

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

PSLC LLC,,)
)
Plaintiff,) Case No. 24-CV-1270
) Milwaukee, Wisconsin
vs.)
) August 8, 2025
GENERAC POWER SYSTEMS, INC.,) 1:25 p.m.
)
Defendant.)
)

TRANSCRIPT OF MOTION TO DISMISS
BEFORE THE HONORABLE PAMELA PEPPER
UNITED STATES CHIEF DISTRICT JUDGE

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Proceedings recorded by electronic recording,
transcript produced by computer aided transcription.

TRANSCRIPT OF PROCEEDINGS

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THE CLERK: Court calls civil case, Case No 24-CV-1270, PSLC LLC v. Generac Power Systems Inc., here for a motion hearing. Please state your appearances for the record starting with counsel for the plaintiff.

MR. SUDER: Good morning, Your Honor. Jonathan Suder and Dave Gunter of Friedman Suder & Cooke.

THE COURT: Good afternoon.

MR. ELLIS: Good afternoon, Your Honor. This is Michael Ellis and Brandon Avers, both of Fish & Richardson, representing the defendant, Generac Power Systems, Incorporated.

THE COURT: Good afternoon. All right. We scheduled this hearing this afternoon on the Motion to Dismiss that is pending, and there's also a Motion to Strike. I just want to say at the outset, as you all know, I think we scheduled this hearing by phone because we assumed that would be more convenient for you all and because I usually do my Motions to Dismiss by phone.

I think you all called and asked to appear in person, somebody did, I don't recall who, okay. And, you know, anybody is always welcome in the courtroom, so you're more than welcome to be here, and I will give you an opportunity if you want to argue because I anticipate that that is what you've come to do,

1 but I want to assure you I've read all the pleadings. I have a
2 general idea of what your arguments are. In fact, I have more
3 than a general idea of what your arguments are and what my
4 reaction to them is, so I don't want to cut anybody off. I want
5 to give you a chance to do whatever you would like to do,
6 especially since you've trekked all this way.

7 It's no cooler here than it is where you came from,
8 but I just want to let you know that you don't need to start
9 from scratch because I think I'm pretty familiar with what the
10 issues are. So with that, I guess I will turn to defense since
11 it is you all's motion and ask how you want to proceed.

12 MR. AVERS: Thank you, Your Honor. Good afternoon.

13 THE COURT: Good afternoon.

14 MR. AVERS: My name is Brandon Avers. May it please
15 the Court.

16 THE COURT: Would you mind pulling that mic just a
17 little bit closer to you. For some reason, this room eats
18 sound.

19 MR. AVERS: How's this?

20 THE COURT: That's fine. Thank you.

21 MR. AVERS: Your Honor, this pattern infringement case
22 should be dismissed under Rule 12(b)(6). Plaintiff asserts
23 three patents in the field of backup power generation. Each is
24 invalid under Section 101, the Supreme Court decision's in
25 *Alice*.

1 The patents admit that the claimed components are
2 conventional, and that they're only performing their
3 conventional functions. Once we set those aside, all that
4 remains is an abstract idea, automatically managing loads that
5 are being powered by a power source to avoid an overload.

6 The patent concedes that people previously managed
7 loads by hand. All it's claiming is automating this process,
8 automating load management. This kind of results-oriented claim
9 is the kind that's routinely held unpatentable by the Supreme
10 Court, the Federal Circuit and district courts around the
11 country. Because the plaintiff can't state a claim for relief
12 based on invalid patents, this case should be dismissed.

13 Your Honor mentioned that you're familiar with the
14 briefing, and so I'll skip a lot of the background details.
15 I'll briefly touch on what I think are the most important things
16 in the specification as far as the technology we're dealing
17 with, and then I'll quickly address some of the affirmative
18 points in our briefing and how they interact with some of the
19 points raised in the sur-reply that the plaintiff filed or the
20 requested sur-reply.

21 Your Honor, we also have a few slides that we'll be
22 using today just to create a visual as I'm walking through a few
23 of these points. I think it would be helpful. I have a digital
24 version that I'm plugged into. If there's a way for me to
25 present, that would be helpful. Alternatively, we also have

1 paper copies for the bench.

