

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

VALTRUS INNOVATIONS LTD. and
KEY PATENT INNOVATIONS LIMITED,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 3:24-cv-03249-S

JURY TRIAL DEMANDED

**PLAINTIFFS VALTRUS INNOVATIONS LTD. AND KEY PATENT INNOVATIONS
LIMITED'S OPPOSITION TO DEFENDANT GOOGLE LLC'S MOTION TO DISMISS**

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I. INTRODUCTION

Valtrus is the successor in interest to a substantial portion of the Hewlett Packard Enterprise patent portfolio, which covers technologies that were at the center of the early Internet and cloud computing revolutions. Among these foundational technologies is United States Patent No. 7,939,967 (“the ’967 Patent”), which recites novel and specific means of configuring hardware components to create redundant power supply systems, such as those used in data centers. The claimed apparatuses—physical machines—solve particular problems that plagued prior art systems. For example, the ’967 Patent explains that a “typical” prior art scenario involved two power supplies simultaneously bearing “an approximately equal share of the load” while providing power to a system. ’967 Patent at 1:7-8. “[S]uch a balanced load sharing approach,” however, “often results in each power supply operating with less than optimum efficiency.” *Id.* at 9-10. The ’967 Patent’s claimed invention addresses this technological challenge by, for example, utilizing a first power supply “configured to issue an alert signal indicative of a failure condition of the first source of electrical energy” and a second power supply “configured to transition from a *lesser output level* to a *greater output level* in response to an activation signal.” *Id.* at claim 1 (emphasis added). During prosecution, the patent examiner emphasized that this was a point of novelty in the invention:

[T]he prior art of record does not disclose or suggest, inter alia, the first power supply configured to issue an alert signal upon failure of the first source and a second power supply configured to transition from a lesser output level to a greater output level.

File History (Dkt. 29-2) at ECF 44.

The ’967 Patent further claims a related, yet distinct, means of addressing the issue of inefficient load sharing by requiring one power supply to operate in “no-output (i.e., standby) mode,” ’967 Patent at 3:66, while the other power supply provides “normal operating power,” *id.* at 4:2. Such “primary/standby” systems allow for “operation at or near optimum efficiency.” *Id.* at 4:50-52; *see also id.* at claim 6 (“the first or second power supply configured to operate at a lesser output level in

response to a ***standby signal***” (emphasis added)). The user, however, can suffer if there is a lapse of power between one power supply’s failure and another’s turning on (such as a diesel generator that must fire up before providing power). A means of addressing this problem involves the use of “internal or external energy storage,” such as capacitors, configured to “provide a brief period of normal operating power . . . while the other power supply is in transition,” such that there is no “interruption in operating power.” *Id.* at 4:2-4, 5:20. Accordingly, claimed embodiments of the ’967 Patent recite “the first power supply further configured to provide operating power to the electrical load ***while the second power supply transitions*** from the lesser output level to the greater output level.” *Id.* at claim 2 (emphasis added); *see also id.* at claim 8.

The ’967 Patent is not directed to an abstract idea. To the contrary, it claims industrial machines configured in particular ways to solve specific technological problems. *See CardioNet, LLC v. InfoBionic, Inc.*, 955 F.3d 1358, 1368 (Fed. Cir. 2020) (claims reciting “an improved cardiac monitoring device” that “achieve[d] multiple technological improvements” were not directed to an abstract idea); *see also Contour IP Holding LLC v. GoPro, Inc.*, 113 F.4th 1373, 1379 (Fed. Cir. 2024) (reversing district court’s determination that claims for an improved video camera were directed to abstract subject matter because the claims “require[d] specific, technological means . . . that in turn provide[d] a technological improvement”). The particular apparatuses claimed are far removed from those typically invalidated under Section 101; indeed, they are physical apparatuses that solve technological problems. *See SRI Int’l, Inc. v. Cisco Sys., Inc.*, 930 F.3d 1295, 1303 (Fed. Cir. 2019) (“The specification bolsters our conclusion that the claims are directed to a technological solution to a technological problem.”); *see also Scale Video Coding LLC v. Cisco Sys., Inc.*, No. 4:23-CV-803-SDJ, 2025 WL 993364, at *8 (E.D. Tex. Apr. 2, 2025) (“The claims and specification set forth how the claimed . . . system solves these problems by improving the efficiency of the internet network.”).

Moreover, the ’967 Patent’s claims recite at least three distinct inventive concepts, described

above and in more detail below, which Valtrus and KPI pleaded would not have been “well understood, routine, or conventional at the time of the invention” to a person of ordinary skill in the art (“POSITA”). *See* Compl. (Dkt. 29) ¶¶ 16, 19, 24, 27. Google’s motion therefore fails at both steps of the *Alice* inquiry and should be denied.

II. LEGAL BACKGROUND

“[P]atent eligibility can be determined at the Rule 12(b)(6) stage . . . only when there are no factual allegations that, taken as true, prevent resolving the eligibility question as a matter of law.” *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1125 (Fed. Cir. 2018); *see also Berkeheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018) (“Any fact . . . that is pertinent to the invalidity conclusion must be proven by clear and convincing evidence.”); *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1319 (Fed. Cir. 2019) (explaining that issued patents are “presumed patent eligible”). “[P]lausible factual allegations may preclude dismissing a case under § 101.” *Aatrix*, 882 F.3d at 1125.

To determine whether patent claims recite eligible subject matter under 35 U.S.C. § 101, courts consider the two-step framework set forth in *Alice Corp. Pty. Ltd. v. CLS Bank International*, 573 U.S. 208 (2014). At step one, the question is “whether the claims at issue are directed to a patent-ineligible concept,” *i.e.*, an abstract idea. *Id.* at 218. “If the claims are not directed to an abstract idea, the *Alice* inquiry ends.” *Contour*, 113 F.4th at 1378. If the inquiry proceeds to step two, the second question asks whether the claims recite an “inventive concept,” that is, “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 573 U.S. at 217-18 (quoting *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 566 U.S. 66, 72-73 (2012)). The “ultimate determination of eligibility” is a question of law that may involve underlying “subsidiary fact questions.” *Aatrix*, 882 F.3d at 1128.

III. ARGUMENT

Google’s motion fails for at least three reasons. First, the motion should be denied outright

with respect to claims 2-15 because Google failed to meet its burden to show that claim 1 is representative of all other claims in the '967 Patent. Second, the '967 Patent's claims are directed to industrial machines that provide redundant power in specific ways that improve upon the prior art, and Google's arguments to the contrary prematurely raise an issue of claim construction. Third, the '967 Patent's claims contain at least three inventive concepts in the form of specific implementations of redundant power supply systems that overcome problems with prior art approaches.

