THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

SOUNDCLEAR TECHNOLOGIES LLC,	§	
	§	
Plaintiff,	§	
	§	**Civil Action No. 3:24-cv-00540-MHL**
v.	§	
	§	
GOOGLE LLC,	§	**JURY TRIAL DEMANDED**
	§	
Defendant.	§	
	§	

MEMORANDUM OF LAW IN SUPPORT OF GOOGLE LLC's
MOTION TO DISMISS PLAINTIFF'S COMPLAINT UNDER RULE 12(b)(6)

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I. INTRODUCTION

Google engineers spent years designing, developing, and refining Google Home and Google Nest devices that people use throughout the world to set reminders, turn on lights, play music, report on the weather, adjust the temperature, and so much more. Plaintiff SoundClear is an entity formed solely to buy and assert patents. This is not the first time SoundClear has sued Google. Seeking a return on its investment, SoundClear first sued Google in May 2024, accusing the Google Home and Nest products of infringing three different patents relating to walkie-talkie technology. That case is pending before Judge Allen in Norfolk.

In the present suit, SoundClear now alleges that Google's Home and Nest devices infringe three different patents that SoundClear also purchased in June 2024.[1] But it is clear at even this early stage that the claims of two of the Asserted Patents, the '337 patent (asserted in Count I) and the '675 patent (asserted in Count II), are patent ineligible under 35 U.S.C. § 101 for claiming an abstract idea.[2] It is equally clear that SoundClear's Complaint (Dkt. 1, "Compl.") fails to plausibly assert infringement of the Asserted Patents under the *Iqbal/Twombly* standard.[3]

Courts consistently have held that claims like those found in the '337 and '675 patents violate § 101 and are appropriately dismissed on the pleadings. Patent claims are subject to dismissal for violating § 101 when they fail a two-step test: (1) the claims are directed to an abstract idea, and (2) the claims do not include an inventive concept that adds significantly more than the abstract idea to transform the nature of the claim. Courts have developed an extensive and well-established body of case law that guides the application of these steps.

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[1] U.S. Patent Nos. 9,223,487 (the "'487 patent"), 11,069,337 (the "'337 patent"), 11,244,675 (the "'675 patent"), collectively, the "Asserted Patents."

[2] Google maintains that the claims of the '487 patent are also patent ineligible under 35 U.S.C. § 101 and intends to raise that issue at a later date.

[3] Google will demonstrate that its independently developed products do not infringe any of the Asserted Patents after the pleading stage.

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The ’337 and ’675 patent claims fail both steps. Under Step One, the Federal Circuit has repeatedly held that claims are directed to an abstract idea where they focus on merely collecting information, analyzing it, and indicating the results of that analysis. Here, the ’337 and ’675 patent claims recite just that: classifying voice based on proximity of the speaker and tailoring the response based on that classification. The ’337 and ’675 patent claims use only results-oriented language to achieve the abstract goals, without reciting any concrete or specific limits on how the goals are accomplished. Under Step Two, the ’337 and ’675 patent claims include no inventive concept because there is nothing in the claims beyond the abstract idea itself that could transform the nature of the claims. The claims of the ’337 and ’675 patents are thus patent ineligible under § 101 and Counts I and II must be dismissed with prejudice.

The Court should also dismiss Counts I, II, and III for the further reason that SoundClear cannot, and does not, plausibly plead direct infringement of any of the Asserted Patents. The ’337 and ’675 patents describe intelligent audio-playing devices that omit or replace words in a response depending on the detected voice. The accused Google Home and Google Nest devices do not operate in this manner. SoundClear’s Complaint includes no factual allegation that could plausibly suggest that the Google devices distinguish between different voices to thereby omit or replace words in an audio response. As to the ’487 patent, SoundClear likewise pleads no facts that the Google devices select objects on screen. Thus, Counts I, II, and III fail to state a claim under the *Twombly/Iqbal* standard and must be dismissed with prejudice.

Finally, for all Counts, SoundClear’s bare allegations of willful infringement are facially deficient as conclusory and must be dismissed under established precedent.

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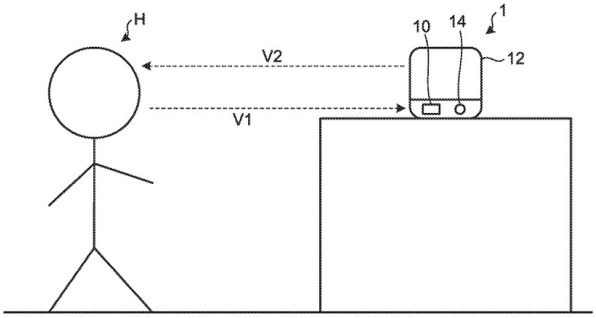
II. BACKGROUND

The ’337 and ’675 patents are very similar. Both patents have the same named inventor and claim priority to patent applications filed in March 2018 less than one week apart. Figures 1-7 of both patents are identical, including the same “schematic diagram” in Figure 1 describing the alleged inventions. ’337 patent 1:62-64; ’675 patent 1:64-66. Both patents describe a device that uses a microphone (voice-detecting unit) to detect a voice (V1) spoken by a user. ’337 patent 1:64-66, 3:22-23; ’675 patent 1:66-2:2, 3:27-28. The voice is analyzed “to perform a predetermined processing.” ’337 patent 2:67-3:1; ’675 patent 3:2-3. Then a voice (V2) is outputted in response from a speaker (voice output unit) back toward the user. ’337 patent 3:1-2; ’675 patent 3:3-5.

FIG.1



Both patents admit that by 2018, these three steps were known. The background sections of both patents refer to a Japanese patent publication, and based on that publication, explain how it was known to have a device that “analyzes detected voice of a user and performs processing according to the user’s intention . . . .” ’337 patent 1:22-24; *see also* ’675 patent 1:20-24. The Asserted Patents admit that it was known by 2018 to have a device “which outputs, via voice, that [the] processing intended by a user has been performed . . . .” ’337 patent 1:25-28; *see also* ’675 patent 1:24-27 (known for devices to “output notification indicating that a processing intended by a user has been performed in voice . . . .”). The ’337 patent admits that it was known to adjust the sound volume of the device’s response to the user. ’337 patent 1:34-38.

The patents diverge slightly on the problems they purportedly address. The ’675 patent identifies a purported problem: the device’s response to the user can be overheard by others, even

when the user does not want that. '675 patent 1:28-34. The '337 patent raises a similar problem: that the device's response may annoy others around the user. '337 patent 1:29-32. "For example, if a person around the voice processing device is asleep, the output voice may be an annoyance to the person." '337 patent 1:32-34. The '337 patent admits that decreasing the response's volume was known but decreasing it too much made it hard for the user to hear. '337 patent 1:34-38.