2 THE COURT: Oh God no. No more paper.

3 THE CLERK: Counsel, are you prepared to share your
4 screen?

5 MR. AVERS: I am.

6 THE CLERK: Give it a second to pop up for us.

7 MR. AVERS: So we're talking about power sources and
8 their ability to power loads. The specification defines loads
9 as anything that you're going to plug into a power source to
10 gain power. Power sources have a maximum amount of power that
11 they can deliver. There's only so many loads you can plug in.
12 If you plug in too many, you run the risk of a long list of
13 negative effects, including damaging your power source, shedding
14 loads. Those are all bad things. The patent calls this an
15 overload.

16 Now, the patent admits that there are certain things
17 in the prior art that we did to solve this problem. One of them
18 is called load shedding. The prior art systems which detect
19 when a generator is in overload condition, it switches off
20 loads. This operation is known as load shedding, and the patent
21 admits that it's well known.

22 The patent also admits that there's another way people
23 solved this problem. They used to do it by hand, manually.
24 People switched over to a backup generator that produced less
25 power than the grid. They knew that they needed to remember not

1 to turn on certain loads in their house. If they did, they
2 might be overloading their generator.

3 The patent gives another example, which is if you
4 already are -- If you're switching over to backup power, you
5 already have all these loads on, the occupants of the house have
6 to run around and quickly switch things off; otherwise, if they
7 leave them on too long, that could damage the generator.

8 This might seem like a small point, but this is
9 important. In the prior art, people used to do this action of
10 preventing overloads by hand manually themselves. All the
11 patent is claiming is a way of automating this process.

12 And therein lies the key problem with these patents.
13 This kind of results-oriented claiming, claiming the effect of
14 preventing overloads that really explain the means is what
15 renders them invalid.

16 As this Court knows though a patent has been granted,
17 federal courts take a second look at the patent's validity, and
18 the Supreme Court gives us a test for doing that in the case of
19 Section 101, two-step test from *Alice*. One, they direct you to
20 an abstract idea. Two, is there an inventive concept? We cover
21 this in the briefing, so I won't go into any detail now.

22 All that's important for what I'm saying now is that
23 we focus on the claimed advance in Step One. To do that, the
24 Federal Circuit has blessed going through the patent's claims
25 and identifying what components are conventional. Once we've

1 done that, what remains is what the claim is directed to.

2 Now, I have a visual to help me explain what I mean by
3 conventional components. The patent has certain figures and
4 certain disclosures where it identifies how things existed
5 before this purported invention.

6 For example, Figure 3 is labeled Prior Art. This is
7 something that existed before the patent. Figure 3 labels a
8 whole bunch of different components, but we also find its
9 components in the patent claims themselves. For instance, you
10 have a power grid. The top left in red is numbered 12. We see
11 the power grid pop up repeatedly in Claim 37.

12 All the power grid is doing in Claim 37 is the same
13 thing it's doing in Figure 3. We see a very similar
14 relationship with the loads highlighted in blue, the transfer
15 switch in yellow, the generator -- backup generator in yellow,
16 and I'm highlighting these components in the claim to identify
17 where we have conventional components serving their conventional
18 functions as explained by the patent.

19 We can keep going. There's another one about a
20 battery charger connected to a battery. The battery is also
21 connected to the input of a DC to AC Inverter we see underlined
22 in red. There's a patent. The patent acknowledges that
23 describes this kind of power inverter. It's doing the same
24 thing in the same order that it was in the prior art as it's
25 doing in Claim 37.

1 They even say this about the processor circuit. The
2 processor circuit monitors the amount of power that's being
3 used. The patent says there's no particular or special
4 processor server that's needed. We just need a processor that's
5 capable of doing what we've claimed.

6 The last thing to fill in some of these blanks that we
7 don't have highlighted quite yet is Figure 1. Figure 1 is a
8 flow chart that explains the function of a transfer switch.
9 Basically, if there's a power grid that's providing power and
10 the power is adequate, you run power from there to your loads.
11 This flow chart shows us that when the power from the power
12 grids are no longer adequate, you switch over to the backup
13 generator. That's all that's being claimed in this red box.

14 Your Honor, once we remove all of these different
15 aspects that are conventional as admitted by the patent, what we
16 have left is what the claim advanced here, something being
17 programmed to prevent exceeding the maximum current capacity of
18 a power source. This is something programed to prevent
19 overloads.

