second step, you look at what else is in the claim. So
2 setting aside the abstract idea, what else is in the
3 claim, and is there an inventive concept in the claim?
4 Is there some new computing technology recited in the
5 claim?

6 And in the ten years since *Alice*, the Federal
7 Circuit has issued hundreds of decisions explaining
8 what it means for a claim to be directed to an abstract
9 idea, especially in step one. And there's become kind
10 of three categories -- there's more than three, but
11 three that are applicable here -- three categories that
12 the Federal Circuit makes abundantly clear are not
13 patent eligible: Collecting, analyzing, and presenting
14 information; claiming results without a specific way of
15 achieving them; and mental processes or human activity.

16 And the claims here are directed to all three
17 of these. You can place them in any one of those three
18 categories.

19 And so I want to start with the '337 patent,
20 if I may, Your Honor, and just take them in the order
21 that we took them in our briefs. So the first slide
22 that I handed out has a representative claim from the
23 '337 patent, and I'll just -- I'll try to do it
24 quickly. I'll just walk through these claim elements,
25 if I may, Your Honor?

1 THE COURT: Yes.

2 MR. ADAMS: And so the '337 patent, claim 4,
3 which is the representative claim that the parties
4 briefed, recites a voice-content control method. So
5 we're talking about a method, and voice content is just
6 information. So it's basically an information control
7 method comprising the steps that we've labeled A
8 through H.

9 So the first step is calculating a distance
10 between a user and a device. The second step, you
11 acquire voice spoken by the user. So you receive it,
12 for example, using a microphone.

13 In Step C, you analyze that voice and
14 classify it as either a first voice or a second voice
15 depending on the distance. So you have -- you already
16 have the distance from Step A. In Step C, you just
17 categorize it as Voice 1 or Voice 2, near or far. So
18 it's just a classification of the voice in the one of
19 two categories.

20 Step D, you analyze that voice to execute
21 some processing. So in this context, you're going to
22 respond to whatever the question was that was asked.

23 In Step E, you're going to generate, based on
24 the content of the executed processing and output
25 sentence. That's originally text data, and then it's

1 output as voice. So this is just providing a response
2 to the user statement that you acquired in Step B. Now
3 in Step E, you're going to generate a response.

4 In Step F, it says adjusting a sound volume
5 of the voice data. So you're going to adjust somehow
6 the volume of the response that you're providing -- or
7 the device is providing.

8 Again, in Step F, it says wherein. So you
9 have these steps, A through F, and then there's a
10 little more clarity provided in the following two
11 steps, G and H.

12 So Step G says at the generating -- so when
13 you're generating the output sentence -- in G1, it says
14 the first output sentence is generated as the output
15 sentence when the acquired voice has been classified as
16 a first voice.

17 So we already classified the voice up in
18 Step C, and this step is saying, okay, when it's
19 classified as a first voice, you're giving a first
20 output sentence, a first response.

21 In G2, it says a second output sentence is
22 generated as the output sentence in which part of the
23 information included in the first output sentence is
24 omitted when the acquired voice is classified as a
25 second voice.

1 So we already categorized it as a first or
2 second voice. If it's a first voice, in Step G1 you're
3 going to generate a response. If it's a second voice,
4 then in Step G2 you're going to generate a different
5 response that omits some of the information that might
6 have been provided in the first response. And I'll
7 give an example of this in a moment, Your Honor.

8 And then in Step H, adjusting the sound
9 volume of the voice data -- and it says, further
10 adjusting the sound volume of voice data such that the
11 sound volume of voice data obtained by converting the
12 first output sentence differs from the sound volume of
13 voice data obtained by converting the second output
14 sentence.

15 So it's a lengthy claim, but it actually just
16 requires a pretty basic process. And that is, you
17 determine the distance between the person and the
18 device. You receive, for example, their question, and
19 you generate a response. If --

20 THE COURT: And a first voice and a second
21 voice, according to this, is simply a function of the
22 distance; is that right?

23 MR. ADAMS: Correct, Your Honor.

24 And so if the person is near, that's a first
25 voice. If they're far, that's a second voice. So if

1 they're near, you generate a first output sentence at a
2 first volume. If they're far, you generate a second
3 output sentence and provide it at a second volume.

4 This happens every day and has happened every
5 day for as long as humans have communicated, and I just
6 want to give Your Honor two examples:

7 If you ask me a question that calls for some
8 confidential information in my answer, if we're at a
9 sidebar where we are close together and it's an open
10 courtroom and there's people here watching, if we're
11 close together, I would answer your question with a
12 first response. I can give you the confidential
13 information, and I would do it at a lower volume
14 because we're closer together.

15 If you were to ask me that same question
16 standing here, I would give you a second different
17 response. I would omit the confidential information,
18 and I would do it at a higher volume because we're
19 farther away.

20 This scenario happens every day. It happens
21 at the bank. If they ask you information about your
22 account and you're close together, you might give them
23 more confidential information and you would do it
24 quietly. If you were further away and had to say it
25 louder, you would omit some of that information.

1 It happens at doctors' offices. It happens
2 in homes. This is something that happens all the time.

3 And that's all the claim recites: Calculate
4 the distance, acquire the voice, hear what the question
5 is, classify it into a first or second voice depending
6 on distance, generate a first response or a second
7 response -- the second response omits some
8 information -- and you provide those at a different
9 volume.

10 That is an abstract idea. That is human
11 activity. That is exactly what the Supreme Court in
12 *Alice* said is not patent eligible subject matter, at
13 least not without some separate inventive concept. So
14 in step one of *Alice*, if we're looking at whether this
15 claim is directed to an abstract idea, it clearly is.
16 It covers human activity that people have been engaged
17 in and we're engaged in right now. So that's the first
18 reason these claims are directed to an abstract idea.

19 The second test that I mentioned is whether
20 claims are directed to collecting, analyzing, or
21 presenting information. So claims are abstract if
22 they're just reciting a computer doing one of those
23 functions. That's what computers do.

24 So if we walk through those claim
25 limitations, again, calculating a distance is just

1 analyzing some information. Acquiring a voice is just
2 acquiring data. That's collecting information. So you
3 collect the voice information, the sound data. You
4 calculate a distance, which is analyzing some data.
5 You then analyze the voice to classify it. That's,
6 obviously, just analyzing the data.

7 You analyze the voice again in Step D to
8 perform some processing. That's analyzing data. And
9 then you generate an output, and that's presenting a
10 result. And when you present that result, you adjust
11 the volume and you specify -- you tailor the content
12 depending on how near or far, for example, the user is.

13 Every one of those steps is just collecting
14 information, the voice data, analyzing it, the
15 distance -- you classify it, and you analyze what was
16 said -- and you present a result. The result is either
17 the first output sentence at a first volume or a second
18 output sentence at a second volume.

19 We've cited a handful of cases in our brief
20 from the Federal Circuit that hold that tailoring
21 information in that manner is abstract. We know that
22 classifying is an abstract concept. That's in the *In*
23 *re TLI Communications* case. We know that tailoring the
24 output, which is the content or the volume -- you're
25 just tailoring the output -- is abstract. We know that

1 from *Impact Engine, Broadband iTV, Capital One, British*
2 *Telecom*. And there's several more cases we cited.

3 And it's maybe most clearly stated by the
4 Federal Circuit in *British Telecom* when the Federal
5 Circuit said this. They said, quote, We have
6 previously held that tailoring the provision of
7 information to a user's characteristics, such as
8 location, is an abstract idea, close quote.

9 That's exactly what the claim does here. It
10 tailors the provision of information, the output
11 sentence, to a user's characteristics, such as
12 location, which is how far away you are. Whether you
13 call it location or proximity, it's the same thing.

14 So we know from the Federal Circuit that
15 tailoring information based on a user's location is
16 abstract. So, again, a separate second test shows that
17 these claims are abstract.

18 The third test that the Federal Circuit has
19 articulated in the last decade since *Alice* is that
20 claims are abstract when they're directed to results
21 without a specific way of achieving them. And if you
22 look through these claim elements, it's clear that
23 they're abstract for that reason too.

24 They say calculate a distance in Step A. It
25 never says how. It says classify the voice. It never

1 says how to do that. It says generate a first output
2 sentence. It never specifies how to do that. It says
3 generate a second output sentence that omits some
4 information. It doesn't say how to do that or how to
5 decide what information to omit or what information
6 should be omitted. And then it says adjust the volume.
7 Again, it doesn't say how.

8 So each of these three categories -- whether
9 it's a mental process in human activity because it's
10 reciting something that we do every day or the second
11 category, collecting, analyzing and presenting
12 information, or the third category -- it simply claims
13 results without ways of achieving them. If it did any
14 one of those three things, we know from the Federal
15 Circuit precedent that it would be directed to an
16 abstract idea. That's step one. And the Court would
17 have to proceed to Step 2 to see whether there's any
18 inventive concepts.

19 As I mentioned in Step 2, Step 2 looks at
20 what else is in the claim. So once you take the
21 abstract idea out and you don't consider the abstract
22 idea, what is left? Is there an inventive concept
23 somewhere else in the claim?

24 And we know because we just walked through
25 all of those steps of Claim 4. There is nothing else

1 in the claim. Every one of those steps just recites
2 part of the abstract idea. It's just reciting the
3 normal communication that humans have all the time.
4 And so there's nothing left in the claim to even
5 consider, and there are cases like that. And
6 obviously, if there's nothing else in the claim to
7 consider, then the claim is directed to an abstract
8 idea and has no inventive concept and, therefore, is
9 not patent eligible.

10 What plaintiffs seem to be pointing to --
11 even though it's not in the claim itself or the claim
12 maybe generically refers to a voice-content control
13 device. The rest of the patent, the patent
14 specification, makes clear that that device is made up
15 of conventional computer components, generic
16 conventional components working in their normal way.

17 A proximity sensor of any kind working in its
18 ordinary way. A CPU of any kind working in its
19 ordinary way. A microphone of any kind working in its
20 normal way, and a speaker to output the response of any
21 kind working in its normal way.

22 All of the components here that are used in
23 this patent were conventional components used in their
24 conventional manner performing their well-understood
25 routine and conventional functions.