The patents propose similar ways to address these problems. Both patents describe analyzing the voice detected from the microphone and classifying the analyzed voice as either a "first voice" or a "second voice." '337 patent Abs.; *see also* '675 patent, Abstract. SoundClear alleges that a "first voice" is "the voice of a particular first person, or a near/close voice" and a "second voice" is "the voice of a particular second person, or a far/distant voice." Dkt. 1 ¶ 48; *see also id*. at ¶ 60.[4] Both patents explain that the distance the user is from the device "can be used" to perform the "first voice" or "second voice" classification:

> Furthermore, a proximity sensor can be provided in the voice-content control device 1, a distance between the user H and the voice-content control device 1 is calculated from a detection result of the proximity sensor, and the *distance can be used as a feature value to perform the classification* to the first voice V1A and the second voice V1B.

'337 patent 8:20-26 (emphasis added); *see also* '675 patent 10:32-38.

Then, the device's response via a speaker outputted back toward the user is tailored depending on whether the voice is classified as "a particular first person, or a near/close voice" or "a particular second person, or a far/distant voice." This tailoring of the response can happen in three ways. First, the patents describe omitting information in a response if the user is classified as "a particular second person, or a far/distant voice," as compared to if the user is classified as "a particular first person, or a near/close voice." '337 patent 9:37-48. Put simply, the device's

[4] Google does not agree with SoundClear's implied constructions in its complaint and reserves the right to dispute their scope and meaning but will assume SoundClear's constructions are true for the purposes of this Motion.

response to the user is shorter, containing less substantive content, if the voice is classified as "a particular second person, or a far/distant voice." '337 patent 9:48-50 ("an amount of sentence of the second output sentence is less than that of the first output sentence."). Second, the patents explain that the device's response may use a different volume if the voice is classified as a "first" or "second" voice. '337 patent 13:62-65 ("the output controller 40 may use different sound volumes for the voice V2 between the first output sentence and the second output sentence."). Third, the patents explain that words can be replaced in the device's response to the user depending on whether the voice is classified as a "first" or "second" voice. '675 patent 11:5-11; 11:53-59. The patents describe examples of word replacement, such as replacing "meeting" with "dinner." '675 patent 14:7-11. The result is that the device's response would be "understandable for the user" but "difficult to be understood by the people other than the user . . . ." '675 patent 15:7-11.

III. THE CLAIMS OF THE '337 AND '675 PATENTS ARE PATENT INELIGIBLE UNDER 35 U.S.C. § 101

A. Legal Standard

> Section 101 of the Patent Act permits an inventor to obtain a patent on "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." 35 U.S.C. § 101. This statutory language has long been understood to contain an important implicit exception . . . that abstract ideas . . . are not patentable.

Dialect, LLC v. Amazon.com, Inc., 701 F. Supp. 3d 332, 337–38 (E.D. Va. 2023) (citations omitted) (cleaned up). The Supreme Court set forth a two-part test in *Alice Corp. Pty. Ltd. v. CLS Bank International* for determining whether challenged claims are directed to unpatentable abstract ideas under 35 U.S.C. § 101. 573 U.S. 208, 217 (2014). At *Alice* Step One, courts determine whether the claims are directed to a patent ineligible abstract idea. *Id*. At *Alice* Step Two, courts "consider the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible

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application." *Id*. This "search for an 'inventive concept'" requires "significantly more than a patent upon the [ineligible concept] itself." *Id*. (brackets in original).

The Federal Circuit has "repeatedly recognized that *in many cases* it is possible and proper to determine patent eligibility under 35 U.S.C. § 101 on a Rule 12(b)(6) motion." *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1097 (Fed. Cir. 2016) (emphasis added) (citations omitted); *see also PersonalWeb Techs. LLC v. Google LLC*, 8 F.4th 1310, 1314 (Fed. Cir. 2021) (§ 101 "may be, and *frequently has been*, resolved on a Rule 12(b)(6) or (c) motion where the undisputed facts, considered under the standards required by that Rule, require a holding of ineligibility under the substantive standards of law") (emphasis added). The Federal Circuit has "*repeatedly* affirmed § 101 rejections at the motion to dismiss stage, before claim construction or significant discovery has commenced." *Trinity Info Media, LLC v. Covalent, Inc.*, 72 F.4th 1355, 1360 (Fed. Cir. 2023) (emphasis added); *see also Yu v. Apple Inc.*, 1 F.4th 1040, 1046 (Fed. Cir. 2021) ("[P]atent eligibility can be determined at the Rule 12(b)(6) stage without the aid of expert testimony."); *Sanderling Mgmt. Ltd. v. Snap Inc.*, 65 F.4th 698, 704 (Fed. Cir. 2023) ("[C]laim construction is not an inviolable prerequisite to a validity determination under § 101."). Courts in this District routinely hold patents ineligible under § 101 on the pleadings. *See, e.g.*, *DriverDo, LLC v. Soc. Auto Transport, Inc.*, No. 3:23cv265, 2024 WL 1376218, *25 (E.D. Va. Mar. 29, 2024); *Geoscope Techs. Pte. Ltd. v. Google LLC*, 692 F. Supp. 3d 566, 570 (E.D. Va. 2023); *Brunswick Corp. v. Volvo Penta of the Ams.*, LLC, 640 F. Supp. 3d 498, 501 (E.D. Va. 2022); *Va. Innovation Scis., Inc. v. Amazon.com, Inc*., 227 F. Supp. 3d 582, 595-605 (E.D. Va. 2017).

B. The Claims of the '337 Patent are Directed to Classifying a Voice Based on Proximity and Tailoring Output Based on that Classification (*Alice* Step One).

Courts "conduct the *Alice* step one inquiry by examining the 'focus of the claimed advance over the prior art.'" *AI Visualize, Inc. v. Nuance Commc'ns, Inc.*, 97 F.4th 1371, 1378 (Fed. Cir.

2024) (citing *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016)). "[T]he § 101 inquiry must focus on the language of the Asserted Claims themselves, and the specification cannot be used to import details from the specification if those details are not claimed." *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 769 (Fed. Cir. 2019) (citations omitted); *see also Ericsson Inc. v. TCL Commc'n Tech. Holdings Ltd.*, 955 F.3d 1317, 1328 (Fed. Cir. 2020). This is because "a specification full of technical details about a physical invention may nonetheless conclude with claims that claim nothing more than the broad law or abstract idea underlying the claims, thus preempting all use of that law or idea." *ChargePoint*, 920 F.3d at 769; *see also id*. at 766 ("'[T]he concern that drives' the judicial exceptions to patentability is 'one of pre-emption,' and the claim language defines the breadth of each claim."). That said, *Alice* Step One's "directed to" inquiry may be informed by the specification, including the problem the alleged invention purports to solve. *ChargePoint*, 920 F.3d at 767 ("The 'directed to' inquiry may also involve looking to the specification to understand 'the problem facing the inventor' and, ultimately, what the patent describes as the invention."); *see also Trinity*, 72 F.4th at 1363 ("Our focus is on the claims, as informed by the specification.").

Here, SoundClear asserts Claim 4 of the '337 patent. Dkt. 1 ¶ 44, 54. Claim 4 recites:

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

[2] a second output sentence is generated as the output sentence in which a part of information included in the first output sentence is omitted when the acquired voice has been classified as the second voice, wherein

[h] at adjusting the sound volume of voice data, further adjusting the sound volume of voice data such that the sound volume of voice data obtained by converting the first output sentence thereinto differs from the sound volume of voice data obtained by converting the second output sentence thereinto.