20 Again, this is something that people used to do by
21 hand immensely. All we're claiming here, the claimed advance;
22 that is, removing all the conventional components is the
23 automation of something that people used to do themselves in
24 their homes immensely.

25 Your Honor, I have similar slides that are directed to

1 the 618 patent and the 857 patent. The same kind of arguments
2 apply, so I'm going to skip over those. To the extent you'd
3 like to see them, I'm more than happy to file this with the
4 Court or address them right now.

5 THE COURT: I'm fine, thanks.

6 MR. AVERS: The plaintiff argues that claim
7 construction is necessary in the requested sur-reply. Your
8 Honor, claim construction isn't necessary in this case. The
9 plaintiff has basically looked at our abstract idea, automated
10 load shedding. It's broken into two parts. One part they said
11 is reactive, so at the overload you do some kind of load
12 management. The other kind is proactive, so it's doing load
13 management proactively, and they said this is what our invention
14 is about. Okay. Let's suppose they're right. All they've done
15 is take an abstract idea and narrowed it, but that doesn't make
16 it any less abstract.

17 A similar issue came up in *Alice*. What the Supreme
18 Court said there was you can't just take an abstract idea and
19 confine it to a particular technological field or narrow it in
20 some way and render it less abstract; otherwise, you're just
21 breaking up an idea into a piecemeal fashion that you can still
22 monopolize that idea but with more patents.

23 What we need to do is look for some inventive concept
24 that's going to transform this abstract idea in some meaningful
25 way and not just looking at a narrower or narrower abstract

1 idea. So this claim construction dispute is unnecessary at this
2 stage. All they've done is identify a slightly smaller abstract
3 idea.

4 To the extent you'd like to talk about the merits of
5 their claim construction argument, we're prepared to do that as
6 well.

7 THE COURT: I don't think that's appropriate at this
8 stage, at the Motion to Dismiss stage.

9 MR. AVERS: Thank you, Your Honor. Your Honor, I know
10 there's a pending Motion to Strike and Motion for Leave to File.
11 For the Motion to Strike, we had made an error when we thought
12 that the motion was going to be due. We looked on the Court's
13 website and saw that there was a federal holiday. We realized
14 we had erred in asking for an extension to end on a particular
15 day, which was the 20th.

16 After looking at the Court's website, we decided that
17 okay because there was this announcement that the Court would be
18 closed, our brief must be due the next day. We had everything
19 done, but our office was closed and the Court's office was
20 closed. We figured okay, it must be due then. It seems like we
21 were wrong, and we acknowledge that. But the factors here don't
22 support a Motion to Strike our reply brief. I'm happy to run
23 through them. But again, those are in briefing as well, so I
24 won't belabor the point.

25 Finally, the Motion for Leave to File the Sur-Reply.

1 Your Honor, we're not afraid of the sur-reply. We're willing to
2 deal with it on the merits, but there were no new arguments in
3 our briefing. And if there were, they were merely responsive to
4 the issues that we saw in their briefing as well.

5 THE COURT: I'm sorry, I was looking away from you for
6 just a second because I didn't remember a separate motion, but
7 it's not. You're talking about the alternative motion.

8 MR. AVERS: Sorry, Your Honor.

9 THE COURT: Thank you.

10 MR. AVERS: Your Honor, do you have any further
11 questions?

12 THE COURT: I don't right now. Thank you.

13 MR. AVERS: Thank you, Your Honor.

14 THE COURT: Thank you. All right. For the plaintiff.

15 MR. GUNTER: Good afternoon, Your Honor.

16 THE COURT: Good afternoon.

17 MR. GUNTER: We also have a few slides prepared if
18 it's possible to switch over to our display.

19 THE COURT: Yep. Give it a second.

20 MR. GUNTER: We have hard copies as well though I know
21 Your Honor may not wish to see those. But if that changes for
22 any reason, please let me know.

23 THE COURT: Next time if you all want to, you can call
24 before you murder the trees. It will save you the effort.

25 MR. GUNTER: That's appreciated, Your Honor. Are you

1 able to see my presentation?