1 And we know from the Federal Circuit cases
2 that if you have an abstract idea and you are
3 implementing it on a generic computer performing its
4 routine conventional functions, that's not patent
5 eligible. Those claims are invalid. That's -- that's
6 what the Supreme Court held in *Alice*. There are a
7 couple of Federal Circuit cases that make it abundantly
8 clear.

9 So in *In re TLI*, the Federal Circuit held
10 that there's no inventive concept under Step 2 where,
11 quote, the recited physical components behave exactly
12 as expected according to their ordinary use. Here,
13 there are not even any components recited in the claim.
14 But if there were, they're just behaving exactly as
15 expected according to their ordinary use.

16 In another Federal Circuit case, *Electric*
17 *Power*, the court held that there's no inventive concept
18 where the claims require only off-the-shelf components.
19 Again, that's what we have here, off-the-shelf
20 components operating in their normal way. There's
21 nothing in the patent that describes a new proximity
22 sensor, a new microphone, a new CPU or a new speaker.

23 The inventors here didn't invent anything
24 new. They took an abstract idea, and they said apply
25 it on a computer. And we know from *Alice* -- the whole

1 point of Alice in 2014 was to make clear that those
2 types of patents are invalid because the subject matter
3 is not patent eligible.

4 And so, Your Honor, that takes care of the
5 '337 patent.

6 The '675 patent is very similar. And so I'm
7 not going to go through the same analysis for the '675
8 patent. The claim language is on the next page of my
9 slide, and there's really only two differences here
10 from the claim we just went through.

11 One, it doesn't require any change in volume.
12 It just requires the two different output sentences
13 based on distance. And it says instead of omitting
14 some information when you're farther away, for example,
15 when you classify it as a second voice, you are going
16 to replace a word.

17 Again, we do this all the time. If we're at
18 a sidebar, I might give you a person's name. If an
19 attorney is standing up here talking, they might say
20 John Doe, right. There's all kinds of scenarios where
21 you might replace one word with another depending on
22 how far you are away from somebody when you're talking
23 and whether you want to disclose that information to
24 other people in the vicinity.

25 So the changes here are -- there's no volume

1 control. There's no requirement that you change the
2 volume. And instead of omitting information, you just
3 replace one word with another.

4 And here it actually says that the proximity
5 or the distance is determined by a proximity detector.
6 Again, the addition of the proximity sensor to the
7 claim. If you were to take the abstract idea out and
8 set it aside -- because we know that's abstract under
9 *Alice* step one -- it's directed to the same thing.
10 It's directed to a mental process or at least a
11 fundamental human activity. It's communication. It's
12 the way people have talked.

13 This claim is also just collecting,
14 analyzing, and presenting or tailoring information
15 that's to be output. And it also claims results
16 without specifying the way to achieve them. So, for
17 *Alice* step one all of the same analysis applies that we
18 just went through.

19 If you take the abstract idea out and you
20 say, okay, what's left in the claim? What else is in
21 this claim? There is nothing here besides the abstract
22 idea except for maybe the generic proximity sensor
23 which, again, is a conventional component operating in
24 its normal way. And so it can't supply an inventive
25 concept.

1 THE COURT: Just summarize again for me how
2 the '675 patent differs from the '337 patent.

3 MR. ADAMS: So it doesn't require a volume
4 adjustment.

5 THE COURT: Right.

6 MR. ADAMS: Instead of omitting information
7 in the second output sentence, it says you replace a
8 word from the first output sentence with a different
9 word when you give your second output sentence, right.
10 So instead of omitting confidential information, I may
11 use another word, like John Doe, instead of omitting,
12 right.

13 THE COURT: Right.

14 MR. ADAMS: So it's just tailoring the
15 information content again based on the distance that
16 you're speaking to somebody.

17 THE COURT: Right.

18 MR. ADAMS: So the analysis is basically the
19 same. And it recites the proximity sensor, Your Honor.
20 It actually recites at least one generic component in
21 the claim limitation; although, that doesn't save the
22 claim in any way.

23 So, Your Honor, that's all I have on the
24 presentation for the '337 and '675 patents. I'd like
25 to move on to the '487 patent unless Your Honor has

1 question about those two.

2 THE COURT: No. Please.

3 MR. ADAMS: Okay. So the '487 patent, Your
4 Honor, is a touchscreen, the use of a touchscreen
5 device. They didn't invent any new touchscreen device.
6 Touchscreen devices were known. You know, iPhones were
7 out in 2007. There were many touchscreen devices.
8 They didn't invent a new touch panel, you know, a new
9 device itself.

10 What they did is they filed a patent
11 application claiming a use of existing touchscreen
12 devices. And so this claim -- it's on Slide 3 of the
13 slides that I passed up, Your Honor. It's long. I
14 will try to walk through it at a high level if you
15 don't mind.

16 THE COURT: All right.

17 MR. ADAMS: So it's a method of controlling
18 an electronic apparatus, a touchscreen device, where in
19 Step A you have indicated objects on display -- those
20 are just icons that are displayed on any given
21 computer -- detecting the user's touches to a touch
22 panel superposed on the display, and acquiring
23 positions of the user's touches to the touch panel as a
24 touch position. Okay. That's just what touchscreens
25 do. They detect touches.

1 Decide whether or not the first and second
2 touch positions are acquired. Okay. That's just have
3 I actually registered these touch positions.

4 In Step D, calculate the distance between the
5 first and second touch positions. Again, you're just
6 analyzing the touch positions. You're figuring out the
7 distance between the two touch positions. Okay. So
8 that's Step D.

9 Step E, now we're going to talk about what
10 happens to those touch positions over time. So Step E,
11 decide whether or not the calculated distance between
12 the first and second touch positions decreases in
13 accordance with the lapse of time. Right. Are they
14 getting closer together? That's all that says.
15 Analyze the touch positions, figure out whether they're
16 getting closer together.

17 F was actually the result. So the result is
18 going to be set a rectangular area with respect to the
19 display and select an object or objects contained in
20 the rectangular area in cases where it is decided that
21 the first and second touch positions are acquired --
22 meaning they've actually been recognized -- and the
23 distance between the first and second touch positions
24 decreases in accordance with the lapse of time.

25 So the result, if it detects this pinching

1 motion, is going to be that it sets a rectangular area
2 and selects objects within it.

3 And the setting selecting is like we've done
4 forever with desktop computers where you click your
5 mouse, you drag it. It sets that rectangular area.
6 And when you let it go, it has selected all of the
7 icons, right, whether it's pictures or folders. And
8 then you can do things with those folders. You can
9 copy, delete, right. It's just setting a rectangular
10 area and then selecting the objects within that area.
11 So that's Step F.

12 Step G, again, just defines the area that's
13 being selected. Wherein two opposite corners of the
14 rectangular area are respectively coincident with the
15 first and the second touch positions occurring at an
16 initial stage of the user's touches to the touch panel.
17 Okay, so the area you're setting is defined by your
18 original touch positions. That's all that's saying.

19 Then we get into H, which is a long
20 limitation that just recites -- and I'll get into this
21 in a second -- what we all do when we analyze whether
22 somebody is pinching, okay. So the setting and
23 selecting step comprises driving a first vector
24 extending from the first touch position occurring at
25 the first moment to the first touch position occurring

1 at a second moment.

2 So, again, we're talking about over time.

3 We'll take -- your thumb is the first touch position,

4 and we're going draw a vector from where it started to

5 where it ended, basically, at a second point in time.

6 And we're going to draw a little vector there.

7 The next clause says, drawing a straight line

8 connecting the first and second touch positions

9 occurring at the first moment, okay. So I have a

10 straight line between my original touch positions, and

11 I now have a vector showing the movement of my thumb.

12 The next clause says, drawing a second vector

13 extending from the second touch position occurring at a

14 first moment to the second touch position occurring at

15 the second moment. That's just the vector representing

16 the movement of my finger, right. It's the other touch

17 position, how it's moving over time.

18 Then you're going to calculate a first angle

19 between the first vector and the straight line, okay.

20 So is my thumb moving along that straight line? What's

21 the angle between my thumb movement and that straight

22 line between, okay. So we're calculating an angle.

23 Then we're going to calculate a second angle

24 between the second vector and the straight line.

25 That's just what angle is my finger moving at relative

1 to the line between the two points.

2 And then you're going to decide whether or
3 not the first angle is smaller than the prescribed
4 angle, and you're going to decide whether or not the
5 second angle is smaller than a prescribed angle, okay.

6 So these are moving relative to the line
7 between the two points. Those vectors, are they less
8 than 30 degrees? Are they less than 45 degrees? Are
9 they less than 90? There's some prescribed angle, and
10 we're just comparing the angle to whatever that
11 predetermined threshold is.

12 And then we move on to Step I. We're in the
13 setting and selecting step, which is up above, further
14 comprises setting the rectangular area and selecting
15 the object or objects contained in the rectangular
16 area, which that's what we've already said was going to
17 happen, right. That happens in cases where it is
18 decided that the distance between the first and second
19 touch positions decreases in accordance with the lapse
20 of time. It already recited that earlier in the claim.
21 So that's just your thumb and your finger. The
22 distance between those two are getting closer together.

23 The first angle is smaller than the
24 prescribed angle -- say it's less than 45 degrees --
25 and the second angle is smaller than the prescribed

1 angle.

2 So all it's doing is taking a touchscreen
3 that already knows how to analyze touch positions and
4 monitor it and calculate things, and it's saying are
5 your thumb and your finger getting closer together?
6 Are they getting closer roughly along a straight line?
7 And that makes total sense because you're trying to
8 detect a pinch gesture, right.

9 And so you need the angles of the movement
10 because if the angle was 90 degrees, your fingers would
11 be doing this, and it would be a different gesture. So
12 if I stand here and I make this gesture, you know it's
13 some kind of rotation gesture. But if they're going
14 along the line between the two points or relatively
15 close to that line, you know I'm pinching, right.
16 That's what people do all the time when they recognize
17 gestures. And if you're on a tablet computer, for
18 example, to recognize a pinch, this is exactly how you
19 would describe it, right.