A. CLAIM 1 IS NOT REPRESENTATIVE OF ALL OTHER CLAIMS

Google has not met its burden to show that claim 1 is representative of the '967 Patent's other fourteen claims. This is fatal to Google's motion because its argument concerning *Alice* step one contains no substantive discussion of claims 2-15 (and indeed does not even mention claims 2 or 5-15). *See* Mot. (Dkt. 38-1) at 10-18; *see also Agile Journeys LLC v. Walt Disney Co.*, No. 6:22-cv-2272-CEM-LHP, 2023 WL 6048798, at *3 (M.D. Fla. June 27, 2023) ("Defendants' abstractness arguments, which are all premised upon the unproven presumption that Claim 1 is representative, also fail.").

The party asserting patent ineligibility "bear[s] the burden to demonstrate that their asserted Section 101 defense is well taken as to each claim." *PPS Data, LLC v. Jack Henry & Assocs., Inc.*, No. 2:18-CV-00007-JRG, 2019 WL 1317286, at *5 (E.D. Tex. Mar. 21, 2019). If that party instead relies on a "representative claim," "it bears the burden of showing that the other asserted claims are 'substantially similar and linked to the same abstract idea.'" *Perdiemco, LLC v. Industrack LLC*, No. 2:15-cv-727-JRG-RSP, 2016 WL 5719697, at *7 (E.D. Tex. Sept. 21, 2016) (quoting *Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1348 (Fed. Cir. 2014)). "District courts have denied motions to dismiss where the movant failed to carry this burden," *id.*, and a "paltry effort at showing representativeness" is insufficient to meet it, *Diogenes Ltd. v. DraftKings, Inc.*, 623 F. Supp. 3d 423, 429 (D. Del. 2022); *see also Eagle View Techs., Inc. v. Roofr, Inc.*, 651 F. Supp. 3d 729, 734 (D. Del. 2023) ("[Defendant] devotes roughly a page and a half of its 25-page opening brief to its

representative claim analysis. . . . I thus find [Defendant’s] briefing insufficient to support a determination that claim 1 of each asserted patent is representative of all remaining claims[.]”). In determining whether one claim is representative of others, the court may consider the patentee’s “well-pleaded allegations,” *see Agile*, 2023 WL 6048798, at *3, and other “meaningful argument as to the distinctive differences between claims,” *Diogenes*, 623 F. Supp. 3d at 430.

Google’s argument—consisting of approximately one page of analysis—that claim 1 is representative of the ’967 Patent’s 14 other claims falls short of its burden. *See* Mot. at 9. As an initial matter, Google has plainly failed to meet its burden with respect to claims 9-15—which Valtrus and KPI do not presently assert, but which Google “includes” in its motion—as Google devotes just one conclusory sentence in a footnote to all six claims. *See* Mot. at 9 n.5; *see also CXT Sys., Inc. v. Acad., Ltd.*, No. 2:18-CV-00171-RWS-RSP, 2019 WL 1237148, at *4 (E.D. Tex. Mar. 12, 2019) (“Defendant does not provide any further support for its conclusory statement that the other claims of the patent are substantially and substantively similar to Claim 16.”); *Agile*, 2023 WL 6048798, at *3-4. Indeed, Google does not even mention claims 10-13 and 15 in its one-sentence analysis. *See* Mot. at 9 n.5.

Google’s paltry discussion of claims 2-8, comprising approximately 100 words, fares no better. Google’s argument that claims 2-8 “all depend from claim 1,” Mot. at 9, is far from dispositive, *see Berkheimer*, 881 F.3d at 1365 (“A claim is not representative simply because it is an independent claim.”). And Google’s argument that all recited “post-solution limitations . . . are ‘purely conventional’” misunderstands the claims without actually addressing the relevant question for representativeness—whether those claims are “substantially similar and linked to the same abstract idea.” *Content Extraction*, 776 F.3d at 1348 (citation omitted); *see also Geoscope Techs. Pte. Ltd. v. Google LLC*, 692 F. Supp. 3d 566, 574-75 (E.D. Va. 2023) (rejecting Google’s argument that “the dependent claims only add minor limitations related to the data collection or the analysis performed” and noting that references to “mathematical components,” “circuitry,” and “grid points” “distinguish these claims

from claim 1”); *CardioNet*, 955 F.3d at 1369. Google merely paraphrases (and misconstrues) the dependent claim elements without giving consideration as to whether the additional claim elements recite meaningful differences from claim 1—in fact, they do.

Dependent claims 2-8 are not substantially similar to claim 1 or linked to the same purportedly abstract idea of “redundant power supplies for alerting and handling of power failures.” *See* Mot. at 1. Rather, these claims recite additional elements that distinguish them from claim 1 in meaningful ways. For example, claims 2 and 8 recite an inventive concept that goes beyond claim 1: further configuring the first power supply such that it is capable of providing “operating power to the electrical load while the second power supply transitions from the lesser output level to the greater output level.” ’967 Patent at claim 2; *see id.* at claim 8 (further specifying the use of “internal energy storage” to accomplish this goal). Claims 2 and 8 therefore claim a *particular* configuration distinct from claim 1 (further configuring the first power supply to provide operating power during transition), that solves a *particular* problem (avoiding lapses in power during transition). Google strips a quote from the ’967 Patent’s specification of context, incorrectly asserting that this inventive concept was “common practice.” Mot. at 9. Although the ’967 Patent’s specification states that a POSITA “will appreciate that the use of output filtering, buffering or energy storage capacitors within power supplies is a common practice,” ’967 Patent at 3:44-47, the use of such devices was not common to “provide a brief period of normal operating power to a load or loads . . . while the other power supply is in transition” from a lesser power level or standby mode to full operating power, *id.* at 4:2-4; *see also Osseo Imaging, LLC v. Carestream Dental LLC*, No. 1:23-cv-03116-LMM, 2024 WL 5329866, at *4 (N.D. Ga. Oct. 17, 2024). Valtrus and KPI pleaded this, and the allegation must be accepted as true at this stage. *See* Compl. ¶ 24 (“This particular application of energy storage infrastructure . . . was inventive and not well understood, routine, or conventional at the time of the invention.”); *see also Aatrix*, 882 F.3d at 1127 (“These allegations suggest that the claimed invention is . . . not directed to generic

components performing conventional activities.”).