2 THE COURT: I am.

3 MR. GUNTER: So I want to address a few things that we
4 just heard from counsel.

5 THE COURT: I am going to ask you, I know you've got
6 your cad up. Could you pull the mic a little bit closer to you.
7 Thank you.

8 MR. GUNTER: Is this better?

9 THE COURT: Yes, better.

10 MR. GUNTER: Perfect. So I wanted to address a few
11 concepts that we heard from counsel just now and through the
12 briefing, and I think one thing that's particularly helpful is
13 to kind of back up for a second and look at procedurally where
14 we are and the fact that we're at a 12(b)(6) motion stage at
15 this point.

16 And so under the lens of a 12(b)(6) motion, we look to
17 the complaint, and we look to see if all well-pleaded factual
18 allegations are taken as true. And here we know that we have
19 well-pleaded allegations, and we know that because those
20 allegations are based in statements that are found in the
21 specification of the patent as well as the claims and ultimately
22 appear in our complaint.

23 Another thing to keep in mind is that all reasonable
24 inferences should be drawn in favor of the plaintiff, that's the
25 nonmovant. And so at the 12(b)(6) stage, claim construction has

1 not yet occurred, which Your Honor you did just acknowledge a
2 moment ago. Fact and expert discovery has not commenced much
3 less concluded, and it's premature to do at that discussion of
4 102 and 103 anticipation and obviousness. There's some of that
5 in defendant's briefing that's kind of getting to the heart of
6 whether there was some anticipatory system out there before our
7 claims. That's not appropriate at this stage.

8 I also want to address one thing that we saw
9 repeatedly reading the briefing, and that's exactly what the
10 Supreme Court has cautioned against when addressing an issue of
11 101 eligibility under *Alice* and; that is, avoid
12 oversimplification.

13 You just saw in defendant's presentation they took a
14 claim that is quite wordy, quite lengthy, and they kind of boil
15 it down to just a few words. And you saw this in the briefing
16 as well where they had these charts and tables that they created
17 where they would take a lengthy explanation and a claim term and
18 they boil it down to really one or two or three words to where
19 they take a lengthy claim term and now it's condensed into six
20 terms. That is what the Supreme Court has cautioned against.
21 Don't oversimplify.

22 It has also cautioned against characterization at such
23 a high level and untethered from the claims that really it would
24 swallow everything, everything on a high level can be considered
25 abstract. That's what the Supreme Court has cautioned against.

1 Now, there was -- Your Honor, you probably saw in the
2 briefing there was some disagreement as to the legal framework
3 that the Court should apply, and that's going to be a threshold
4 issue that the Court's going to undertake in doing its analysis
5 here. And particularly, defendant said that plaintiff got the
6 framework wrong. They tried to pull our argument, our Step One
7 argument, and claim that it was really a Step Two argument and
8 analysis. That is not true.

9 And, in fact, whenever we went back and started
10 looking at some of the cases that defendant chiefly relied on in
11 its brief, even those cases say that what we did under Step One,
12 namely whether something is a specific improvement to a
13 technological process, that is legally correct under Step One
14 for the Court to look at the issue in that framework.

15 Here's a quote from *Michigan Motors*, which was one of
16 the chief cases that defendant relied on. And *Michigan Motors*
17 acknowledges that at Step One, you look for a specific
18 improvement over a technological process. That's the legal
19 framework.

20 And the Federal Circuit has repeatedly affirmed that.
21 I included here, and this was in our brief as well. It is one
22 of the latest pronouncements from the Federal Circuit. This is
23 from the *ADASA* case. Mr. Suder was chief counsel -- lead
24 counsel for *ADASA* in that. That's one of the latest
25 pronouncements for the Federal Circuit which said under Step

1 One, you look for a specific improvement to a technological
2 process.

3 We've listed a series of other cases as well in the
4 briefing that all follow that. So it's not a one off that we're
5 saying. Defense cases, they agree if you go and look at those
6 and read them.

7 I'll really touch on Step Two as well. We think we're
8 patent eligible under Step One, but we also think that we are in
9 Step Two of *Alice* as well. We're as Step One is looking at the
10 claim as a whole and deciding whether it's directed to an
11 abstract idea i.e. directed to a specific improvement of a
12 technological process. Step Two is kind of doing a claim
13 limitation by claim limitation individually and ordered to
14 decide is there something inventive there that transforms it as
15 well. I think we're patent eligible under both, certainly Step
16 One, at the very least Step Two.