20 So that's what the claim is describing. It's
21 long. It's lengthy, but it's just describing a couple
22 of things: Collecting, analyzing information, and then
23 presenting the result. Here you're collecting the
24 touch positions. You're analyzing the movement of
25 those positions over time, and then you're presenting

1 the result, which is, okay, I'll make this rectangular
2 area and I'll select the icons within that area.

3 It's also doing exactly what your brain does
4 even though you're not thinking about it. When you're
5 distinguishing between a pinch gesture and a rotation
6 gesture, you're looking at the angle of those vectors
7 relative to the line between the two points. That's
8 how your brain is distinguishing between them.

9 And so if we -- if we then look at the case
10 law and see, okay, is this an abstract idea? We know
11 that it is because it's collecting, analyzing, and
12 presenting information.

13 And we know it from a couple of cases. *SAP*
14 is one of them. It says that selecting certain
15 information, analyzing and using mathematical
16 techniques, and reporting or displaying the results of
17 the analysis is abstract. We know that from the *SAP*
18 case.

19 *Electric Power*, the Federal Circuit said we
20 have treated analyzing information by steps people go
21 through in their minds or by mathematical algorithms,
22 without more, as essentially mental processes within
23 the abstract idea category.

24 So we know that the math behind it is
25 abstract. There are many Federal Circuit cases that

1 say so. And then we know more generally from the
2 Federal Circuit cases we cite in our brief that
3 analyzing gestures is also abstract.

4 So *Thunder Power* -- the Federal Circuit held
5 analyzing gestures was abstract in *Thunder Power*. *IBM*
6 *v. Zillow* is actually really close. That involves
7 drawing an area on a map and then selecting the objects
8 that fell within that area. It's basically the same
9 thing that the patent -- the '487 here claims in *IBM v.*
10 *Zillow*.

11 In *GREE v. Supercell*, the Federal Circuit
12 held that using a known touchscreen device to detect a
13 touch operation and perform a certain function using,
14 for example, a swipe gesture was abstract.

15 And so we know from these Federal Circuit
16 cases that analyzing the positions using a touchscreen
17 device is abstract. We know that analyzing certain
18 gestures, like trying to detect whether they're
19 pinching or rotating, we know that's abstract.

20 And so then if this is directed to an
21 abstract idea, which it clearly is -- it's collecting
22 and analyzing information. It's performing math, and
23 it's doing what people do in their minds just doing it
24 on a tablet computer -- then you go to Step 2 of *Alice*.
25 Then you say what else is in the claim? If you remove

1 the abstract idea, what's left?

2 What's left is the tablet or the touchscreen
3 device itself. The touchscreen device itself is
4 conventional.

5 So the '487 patent says -- this is at
6 column 1, lines 19 to 20 -- input apparatuses,
7 including touch panels, have widely been spread,
8 meaning widely known. This patent was translated from
9 Japanese. So input apparatuses, including touch
10 panels, were widely known is what the patent concedes.

11 In the patent at column 6, lines 18 to 21, it
12 says that the electronic apparatus, which is what
13 they're describing in their patent, may be a
14 smartphone, a tablet type terminal device with a touch
15 panel, or a personal computer with a touch panel.

16 There's no dispute here that this claim, this
17 method is being performed on a conventional touchscreen
18 device operating in its normal way. It's just
19 detecting touches the way they're all designed to do.

20 And so there's nothing inventive in this
21 claim once you set aside the abstract idea. Everything
22 that plaintiff is pointing to as inventive is just the
23 math underlying a pinch gesture or it's just analyzing
24 and presenting information which is abstract. And you
25 can't rely on the abstract idea to say that was

1 inventive in Step 2 of *Alice*.

2 And so Amazon would submit that all three of
3 these patents are invalid. They're all directed to
4 abstract ideas, and they're all applied on conventional
5 generic computers operating in their normal way. And
6 that is exactly what the Supreme Court said in *Alice* is
7 not patent eligible. That's the whole reason they took
8 that case, was to put an end to patents like this that
9 claim uses of a computer they did not invent. Not
10 they -- the inventors in Japan here did not invent the
11 idea that we would speak at different volumes depending
12 on how far away we are or that we might tailor what we
13 say to each other depending on distance. They did not
14 invent a touchscreen device or the pinch gesture.

15 What they're claiming is using generic
16 computers in their ordinary way for these uses that
17 people have used and done forever. Those kinds of
18 patents are directed to abstract ideas. They provide
19 no inventive concept and, therefore, they're invalid.

20 THE COURT: All right.

21 MR. ADAMS: Your Honor, that's all I have on
22 the 101 issue. Did you want me to move on to the
23 failure to state a plausible claim of infringement?

24 THE COURT: Why don't you briefly.

25 MR. ADAMS: So in the complaint, they have a

1 couple of infringement theories. And so to plead a
2 plausible claim of patent infringement, you have to
3 allege sufficient facts for the Court to reasonably
4 infer that the defendant infringes. And you can't just
5 say this is what my patent claim says, and on
6 information and belief your device does that. You have
7 to actually plead facts and have some support that
8 would allow the Court to conclude -- or not to
9 conclude, to infer that Amazon's devices actually do
10 these things.

11 And so I'll talk about the '337 and the '675
12 patents first, which are the voice response patents.
13 They have two infringement theories, and we described
14 them in our brief. The first one is that these Amazon
15 devices somehow classify the voice as a first voice or
16 a second voice using something called voice ID. Voice
17 ID is something that Amazon products use to
18 distinguish -- so if I make a statement to my device or
19 my wife makes the same statement, it can distinguish
20 between the two voices. It recognizes is it me or is
21 it my wife that's talking to the device. But it does
22 that based on a voice profile. It stores your voice
23 profile, and it compares your speech to that voice
24 profile and determines who it is.

25 And you don't have to take my word for it. I

1 think this is the issue they raised in their
2 opposition, Amazon lawyers are just saying so. No.
3 The only document that they cite in their complaint
4 says that voice ID -- it doesn't say classified. But
5 it classifies voices based on a voice profile
6 associated with individual users. That's the document
7 they relied on to explain to the Court how voice ID
8 works.

9 There's no allegation, there's no evidence
10 that voice ID classifies the voice to a first voice or
11 a second voice based on distance. Not only is there no
12 support for that and no evidence of that, but what they
13 cite about voice ID actually says something different.
14 It says -- it doesn't say it classifies voice based on
15 distance. It says, we classify by comparing the voice
16 to a voice profile.

17 There is nothing in the complaint, there is
18 nothing in the documents they cite in the complaint
19 that would allow the Court to infer that voice ID
20 classifies a first voice or a second voice based on
21 distance.

22 And we cited some cases that show that not
23 only is what they cite -- it doesn't support their
24 claim. It's actually inconsistent with it. The fact
25 that voice ID classifies based on a voice profile is

1 contrary to the idea that it classifies voice based on
2 distance. So they've -- with respect to voice ID,
3 which they're relying on for the voice classification,
4 they've failed to state a plausible claim. There would
5 be no basis for the Court to infer right now that
6 that's how Amazon's products work.

7 Their second theory relies on adaptive
8 content. Adaptive content is a feature of some devices
9 that have screens on them where it will detect the
10 presence of a person in the room and it will change
11 what is displayed on the screen, on the home screen,
12 based on the person's -- based on the distance the
13 person is from the device.

14 So I have one at home. If I walk -- if I
15 would walk through my kitchen and I'm not very close to
16 the device, it has bigger font, for example. If you
17 get closer at some point, some of these devices are
18 capable of shrinking the font and putting different
19 information or more information in a smaller font.
20 This is a display on a home screen.

21 It's similar to a screen saver on a monitor.
22 It's there. It's not part of Alexa. It doesn't
23 operate when you talk to it. It's just on the screen
24 when you're there.

25 Again, you don't have to take my word for

1 that. The documents they cite in the complaint talk
2 about adaptive content and what it displays on a
3 screen. There is nothing about adaptive content in the
4 documents they cite that would suggest it's changing
5 the content in response to a voice input or that the
6 changing information that's provided on the screen is
7 somehow provided to the user as a voice output.

8 There's nothing in the complaint that would
9 allow the Court to infer that that information changes
10 based on a voice input or that the different
11 information is provided as a voice output, which is
12 really what the claim requires. The claim requires a
13 voice output. That's one of two things. It's either
14 the original output or it omits some information
15 depending on distance.

16 There's nothing in the complaint that
17 suggests and would allow the Court to infer that
18 adaptive content outputs in voice two different
19 responses depending on how close you are to the device.

20 And it would have been easy for them if the
21 devices actually did this to plead their claim. They
22 could have bought a device for \$25. They could have
23 made a statement when they're one distance -- a certain
24 distance from the device. They could have moved to a
25 different distance and made the same statement to the

1 device. And if it provided a different answer or it
2 omitted some of the original information, they could
3 have pled that.

4 There's a reason why they didn't plead it,
5 but the bottom line is there's nothing in the complaint
6 that would allow the Court to infer that the devices
7 operate the way their claims require. That's with
8 respect to the '337 and '675 patents. We think those
9 claims should definitely be dismissed for failure to
10 state a claim.

11 With respect to the '487 patent, which is the
12 touchscreen patent, the only thing they point to on
13 Amazon's touchscreen devices is that these devices are
14 capable of pinch to zoom, which we're all familiar with
15 now. Like I said, it was available on the first iPhone
16 in 2007 and basically every, you know -- a lot of
17 touchscreen devices since then before their patents
18 were filed years later, right.

19 And so with respect to the touchscreen
20 specifically and specifically their claims, they have
21 no basis and they provide no factual allegation that
22 would allow the Court to infer that Amazon devices when
23 you're pinching set a rectangular area or select any
24 objects within that area.

25 What they are relying on in the Amazon

1 devices is the basic pinch to zoom. Or it's actually
2 pinch -- you zoom out, pinch to zoom out.

3 There is -- there's nothing in the complaint
4 that would allow the Court to infer that when the
5 Amazon devices -- when a user pinches and zooms out,
6 that it is selecting some area and -- or setting a
7 rectangular area and selecting objects within it.
8 There's just nothing in the complaint.