Claim 6 similarly recites an inventive concept that goes beyond claim 1’s specific claim elements: requiring one power supply to operate in “standby” mode while the other provides full operating power to the load. This “allows for each of the power supplies to operate at or near optimum efficiency while providing for the electrical demands of the load being served.” ’967 Patent at 4:11-14. This *particular* configuration (requiring one power supply to operate in standby mode) solves a *particular* problem (inefficiencies associated with balanced load sharing). All Google says about claim 6 (in half a sentence) is that it “requires that one of the power supplies ‘operate at a lesser output level in response to a standby signal,” Mot. at 9, but that characterization completely disregards the distinct inventive concept Valtrus and KPI identified in their complaint, *see* Compl. ¶¶ 21-22, 27.

Google similarly mischaracterizes claims 3-5 and 7 without explaining why its overgeneralizations render these claims substantially similar and linked to the same purportedly abstract idea it has come up with. All Google has to say about claim 3 is that it “defines the activation signal by the alert signal.” Mot. at 9. In the same sentence, Google straightforwardly states that “Claim 4 provides the activation signal in response to the alert signal.” *Id.* “Claim 5 requires that the first power supply also be able to take over for a failing second power supply . . . while claim 7 recites a third power supply.” *Id.* Listing additional claim limitations is not an argument as to why these claim limitations supposedly are or are not substantially similar and linked to the same idea as claim 1.

Simply put, Google failed to meet its burden to show that claim 1 is representative of claims 2-14. Google cannot correct this deficiency in its reply brief. *See Robles v. Eminent Med. Ctr., LLC*, 619 F. Supp. 3d 609, 626 (N.D. Tex. 2022) (“Arguments ‘raised for the first time in a reply brief are generally waived,’ as the responding party is deprived of the opportunity to respond to the new argument.” (quoting *Jones v. Cain*, 600 F.3d 527, 541 (5th Cir. 2010))). Because Google’s discussion of *Alice* step one only contains a substantive discussion of claim 1, *see* Mot. at 10-18, the Court should

deny Google’s motion outright with respect to claims 2-14, *see Agile*, 2023 WL 6048798, at *3.

B. THE ’967 PATENT’S CLAIMS ARE DIRECTED TO SPECIFIC INDUSTRIAL MACHINES THAT IMPROVE UPON THE RELEVANT TECHNOLOGY IN PARTICULAR WAYS

Claim 1—the only claim Google substantively analyzes with respect to its *Alice* step one analysis—is directed to an industrial machine that provides redundant power in a particular way that improves upon prior art systems. Claim 1 recites a specific combination of hardware components that allows power supplies to operate “at or near optimum efficiency” by having one power supply operate at a greater power output than a second power supply during normal operation and capable of issuing an alert signal indicative of a failure of the first source of power. ’967 Patent at 4:50-51; *id.* at claim 1. The patented invention solves efficiency issues that affected prior art redundant power supplies utilizing “a balanced load sharing approach.” *Id.* at 1:7. Dependent claims 2-8 add additional hardware and configurations to the apparatus of claim 1, as detailed above. These specific implementations of redundant power supply systems are more than the mere abstract idea of “redundant power supplies for alerting and handling of power failures,” as Google contends. *See* Mot. at 1; *see also Gesture Tech. Partners, LLC v. LG Elecs. Inc.*, No. 21-19234 (SRC), 2024 WL 5196815, at *4 (D.N.J. Dec. 23, 2024) (finding “an apparatus claim, in which the apparatus is defined by a listed set of particular components” not abstract). Further, Google’s argument relies on a shaky interpretation of the ’967 Patent’s claim language, prematurely raising a claim construction issue.

1. The ’967 Patent’s Claims Are Not Directed To An Abstract Idea

At *Alice* step one, the Court must “determine whether the claims are directed to patent ineligible subject matter.” *Contour*, 113 F.4th at 1379. A “new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof,” may be patented. 35 U.S.C. § 101. An abstract idea “having no particular concrete or tangible form,” however, may not be patented. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014)

(post-*Alice*); see also *McRO, Inc. v. Banai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (“The abstract idea exception prevents patenting a result where ‘it matters not by what process or machinery the result is accomplished.’” (citation omitted)). The “directed to” inquiry “cannot simply ask whether the claims *involve* a patent-ineligible concept”; it must determine whether a claim’s “character as a whole is directed to excluded subject matter.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Pats. Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). To determine a claim’s character, courts “look at the focus of the claimed advance over the prior art.” *Koninklijke KPN N.V. v. Gemalto M2M GmbH*, 942 F.3d 1143, 1149 (Fed. Cir. 2019) (quoting *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016)). While conducting this analysis, the court must avoid “characteriz[ing] the claims at an impermissibly high level of generality,” which “all but ensure[s] the incorrect conclusion.” *Contour*, 113 F.4th at 1379-80.

Claim 1 of the ’967 Patent is directed to an industrial machine—a specific redundant power system comprising hardware such as power supplies physically coupled to an electrical load (such as a server)—that improves upon the relevant technology in a particular way. See ’967 Patent at claim 1; see also *Koninklijke*, 942 F.3d at 1151 (“[T]he appealed claims recite a sufficiently specific implementation . . . of an existing tool . . . that improves the functioning of the overall technological process of detecting systematic errors in data transmissions.”). As the ’967 Patent’s disclosure explains, “[i]n a typical scenario, each operating power supply bears an approximately equal share of the load. However, such a balanced load sharing approach often results in each power supply operating with less than optimum efficiency.” ’967 Patent at 1:7-12. Claim 1 improves over prior art “balanced load sharing” approaches by requiring that the second power supply “transition from a lesser output level to a greater output level in response to an activation signal.” *Id.* at claim 1. This is a technological improvement to a power supply that makes redundant power systems more efficient than they were before. See *Olympus Corp. v. Maxell, Ltd.*, No. 18-216, 2018 WL 5962471, at *5 (D. Del.

Nov. 18, 2018) (“Claim 1 . . . is directed to a specific type of technology – a recording/play-back apparatus – with features designed to improve upon the prior art.”).