The '337 patent specification admits that it was already known by 2018 to detect the voice of a user, analyze that voice and perform processing according to the user's intention, output via voice a response based on that processing, and to adjust the sound volume of the response. '337 patent 1:1:21-35. This shifts the "focus of the claimed advance over the prior art" away from known limitations 4[b], 4[d], 4[e], and 4[f] in grey. All remaining limitations fall into the two categories of (1) classifying a voice based on proximity (4[a] and 4[c] in blue), and (2) tailoring output based on that classification (4[g] and 4[h] in violet).

Limitations 4[a] and 4[c], in blue, are directed to classifying a voice based on proximity. Limitation 4[a] recites "calculating a distance between a user and a voice-content control device." The specification indicates that this can be done using a proximity sensor. '337 patent 8:20-24. Limitation 4[c] recites analyzing the voice data to classify it "as either one of a first voice and a second voice . . . ." SoundClear's Complaint alleges that a "first voice" is "the voice of a particular first person, or a near/close voice" and a "second voice" is "the voice of a particular second person, or a far/distant voice." Dkt. 1 ¶ 48; *see also id*. at ¶ 60. Limitation 4[c] goes on to recite that the classification of a "first" or "second" voice is "based on the distance between the user and the voice-content control device" where that distance was calculated at Limitation 4[a].

Limitations 4[g] and 4[h], in violet, stripped of excess verbiage, boil down to tailoring output based on the classification of the detected voice. *See RecogniCorp, LLC v. Nintendo Co. Ltd.*, 855 F.3d 1322, 1325 (Fed. Cir. 2017) (affirming district court's analysis of what the claims "boil[ed] down to"); *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1256 (Fed. Cir.

2016) ("Stripped of excess verbiage, claim 1 is directed to . . . ."); *Intell. Ventures I LLC v. Cap. One Fin. Corp.*, 850 F.3d 1332, 1339 (Fed. Cir. 2017) ("Stripped of excess verbiage, the claim creates the dynamic document based upon 'management record types' ('MRTs') and 'primary record types' ('PRTs')."); *Veripath, Inc. v. Didomi*, 842 F. App'x 640, 643 (Fed. Cir. 2021) ("[s]tripped of excess verbiage, at its most basic level, claim 1 is anchored on the abstract idea of exchanging privacy for functionality.").

Limitation 4[g] recites two different output sentences depending on the classification in Limitation 4[c]. If the voice is a "first voice" (*e.g.*, "the voice of a particular first person, or a near/close voice"), then a first sentence is output. '337 patent, claim 4[g][1]. But if the voice is a "second voice" (*e.g.*, "the voice of a particular second person, or a far/distant voice"), then a second sentence that omits part of the information included in the first sentence is output. '337 patent, claim 4[g][2]. The specification indicates that the response to the second voice is shorter. '337 patent 9:38-57. These limitations are thus directed to tailoring the length of the response depending on whether the voice is classified as a "first" or "second" voice.

Limitation 4[h] recites "adjusting the sound volume of voice data" where the response's sound volume differs depending on whether the voice is a "first voice" or a "second voice." *See also* '337 patent 13:62-65. Limitation 4[h] is thus directed to tailoring the sound volume of the response depending on whether the classification at limitation 4[c].

Alice Step One's "directed to" inquiry may be informed by the problem the alleged invention purports to solve. *ChargePoint*, 920 F.3d at 767. Here, the '337 patent specification further supports that the claims are directed to ***classifying a voice based on proximity and tailoring output based on that classification***. The specification indicates that the purported problem is that the device's response needs to be loud enough for the user to hear, but not so loud as to annoy

others. ’337 patent 1:29-38. The alleged invention purports to solve this problem by classifying the voice based on distance as a “first” or “second” voice. ’337 patent 1:67-2:1; 7:51-63; 8:20-26; 8:35-41. Depending on whether the voice is classified as a “first” or “second” voice, the output is tailored accordingly. If the voice is classified as a “second” voice, then the device’s response is shorter and the sound volume is also adjusted. ’337 patent 9:38-48; 9:48-50; 13:62-65. The specification thus makes clear that the focus of the claimed advance over the prior art is classifying a voice based on proximity and tailoring output based on that classification.

Although SoundClear has only formally asserted one claim of the 337 ’patent, all claims of the ’337 patent are patent ineligible under 35 U.S.C. § 101 because Claim 4 is representative of all claims of the ’337 patent. The Federal Circuit has held that “[l]imiting the analysis of a § 101 challenge to representative claims is proper when the claims at issue are ‘substantially similar and linked to the same’ ineligible concept.” *Mobile Acuity Ltd. v. Blippar Ltd.*, 110 F.4th 1280, 1290 (Fed. Cir. 2024); *see also DriverDo*, 2024 WL 1376218, at *11. As demonstrated in Exhibit 1, all claims of the ’337 patent are substantially similar and linked to the same abstract idea of classifying a voice based on proximity and tailoring output based on that classification.

C. The Claims of the ’675 Patent, like those of the ’337 Patent, are Directed to Classifying a Voice Based on Proximity and Tailoring Output Based on that Classification (*Alice* Step One).

SoundClear asserts Claim 6 of the ’675 patent. Dkt. 1 ¶ 57, 65. Claim 6 recites:

6[pre]. An output-content control method comprising:
[a] acquiring a voice spoken by a user;
[b] calculating a distance between the user and an output-content control device by a proximity sensor to classify the voice into either a first voice or a second voice based on the calculated distance;
[c] analyzing the acquired voice to detect intention information indicating what kind of information is wished to be acquired by the user;
[d] acquiring notification information which includes content information as a content of information to be notified to the user based on the intention information; and

> [e] generating, when the voice is determined to be the first voice, a first output sentence in which at least one word selected among words included in the content information of the notification information is replaced with another word; and
> [f] generating, when the voice is determined to be the second voice, a second output sentence which includes all of the intention information and the content information.[5]

Similar to the '337 patent, the '675 patent admits it was known to detect the voice of a user, analyze that detected voice and perform processing according to the user's intention, and output via voice a notification indicating that the processing intended by a user has been performed. '675 patent 1:20-27. This shifts the "focus of the claimed advance over the prior art" away from known limitations 6[a], 6[c], and 6[d] in grey. Like the '337 patent, all remaining limitations fall into the two categories of (1) classifying a voice based on proximity (6[b] in blue), and (2) tailoring output based on that classification (6[e] and 6[f] in violet).

Limitation 6[b], in blue, is directed to classifying a voice based on proximity. It recites "calculating a distance between the user and an output-content control device by a proximity sensor to classify the voice into either a first voice or a second voice based on the calculated distance." *See also* '675 patent 10:32-38.

Limitations 6[e] and 6[f], in violet, are directed to tailoring output to the user based on the classification from limitation 6[b]. '675 patent 9:65-10:4. Limitation 6[e] recites that when the voice is a "first voice," then the output is a first sentence in which at least one word is replaced. Limitation 6[f] recites that when the voice is a "second voice," the output is a second output sentence that includes all information.