9 They seem to be saying that every touchscreen
10 device that has pinch to zoom functionality infringes
11 or at least that they're allowed to sue every company
12 that has a touchscreen device. And *Iqbal* and *Twombly*
13 require more than that.

14 You have to set forth a plausible
15 infringement claim. You can't just come into court and
16 say, we think it's possible they infringed because they
17 have pinch to zoom. No. You have to plead facts
18 supported -- supported facts that would allow the Court
19 to infer that the Amazon devices actually perform the
20 method in the claim, which includes setting a
21 rectangular area and selecting objects. And there's
22 nothing in the complaint that would allow the Court to
23 infer that.

24 So, obviously, we believe these patents are
25 invalid. They claim patent ineligible subject matter.

1 If any of the patents are not dismissed, then their
2 complaint should be dismissed because it fails to state
3 a plausible claim for infringement against Amazon and
4 the devices.

5 THE COURT: All right. Thank you.

6 MR. ADAMS: Thank you, Your Honor.

7 THE COURT: Let me hear from plaintiffs on
8 the patent issues.

9 MR. REYNOLDS: Good morning, Your Honor.
10 Steve Reynolds. I'll be addressing the *Alice* issues.

11 THE COURT: Yes.

12 MR. REYNOLDS: And then my colleague,
13 Mr. Sprenger, will be addressing the infringement
14 issues.

15 THE COURT: All right.

16 MR. REYNOLDS: Counsel ended his *Alice*
17 discussion by referring to our devices as generic
18 computers. They're not. Two patents are
19 voice-controlled devices. It's right in the claims.
20 The third patent is a touchscreen. They're not generic
21 computers.

22 Much of the case law that arose was when
23 folks took general activities, business activities or
24 human activities, and just moved them onto a general
25 computer to make them be done quicker. But that's not

1 what we're dealing with here. We're not dealing with
2 generic computers.

3 Amazon's approach here has overturned -- or
4 would overturn the *CosmoKey* case, the *McRO* case, the
5 *CardioNet* case, the *Enfish* case, the *Mentone* case --
6 all of them -- their approach to addressing *Alice*. And
7 this is why: The tests they refer to are not tests.
8 They're not. There's one test under *Alice*, okay.

9 These other tests about -- what they call
10 tests about just collecting or analyzing or merely
11 presenting results or merely human analogy, these are
12 proxies that the courts have used. They've recognized
13 that they are imperfect proxies. They are not
14 dispositive proxies. But worst of all, they're
15 conclusions that these courts have reached based on the
16 claims that the courts have looked at.

17 You can't apply those cases -- this is what
18 we call the *ratio decidendi* in our briefs. You can't
19 apply those cases without looking at the claims that
20 they were looking at. Just because a court concluded
21 that a long claim just analyzes and reports results
22 doesn't mean you can just shift the conclusion over.
23 So in our briefing, we've laid out claims from other
24 cases that Your Honor can take a look at and see why
25 they're analogous to our claims.

1 And I would invite you to read the claims in
2 some of their cases. I'll go through one because it's
3 quite clear when we're getting away from something
4 that's specific and when it's something that's just
5 abstract. And I'll go through that in a second.

6 But just taking *Enfish*, the *Enfish* case, this
7 is *Enfish*, okay. General purpose computer, this was
8 held eligible at step one. And you made the table,
9 first row, Courtroom 900, Judge No. 1, okay. But then
10 the next row is a different type of information. We
11 want to know about the judge. So we add another
12 column. We said Judge Trenga and the ID 1. This is
13 what they call the self-referential table because now
14 when you go to 1 and you say, well, what's 1, oh, 1 is
15 Judge Trenga. And it allows you to list different
16 information.

17 I've done it with a pen and pencil. People
18 have probably done this in the past. Upheld under
19 *Alice* on a general purpose computer. Why? Because
20 it's a specific means of improving something. That is
21 the *Alice* test, not these other proxies they're relying
22 on. Amazon ignores that part of the test in their
23 brief because it is so clear that these claims take
24 specific devices and improve them in specific ways.

25 Now, another mistake they made throughout

1 their briefing is they take abstract to mean
2 nonphysical. It's not what it means. Abstract means
3 the opposite of specific. Specific, you know what
4 you're looking at. Abstract, who knows what you're
5 looking at. It doesn't matter that it's a physical
6 device or component or not.

7 So they take -- they go through our claims,
8 and they pull out everything that's a little physical
9 device, like a proximity detector or a microphone, and
10 say, well, that's just a -- that's the only nonabstract
11 part of the claim. Wrong. Wrong.

12 *Enfish v. Microsoft*, that's 822 F.3d 1327 at
13 1335. This is a Federal Circuit case from 2016.
14 Software can make nonabstract improvements to computer
15 technology just as hardware improvements can. And
16 claims directed to hardware can also be invalidated.

17 So the *American Axle* case was a method of
18 producing a drivetrain, and the court said, nah, you
19 don't say how it's done. Even though this is a very
20 mechanical device, it's abstract.

21 So this thinking of abstract as whether it's
22 a solid thing you can touch or it's done on a computer
23 just completely leads them astray. And, like I said,
24 they would invalidate all of these cases that just have
25 general purpose computers that were allowed, like

1 *CosmoKey*. *CosmoKey* had a phone. They just added a
2 separate communication channel, and the court said,
3 hum, specific technological problem solved, done on the
4 phone, using a phone how it operates. Under their
5 rationale, that wouldn't have survived. But that's why
6 the defense side has arranged it this way. They've
7 splintered these tests out so that they can basically
8 just shoot at every single patent.

9 The analogies. The analogies are a problem.
10 We've cited some in our brief. *Alice* said that the
11 analogies can lead you astray. And courts have even
12 said coming up with a human analogy is not alone
13 enough. Again, this is just a proxy that gets to
14 what's the true test under *Alice*.

15 But under their rationale, we pull Garrett
16 Morgan's patent on the traffic light because human
17 beings for a long time have been directing traffic.
18 You know, you use different signals to tell people
19 where to go. Thomas Edison invented the light bulb.
20 So the light bulb, that's -- that's the physical
21 component. People have used light bulbs forever. So
22 under their rationale, you don't get a patent for a
23 traffic light.

24 And so this is where these analogies -- I
25 mean, you've got to have a faithful analogy. If you

1 abstract a claim enough, you will come up with
2 something that looks like a human activity. And the
3 courts say no, no, that's not good enough.

4 The *CardioNet* case we cite rejects the exact
5 same approach, the exact same approach they take here.
6 It says, and I quote -- this is *CardioNet*, 955 F.3d
7 1358 at 1371 -- generalizing the asserted claims as
8 being directed to collecting, analyzing, and reporting
9 data is inconsistent with our instruction that courts
10 be careful to avoid oversimplifying the claims by
11 looking at them generally and failing to account for
12 the specific requirements in the claims.

13 Pulling out gerunds in claims and saying, oh,
14 that's just analyzing; it's not enough. And we put
15 this in our brief. A good example is the *Mentone* case.
16 We had italicized words that look a lot like
17 processing. And if you just look at those under
18 Amazon's rationale, that case should be overturned. So
19 with their broad stroke, they just -- they cut out a
20 lot of patents.

21 Improvement patents are the majority of
22 patents. This spark of genius to create something that
23 never existed before is rare. Most patents -- I bet if
24 you look at Amazon's portfolio, most patents are an
25 incremental improvement on something that existed. And

1 sometimes if you look at it, maybe it looks simple.

2 Maybe it wasn't obvious.

3 The first person who put a spoiler on a car,
4 well, those were on airplanes. And just so we put it
5 on a car and it gave you some down force and it worked,
6 do we say how the spoiler works? No. Everyone knows
7 how the spoiler worked. You know, air generally in
8 circulation, negative lift. That's what it does on an
9 airplane, and you put in on a car.

10 So pulling these patents apart, as they try
11 to do, instead of looking at the claims holistically
12 would defeat just about any patent.

13 In the *Contour* case we cite, it's a very
14 short opinion, and it lays out this *Alice* rationale
15 very precisely. And it says, describing the claims at
16 such a high level of abstraction and untethered from
17 the language of the claims all but ensures that the
18 exceptions to 101 swallow the rule. That's *Contour IP*
19 *Holding v. GoPro*, 113 F.4th 1373 at 1380.

20 So let's talk about specifics. You know, we
21 gave the Court these tables where we put the claims
22 next to each other. And it's not just about the amount
23 of words on the page, which is what Amazon says. If
24 you look at the *CardioNet*, *Contour*, *McRO*, and even the
25 *Mentone* case, they're very similar. They all have

1 these kind of dual streams, dual inputs, and it's the
2 specificity of the words that make these claims
3 similar.

4 The reason I say that is because words can do
5 one of two things. A word can make something more
6 specific, or a word can make something more abstract.
7 So if you add more words to a claim but you've just
8 used broad terms, it can make the claim indecipherable.
9 And I'm going to give you an example in one minute.

10 But most of the time, if you look at the
11 actual claims of the cases they cite, which I've
12 done -- they don't put it in their briefs. But if you
13 look at the claims, the ones that fail have these
14 subjective words, like user preferences, make a
15 decision based on user preferences. Well, what's a
16 user preference? It can be any -- you read the thing,
17 and you're like, well, I don't know what a user
18 preference would be. User selected categories, that's
19 through *Capital One*. Or parameters. You know, they
20 just say make a decision based on a word that could be
21 anything.

22 But look at the claims here. Claim 4 of the
23 '337, calculate a distance. You know what distance is.
24 Just like the spoiler on the car, the claim doesn't
25 tell you how to do it. A distance calculation that was

1 known how to do it, that's not the invention. It's the
2 way the invention's improved. But that's a specific
3 thing for calculating a distance.

4 Classifying the incoming voice as a first
5 recorded voice or a second recorded voice, that's a
6 binary decision, one thing or the other. You're not
7 relying on subjective user or content or preferences.
8 You're making a binary decision, okay.

9 And how did we do that? Oh, we did it with
10 the distance calculation. Specific means improving a
11 device. That is the *Alice* step one rule.