The Supreme Court has long instructed that claims directed to a “particular apparatus” are patent eligible, *e.g.*, *Wyeth v. Stone*, 30 F. Cas. 723, 727 (C.C.D. Mass. 1840); *Gottschalk v. Benson*, 409 U.S. 63, 64 (1972), and the Federal Circuit has consistently upheld the eligibility of similar claims directed to physical machines that improve upon the prior art. Last year in *Contour*, for example, the Federal Circuit upheld claims reciting a “hands-free, POV action sports video camera . . . configured for remote image acquisition control and viewing,” which solved a problem in the prior art concerning difficulties adjusting “recording settings or a point of view to better match the user’s recording preferences.” 113 F.4th at 1375, 1378-79 (rejecting district court’s conclusion that one claim was “directed to the abstract idea of ‘creating and transmitting video (at two different resolutions) and adjusting the video’s settings remotely”” because the claims “require specific, technological means . . . that in turn provide a technological improvement” to a POV camera). Moreover, in *CardioNet*, the Federal Circuit upheld claims “drawn to a device for detecting and reporting the presence of atrial fibrillation or atrial flutter in a patient” where the patent’s specification “describe[d] a number of advantages achieved by the claimed cardiac monitoring device.” 955 F.3d at 1364, 1366 (rejecting district court’s conclusion “that the claims are directed to the abstract idea that atrial fibrillation and atrial flutter ‘can be distinguished by focusing on the variability of the irregular heartbeat””). And in *Thales Visionix, Inc. v. United States*, the Federal Circuit upheld system claims reciting inertial sensors mounted on tracked objects and moving platforms and “an element adapted to receive signals” from the inertial sensors “and configured to determine an orientation of the object relative to the” moving platforms, where the specification explained that there were “multiple advantages of the disclosed system over the prior art,” including that the system could “operate independently” and was “simpler than previous inertial systems.” 850 F.3d 1343, 1345, 1348 (Fed. Cir. 2017) (rejecting Claims Court’s

conclusion that the claims were “merely directed to the abstract idea of using ‘mathematical equations for determining the relative position of a moving object to a moving reference frame’”).

a) *Google’s Analogy Fails*

In an attempt to overcome longstanding precedent upholding similar physical machines, Google provides the “tortured analogy” of a house with a portable generator in the garage in an attempt to stretch claim 1’s elements over conventional human activity. *See Sec. First Innovations, LLC v. Google LLC*, No. 2:23-cv-97, 2023 WL 7726389, at *16 (E.D. Va. Nov. 15, 2023). “It is not enough, however, to merely trace the invention to some real-world analogy.” *Data Engine Techs. LLC v. Google LLC*, 906 F.3d 999, 1011 (Fed. Cir. 2018). “[A]fter all, real-world methods and processes can be patentable.” *Sec. First*, 2023 WL 7726389, at *16. Regardless, Google’s analogy is inapt because, as in *Data Engine*, “Google fails to appreciate the functional improvement achieved by the specifically recited” invention. 906 F.3d at 1011. A house with a portable generator in the garage is not comparable to a redundant power system in which two or more power supplies are simultaneously coupled to an electrical load, configured to provide greater and lesser output levels, and issue and act in response to alert and activation signals. The functional improvement achieved by claim 1’s recited invention allows power supplies to operate more efficiently than in prior art “balanced load sharing” systems. *See* ’967 Patent at 1:8-10; *id.* at claim 1. The “first power supply” in Google’s analogy—“[a] connection to a local power grid”—does not somehow become more efficient because a homeowner has a portable generator tucked away in the garage. Nor does that first power supply issue an alert signal before failing; it simply shuts off. Furthermore, Google all but admits that claim 1 is not representative with respect to claims 3 and 4 because those claims “associat[e]” the “alert signal” and “activation signal” in a way that further distinguishes the analogy—by automatically switching the second power supply on rather than requiring the homeowner to notice that the lights have gone out, find the generator, take it to the power inlet box, plug it into the house, and turn it on. *Compare* Mot.

at 15 (arguing that automatic detection is “not an element of claim 1” as opposed to claims 3 and 4), *with id.* at 9 (“Claim 3 defines the activation signal by the alert signal, while Claim 4 provides the activation signal in response to the alert signal.”). This is not the mere automation of conventional activity, but instead a particular improvement to solve a specific technological problem in redundant power systems by allowing them to operate more efficiently and without interruption. Finally, Google’s analogy and subsequent discussion disregard the functional improvement recited in claims 2 and 8, in which the first power supply is configured to provide operating power while the second power supply transitions to the greater output level; in other words, the lights never go out. *See* ’967 Patent at claim 2, claim 8. Google’s analogy does not fairly represent claim 1, let alone all other claims of the ’967 Patent. Instead, it ignores the ’967 Patent’s improvements over the prior art in a strained attempt to compare claim 1’s redundant power system to suburban household activity.

b) Google’s Novelty Arguments Are Misplaced

The combination of components recited in claim 1 results in a new hardware apparatus that did not previously exist. Google may dispute novelty, but now is not the time to raise fact-intensive validity issues under 35 U.S.C. §§ 102 and 103. *See Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1311 (Fed. Cir. 2016) (“The inventiveness inquiry of § 101 should therefore not be confused with the separate novelty inquiry of § 102 or the obviousness inquiry of § 103.”). Google cherry-picks phrases from the ’967 Patent’s specification in an attempt to show that the invention’s components individually existed in the prior art, *see* Mot. at 11-12, but Google ignores the specific improvements to the relevant technology resulting from the particular combinations of elements recited in the claims. *See Staton Techiya LLC v. Samsung Elecs. Co.*, No. 2:21-cv-00413-JRG-RSP, 2023 WL 8862265, at *3 (E.D. Tex. Nov. 21, 2023) (“[W]hile Samsung broadly views the specifications at a level of abstraction that supports its position, the claims, given context by the specification, do not support that the focus is only toward the abstract idea of recording and storing.”). The ’967 Patent’s claims recite specific

redundant power systems that improve upon prior art systems in various ways, such as by improving efficiency (claims 1 and 6) and by ensuring that sufficient power to the load is always provided (claims 2 and 8). The claimed apparatuses were not “typical,” ’967 Patent at 1:7, and indeed did not constitute conventional activity disclosed in the prior art. *See* File History at ECF 44; *see also Staton*, 2023 WL 8862265, at *3 (E.D. Tex. Nov. 21, 2023) (“[T]he Court is not persuaded that the patents do not demonstrate inventive technology or specific improvements. To the extent that Samsung asserts the invention was known in the art, the proper forum for those claims is before the jury.”).