The '675 patent specification further informs us that the problem the alleged invention purports to solve is an eavesdropping problem–persons other than the user can overhear the device's response even when the user does not want to be overheard. '675 patent 1:28-34. The

[5] As corrected based on a Certificate of Correction issued by the U.S. Patent and Trademark Office on February 8, 2022.

specification goes on to explain that the word replacement allegedly solves this problem because it makes the device's response "understandable for the user" but "difficult to be understood by the people other than the user . . . ." '675 patent 15:7-11. The specification thus further supports that the claims of the '675 patent are directed to classifying a voice based on proximity, and tailoring output–*e.g.*, by replacing certain words–based on that classification.

Claim 6 of the '675 patent is representative of all claims in the '675 patent. All claims of the '675 patent are substantially similar and linked to the same abstract idea of classifying a voice based on proximity and tailoring output based on that classification. *See* Ex. 2.

D. Classifying a Voice Based on Proximity and Tailoring Output Based on that Classification is Abstract (*Alice* Step One).

To determine whether patent claims are abstract, courts have used different tests. Under the **case law comparison test**, claims are abstract because they are analogous to claims already found to be directed to an abstract idea. Under the **functional test**, claims are abstract because they are directed to generalized results instead of specific ways of accomplishing those results. Under the **real-world analogy test**, claims are abstract because they cover activities that humans performed before the claimed electronics existed. Failing any one of these tests indicates the claims are directed to an abstract idea. Here, the claims of the '337 and '675 patents fail all three.

1. Case Law Comparison Test

In determining whether the patent claims are abstract, courts look to previous similar cases. *Dialect,* 701 F. Supp. 3d at 338 ("Because 'there is no ... single, succinct, usable definition' of the term 'abstract idea,' district and appellate courts apply 'the classic common law methodology' by 'examin[ing] earlier cases in which a similar or parallel descriptive nature can be seen.'"); *Beteiro, LLC v. DraftKings Inc.*, 104 F.4th 1350, 1356 (Fed. Cir. 2024) ("[T]he decisional mechanism courts now apply [to § 101 cases] is to examine earlier cases in which a similar or parallel

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descriptive nature can be seen."); *In re Killian*, 45 F.4th 1373, 1383 (Fed. Cir. 2022) ("cases arising under § 101 [are decided] through comparison to its prior opinions").

Precedent is clear that "[i]nformation as such is an intangible" and thus "collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas." *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (citations omitted). The Federal Circuit has long held that claims reciting "collecting information, analyzing it, and displaying certain results of the collection and analysis" are "a familiar class of claims 'directed to' a patent-ineligible concept." *Id*. at 1353; *see also Beteiro*, 104 F.4th at 1355-56 (collecting cases).

Classifying data does not make the claims any less abstract. For example, in *TLI Communications LLC v. AV Automotive, L.L.C.*, 823 F.3d 607, 611 (Fed. Cir. 2016), the claims were "directed to the abstract idea of classifying and storing digital images in an organized manner . . . ." The alleged invention taught assigning "classification data" to digital images, and recited steps for extracting that classification information, and storing the digital images "taking into consideration the classification information." *Id*. at 611. The district court held the claims were "directed to 'the abstract idea of taking, organizing, classifying, and storing photographs'" and the Federal Circuit affirmed. *Id*. The Federal Circuit explained that claims were recited in results-oriented functional terms "without any meaningful limitations" and were "simply directed to the abstract idea of classifying and storing digital images in an organized manner." *Id*. at 612-13; *see also CyberFone Sys., LLC v. CNN Interactive Grp., Inc.*, 558 F. App'x 988, 992 (Fed. Cir. 2014) (". . . collecting information in classified form, then separating and transmitting that information according to its classification, is an abstract idea that is not patent-eligible."). In this

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case, classifying a voice based on proximity falls squarely into the line of cases holding similar claims directed to an abstract idea.

Likewise, tailoring output to a user is abstract. For example, in *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369 (Fed. Cir. 2015), the asserted patent generally related to "customizing web page content as a function of navigation history and information known about the user." More specifically, the claim related "to customizing information based on (1) information known about the user and (2) navigation data" where "information known about the user" included the user's location. *Id*. The district court held all claims patent ineligible under § 101, and the Federal Circuit affirmed. *Id*. at 1365-66. The Federal Circuit explained that "tailoring content based on the viewer's location" was "a fundamental . . . practice long prevalent in our system." *Id*. at 1369 (quoting *Alice*, 573 U.S. at 219). The Federal Circuit compared the tailoring to newspaper inserts based on the customer's location and explained doing so was an abstract idea. *Id*.; *see also In re Morsa*, 809 F. App'x 913, 917 (Fed. Cir. 2020) ("the claim recites both targeted advertising and bidding to display the advertising, which are both abstract ideas relating to customizing information based on the user and matching them to the advertiser"); *British Telcoms. PLC v. IAC/InterActiveCorp*, 813 F. App'x 584, 587 (Fed. Cir. 2020) ("tailoring the provision of information to a user's characteristics, such as location, is an abstract idea"). Here, tailoring output to a user based on classification of the user's voice falls squarely into the line of cases holding similar claims directed to an abstract idea.

Notably, the fact that the claims involve both abstract data processing and abstract output tailoring does not make the claims non-abstract. *ChargePoint*, 920 F.3d at 771 ("[a]dding one abstract idea . . . to another abstract idea . . . does not render the claim non-abstract."); *see also Impact Engine, Inc. v. Google LLC*, No. 2022-2291, 2024 WL 3287126, at *6 (Fed. Cir. July 3,

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2024) ("The focus of the claims is the abstract idea of processing information—turning user-provided input into user-tailored output—and not any improved concrete tools or methods by which that processing functionality is achieved.").

Furthermore, the claims of the '337 and '675 patents are similar to the ineligible claim in *Dialect*, 701 F. Supp. 3d at 337. In *Dialect*, the patent at issue was "directed to a vehicle-mounted system of physical processors programmed to process natural speech." *Id*. at 336. The challenged claim recited a system for "processing natural language utterances" by "receiv[ing] a natural language utterance associated with a user" (*i.e.*, gathering a user's voice data), analyzing the utterance by "perform[ing] speech recognition," parsing and interpreting the recognized speech, and determining (*i.e.*, classifying) "whether the command or query is to be executed on-board or off-board the vehicle," and then executing the query or sending it to the appropriate destination depending on the results of the analysis. *Id*. at 336-37. The court noted that the claim lacked "any specific hardware, software, or instrumentality," used only prior art devices, and used results-oriented language. *Id*. at 337. The court held that the claim was directed to an abstract idea, explaining that the claim was "no less abstract than 'collection of information, comprehen[sion of its] meaning . . ., and indication of the results,' an idea that the Federal Circuit has *repeatedly* found to fail *Alice* Step One." *Id*. at 340 (emphasis added) (citations omitted).