12 But we go further. Some of the limitations
13 make it clear we're dealing with not a general purpose
14 computer but a voice-controlled device. And that's the
15 part about analyzing the voice, generating an output
16 sentence as text data. That's a voice-controlled
17 device. So that did exist. But that's not where the
18 inventive part of these claims lies. We think the
19 claims improved that device.

20 And then it generates one of two sentences.
21 How does it do that? A binary decision. Did we
22 acquire a first voice, or did we acquire another voice?
23 And then we change the content. Oh, how did you do
24 that? Oh, if it's the second voice, you omit
25 information. You look at a limited set, which is then

1 information you want in the first sentence, and omit
2 it. And then you adjust the sound. Adjusting sound
3 can go up or down.

4 And so I don't think that I quoted the *Alice*
5 test. Just so you don't have to take my word for it,
6 but this is *CardioNet*, 959 F.3d at 1358: We begin our
7 analysis with *Alice* step one. In doing so, we look to
8 whether the claims focus on a specific means or method
9 that improves the relevant technology or are instead
10 directed to a result or effect that itself is the
11 abstract idea. That's the test, not these other three
12 tests that they've allowed. Specific means of
13 improving a specific device is eligible.

14 The patent office has this flowchart to
15 figure out how to prosecute claims with all of this
16 madness of *Alice*. And they stuck in their flowchart --
17 it didn't even make sense. Their flowchart with, like,
18 Step A or step one and Step B, and they just jammed in
19 what they called a streamlined pathway. It kind of
20 doesn't make sense but -- in terms of the flowchart
21 because they say -- this is the MPEP, 2106.06. It's
22 called a streamlined analysis: When the eligibility of
23 the claim is self-evident, e.g., because the claim
24 clearly improves a technology or computer function, if
25 you're improving something, you're eligible by and

1 large.

2 THE COURT: Well, as I understand the
3 argument -- tell me if you think this is wrong --
4 Amazon says with respect to the '337 patent, normal
5 human interaction modulates the volume of your response
6 to a question based on distance. So that's just -- and
7 your position is that may be so, but if you're
8 importing that functionality into a voice-content
9 device, not only does that make the concept
10 nonabstract, it's an innovative improvement. Right?

11 MR. REYNOLDS: Correct. And the distinction
12 the courts would draw is whether you're improving the
13 device or using it as a tool.

14 So the *Impact Engine* case they talk about,
15 it's about creating marketing emails based on user
16 preferences and templates. And this is what you do.
17 You'd sit around and figure out with your marketing
18 agency, you know, what you want to put in there. But
19 they say, hey, it will go quicker if I put it on a
20 computer and read in preferences and put a template
21 together. Now, you're not improving the computer. You
22 just moved over and decided to start using the computer
23 incidentally. And that's where this whole question
24 breaks down.

25 But here there's a voice-controlled device.

1 We're improving the device itself.

2 And just as kind of a harebrained proxy, you
3 know, if I'm talking to you or to one of your clerks, I
4 would never consider wheeling in a computer, setting it
5 up, and saying, all right, let me use the computer to
6 help determine who's talking to me right now and then
7 telling me how I can respond to them too. So this
8 isn't a human interaction that you're just using a
9 device incidentally.

10 You don't have to take my word for it. The
11 *McRO* case is instructive here. The *McRO* case
12 recognized that animators had used these morphing
13 weights in the specific process of, like, making it so
14 that, like, animated lips could move. And the court --
15 without getting into all the details, the court said --
16 well, before I get there, the way the human is
17 created -- you can see in the opinion. It just shows a
18 chart, time, morph weight, and then the amount added to
19 it.

20 And if you pull the patent, which is in the
21 complaint, the output looks pretty much the same. So
22 you have what humans used to do. And then they put it
23 on -- this is a general purpose computer. And then
24 they put it on a purpose computer.

25 But the Federal Circuit said, just because

1 it's a task performed by humans does not mean it's a
2 process performed by humans, and it automated the
3 process in *McRO*.

4 Now, I would say that *McRO* is a lot closer to
5 the *Alice* line than ours. Because, like I said, you're
6 never pulling in a computer to help you talk to two
7 people. Whereas in *McRO*, they did kind of pull in a
8 computer to help them animate.

9 But it's just not as simple as Amazon makes
10 it. It just -- drawing quotes from cases and then just
11 asking this Court to render the same conclusion is not
12 helpful without -- I mean, you have got to do some
13 work. You have got to go into these claims and look at
14 them and look at how they operate.

15 So *Electric Power*, this case gets a passim in
16 both their briefs. It's all over the place. I pulled
17 out one of eight limitations. So this is one with lots
18 of words in it. But I'll represent, before I read it,
19 there are three words that could mean literally
20 anything, events, measurements, other power system data
21 sources.

22 Then there are three phrase that further
23 obfuscate those words by using words like derived from
24 an analysis, derived from phasor measurements.

25 And then there are what I call multipliers

1 where they multiply what they might consider. So this
2 is just one limitation. This is the *Electric Power*
3 case that they rely on all through their briefs but
4 never, never recite the claim.

5 Detecting and analyzing events -- you're
6 aware of those -- from the plurality of data streams
7 from the wide area based on at least one of limits,
8 sensitivities, rates of change, or one or more
9 measurements from -- and we get more listing --
10 datastreams and data -- dynamic stability metrics
11 derived from analysis of measurements from the
12 datastreams, including at least one of frequency
13 instability, voltages, power flows, phase angles,
14 damping, and oscillation modes -- so remember one of
15 those things -- derived from the phasor measurements
16 and the other power system data sources in which the
17 metrics are indicative of, one, events; two, grid
18 stress; and/or, three, grid instability.

19 This is why when you read the claims, you say
20 that's abstract. We have no clue what's going on
21 there. None of those words are limited. They could be
22 anything. You don't know what's going on.

23 In ours, very simple. Take a voice, make a
24 binary decision, calculate a distance. You read
25 through the claim, you can tell what's going on. It's

1 specific.

2 And again, the courts have really struggled
3 with this human analogy part. And if you specifically
4 meet the test, you don't need to go back and do the
5 human analogy part. Okay. So that's *Alice* step one.

6 All the Court has to determine here is the
7 claims are tied to a specific device and they're
8 improved using --

9 (Reporter clarification.)

10 MR. REYNOLDS: -- a specific means of doing
11 so and we're done.

12 So *Alice* step two, this is a highly factual
13 inquiry. We pointed out in our brief that Amazon --
14 well, I'll read the standard first because that's going
15 to make more sense. But it's actually a two-part step.
16 So at step two, we consider the elements of each claim
17 both individually and as an ordered combination to
18 determine whether the additional elements transform the
19 nature of the claim into a patent-eligible application.
20 So you look at the components individually but also in
21 combination. So you kind of have to look at it twice.

22 That second part they never did. They just
23 literally repeated the test. They went through and
24 said each individual component they claim was generic,
25 and then they just recited the test. And we pointed it

1 out on response.

2 Then in reply, they didn't really even do it
3 either, but they -- you know, they took a little bit
4 better shot at it, but it's too late. I mean, the law
5 in this court says you can't raise a new argument on
6 reply. And it's very perfunctory, and they were done
7 in just, like, a short paragraph.

8 But, I mean, we can set that aside because
9 you look at all of these devices. You heard counsel go
10 through and say this was generic, this device was
11 generic, this device was generic. Courts have roundly
12 rejected that approach.

13 So the *BASCOM* case they cite rejected the
14 district court when the district court in *BASCOM* --
15 I'll back up a second. Standard computer, standard
16 network. You know how you have these filtering
17 mechanisms to make sure you don't get the bad websites?
18 Well, that filter can be off on the server or it can be
19 on your local computer. And *BASCOM* said, we can
20 improve it by kind of mixing and matching where the
21 filtering mechanism is. A standard computer, a
22 standard network, a standard everything. They're just
23 changing where the filter mechanism is.

24 So the district court went through and said
25 these are all generic components. Fails at step two.

1 The Federal Circuit said, no. It rejected the approach
2 that going through and pointing out that each device is
3 generic controlled the analysis. It didn't.

4 It found that each was generic, but the court
5 said, quote -- and this is *BASCOM v. AT&T Mobility*, 827
6 F.3d at 1341. As is the case here, an inventive
7 concept can be found in the non-conventional and
8 non-generic arrangement of known conventional pieces
9 even if they're all conventional. So what the law is
10 is that conventional is not what it is. It's how it
11 operates. How these devices operate. Is it
12 conventional?

13 Was it conventional for a voice-controlled
14 device to use distance to help identify voices?
15 There's nothing in the record, nothing that says that
16 that was a conventional approach. You can't break them
17 apart.

18 There's a case, *Ollnova Techs Limited v.*
19 *Ecobee*. It's out of the Eastern District of Texas.
20 This is one of the cases we did not cite, but I offer
21 it here as helpful. It's a 2024 U.S. District, LEXIS
22 160521 at page 24. It says you cannot dissect the
23 claims. You cannot break them up at step two and start
24 looking at them separately.

25 It's how all the limitations -- the *Amdocs*

1 case I think they cite. *Amdocs*, 841 F.3d 1288 at 1302.
2 All limitations are considered individually and as an
3 order combination at this step.

4 So you look at them all, look how these
5 devices are operating, and determine whether they're
6 conventional or not. So, yes, a voice-controlled
7 device that operates using distance to classify voices,
8 not conventional. There's nothing in the record that
9 says it does.

10 And it's even more problematic at the motion
11 to dismiss stage. The *Orbcomm v. CalAmp* case we cite,
12 that's from this district, Judge Hudson, said at the
13 motion to dismiss stage, if you're in *Alice* step two
14 and you can't point to anything but just a simple
15 generic computer, it's just -- it's not -- it's not
16 something that can be resolved at this stage. And we
17 clearly are not relying on just generic computers in
18 these claims.

19 Touching on the '487 patent. I mean, this is
20 just about the most self-evident specific improvement
21 that I've ever seen in a patent. The cases they
22 cite -- this *GREE* case they didn't cite in their
23 opening brief but they found it on reply. Because it
24 talks about the claims recite detecting methods on the
25 touchscreen. But the claims never say how it's done.

1 They assume that the touchscreen can detect these
2 methods, and then everything else is done in the
3 general purpose part of the computer. That's why that
4 was not inventive.