The ’967 Patent’s claims are akin to those found eligible in *Contour*, which recite a portable video camera comprising conventional components such as a “lens,” “image sensor,” and “camera processor.” 113 F.4th at 1376-77. Although the patentee did not invent lenses, image sensors, or camera processors, the Federal Circuit—reversing the district court—determined that “when read as a whole,” the claim was “directed to a specific means that improves the relevant technology,” *i.e.*, “an improved POV camera through its combination of claim limitations and requirement that the claimed POV camera processor be configured to record low-and high-quality data streams in parallel.” *Id.* at 1379. Similarly, the ’967 Patent’s claims, when read in their entirety and in light of the specification, recite specific improvements in the relevant technology concerning efficiency and functionality of redundant power supply systems by requiring the two power supplies to operate at different levels. *Cf. Staton*, 2023 WL 8862265, at *3 (“[T]he claims, given context by the specification, do not support that the focus is only toward the abstract idea of recording and storing.”).

Google invites this Court to repeat the district court’s errors in *Contour*. There, the district court emphasized that “[t]he claims do not recite any particular hardware required other than the generic ‘lens and image sensor’ to take the video, generic ‘wireless connection protocol device,’ and generic ‘camera processor.’” *Contour IP Holding, LLC v. GoPro, Inc.*, No. 3:17-cv-04738-WHO, 2022 WL 658553, at *4 (N.D. Cal. Mar. 4, 2022), *rev’d*, 113 F.4th 1373 (Fed. Cir. 2024). In determining that

“the solution is just a recitation of the idea itself with generic components,” *id.* at *6, the district court “characterize[d] the claims at an impermissibly high level of generality” and ignored the “technological improvement to the real time viewing capabilities of a POV camera’s recordings on a remote device,” 113 F.4th at 1379-80. Google argues that the “claim language is recited in highly generic terms” and “provides no details of *how* to supply power from the power source,” Mot. at 10-11, but that argument is a straw man, as it goes to enablement under 35 U.S.C. § 112(a), and further ignores the specific technical improvements provided by the ’967 Patent’s claimed systems as a whole. *See Contour*, 113 F.4th at 1380 (noting that the district court “disregard[ed] the disclosed technological means for obtaining a technological result”). The claims found eligible in *Contour* did not, for example, explain how to “receive the video image data directly or indirectly from the image sensor,” *id.* 1376, but they were nevertheless directed to patent eligible subject matter, *see also Thales*, 850 F.3d at 1345 (no explanation for how to “adapt[]” the “element . . . to receive signals from said first and second inertial sensors”); *CardioNet*, 955 F.3d at 1365 (no explanation for how to create or configure “an event generator to generate an event when the variability in the beat-to-beat timing is identified as relevant”). Like the claims in this case, the claims in *Contour* “require[d] specific, technological means . . . that in turn provide[d] a technological improvement” to a physical device. *Contour*, 113 F.4th at 1379; *see also FYF-JB LLC v. Pet Factory, Inc.*, 410 F. Supp. 3d 912, 912 (N.D. Ill. 2019) (upholding apparatus claims “directed to a[n apparatus] with specific structural components, which when read in the context of the specification are explained as an improvement over previous [apparatuses]”).

Google’s remaining cases are inapposite. *Electric Power Group, LLC v. Alstom S.A.* involved a claimed *method* (as opposed to the apparatus recited in claims 1-8 of the ’967 Patent) for “detecting events on an interconnected electric power grid.” 830 F.3d 1350, 1351 (Fed. Cir. 2016). Unlike that claim, which was focused merely “on collecting information, analyzing it, and displaying certain results,” *id.* at 1353, the ’967 Patent’s claims recite tangible machines configured in particular ways to

create quantifiable improvements over prior art systems.¹ The claims in *Broadcom Corp. v. Netflix Inc.* are similarly distinguishable, as the claimed “method” for “collecting,” “detecting,” and “correlating” performance data lacked a “specific, concrete innovation,” and the claimed “method for connecting to a web service” did not “depart[] from earlier approaches to solve a specific problem,” 677 F. Supp. 3d 1010, 1015, 1021-22, 1024 (N.D. Cal. 2023). Here, the ’967 Patent’s claims are focused on improvements in physical infrastructure, not an abstract idea that uses computers merely as tools.

ChargePoint, Inc. v. SemaConnect, Inc. is likewise distinguishable. 920 F.3d 759 (Fed. Cir. 2019). There, the patentee “ha[d] not expressed a need for claim construction,” unlike here. *Id.* at 767; *see infra* § III.B.ii. As a result, “the broad claim language would cover any mechanism for implementing network communication on a charging station, thus preempting the entire industry’s ability to use networked charging stations.” *Id.* at 770. Here, however, it is Google—not KPI and Valtrus—offering an exceptionally broad view of the ’967 Patent’s claim terms. *See infra* § III.B.ii. The ’967 Patent’s claims recite specific improvements over prior art redundant power systems to make them more efficient and avoid interruptions in power; they do not, as Google suggests, preempt the entire industry. The defendant in *Contour* likewise relied on *ChargePoint*, but the Federal Circuit distinguished the case, explaining that “neither the specification nor the claims supported that ‘the charging station itself is improved from a technical perspective’” 113 F.4th at 1380 (citation omitted). Unlike the *ChargePoint* claims, the claimed apparatuses in this case operate differently from previous redundant power systems in particular ways that improve upon the relevant technology.

In sum, the ’967 Patent’s claims recite apparatuses—physical machines—configured in particular ways that differentiate them from, and improve upon, prior art redundant power supply

¹ Forthcoming expert discovery will substantiate Valtrus and KPI’s allegations that embodiments of the ’967 Patent’s claimed invention “are more efficient than approaches in the prior art.” Compl. ¶ 15.

systems. Utilizing multiple power supplies in the discrete ways taught by the specification and recited in the claims is not, contrary to Google’s assertions, akin to conventional human activity.

2. Issues Of Claim Construction Prevent Determination Of Patent Eligibility At The Pleadings Stage

“[I]t will ordinarily be desirable—and often necessary—to resolve claim construction disputes prior to a § 101 analysis, for the determination of patent eligibility requires a full understanding of the basic character of the claim subject matter.” *Bancorp Servs., L.L.C. v. Sun Life Assurance Co.*, 687 F.3d 1266, 1273-74 (Fed. Cir. 2012). As a court in the Western District of Texas has explained:

[B]ecause claim construction can affect—and perhaps, in most cases, will affect—a court’s § 101 eligibility analysis, the Court believes that it is generally wiser—and more efficient—to wait to determine a patent’s § 101 eligibility until after issuing its claim construction order.