Both *Dialect* and the present case involve collecting voice data–"receive a natural language utterance associated with a user" in *Dialect* and "acquiring a voice spoken by a user" here. Both *Dialect* and this case involve analyzing and processing that voice data–parsing and interpreting the recognized speech to determine a domain and context in *Dialect* and analyzing the voice to classify it as a "first" or "second" voice here. And both *Dialect* and this case involve determining what to do depending on the results of that analysis–executing the command or query on- or off-board the

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vehicle in *Dialect* and tailoring the response here. Just as the claims were held abstract in *Dialect*, so too are the claims of the '337 and '675 patents abstract here. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016) ("[B]oth this court and the Supreme Court have found it sufficient to compare claims at issue to those claims already found to be directed to an abstract idea in previous cases."); *see also IPA Techs., Inc. v. Amazon.com, Inc.*, 307 F. Supp. 3d 356, 359 (D. Del. 2018) (Andrews, J.) (holding as abstract claims reciting steps for interpreting a spoken request from a user, constructing a query based on that interpretation, and using the query to select data to transmit to the user), *Nuance Commc'ns, Inc. v. MModal LLC*, No. CV 17-1484-MN-SRF, 2018 WL 6584129, at *2 (D. Del. Dec. 14, 2018) (holding as abstract claims reciting steps for processing an input data stream to identify latent information, populate a template based on the identified information, and generate a report for the user based on the populated template).

2. Functional Test

The Federal Circuit has held that patent claims "drafted using largely (if not entirely) result-focused functional language, containing no specificity about how the purported invention achieves those results . . . are *almost always* found to be ineligible for patenting under Section 101." *Beteiro*, 104 F.4th at 1356 (emphasis added); *see also Elec. Power Grp.,* 830 F.3d at 1356 ("[T]he essentially result-focused, functional character of claim language has been a *frequent* feature of claims held ineligible under § 101 . . . .") (emphasis added). Specifically, the issue is "whether the claims in the patent focus on a specific means or method, or are instead directed to a result or effect that itself is the abstract idea and merely invokes generic processes and machinery." *Two-Way Media Ltd v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1337 (Fed. Cir. 2017). Where, as here, the patent claim language recites a "result-oriented solution, with insufficient detail for how a computer accomplishes it," the Federal Circuit has held the claims directed to an abstract idea. *IBM v. Zillow Grp., Inc.*, 50 F.4th 1371, 1381 (Fed. Cir. 2022); *see also DriverDo*, 2024 WL

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1376218, at *15 ("[t]he invalidation of purely functional claims is a consistent theme in the Federal Circuit's recent § 101 jurisprudence.").

Here, the '337 and '675 patent claims fail the functional test because each claimed step is plainly results-oriented and fails to specify *how* to implement the step or achieve the desired result. As a stark example, limitation 4[c] of the '337 patent recites the critical step of classifying the voice: "analyzing the acquired voice to classify the acquired voice as either one of a first voice and a second voice based on the distance between the user and the voice-content control device." Similarly, limitation 6[b] of the '675 patent recites the critical classification step: "calculating a distance between the user and an output-content control device by a proximity sensor to classify the voice into either a first voice or a second voice based on the calculated distance." But neither claim recites *how* distance from the user is used to classify the voice. Rather, the plaintiff only claims the desired result: the voice is classified based on distance. This is not enough. *See Intell. Ventures*, 850 F.3d at 1342 ("[T]he claim language here provides only a result-oriented solution, with insufficient detail for how a computer accomplishes it. Our law demands more.").

The '337 and '675 patent specifications likewise inform us that the claims are results-oriented as the specifications make clear that *it does not matter* how the result is achieved. The specifications explain: "the voice classifying unit 38 can perform the classification to the first voice V1A and the second voice V1B **by using any method**." '337 patent 8:10-12 (emphasis added); *see also* '675 patent 10:22-24 (similar). Even if details from the specification could be imported into the claims, the specification lacks any detail on how to classify a voice based on distance. *See AI Visualize*, 97 F.4th at 1378 (courts must "avoid importing concepts from the specification into the claims"). All the specification says about distance is:

> Furthermore, a proximity sensor can be provided in the voice-content control device 1, a distance between the user H and the voice-content control device 1 is calculated from a

> detection result of the proximity sensor, and *the distance can be used as a feature value to perform the classification* to the first voice V1A and the second voice V1B.

'337 patent 8:20-26 (emphasis added); *see also* '675 patent 10:32-38 (similar). Missing is any explanation of *how* the sensor detects a result, *how* the distance is calculated from the result, or *how* that calculated distance is used to classify the voice. *See also* '337 patent, claim 4[a], 4[c]; '675 patent, claim 6[b].

All of the limitations for classifying a voice based on proximity and tailoring output based on that classification are functional and directed only to a result or effect. '337 patent, claim 4[a], 4[c], 4[g], and 4[h]; '675 patent, claims 6[b], 6[e], and 6[f]. And the specification informs us time and again that *it does not matter* how the recited results are achieved. '337 patent 4:4-6, 4:47-50, 5:3-4, 6:13-15; '675 patent 4:12-14, 4:41-43, 4:58-59. Thus, the challenged claims are directed to an abstract idea and fail *Alice* Step One for this second reason. *See also ENCO Sys., Inc. v. DaVincia, LLC*, 845 F. App'x 953 (Fed. Cir. 2021) (speech recognition claim directed to an abstract idea because "claim 1 fails to set forth specific techniques for processing the data"); *Ericsson*, 955 F.3d at 1328 ("Merely claiming 'those functions in general terms, without limiting them to technical means for performing the functions that are arguably an advance,' does not make a claim eligible at step one.").

3. Real World Analogy Test

A claimed method's similarity to longstanding "real-world" activities, *i.e.*, "to 'fundamental . . . practices long prevalent' is yet another clue that the claims may be abstract and unpatentable." *Beteiro*, 104 F.4th at 1356. For example, in *Content Extraction & Transmission LLC v. Wells Fargo Bank, National Association*, 776 F.3d 1343, 1347 (Fed. Cir. 2014), the claims were directed "to the abstract idea of 1) collecting data, 2) recognizing certain data within the collected data set, and 3) storing that recognized data in a memory." The Federal Circuit explained

that "humans have always performed these functions. And banks have, for some time, reviewed checks, recognized relevant data such as the amount, account number, and identity of account holder, and stored that information in their records." *Id*. And the Federal Circuit has made clear that the question here is not whether the specific claimed steps were long-prevalent fundamental practices, but rather whether there is a pre-computer analog. *Esignature Software, LLC v. Adobe Inc.*, No. 2023-1711, 2024 WL 3289488, at *3 (Fed. Cir. July 3, 2024) (rejecting plaintiff's argument on *digitally* signing *electronic* documents because signing documents was a longstanding business practice); *see also Parus Holdings, Inc. v. Sallie Mae Bank*, 137 F. Supp. 3d 660, 671 (D. Del. 2015), *aff'd*, 677 F. App'x 682 (Fed. Cir. 2017) (claims involving speech recognition abstract because there were "pre-Internet analogs" that suggested methods of organizing human (business) activity); *DriverDo*, 2024 WL 1376218, at *20 (claims directed to an abstract idea "because they are directed to a method of organizing human activity").