17 And Your Honor, you're likely familiar, and we cited
18 in our brief the *Berkheimer* case, and that's a case that says
19 there's factual determinations that, you know, when there's a
20 dispute amongst the parties over whether something is, you know,
21 well understood, routine, or conventional under Step Two.
22 That's a fact question, and that can be appropriate to deny at
23 the 12(b)(6) stage to resolve that.

24 So I want to touch on -- I've now said several times
25 what the test is for *Alice*, Step One. It's that specific

1 improvement to a technological process. So what's the
2 technological process here? It is load management for backup
3 power systems. That's true. And we provide an improvement, and
4 the patent walks through its specification. What is that
5 improvement? It's increased safety. You're avoiding what
6 counsel referred to as a long list of deleterious effects.
7 You're avoiding that.

8 THE COURT: I think he said real bad stuff happens.

9 MR. GUNTER: Yes, Your Honor, real bad stuff. That's
10 a good way of putting it. The last thing you want to do is burn
11 your house down because you're switching over to a backup power
12 supply that can't handle everything and it's not properly
13 managing the loads, so that's what we want to do.

14 And on that point of increased safety, the examples
15 that counsel were giving for walking around and unplugging
16 things, that is probably the epitome of the unsafe operation and
17 the inefficient operation that our patent is seeking to avoid.
18 It's seeking to provide an improvement to where you're not going
19 around your house and unplugging appliances just because there
20 is a power outage.

21 In fact, the patent even in one of the examples it
22 gave in the background was saying you would never want to do
23 that. What happens if you're asleep when the power goes out or
24 if a storm happens or if you're away from your house? There's
25 all kinds of examples where you don't want to be doing this

1 manual unplugging process. So we're providing an improvement to
2 a process of load management, so there's the increased safety.

3 Then, there's a couple other points I hope got across
4 in our briefing, but I think I'll be able to convey here.
5 There's also an idea of increased efficiency. You want to use
6 the full power of a generator, and I'm going to explain that
7 with respect to the figures, including the figures that counsel
8 just showed you here in a moment.

9 And then the final aspect, and we mention this in our
10 brief repeatedly, was the idea that you're introducing a new
11 type of system architecture, and that's something that our
12 patent puts forward. That's patent eligible under Step One and
13 under Step Two.

14 In our patent, there is -- There's a lot of talk about
15 the processor circuitry and what that circuitry does. It's not
16 simply some automation of a prior task, and it's not simply just
17 an algorithm that's applied. Let me walk through some of the
18 explanations that the patent gives in its specification.

19 You've got the idea that, you know, parameters of not
20 only the power systems, the power sources, in other words the
21 generator or the solar panels that are providing power, but you
22 know the parameters of -- of the loads as well, so what's
23 outputting the power and what's taking the power in.

24 You provide this to the system. The processor
25 circuitry acknowledges that. Then, you've got monitoring of the

1 output okay to see where there's fluctuations on how the output
2 that the power source is providing that power. Then, you're
3 doing something tangible. You're controlling the transfer
4 switch. That's a piece of hardware that the patent describes.
5 You're also monitoring -- I mentioned the loads. You're
6 monitoring the loads, too. Those consumptions change over time.
7 In one, the figures that we're about to look at, there's a
8 series of loads. There's the dish washer, the washing machine,
9 the oven, your air conditioning. You're monitoring all the load
10 requirements of those. Those are changing because they do
11 change during the day or during the season or what have you.

12 Then, this is critical for the processor circuitry.
13 You're controlling the load connection, disconnection and
14 timing. Those are three related -- Three related concepts that
15 the patentee broke those three concepts down repeatedly in the
16 specifications, not just about connecting loads. It's also
17 about disconnecting them when you need to. It's also about
18 limiting, and he talked about -- He gave examples in the spec
19 where instead of doing 100 percent, for example, on your oven,
20 you might want to limit just down to 20 percent. Maybe, it's
21 not important that dinner is ready immediately. Maybe, it's
22 okay that you warm the oven up a little slower. That's an
23 example of limiting. So there's connecting, disconnecting
24 limiting. The process circuitry is doing all three of those
25 things.