Slyce Acquisition Inc. v. Syte – Visual Conception Ltd., No. W-19-CV-00257-ADA, 2020 WL 278481, at *5 (W.D. Tex. Jan. 10, 2020); *see also E-Numerate Sols., Inc. v. United States*, 149 Fed. Cl. 563, 580 (2020) (same). *See also UTTO Inc. v. Metrotech Corp.*, 119 F.4th 984, 993 (Fed. Cir. 2024) (“The application of eligibility standards depends on what is claimed—that is, on the meaning of the claims—and thus requires the court to interpret the claims.”).

Because claim construction often involves underlying questions of fact, *see Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 325-26 (2015), courts may—and often do—postpone ruling on subject matter eligibility until they have had the opportunity to resolve any claim construction disputes. *See, e.g., Loyalty Conversion Sys. Corp. v. Am. Airlines, Inc.*, 66 F. Supp. 3d 829, 835 (E.D. Tex. 2014) (Bryson, J.) (“[T]he Court has waited until after the claim construction hearing in this case to rule on the present motion in order to ensure that there are no issues of claim construction that would affect the Court’s legal analysis of the patentability issue.”); *Celgene Corp. v. Lotus Pharm. Co.*, No. 17-6842-SDW-LDW, 2018 WL 6584888, at *2 (D.N.J. Dec. 14, 2018) (“Courts routinely deny § 101 motions as premature where claim construction disputes exist[].”); *Glob. Locating Sys., LLC v. Shadowtrack 247, LLC*, No.

1:19-cv-00225-MR, 2020 WL 3513535, at *3-4 (W.D.N.C. June 29, 2020) (collecting cases).

Here, a claim construction dispute exists as to the meanings of “lesser output level” and “greater output level.” Claim 1 of the ‘967 Patent recites:

1. An apparatus, comprising:

a first power supply coupled to an electrical load and a first source of electrical energy, the first power supply configured to issue an alert signal indicative of a failure condition of the first source of electrical energy; and

a second power supply coupled to the electrical load and a second source of electrical energy, the second power supply configured to transition from a **lesser output level** to a **greater output level** in response to an activation signal.

’967 Patent at claim 1 (emphasis added).

Google argues that claim 1 “has no limitations precluding power supplies from initially bearing an equal share of the load prior to one supply failing” because “claim 1 only requires ‘transition[ing] from a lesser output level to a greater output level.’” Mot. at 22-23. Google has construed “lesser output level” and “greater output level” to mean “lesser output level of the second power supply” and “greater output level of the second power supply,” such that the claim covers any increase in output from the **second** power supply in response to the first power supply’s failure.² The ’967 Patent’s disclosure, however, teaches that the output levels of claim 1 are in reference to the output of the **first** power supply. The patent explains that the second power supply initially operates at a “lesser output level” than the first power supply to overcome inefficiencies with prior art systems that utilized a “balanced load sharing approach.” See ’967 Patent at 1:8-11, 3:18-24, 4:48-53; *id.* at claim 1.

Google further argues that Valtrus and KPI’s amended complaint “read[s] the ’967 patent broadly to cover any system employing redundant power supplies for alerting and handling of power

² Google’s interpretation would seemingly mean, for example, that claim 1 would cover a redundant power supply system in which two power supplies initially share the load (*e.g.*, each provides 50% of the requisite power) and then one power supply increases its share of the load in response to the other’s failure (*i.e.*, the power supply goes from a “lesser output level” to a “greater output level”).

failures,” Mot. at 5, but that is not so. Valtrus and KPI explain in the operative complaint that Google’s data centers infringe not because Google employs redundant power systems generally, but because Google employs the particular redundant power supply system covered by the ’967 Patent’s claims. For example, Google data centers do not appear to use the prior art balanced load sharing approach in which two power sources simultaneously provide equal power to the load. Instead, Google ensures that “[e]very critical component has a primary and alternative power source, each with equal power” such that “[b]ackup generators can provide enough emergency electrical power to run each data center at full capacity.” Compl. ¶ 40 (quoting *Google Security Overview*, Google Cloud, <https://cloud.google.com/docs/security/overview/whitepaper>). In other words, Google’s primary power supply provides most, if not all, of the power to the data center during normal operations. During this time, the backup power supply is not providing much, if any, power. But “[o]n the rare occasions when a Google data center is affected by a power outage, [Google] ha[s] to be ready to ramp up millions of watts of backup electricity in seconds.” Joe Kava, *Cleaner Data Centers, Batteries Included*, Google Keyword (Dec. 16, 2020), <https://blog.google/inside-google/infrastructure/cleaner-data-centers-batteries-included/>. When a power outage occurs, the backup power supply, which can produce just as much power as the primary power supply, takes over and begins providing more electricity to the data center than the primary power supply until the issue with the primary power supply is resolved. Once the issue is fixed, the primary power supply again takes over.

Before the Court decides whether the ’967 Patent’s claims are directed to an abstract idea, it must determine whether claim 1’s output levels are in relation to the first or second power supplies. Under its interpretation, Google argues that claim 1 would preempt all redundant power systems in which the second power supply increases its output by any amount in response to an activation signal. That interpretation conforms well to Google’s argument, Mot. at 1, but it is not a faithful construction of the ’967 Patent’s claim language. The specification explicitly identifies inefficiencies with prior art

balanced load sharing approaches, confirming claim 1 is directed toward a particular redundant power supply apparatus in which the second power supply operates at a lesser output level than the first power supply until, in response to an activation signal, the second power supply transitions to provide a greater output level than the first power supply. This particular configuration differs from, and has advantages over, “typical” prior art solutions. *See* ’967 Patent at 1:7. Because the Court will not hold a *Markman* hearing until at least November 2025, *see* Scheduling Order (Dkt. 34) at 3, the Court should deny Google’s motion as premature.