Here, the claims of the '337 and '675 patents fail the real-world analogy test because they cover activity with a clear, pre-computer analog. For the '337 patent, consider where Laura's husband says something to her, and she determines how to respond based on how far away he is (classifies the voice as a "first voice" or a "second voice" "based on the distance"). If his voice is a "far/distant voice," then she responds with a shorter sentence ("a part of information . . . is omitted") at a louder sound volume. For the '675 patent, consider where Mike and his partner are talking about their plans in public. If Mike's partner asks him what they intend to do at 6 pm, Mike determines how to respond based on how far away his partner is ("classify the voice into either a first voice or a second voice based on the calculated distance"). Depending on distance, he might respond by mentioning that they have a "meeting" at 6 pm or that they have a "dinner" at a

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particular restaurant at 6 pm. *Cf.* '675 patent 14:7-11. The claims of both the '337 and '675 patents clearly have long prevalent, pre-computer analogs, and thus fail the real-world analogy test.

E. There is No Inventive Concept in the Claim Elements Individually or as an Ordered Combination (*Alice* Step Two).

"To save a patent at step two, an inventive concept must be evident in the claims." *Ficep Corp. v. Peddinghaus Corp.*, No. 2022-1590, 2023 WL 5346043, at *6 (Fed. Cir. Aug. 21, 2023) (citing *Two-Way Media*, 874 F.3d at 1338). The Federal Circuit has "repeatedly held that '[t]he abstract idea itself cannot supply the inventive concept.'" *People.ai, Inc. v. Clari Inc.*, No. 2022-1364, 2023 WL 2820794, at *11 (Fed. Cir. Apr. 7, 2023); *see also Alice*, 573 U.S. at 217 ("[w]hat else is there in the claims before us?").

The starting point here is the specifications' admissions as to what was already known by 2018, and hence cannot be the inventive concept. *TLI*, 823 F.3d at 614 (rejecting plaintiff's argument that the "telephone unit" and "server" added an inventive concept because the specification admitted that those components performed "functions 'known' in the art."). Both asserted patents admit that it was known to detect a user's voice, analyze it and perform processing according to the user's intention, and output via voice a response to the user based on that processing. '337 patent 1:21-28; *see also* '675 patent 1:20-27. The '337 patent further admits that it was known to adjust the sound volume of the device's response. '337 patent 1:32-34.

Those admissions in the specification eliminate as potential inventive concepts '337 patent limitations 4[b] (acquiring voice of a user), 4[d] (analyze detected voice and perform processing according to the user's intent), 4[e] (generating based on processing output via voice), and 4[f] (adjusting sound volume of output). For the '675 patent, those admissions in the specification eliminate as potential inventive concepts limitations 6[a] (acquiring voice of a user), 6[c] (analyze

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detected voice to detect information intention information), and 6[d] (acquiring notification information based on the user's intention information).

Omitting the known limitations, all that remains are the claims for the abstract idea itself. Limitations 4[a] and 4[c] of the '337 patent and limitation 6[b] of the '675 patent recite nothing more than classifying a voice based on proximity. Limitations 4[g] and 4[h] of the '337 patent and limitations 6[e] and 6[f] of the '675 patent recite nothing more than tailoring output based on that classification. And the Federal Circuit is clear that "[t]he abstract idea itself cannot supply the inventive concept." *People.ai*, 2023 WL 2820794, at *11.

And even if some limitations could be considered apart from the abstract idea itself, any remaining limitations do not recite *how* the steps are to be performed. For example, limitation 4[c] of the '337 patent and 6[b] of the '675 patent fail to explain *how* to classify the voice based on distance from the user. The claims are devoid of any inventive concept and fail at *Alice* Step Two. *See also IPA Techs.*, 307 F. Supp. 3d at 370 (no inventive concept because "broad, functional claim language that merely describes an abstract idea"); *Nuance*, 2018 WL 6584129, at *9 (no inventive concept because "the claims do not identify how the claimed functions of 'bounding' and 'normalizing' are performed") (emphasis added).

The generic "proximity sensor" in Claim 6[b] of the '675 patent cannot be the inventive concept. "It is well-settled that mere recitation of concrete, tangible components is insufficient to confer patent eligibility to an otherwise abstract idea." *TLI*, 823 F.3d at 613. In *TLI*, the recited components–"'a telephone unit,' a 'server', an 'image analysis unit,' and a 'control unit'" all failed "to add an inventive concept sufficient to bring the abstract idea into the realm of patentability." *Id*. The Federal Circuit explained "generic computer components [were] insufficient to add an

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inventive concept to an otherwise abstract idea" and "the recited physical components behave exactly as expected according to their ordinary use." *Id*. at 614-15.

Here, the recited proximity sensor is the very definition of generic. The specification further indicates the sensor does nothing more than detect the user's proximity, the result of which is used to calculate the user's distance from the device. '675 patent 10:32-38; *see also iLife Techs., Inc. v. Nintendo of Am., Inc.*, 839 F. App'x 534, 538 (Fed. Cir. 2021) ("Aside from the abstract idea, the claim recites only generic computer components, including a *sensor*, a processor, and a communication device.") (emphasis added); *In re Gopalan*, 809 F. App'x 942, 946 (Fed. Cir. 2020) (no inventive concept where the patent failed to "recite any particular sensor placement or design, only generally stating that the specification's 'teachings can be applied . . . us[ing] offset measures of sensor based measurements' through 'placement of sensors or design aberrations.'").

There is no inventive concept here just as there was no inventive concept in *Dialect*. 701 F. Supp. 3d 332. At *Alice* Step Two, the court there found no inventive concept because "the abstract idea itself cannot provide the inventiveness *Alice* Step Two requires." *Id*. at 340. Given that, the court explained that the only portion of the challenged claim not directed to the abstract idea was determining whether the command/query was to be executed on-board or offboard the vehicle, and then executing it. *Id*. Still, the court held that determining where to execute the command and then executing did not satisfy *Alice* Step Two: "There is nothing inventive about this elementary concept; it constitutes a bare command to achieve a result." *Id*. at 340-42. Here, all limitations of Claim 4 of the '337 patent and Claim 6 of the '675 patent are either admittedly known, or else recite the use of the abstract idea of classifying a voice based on proximity and tailoring output based on that classification.

Nor is there any inventive concept in the claim limitations as an ordered combination. In *Two-Way Media*, 874 F.3d at 1333, the patents generally related to "streaming audio/visual data over a communications system like the internet." At *Alice* Step Two, the court explained that while an inventive concept could be found in the "non-conventional and non-generic arrangement of known, conventional pieces[,]" there was "no inventive concept in the ordered combination of these limitations." *Two-Way Media*, 874 F.3d at 1339 (citation omitted). The court explained: "The claim uses a conventional ordering of steps—first processing the data, then routing it, controlling it, and monitoring its reception—with conventional technology to achieve its desired result." *Id*.