5 Ours are tied to the touches on the
6 touchscreen. How does the touchscreen determine what a
7 gesture is? Well, we've improved that. The devices
8 improve how it can sense what the fingers are doing,
9 and it's -- I mean, I think counsel was up here for
10 four minutes going through the claim. It's very, very
11 specific. And by no means is there any indication that
12 it's conventional.

13 Again, if you look at the *Core Wireless* case,
14 *Core Wireless* was upheld. And it was just like a
15 simple menu on your phone that improved, like, how you
16 could see the menu. Well, I mean, ours is more
17 specific and more tied to a physical device.

18 And so I just want to conclude by pointing
19 out the basis for this *Alice* stuff. So the Supreme
20 Court in *Alice* said that we've long recognized that
21 there are exceptions to patentability. Laws of nature
22 and natural phenomenon and abstract ideas are not
23 patentable. There's one primary concern.

24 We have described -- this is quoting *Alice*,
25 573 U.S. at 216. We have described the concern that

1 derives this exclusionary principle, the exceptions, as
2 one of preemption. Laws of nature and natural
3 phenomenon and abstract ideas are the basic tools of
4 scientific and technological work. We have repeatedly
5 emphasized this concern, that patent law not inhibit
6 further discovery by improperly tying up the future use
7 of these building blocks.

8 It's about specificity. How much are you
9 trying to grab with your patent? And that's why *Alice*
10 step one, if it's a specific improvement, if it's tied
11 to a device, it's eligible.

12 *KSR v. Teleflex*, 550 U.S. 398, 418 to 419,
13 this case addressed obviousness. So it's not directly
14 applicable. But it says inventions in most, if not all
15 instances, rely on building blocks long since
16 uncovered. If you pull a claim apart enough, you're
17 going to find building blocks that have existed.

18 When you do what Amazon does, you just
19 eventually -- you pull a claim apart, you're just going
20 to have a couple of letters on a page. But that's not
21 the way claims are to be understood. They're to be
22 understood in their full context.

23 And then *Alice* -- after the Supreme Court in
24 *Alice*, 573 U.S. 208 at 216 says, all inventions embody,
25 use, reflect, rest upon, or apply laws of nature and

1 natural phenomenon or abstract idea. All claims.

2 So of course you're going to be able to pull
3 out an abstract concept from any claim you look at, but
4 you can't do that myopically. You can't just go
5 forward and throw out pieces and then say, oh, well,
6 this part's abstract and then add the pieces back in
7 and say, well, all of those pieces were conventional.
8 It just doesn't make sense with how patent law is
9 developed, and this is the Supreme Court telling you.

10 And again, you have the *Enfish* case that says
11 software can make nonabstract improvements to computer
12 technology just as hardware can.

13 (Reporter clarification.)

14 MR. REYNOLDS: The last thing I'll mention,
15 *Enfish* also makes clear, just so you don't take it from
16 me, that when you look at case law -- and remember,
17 case law is just one of the proxies. You could find
18 these claims eligible just by reading the claims
19 themselves and saying, yep, that's a specific
20 improvement. Done.

21 Some people call this the case law test. You
22 don't need to look at case law, but when you do look at
23 what cases have done with other claims, the Supreme
24 Court has found it sufficient to compare claims at
25 issue to claims already found to be directed in the

1 abstract idea in previous cases.

2 Some of the cases that Amazon relies on,
3 *Capital One*, the *Intellectual Ventures* case, *IBM v.*
4 *Zillow*, they've got multiple claims in there and
5 multiple different analysis. And they don't even tell
6 you which claim that they think is relevant to this
7 case because to them it doesn't matter. They're just
8 pulling out the ultimate conclusion and saying, hey,
9 hopefully, the Court will just assume that this
10 language sounds close enough.

11 It's just -- it's -- it's -- there's no
12 possible way to use that as a basis for invalidating a
13 claim.

14 Yeah, and in the *Intellectual Ventures* case,
15 they rely on a lot. I mean, if you look at that
16 claim -- I'll read it because it's very short: A
17 display depicting portions of a website someone visits
18 as a function of website navigation data. Function
19 how? What? I don't know.

20 And a display depicting portions of a website
21 visited by the user as a function of user's personal
22 characteristics.

23 Yeah, of course that's that. But, look,
24 what's going on? You're browsing a website, and you
25 just pick something based on a function of something.

1 That's a case they heavily rely on in their brief.

2 So, you know, I don't -- it's too late to
3 have them put the claims in the precedent they're
4 relying on into the briefs, but it sure would help us
5 if they did.

6 Let me make sure I didn't miss anything.

7 That's it, Your Honor. Thank you very much.

8 THE COURT: All right. Thank you.

9 Let me hear from counsel on the 12(b)(6).

10 MR. SPRENGER: Hi, Your Honor. Kevin
11 Sprenger. I'll be arguing the 12(b)(6).

12 THE COURT: Yes.

13 MR. SPRENGER: So here's the reality, Your
14 Honor. Right now we're at the pleading stage for
15 Rule 12 motion to dismiss. Amazon has not given us a
16 single document in discovery. They have not turned
17 over any source code. You know, discovery requests
18 have been served but, you know, there's been no
19 exchange of documents or source code, Your Honor.

20 And right now Amazon is basically saying that
21 we acknowledge that the accused products exist. We
22 acknowledge that the features that are identified in
23 the complaint exist. We acknowledge that the
24 features -- that those specific software features are
25 in those accused products. But we don't acknowledge

1 that that's enough to allow the Court to draw a
2 reasonable inference that those features work together
3 within that black box.

4 THE COURT: Well, I understood their argument
5 to be a little different. With respect to the '337
6 patent, as I understand their argument, there's no
7 facts that would make plausible that the accused
8 features use this voice modulating feature of the
9 patent that their accused devices don't increase the
10 voice based on distance.

11 MR. SPRENGER: Well, that's their allegation,
12 Your Honor.

13 THE COURT: Right. But what they're saying
14 is you've not alleged any facts that make plausible
15 that claim as an infringing aspect of their accused
16 devices.

17 MR. SPRENGER: Well, we have, Your Honor, in
18 the sense that our allegations -- which by the way,
19 Amazon cherry-picked specific sentences from our
20 allegations and ignores a lot of what's in there. Our
21 allegations, again, they cite specific features in
22 these black box products, and they have factual
23 allegations, some of which are on information and
24 belief because we don't have the source code, Your
25 Honor. We have no way of knowing what's going on

1 within that black box. We have --

2 THE COURT: You would know whether the
3 accused features modulates the voice based on distance;
4 wouldn't you? I mean, what would you need to know
5 other than to --

6 MR. SPRENGER: Sure. Again, Your Honor, so
7 these are --

8 THE COURT: -- use the feature?

9 MR. SPRENGER: Right. So again, Your Honor,
10 this is the brain of the device, which is all in the
11 source code. So these adaptive content and, you know,
12 sensing features and camera sensing and so forth, these
13 are all software and hardware modules within the black
14 box, and they're working with the Alexa brain of the
15 device. And we have no way of knowing for sure whether
16 those things are working together or not.

17 THE COURT: You can't tell by using Alexa
18 whether it modulates the voice based on distance of the
19 speaker?

20 MR. SPRENGER: So we've cited papers, Your
21 Honor, Amazon's own evidence, saying that, for example,
22 SIR beamforming is capable of actually, like, tracking
23 a voice around the room. So that -- that in and of
24 itself is a way of, you know, locating voices relative
25 to the device. So we know that that feature exists in

1 the products.

2 THE COURT: But the invention, as I
3 understand it, is that once that information is
4 obtained, then the voice-content control device
5 modulates the volume of the voice based on the distance
6 of the speaker. That's the core of the invention, as I
7 understand it; is that right?

8 MR. SPRENGER: That's correct, Your Honor.

9 THE COURT: Right. What have you alleged
10 that makes that a feature of the Alexa or other accused
11 devices?

12 MR. SPRENGER: So we know, again, Your Honor,
13 that the devices are capable of tracking voices around
14 the room.

15 THE COURT: Let's assume that's the case.

16 MR. SPRENGER: We know that the Amazon
17 products are also capable of classifying voices and
18 displaying, for example, different content or
19 responding audibly with different content based on
20 who's speaking.

21 So again, the inference -- the reasonable
22 inference that the Court can draw at this stage,
23 without having access to source code, is that a black
24 box product that's capable of tracking a person around
25 the room and also capable of saying, hey, this is

1 person A versus person B, we're going to display or
2 respond audibly with person A's information or
3 person B's information, that those functions are
4 working together.

5 THE COURT: Well, is that enough though?
6 Even if you assume that through the software they use
7 it's capable of doing that, doesn't it necessarily
8 require they're actually using that functionality to
9 invalidate your patent?

10 MR. SPRENGER: I'm sorry, Your Honor. I
11 don't --

12 THE COURT: Well, as I understand what you're
13 saying, you need the source code, you need the software
14 to establish that it has this functionality to
15 distinguish between users based on distance and then
16 modulate the volume response. Correct?

17 MR. SPRENGER: Correct.

18 THE COURT: But even if it has that
19 functionality or that potential, in order to infringe
20 the patent, they have to actually utilize that
21 functionality; don't they?

22 MR. SPRENGER: That's correct, Your Honor.

23 THE COURT: All right. And you can tell that
24 by simply using the Alexa's feature; can't you? I
25 mean, you can use Alexa and say, Alexa. And you can be

1 different distances and see if the voice modulates
2 depending on the distance.

3 MR. SPRENGER: Sure. Well, for example --

4 THE COURT: And have you alleged that it does
5 that?

6 MR. SPRENGER: Excuse me, Your Honor.

7 (Counsel confer.)

8 MR. SPRENGER: Sorry. One second, Your
9 Honor.

10 (Counsel confer.)

11 MR. SPRENGER: So, Your Honor, the devices
12 modulate based on distance. And again, in SIR
13 beamforming, they're determining how far a speaker,
14 meaning a person, is away from the speaker. So again,
15 it's a matter that the voice classification feature is
16 working with a feature, such as SIR beamforming or any
17 other sort of, you know, camera sensing and so forth,
18 to actually detect how far the voice is from the
19 device.