C. THE ’967 PATENT’S CLAIMS RECITE INVENTIVE CONCEPTS

If the Court reaches *Alice* step two, and it need not for the above reasons, it must determine whether the claims recite an “inventive concept”—that is, a “specific implementation of the abstract idea that purports to solve a problem unique to” the relevant technological field. *Weisner v. Google LLC*, 51 F.4th 1073, 1085 (Fed. Cir. 2022). Courts “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *CosmoKey Sols. GmbH & Co. v. Duo Sec. LLC*, 15 F.4th 1091, 1096 (Fed. Cir. 2021) (quoting *Alice*, 573 U.S. at 218). Claims covering “specific improvements” in the recited technology that “go beyond ‘well-understood, routine, and conventional activit[ies]’” are patent eligible. *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016). The “disclosure of ‘improvements in the specification, to the extent they are captured in the claims, create[s] a factual dispute regarding whether the invention describes well-understood, routine, and conventional activities.’” *Rosen Techs. LLC v. Lennox Int’l Inc.*, No. 3:22-CV-00732-K, 2023 WL 36074, at *3 (N.D. Tex. Jan. 4, 2023) (quoting *Berkheimer*, 881 F.3d at 1369).

The ’967 Patent’s claims recite at least three inventive concepts, further described below, which Valtrus and KPI alleged “would not have been well understood, routine, or conventional” to a POSITA at the time of the invention. *See, e.g.*, Compl. ¶¶ 14, 19, 24, 27. “Whether the claim elements

or the claimed combination are well-understood, routine, [or] conventional is a question of fact.” *Aatrix*, 882 F.3d at 1128. Google chose to raise Section 101 eligibility at the motion to dismiss stage. Like in *Aatrix*, however, Valtrus and KPI have included “concrete allegations in the . . . amended complaint that individual elements and the claimed combinations are not well-understood, routine or conventional activity” and additional “allegations regarding the claimed combination’s improvement” over the prior art. *Id.* at 1128; *see also, e.g.*, Compl. ¶ 19 (“The foregoing first inventive concept would not have been viewed by a PHOSITA as being well-understood, routine, or conventional at the time of the invention.”); *id.* ¶ 21 (relating to a second identified inventive concept, “the inefficiency of prior art systems . . . is overcome by the invention by having one power supply operate in a ‘standby mode’ to start”); *id.* ¶ 24 (“This particular application of energy storage infrastructure [related to a third inventive concept]—to temporarily provide full operating power during transition from one power supply to another—was inventive and not well understood, routine, or conventional at the time of the invention.”). As the *Rosen* Court put it, “[t]he inventive concept is supported by allegations in the Amended Complaint . . . which must be taken as true at the pleadings stage.” 2023 WL 36074, at *7.

In particular, claim 1 captures the inventive concept of allowing the first and second power supplies “to operate at or near optimum efficiency while providing for the electrical demands of the load being serve[d]” by configuring the second power supply “to transition from a **lesser output level** to a **greater output level** in response to an activation signal.” *See* Compl. ¶ 17 (emphasis added) (quoting ’967 Patent at 1:43-51, 4:9-12). Claim 6 captures a related, yet distinct, inventive concept: requiring the second power supply to operate in “**standby mode**” while the first power supply provides “all needed operating power to a load.” *See id.* ¶ 21 (emphasis added) (quoting ’967 Patent at 3:18-39). Such a configuration also “allows for operating ‘at or near optimum efficiency.’” *Id.* (quoting ’967 Patent at 4:50-51). Claims 2-8 also capture an additional inventive concept: utilizing “**capacitors or other internal storage**” in the first power supply “to temporarily provide full

operating power during transition from one power supply to another” to avoid periods of interruption. *Id.* ¶ 24 (emphasis added) (quoting ’967 Patent at 3:39-44). The ’967 Patent’s claim elements, when taken as a whole, plausibly recite inventive concepts. That is sufficient to defeat Google’s motion. *See Aatrix*, 882 F.3d at 1126-27 (“We have held that patentees who adequately allege their claims contain inventive concepts survive a § 101 eligibility analysis under Rule 12(b)(6).”).

In sum, Valtrus and KPI have identified three inventive concepts and pleaded that these concepts, in combination with the other claim elements, “would not have been well understood, routine, or conventional” to a POSITA at the time of the invention. *See, e.g.*, Compl. ¶¶ 14, 19, 24, 27. Google cannot show otherwise on this record, let alone by clear and convincing evidence.

Google’s arguments do not change this outcome. First, Google argues that “Claim 1 does not recite *how* to perform any of the recited limitations,” Mot. at 20 (capitalization altered), but that is incorrect. Google’s analysis ignores the ’967 Patent’s specification, *see* Mot. at 21, but the very case it relies upon emphasizes the need to consider the claims in the context of the specification, *see Intell. Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1331 (Fed. Cir. 2017) (“[N]either ***the specification*** nor the claims cabin the invention specifically in terms of solving these compatibility issues.” (emphasis added)). Here, the ’967 Patent’s claim elements, when read in light of the specification, capture inventive concepts that explain how to make an apparatus that improves upon prior art redundant power systems in particular ways. The ’967 Patent’s specification explains that “typical” redundant power supply systems utilize power supplies “bear[ing] an approximately equal share of the load,” which “often results in each power supply operating with less than optimum efficiency.” ’967 Patent at 1:7-11. It is thus more efficient to have one power supply with a greater power output than the other during normal operation. *See id.* at 4:50-52. Claim 1 captures this inventive concept by requiring the second power supply “to transition from a lesser output level to a greater output level in response to an activation signal.” *Id.* at claim 1. And claim 6 captures a related, yet distinct, inventive

concept by further configuring a power supply “to operate at a lesser output level in response to a standby signal.” *Id.* at claim 6; *see also id.* at 4:50-52 (explaining that such “primary/standby operation” allows for “operation at or near optimum efficiency”); *id.* at Fig. 3 (showing transition of second power supply from standby output level to full operating level). The specification also explains the need to avoid “an interruption in operating power, despite the failure of independent voltage,” and claims 2 and 8 address this by further configuring the apparatus “to provide operating power to the electrical load while the second power supply transitions from the lesser output level to the greater output level.” *Id.* at claim 2; *see id.* at claim 8 (reciting the use of “internal energy storage”). In other words, the ’967 Patent’s specification recites problems with prior art redundant power systems, and claims 1, 2, 6, and 8 recite particular configurations of an apparatus to address these concerns and create a better redundant power supply.