Here, similar to *Two-Way Media*, there is no inventive concept where the voice spoken by a user must be acquired before being analyzed, and must be analyzed in order for the results of that analysis to be used to tailor a response. *See, e.g.*, '337 patent, claim 4[c] ("analyzing the *acquired* voice . . . ."), claim 4[g][1] (". . . *when* the acquired voice *has been classified* as the first voice"), claim 4[g][2] (". . . *when* the acquired voice *has been classified* as the second voice"); '675 patent, claim 6[e] ("generating, *when* the voice *is determined to be* the first voice . . . ."), claim 6[f] ("generating, *when* the voice *is determined to be* the second voice . . . ."); *see also Prism Techs. LLC v. T-Mobile USA, Inc.*, 696 F. App'x 1014, 1018 (Fed. Cir. 2017) ("Viewed as an ordered combination, the asserted claims recite no more than the sort of 'perfectly conventional' generic computer components employed in a customary manner that we have previously held insufficient to transform the abstract idea into a patent-eligible invention.").

IV. SOUNDCLEAR FAILS TO STATE A PLAUSIBLE CLAIM FOR DIRECT INFRINGEMENT OF THE '675 AND '337 PATENTS

Counts I and II of the Complaint recite facts that cannot plausibly support a finding of direct infringement of the '675 and '337 patents. SoundClear's own Complaint plainly demonstrates that the features of the accused products, both individually and collectively, lack

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multiple elements of the independent claims, including determining proximity to a user for distinguishing between a first and second voice to thereby (1) omit or replace words in a response; and (2) adjust the volume of the response. *Twombly/Iqbal* thus requires dismissal of Counts I and II of the Complaint.

The Google Products[6] are intelligent audio devices that are capable of receiving voice prompts and commands. In response, the Google Products provide audio and, in the case of devices with display screens, visual responses. For example, a user might say "Hey Google, what is the weather today," and the Google Products will respond audibly with the weather forecast, or display the forecast on the screen. The Google Products include various functions that facilitate the user's ease of use with the devices, including Voice Match (Compl. ¶¶ 48, 52, 60), UltraSonic Sensing (Compl. ¶¶ 46, 48, 60), Camera Sensing (Compl. ¶¶ 46, 48, 60), "Face Match," "Quick Gestures," "Look and Talk," (Compl. ¶¶ 46, 60), Beamforming (Compl. ¶¶ 46, 60), and Ambient IQ (Compl. ¶¶ 51, 53).[7] The Complaint cobbles together this list of features and functions relating to voice, noise, distance, and motion detection, and from that asserts that the various techniques together read on the claims. This is demonstrably not correct. "To survive a motion to dismiss [under Rule 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Walton Glob. Invs., Ltd. v. Bowman Consulting*

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[6] SoundClear accuses the following products as infringing in Counts I and II of the Complaint: Google Home, Google Nest Mini (1st Gen), Google Home Mini (1st Gen), Google Home Max, Google Nest Audio, Google Nest Hub, Google Nest Hub Max, and Google Nest Hub (2nd Gen.), and Google Assistant, which SoundClear refers to as the "Google Home Products" (Compl. ¶8, referred to herein as the "Google Products.") There are no detailed allegations of infringement as to the "Google Nexus/Pixel Products" or "Google Assistant Products" in Counts I or II of the Complaint. Thus, SoundClear's failure to proffer plausible infringement theories in Counts I and II as to the Google Home Products applies equally to the Google Nexus/Pixel Products and the Google Assistant Products.

[7] For the purposes of this motion only, Google accepts as true SoundClear's factual allegations relating to the functionality of the Google Products.

Grp., *Ltd.*, No. 3:23-cv-87, 2023 WL 4138243, at *2 (E.D. Va. June 22, 2023) (alteration in original) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "Plaintiff cannot assert a plausible claim for infringement under the *Iqbal/Twombly* standard by reciting the claim elements and merely concluding that the accused product has those elements. There must be some factual allegations that, when taken as true, articulate why it is plausible that the accused product infringes the patent claim." *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1353 (Fed. Cir. 2021).[8] SoundClear's allegations are implausible on their face and should be dismissed.

A. Counts I and II of the Complaint Fail to Plausibly Allege that the Google Products Omit or Replace Words or Information

The independent claims of the '337 and '675 Patents explicitly require that the words or information that would otherwise be provided to a user by the intelligent audio device when the user speaks in a first voice be "omitted" ('337 patent, *e.g.*, 20:1) or "replaced" ('675 patent, *e.g.*, 22:23) when the user speaks using a second voice.[9] None of the features described in SoundClear's Complaint plausibly infringe on these claim elements.

Voice Match cannot infringe these claim elements because it merely identifies the person speaking and, in response, provides information associated with that speaker. Voice Match does not replace or omit words or information otherwise intended to be provided based on whether a first or second voice is used, which is in turn determined based on the proximity of the user, and SoundClear does not allege that it does. *See, e.g.*, Compl. ¶ 48. Instead, SoundClear alleges that

[8] *See also Ottah v. Bracewell LLP*, No. 22-1876, 2022 WL 16754378, at *2 (Fed. Cir. Nov. 8, 2022) (affirming a district court's grant of a motion to dismiss because, even accepting the plaintiff's factual allegations as true, the accused products did not practice certain claim limitations of the asserted patent); *Kim v. Green Tea Ideas*, No. 3:17-cv- 00449-JAG, 2018 WL 1172998, at *2 (E.D. Va. Mar. 6, 2018) ("Literal infringement requires the accused product to contain each exact claim limitation.")

[9] In the case of the '675 patent, the first and second voices are reversed, i.e., the use of the first voice causes the words to be replaced. But, the general concept remains the same.

Voice Match replaces information by providing filtered and customized responses for the identified user. Compl. ¶ 63 *and see* Compl. ¶ 52. But even if filtering or customizing constituted omitting or replacing (it does not), SoundClear does not plausibly allege any such filtering or customizing is performed by Voice Match based on a user's proximity to the device.

SoundClear alleges that Ultrasonic Sensing and Camera Sensing determine the distance of a user from a Google Product. Compl. ¶¶ 46, 48, 60. But these are separate features from Voice Match. SoundClear nowhere alleges that these features cause any words or information of an intended response to be altered. Rather, SoundClear alleges that the Google Products use Camera Sensing to "determine that the acquired voice sound is originating from a user that is near or far from device and use that information to process the voice sounds accordingly (e.g., to adjust the display/appearance of information presented in response to the acquired voice signal)." Coml. ¶48. Adjusting the display or appearance of responsive information does not plausibly replace or omit words based on a first or second voice as the claim language necessitates. Similarly, SoundClear's allegation that Camera Sensing has the ability to cause "gray dots [to] appear, indicating that Assistant is ready to take user queries" when a user is within 5 feet of the device has no relevance to the information provided to a user in response to a query. Compl. ¶¶ 46, 60.

Other Camera Sensing techniques identified by the Complaint also cannot plausibly support an infringement theory. SoundClear alleges that Face Match "checks that the Face Matched user is the active speaker. This is provided by a multimodal active speaker detection model that takes as input both video of the user's face and the audio containing speech, and predicts whether they are speaking." https://research.google/blog/look-and-talk-natural-conversations-with-google-assistant/?m=1, *cited in* Compl. ¶¶ 46, 60. Look and Talk "can differentiate intentional interactions from passing glances in order to accurately identify a user's intent to

engage with Assistant." *Id.* Quick Gestures allow a user to "easily stop and resume media." https://support.google.com/googlenest/answer/9449279, *cited a*t Compl. ¶¶ 46, 60. The Complaint makes no plausible allegation and lacks any plausible theory whereby any of these Camera Sensing features replace or omit words or information in an otherwise intended response by the Google Products.