20 And just another example of this, Your Honor,
21 is the whisper function where the device can, you know,
22 essentially detect whether a person is whispering to
23 the device and then respond at a whisper level voice as
24 well. That's just another example of -- we've
25 identified these peripheral features, Your Honor, that

1 infringe the claims, but we have no way of knowing
2 what's really going on inside there at this stage.

3 THE COURT: All right. What about the '447
4 patent? I'm sorry, the '487.

5 MR. SPRENGER: '487, okay.

6 THE COURT: What is there about these accused
7 devices that infringe that patent?

8 MR. SPRENGER: Right, Your Honor. So again,
9 we've pointed to the ability for pinch to zoom out, and
10 we've identified that in the allegations, that the
11 devices are capable of zooming out when you pinch.

12 Amazon's argument seems to be one of a claim
13 construction, Your Honor. They're saying that, oh, the
14 devices don't select a rectangular area and they don't
15 set a rectangular area. As a preliminary matter, that
16 in itself is an argument about claim construction,
17 which we've not yet entered in this case.

18 THE COURT: Right.

19 MR. SPRENGER: And again, we don't know
20 without source code to know exactly how their
21 touchscreen feature is working to know these details at
22 the time. But we do know that the use of the device
23 itself using pinch to zoom on these devices, it's a
24 very reasonable inference at this point that, for
25 example, the screen is a rectangle. Whatever is in the

1 screen is, you know, selected when you pinch to zoom
2 out, Your Honor.

3 THE COURT: All right.

4 MR. SPRENGER: So this is just another
5 example.

6 Again, Your Honor, it's important at this
7 stage that Amazon has not denied that these features
8 exist. It's not denied that these features are in the
9 accused products. It's not even really denied, you
10 know, holistically in terms of how they're working, how
11 we allege that they work. They're saying that we
12 haven't presented sufficient evidence. But again, this
13 is all that's publically available at this time. So
14 we've presented the best evidence that we could without
15 knowing more.

16 THE COURT: All right. I understand.

17 MR. SPRENGER: Okay. Amazon also sort of
18 holds SoundClear's complaint to a heightened legal
19 standard at this stage, Your Honor. They're saying
20 that, you know, we haven't, you know, met the standard
21 based on what's in our complaint. But again, the
22 reality is we only need to --

23 One moment, Your Honor.

24 At this stage, the Fourth Circuit has held
25 that district courts must accept all of the factual

1 allegations in the complaint and draw all reasonable
2 inferences in favor of the plaintiff. So they can't,
3 you know, cherry-pick one statement out of our
4 complaint and say, oh, we're going to ignore everything
5 else that they've said but this statement that
6 contradicts some aspect of the complaint and,
7 therefore, they fail plausibility.

8 They're ignoring everything else. They're
9 not drawing any reasonable inferences from our full
10 allegations, Your Honor. And that's thematic actually
11 of Amazon's motion.

12 THE COURT: All right. Well, what it sounds
13 like is you're suggesting that the Court simply defer
14 ruling on these issues until claims construction and
15 summary judgment.

16 MR. SPRENGER: Well, that would -- that would
17 certainly be better than dismissal, Your Honor, at this
18 stage. But, you know, it's a valid point. You know,
19 many of the cases that Amazon is citing to support
20 their legal standard are cases that are about summary
21 judgment. And again, that's not where we are at this
22 stage.

23 THE COURT: All right. I understand.

24 MR. SPRENGER: My colleague is going to step
25 up. Thank you, Your Honor.

1 MR. REYNOLDS: Do you mind, Your Honor, if I
2 just try to address one of your questions?

3 THE COURT: On 12(b)(6)?

4 MR. REYNOLDS: Yes.

5 THE COURT: Go ahead.

6 MR. REYNOLDS: I apologize, Your Honor. I
7 will be very quick.

8 But the claim uses distance to classify the
9 speaker. It doesn't use distance directly to modulate
10 the volume. So you can't determine whether it meets
11 the claim just by knowing if one speaker gets closer to
12 the device or not and has the volume change because it
13 uses distance to figure out who's speaking. So you
14 would have to look at two different users and figure
15 out what they're speaking.

16 That makes it just a little bit more
17 complicated to figure out what's going on.

18 THE COURT: All right. But isn't that
19 determinable by use of the device, use of Alexa or Echo
20 or whatever?

21 MR. REYNOLDS: It is. They have multiple
22 functions in there for determining distance in this
23 adaptive content. You can have it read the content
24 back to you so that it's -- they're claiming it's just
25 a visual, but that's -- that's not the case. It can be

1 audibly done.

2 There are different features, the whisper
3 mode and then you've got the view finder which locates
4 folks. So, you know, we're not -- it's not necessary
5 at this point to limit ourselves to, you know, what
6 specific function is operating. And the brain can be
7 using all of them. They've got all the inputs in the
8 brain.

9 THE COURT: All right.

10 MR. REYNOLDS: So yeah, I think there's a
11 rational basis when you have two users in two different
12 spots speaking to Alexa. It figures out who you are,
13 and you know it's got this capability. That's enough
14 for plausibility.

15 And that was Steve Reynolds. I'm sorry. I
16 didn't introduce myself.

17 THE COURT: That's all right.

18 Counsel.

19 MR. ADAMS: Thank you, Your Honor. I'll step
20 back to the 101 issue if that's okay with Your Honor.

21 THE COURT: Yes. What about this notion that
22 even though admittedly what we're doing is taking an
23 aspect of human interaction that requires collecting,
24 analyzing, and presenting a result, we're incorporating
25 that into a computer essentially, and that's an

1 innovative concept that deserves protection?

2 MR. ADAMS: That's exactly what *Alice*
3 addressed, right, and so that's why there's the
4 two-step test. You first determine which claim
5 limitations reflect the abstract idea. And then you
6 look at what else is in the claim, and you decide is
7 there some inventive concept there? Did they improve
8 computer functionality in some way in that second step?

9 And that's why the Court looks at what are
10 the computer components that are being used. If
11 they're conventional computer components being used and
12 they're well-understood routine and conventional
13 matter, that patent is ineligible.

14 There are all kinds of patents. All of these
15 computer patents that have been invalidated, hundreds
16 since *Alice*, right, hundreds of decisions. They all
17 claim to do something new on a computer.

18 So take *Capital One*. *Capital One* was about
19 personalized web pages based on the location of the
20 person viewing the web page. Under their theory, that
21 would be an improvement to the computer because you're
22 using some data, the location, to improve the content
23 that's being provided. And the Federal Circuit said,
24 no, that's not an improvement to the computer itself.
25 That's an improvement to information being provided,

1 which is abstract.

2 These claims recite exactly the same thing.
3 They're trying to claim an improvement to the
4 information provided. It's tailored, and it's tailored
5 based on some input. In *Capital One*, it was the
6 location. Here, it's distance, which is essentially
7 the location of the person talking.

8 And they analogized in that *Capital One* case
9 to newspaper inserts. So it was a common practice for
10 a long time to have different newspaper inserts based
11 on the location of the recipient of the paper. And
12 they allegedly in that case improved that by doing it
13 on a computer.

14 And the argument was we improved the computer
15 because it improves the information. It's providing
16 customized information that's never been provided
17 before. And the Federal Circuit said, no, you can't do
18 that. You're just taking something that's been known,
19 a practice that's been known for a long time, and
20 you're implementing it on a computer.

21 That's exactly what they're doing here.
22 They're taking something that's been done forever, and
23 they're implementing it on a computer. They're
24 tailoring the information that's being output by the
25 computer based on a data point, which is the location

1 of the user or the distance to the user. Clearly not
2 patent eligible under the cases that we've cited in our
3 briefs.

4 The cases that they point to when counsel got
5 up, totally different. None of them relate to
6 providing information. Even Your Honor's
7 characterization of the claim of modulating the voice
8 based on the distance, clearly an abstract idea. The
9 fact that you referred to that as the core of the
10 invention and counsel agreed basically ends this
11 discussion. It's clearly directed to an abstract idea.

12 And so the question is, okay, it's directed
13 to an abstract idea. What else is in the claim?
14 Nothing, generic computer components, known microphone,
15 known CPU, known speaker, and a known proximity sensor.

16 And so what they're trying to do during their
17 argument is make it sound like the addition of this
18 proximity sensor somehow made it new. And we know,
19 again, from the case law that that doesn't make it
20 enough.

21 So there are cases. *In re TLI Communications*
22 is one of the cases. They added a camera to a phone,
23 and they claimed that that was new because -- and then
24 they send the images to a server. They did some
25 classification of the images. And they claimed that it

1 was new because they added this camera to a phone
2 device, a communication device. The Federal Circuit
3 said, no, you're using the phone as it's always been
4 used to communicate, and you're using the camera the
5 way it's always been used to capture images. Adding
6 those two known components is not an invention if
7 they're both working in the way they've always worked.

8 *Content Extraction* was another case where the
9 claim added a scanner to a computer. That was about
10 scanning checks and extracting information. A computer
11 scanning a check and extracting the account information
12 and information from the check that it read, doing
13 things that tellers had done -- bank tellers had done
14 forever by using a computer to do it. And they claim
15 that it was new because they added a scanner to the
16 computer.

17 The Federal Circuit said, no, that's not an
18 inventive concept because you're using the scanner the
19 way it's always been used. You're using the computer
20 the way it's always been used to analyze and extract
21 the information. And so you -- and it's a longstanding
22 fundamental practice. And you don't get to use these
23 conventional components to do something that's a
24 longstanding practice.

25 And then the *University of Florida Research*

1 *Foundation* case we cite in our brief has a similar
2 outcome. There you were taking data from two bedside
3 machines in a hospital, and you were sending that to a
4 computer to do some functions. And they argue that it
5 was patent eligible because they used these combination
6 of machines. And the Federal Circuit said, no, you're
7 using each of them the way they've always been used.

8 And so this idea that the addition of the
9 proximity sensor somehow made this new to detect the
10 distance, it's not enough, and it's not even true.
11 That's not the invention. If you read through this
12 patent, it never describes any problem that the
13 inventors overcame in incorporating a proximity sensor
14 into a computer. And in fact, it says in one sentence
15 a proximity sensor can be used to detect the distance.