Google argues that the respective components “recited in claim 1 are equally generic and not inventive,” Mot. at 19, but that argument ignores the claimed system ***as a whole***. *See Amdocs*, 841 F.3d at 1300-01 (inventive concept present when “generic components operate in an unconventional manner to achieve an improvement in . . . functionality”). As Valtrus and KPI pleaded, the ’967 Patent’s atypical approach results in particular improvements to the efficiency and operation of redundant power supply systems in ways that were unconventional to a POSITA at the time of the invention. *See* Compl. ¶¶ 14, 19, 24, 27. Google cannot meet its burden simply by pointing out that individual elements recited in the claims existed in the prior art, especially where like here the particular combinations were unconventional. Indeed, the patent examiner emphasized that claim 1’s recited invention was a departure from prior art systems:

[T]he prior art of record does not disclose or suggest, inter alia, the first power supply configured to issue an alert signal upon failure of the first source and a second power supply configured to transition from a ***lesser output level*** to a ***greater output level***.

File History at ECF 44 (emphasis added).

Google devotes nearly a page of its brief toward attacking a straw man concerning the supposed “automation” of long-standing human processes, *see* Mot. at 20, but there are two problems with this argument. First, as explained above, the ’967 Patent’s claims do not simply “automate” conventional human activity, and Google’s generator-in-the-garage analogy is inapt. *See supra* § III.B.i. Second, Valtrus and KPI do not allege that the “automation” of any abstract idea is an inventive concept. *See generally* Compl. Instead, the three pleaded inventive concepts are particular physical improvements over prior art systems that, when combined with the remaining claim elements, were unconventional at the time of the invention. *See* Compl. ¶¶ 14, 19, 24, 27. Thus, unlike Google’s cited cases, the ’967 Patent’s claims recite unconventional combinations of components that, together, provide unique technological improvements.

Ignoring the actual inventive concepts Valtrus and KPI pleaded, Google suggests that the “three alleged inventive concepts are actually one, single abstract concept.” Mot. at 22. False. First, Google argues that “claim 1 *as drafted* does not embody” the concept of one power supply providing a greater load than another, Mot. at 22 (emphasis added), but again, this is an issue of claim construction concerning whether the “lesser output level” is relative to the first or second power supplies, *see supra* § III.B.ii. Google further argues that, to the extent claim 1 embodies a novel concept, it is at most a “*new* abstract idea,” Mot. at 22 (citation omitted), but an industrial machine configured in a particular way to operate in a more efficient manner than prior art systems is not an abstract idea. Moreover, Google mischaracterizes Valtrus and KPI’s first pleaded inventive concept by suggesting that it “relies on the dubious assertion that *all* redundant power supplies always split the load,” Mot. at 23, but that argument ignores the other elements of the claim language, such as the presence of an alert signal—which Google’s analogy did not fairly represent. It was these elements, in combination, that the patent examiner determined were novel: “the prior art of record does not disclose or suggest, inter alia, the first power supply configured to issue an *alert signal*” File History at ECF 44

(emphasis added). Google, again, mentions “back-up generators” but ignores the claim elements in combination. Valtrus and KPI plausibly allege that claim 1’s apparatus recites a more efficient redundant power supply system by configuring the second power supply to transition from a lesser output level to a greater output level in response to an activation signal and that this “first inventive concept would not have been viewed by a POSITA as being well-understood, routine, or conventional at the time of the invention.” Compl. ¶¶ 17, 19. Google’s argument that the ’967 Patent’s claimed invention has “long been used in both commercial and residential applications,” Mot. at 23, is at most a question of fact that goes to invalidity under Sections 102 and 103, not eligibility under Section 101.

Google’s attacks on Valtrus and KPI’s second pleaded inventive concept fail for the same reasons. Simply stating that “keeping the backup power supply on standby is part of the abstract idea,” Mot. at 23, does not make it true. As the ’967 Patent’s specification explains and Valtrus and KPI pleaded, configuring one power supply to operate at a lesser output level in response to a standby signal results in a discrete improvement over prior art systems that allows for operation “at or near optimum efficiency.” Compl. ¶ 21 (quoting ’967 Patent at 4:51). Ignoring these allegations, Google simply argues that “[t]his assertion”—without identifying what “assertion” it is referring to—“is not credible in light of batteries and backup generators,” Mot. at 23, but as explained above, this improperly singles out individual claim elements without focusing on the inventive concept set forth by the elements in combination. In ignoring the claim elements as a whole, Google has fallen well short of its burden to establish the absence of an inventive concept by clear and convincing evidence.

Similarly, Google dismisses Valtrus and KPI’s third pleaded inventive concept by proclaiming that the use of energy storage devices in the first power supply “is just part of the abstract idea of redundant power supplies for alerting and handling of power failures,” Mot. at 24, but Google cannot meet its burden by singling out individual elements. For example, Google cherry-picks quotes from the ’967 Patent’s specification, explaining that “the use of output filtering, buffering or energy storage

capacitors within power supplies is a common practice,” Mot. at 24 (quoting ’967 Patent at 3:44-48), but that is not an admission that the use of capacitors *in combination with the other claim elements* was conventional. Capacitors have a wide range of uses, and the ’967 Patent’s specification does not, for example, state that it was a routine practice to use capacitors to provide full operating power to an electrical load while a second power supply transitions from the lesser output level to the greater output level. *See generally* ’967 Patent. And Valtrus and KPI pleaded that it was not: “[t]his particular application of energy storage infrastructure—to temporarily provide full operating power during transition from one power supply to another—was inventive and not well understood, routine, or conventional at the time of the invention.” Compl. ¶ 24. Simply pointing out that capacitors were common in the art does not mean their particular use in the ’967 Patent’s claimed invention in combination with other elements was conventional. *See Amdocs*, 841 F.3d at 1311.

IV. CONCLUSION³

The Court should deny Google’s motion outright with respect to claims 2-15 of the ’967 Patent because Google failed to meet its burden to show that claim 1 is representative. The Court should also deny the remainder of Google’s motion at *Alice* step one because the ’967 Patent’s claims are directed to specific industrial machines that solve problems with prior art redundant power systems. Although the Court need not reach it, Google’s motion further fails at *Alice* step two because the ’967 Patent’s claim elements capture three inventive concepts Valtrus and KPI pleaded in their complaint.⁴

³ At this time, Valtrus and KPI do not oppose Google’s motion as it pertains to pre-suit willful infringement but maintain that Google’s post-suit infringement is and remains willful. Should discovery reveal that Google had pre-suit knowledge of the ’967 Patent, Valtrus and KPI will seek leave to amend.

⁴ To the extent the Court is persuaded by any of Google’s arguments, Valtrus and KPI respectfully request leave to further amend their complaint to add additional allegations and, if appropriate, expert analysis.

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By: /s/ Greg Love

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CERTIFICATE OF SERVICE

This is to certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on this 8th day of May, 2025.

/s/ Greg Love