Finally, the Complaint alleges that beamforming infringes because it is an "algorithm for detecting the location of the voice audio source . . . between a user . . . and a voice-content control device," that allows "the algorithm to 'adapt to previously unseen or changing conditions.'" Compl. 46, 60. Thus, the Complaint alleges that beamforming facilitates the determination of the distance from a user to the Google Product but makes no allegation that the distance measurement has any impact on the substance of the response to the user's query, let alone causes the replacement or omission of any word in that response.

In sum, the Complaint makes clear that the otherwise intended substantive content of the response provided by the Google Products is not in any way omitted or replaced based on the user's proximity to the device or based on whether a first or second voice is identified, as the claims require. Instead, SoundClear alleges only that the presentation of information is merely changed ("adjust the display/appearance of information presented", "apply enhanced additional noise cancellation/suppression for voice signals that originate further away from the device.") Compl. ¶ 48. That is not a plausible infringement theory even at this stage of the case.

B. Count I of the Complaint Fails to Plausibly Allege that the Google Products Adjust the Output Volume Based on the User's Voice

The '337 Patent claims recite further that the volume of the response differs depending on whether the device identifies a first voice or a second voice. *See, e.g.*, '337 patent, claim 4, 20:6-10 ("adjusting the sound volume of voice data such that the sound volume of voice data obtained

by converting the first output sentence [”first voice“] thereinto differs from the sound volume of voice data obtained by converting the second output sentence [”second voice“] thereinto.”). SoundClear identifies only Ambient IQ as infringing this claim element. Compl. ¶¶ 51-53. Yet, Ambient IQ does not adjust volume depending on whether the voice is a “first voice” or “second voice.” Instead, Ambient IQ adjusts the noise level based on the ambient noise in the room, e.g., the noise created by a dishwasher (“the Ambient IQ feature, which allows the automatic adjustment of volume of Google Assistant’s voice response according to the ambient noise.”). Compl. ¶ 51; *and see* https://blog.google/intl/en-in/products/hardware/made-for-music-new-nest-audio-is-here/, *cited* by *id.* (“Ambient IQ lets Nest Audio also adjust the volume of Assistant, news, podcasts and audiobooks based on the background noise in your home, so you can hear the weather forecast over a noisy vacuum cleaner.”). There is no plausible theory in the Complaint alleging that the difference between a first or second voice impacts Ambient IQ’s operation in any way. For this reason alone, Count I must fail.

V. SOUNDCLEAR FAILS TO STATE A PLAUSIBLE CLAIM FOR DIRECT INFRINGEMENT OF THE ’487 PATENT

The ’487 patent describes a way of interacting with a conventional touchscreen device, such as a smartphone or tablet computer. ’487 patent, 1:48-2:9, 8:9-15. Specifically, the independent claims and specification describe using a two-finger gesture to designate an area of the screen to “select” the icons within that area by the user moving the two fingers closer together. *Id.*, 8:42-55. Once the area is designated, the user can “move, delete, or copy an icon or icons in the designated partial area.” *Id.*, and Figs. 4A-C; 9:39-44, 9:58-10:23, 10:40-60; Fig. 19A, 19B, 18:51-55. Thus, the patent describes the same icon-selecting function that desktop computers have provided for decades when a user clicks a mouse button, drags the mouse, and then releases the button. The difference is that, rather than using a mouse, the user can use a pinching gesture. The

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

In its complaint, SoundClear alleges that a pinch-to-zoom feature of Google's touchscreen devices meets the claim limitations. Compl. ¶¶ 71-78. SoundClear fails to state a plausible claim of infringement. The independent claims require the device to "select[] an object or objects contained in the rectangular area." *E.g.*, '487 patent, claim 11, 23:63-64. SoundClear asserts that the Google Products "perform the zoom function by setting a rectangular area with respect to the display and selecting an object or objects contained in the rectangular area[.]" Compl. ¶ 75. This allegation is implausible because the well-known pinch-to-zoom feature does not cause a Google Product to "select" any object. Zooming in or out simply adjusts the magnification level of the entire display—it does not select objects within any rectangular area defined by the touch points. SoundClear does not include any factual allegation identifying how the pinch-to-zoom function supposedly allows users to select objects. It does not. Thus, SoundClear fails to plausibly allege that the pinch-to-zoom feature, whether zooming in or zooming out, satisfies the "selecting an object or objects" limitation recited by the claims.

In its complaint, SoundClear also alleges that the pinch-to-zoom feature meets the claim limitations that require the device to set a "rectangular area." Compl. ¶ 75. This allegation is implausible because zooming in or out on a screen is unrelated to setting a rectangular area. SoundClear's only allegation regarding setting a rectangular area is "[o]n information and belief, Google Products and Services thus perform the zoom function by setting the rectangular area." *Id.* ¶ 78. But this bare recitation does not make a plausible allegation. None of the citations provided by SoundClear reference a rectangular area. Further, SoundClear does not explain why

changing the magnification of a display would identify a rectangular area at all. SoundClear's allegations are insufficient.

VI. SOUNDCLEAR FAILS TO STATE A PLAUSIBLE CLAIM FOR WILLFUL INFRINGEMENT

In the Prayer for Relief of its Complaint, SoundClear seeks "enhanced damages for willful infringement." Compl. Prayer for Relief, d. The Court should dismiss SoundClear's claim for willful infringement as inadequately pled under *Iqbal/Twombly*. To state a claim that Google willfully infringed the Asserted Patents, SoundClear was required to allege facts showing (1) Google knew about the Asserted Patents and (2) then engaged in "deliberate or intentional infringement." *Bayer Healthcare LLC v. Baxalta Inc.*, 989 F.3d 964, 988 (Fed. Cir. 2021); *State Indus., Inc. v. A.O. Smith Corp*., 751 F.2d 1226, 1236 (Fed. Cir. 1985); *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1341 (Fed. Cir. 2016) ("Knowledge of the patent alleged to be willfully infringed continues to be a prerequisite to enhanced damages."). SoundClear satisfies neither requirement: SoundClear does not allege any factual basis to support that (1) Google had knowledge of any of the Asserted Patents and alleges no facts from which the Court could infer that (2) Google engaged in "deliberate or intentional infringement" of any of the Asserted Patents. *Bayer*, 989 F.3d at 998. Thus, SoundClear's naked demand for damages based on willful infringement must be dismissed.

VII. CONCLUSION

For the foregoing reasons, the Court should dismiss Counts I, II and III of the Complaint, and all allegations of willful infringement, with prejudice for failure to state a claim.[10]

Dated: September 30, 2024

Respectfully submitted,

/s/ Stephen E. Noona
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[10] Google hereby advises the Court that SoundClear filed suit on the same patents involved in the present matter in another litigation in the Eastern District of Virginia. That case is styled *SoundClear Technologies LLC v. Amazon.Com, Inc., et al*, No. 1:24-cv-01283 (E.D. Va.).

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CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2024, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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