16 There was nothing new about using it.
17 There's nothing new about taking a proximity sensor and
18 sending that data to a computer. That's what proximity
19 sensors do. One sentence in their patent.

20 If this whole patent was about how hard it
21 was to incorporate a proximity sensor into a computer
22 and all the problems the inventors faced and what they
23 had to do to overcome it, okay, you might have a new
24 computing device. That's not the case here. One
25 sentence, and it says you can use a proximity sensor.

1 It's really no different than the microphone.
2 The microphone is a sensor. It's just a sensor for
3 capturing sound data instead of distance data. The
4 claim here is receiving that data, collecting it,
5 analyzing it, and then tailoring the output.

6 And so they complain that on the one hand
7 that we're doing it at too high of a level, and then
8 they're complaining that we're going into too much
9 detail on the claims. I walked through every claim
10 limitation with the Court because that's what *Alice*
11 says to do. You walk through the claim limitations.
12 You determine which of those claim elements reflect an
13 abstract idea under step one, and then you look at what
14 else is under step two.

15 The cases they cite are very different. They
16 have nothing to do with providing information to a user
17 or customizing information to a user. *Enfish*, which
18 they relied on, actually improved the way computers
19 retrieve information. It was an actual improvement to
20 the computer itself. Totally different and not related
21 to providing information.

22 They referred to *Contour IP*, which is a
23 camera case that changed the way cameras function. It
24 was an improvement to the device, and it did not
25 reflect any fundamental practice.

1 They referred to *CardioNet*. *CardioNet* was a
2 medical device that analyzed heartbeats, and the
3 Federal Circuit found that that was not abstract
4 because it referred to a process that doctors had never
5 used before. It wasn't just taking something that was
6 known and applying it on a computer. They actually had
7 a new process that wasn't done before.

8 *McRO* related to 3D animation. And again, the
9 difference there was that they didn't just take the
10 abstract idea how animators had done things for years.
11 They actually had a different way of animating that
12 humans had not used before. It improved the
13 functioning of the computer, and it did not reflect any
14 kind of fundamental practice in the industry.

15 And then they referred to *CosmoKey*, which is
16 a server authentication or a network authentication
17 case. And there are cases that say if you have
18 actually improved the security of a network, you've
19 improved the network itself. And so that case is very
20 different.

21 In that area, there's a whole line of cases.
22 Some kinds of authentications. So if you're just doing
23 authentication where you -- if authentication just
24 mimics what people have done forever in terms of
25 getting ID or location information, the Federal Circuit

1 has said those are abstract ideas and they're patent
2 ineligible.

3 There are other network security patents that
4 actually do improve the network itself, and that was
5 *CosmoKey*. And that's why that claim was patentable.
6 It was an actual improvement to the network itself.

7 This case and the claims here do not improve
8 the computer itself. It does not improve -- it's not
9 an improved proximity sensor. They didn't invent a new
10 proximity sensor. They didn't invent a new microphone.
11 There's no improved computer component here. They're
12 all used in their ordinary fashion to do what they've
13 always done.

14 They also said that it's different here and
15 this is nonabstract because it makes a binary decision
16 based on distance. That's exactly what was happening
17 in *Capital One*, is making a decision based on the
18 location of the user and displaying certain
19 information. The same is true in these claims. It's
20 just outputting it audibly instead of on a computer
21 screen.

22 That's all I have, Your Honor, on the 101
23 issue.

24 THE COURT: All right.

25 MR. ADAMS: If I could just move quickly to

1 the pleading issue. It seems like what they're saying
2 is that they had no actual basis for filing this case.
3 They don't know how the Amazon products work. The
4 reality is they don't need the source code. There are
5 tons of documents available because developers use
6 these products all the time and develop new apps and
7 develop different products that work with them.

8 There is a ton of information publicly
9 available about how these features of the accused
10 devices work. They know how they work. They don't
11 work the way the patent claims -- in the way the patent
12 claims require. That's why they couldn't plead a
13 plausible claim of infringement.

14 They say that beamforming tracks the location
15 of a person around a room, it determines the direction
16 of who's speaking to the device. There is nothing in
17 their complaint to suggest that beamforming calculates
18 the distance and then classifies the voice based on
19 that distance.

20 They said that voice ID --

21 THE COURT: The whisper function.

22 MR. ADAMS: So that's another one. So the
23 whisper function analyzes the voice and determines
24 whether it has the characteristics of a whisper. When
25 you speak in a whisper, your vocal cords don't vibrate

1 the same, and it makes different sounds. And it
2 determines whether you're whispering or not. It
3 responds in a whisper if it thinks you're whispering to
4 it. Nothing to do with distance.

5 It's not if I stand back here and talk to the
6 Echo device, it gives me one response. And if I stand
7 closer it, it gives me a whisper response. It's if I
8 whisper to it, it detects a whisper, and it gives me a
9 response. It doesn't change the information that's
10 provided, and it doesn't change the volume.

11 Whether I whisper from far away or close,
12 there's no indication in their complaint that it
13 changes the volume. So the whisper issue was not
14 really briefed, but I think there's good reason why
15 they didn't rely on that in the briefing.

16 THE COURT: All right.

17 MR. ADAMS: They rely on voice ID in this
18 distinguishing between person A and person B. That is
19 not what the claims talk about. The claims talk about
20 classifying voice based on the distance to the device
21 and providing a different response at a different
22 volume based on the distance. It's not classifying
23 between two different people.

24 What they haven't pled is that voice ID, when
25 it responds, it is classifying the voice based on the

1 distance. It's not. The document that they cite in
2 the complaint says that voice ID classifies a voice, if
3 you want to use that phrase, categorizes the voice or
4 determines who's talking by comparing the voice to a
5 voice profile. Nothing about distance helps it
6 determine whether it's person 1 or person 2 talking.

7 So the whole idea in their complaint that
8 this patent is about two different people talking,
9 there's no support for that. It's nowhere in the
10 claim. It's not just the -- this two-person scenario
11 is nowhere in the entire patent for the '337 or the
12 '675.

13 And so this idea that these products are a
14 black box, that they don't know how they work is simply
15 not true. They could test it easily themselves. There
16 are -- there's tons of information available about how
17 these products work, and the developers get a bunch of
18 information. The reality is they just couldn't find
19 any information to support their claim.

20 And what they were required to do is provide
21 in their complaint facts that would allow the Court to
22 reasonably infer that the products infringe these
23 claims, and they haven't done that. And for that
24 reason, the complaint should be dismissed.

25 THE COURT: All right. Thank you.

1 MR. ADAMS: Thank you, Your Honor.

2 THE COURT: There's also pending the motion
3 to transfer. I've read the fulsome briefing on that
4 and unless -- but I will give counsel an opportunity to
5 tell me something that they've not already told me. I
6 don't need extended argument beyond that.

7 Counsel.

8 MR. ADAMS: Your Honor, William Adams from
9 Knobbe Martens on behalf of Amazon.

10 THE COURT: Yes.

11 MR. ADAMS: I think what we put in our brief
12 tells the story.

13 THE COURT: Yes.

14 MR. ADAMS: I don't think we have anything to
15 add to that. So I think we'll rest on what's in the
16 papers.

17 THE COURT: All right. Fine. Thank you.

18 Counsel, anything you want to say about this?

19 MR. CIUFFO: Yes, Your Honor. Austin Ciuffo
20 for SoundClear.

21 The one thing that I think is really worth
22 highlighting in this case, as you read, Your Honor, is
23 in the days following Amazon's motion to transfer, we
24 conducted a preliminary due diligence into the location
25 of witnesses, both Lab 126 witnesses and Alexa

1 witnesses, which Amazon did not discuss at all in their
2 motion and another reason it fails.

3 It turns out that a very important person to
4 this case, the head of new products for Lab 126, it
5 was, as of the days following their motion, located
6 here in the State of Virginia in McLean. In the days
7 leading up to submitting our response motion, he
8 changed his profile on his LinkedIn to get rid of
9 McLean. He didn't change anything else on his LinkedIn
10 profile, and now it just says the United States.

11 So we have an issue here where we're not
12 certain that the assertions in Amazon's motion are
13 actually truthful. We are not really understanding
14 what's going on behind the scenes. Because we point
15 this out in our response brief, and on reply, Amazon
16 doesn't say a word about it.

17 THE COURT: All right.

18 MR. CIUFFO: There is no explanation.

19 THE COURT: All right. Thank you.

20 MR. CIUFFO: Thank you, Your Honor.

21 THE COURT: Counsel, I'll give you a chance
22 to respond to that.

23 MR. ADAMS: Your Honor, I will be very brief.

24 THE COURT: Yes.

25 MR. ADAMS: The person they point out that

1 they say we've allegedly somehow helped this person
2 change their LinkedIn profile has no relevance at all
3 in this case. We set forth declarations that show the
4 accused products were designed out in the Northern
5 District of California. They searched the Internet and
6 LinkedIn apparently for people.

7 And even in their motion, even in their
8 opposition, they say there's 8,000 relevant people
9 in -- I mean, how can that be possible? There's 8,000
10 relevant witnesses?

11 But all that aside, they reference one person
12 they found with a LinkedIn profile that, frankly, is
13 irrelevant to this case. And the allegation that I
14 think I'm hearing that we've somehow helped this person
15 who we believe, based on the public information, is
16 completely irrelevant to this case. Not one of the 50
17 people that designed and developed this product, had
18 anything to do with this product I think is just
19 baseless. So I'll leave it at that.

20 THE COURT: All right.

21 MR. ADAMS: That's why I don't think it
22 needed to be addressed in the briefing.

23 Thank you, Your Honor.

24 THE COURT: All right. Thank you.

25 The Court is going to take these under

1 advisement. I'll get an opinion for you on both
2 motions just as soon as I can.

3 Arguments were very helpful. I appreciate
4 all counsel's efforts on that.

5 And with that, I'll stand in recess.

6 -----

Time: 11:55 a.m.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I certify that the foregoing is a true and
accurate transcription of my stenographic notes.

/s/

Rhonda F. Montgomery, CCR, RPR