1 Now, here's a piece that lends towards this new system
2 architecture that I was describing. Now, the invention talks
3 about taking an inverter and placing it on the output of a
4 smaller backup power supply, so a solar panel, for example. You
5 are provided an inverter now to there, and you will be using
6 that solar panel, not capable of powering all of your loads just
7 some because it's small and more cost effective. So you're
8 using that, and you're sensing the output of the inverter there.
9 Now, that can be a power supply. That didn't used to happen in
10 the prior way that these systems were implemented. I'm going to
11 show you the examples here in just a moment.

12 So just to recap on that. We've got a series of
13 hardware components, DC to AC Inverters, transfer switch, load
14 controller, user input device, which I'm going to get to,
15 processor circuitry. All of those things are now working in a
16 new manner to sense and supply, connect, disconnect the loads
17 and the power sources through intelligent connection and timing.
18 That's the new-improved process that makes our claims eligible
19 under Step One.

20 So if the Court would indulge me for a moment. I
21 found this highly enlightening when I first read the patent to
22 look at the way that the patentee described the prior systems
23 and then his improvement. And again, that goes to the heart of
24 Step One, the prior way of doing it, and now the improved way
25 that his systems want.

1 So you saw Figure 2 a moment ago. The Court is likely
2 familiar with it. If you would indulge me, I can kind of orient
3 us a little bit. On the left-hand side here, so this as a whole
4 is a prior art system. On the left-hand side, you have the
5 power sources, the grid, and the generator. So the grid is the
6 utility. The generator is your backup power supply. Over on
7 the right-hand side of Figure 2, you've got all these different
8 loads that I mentioned a moment ago, the oven, the dryer, the
9 air conditioner, et cetera.

10 What the patentee says about the prior art is that you
11 could go from grid to generator. And if you look even in the
12 center of it annotated at one and two, the transfer switch, the
13 drawbridge is going between the grid and the generator. So that
14 can happen in the prior art system, but he said it was horribly
15 inefficient. Why? Because you had to actually power or be
16 capable of powering all of the loads that you see on the right.

17 In other words, once you went from the utility grid
18 down to the generator, you had to be able to power them all or
19 else you'd have a trip, very bad stuff would happen as counsel
20 said. So what you'd do is you would estimate your total loads
21 of your household. That was, you know, five kilowatts, for
22 example. You would buy a generator that was vastly exceeding
23 that, the patentee describes, in order to never reach that
24 situation where you'd have a trip. In other words, you would
25 have all of this excess in your generator that was not only very

1 large but very expensive to buy these massive generators just to
2 kind of get out in front of avoiding tripping whenever you had
3 an overload. That's prior art, number one. That's described --
4 Just if this Court wants to go back and look at that, that's at
5 Column Number 17, Items 29 to 43. There's also some discussion
6 in Exhibit A of the opening brief that defendant filed about
7 that inefficiency concept.

8 So that's the first type of prior art. Then, the
9 patentee lays out the second type of prior art that existed at
10 the time. You've got, as the Court can see, kind of the same
11 overall architecture. You've got the power sources over on the
12 left. You've got your loads on the right. You've got your
13 transfer switch still with the one and two. You still have the
14 drawbridge. But now what is present? Now, there was the load
15 manager. You see that highlighted in red here.

16 Well, the patentee describes how the load manager
17 would work. So now, it wasn't that you had to have a system
18 that could power them all, but as soon as there was a problem,
19 as soon as there was too many loads connected or wasn't capable
20 of powering them all, the patentee says it shuts them all down,
21 turns them all off simultaneously as a way the prior art systems
22 worked. Then, what it would do is it would reconnect them one
23 at a time. So you would, for example, turn your oven back on,
24 measure was there an overload? There wasn't. Okay, let's add
25 the next thing on. Let's turn the clothes dryer back on for a

1 period of time. Was there an overload? No. The system had no
2 idea to know what caused the overload. It had never done that
3 analysis. It just was what the patentee referred to as blindly
4 operating. You're just adding one back on. Was there an
5 overload? Two, no three. Or now you've added your AC, it
6 tripped again. Turn them all off simultaneously. Again, this
7 is such an inefficient way of doing it and frankly not safe.

8 So what our invention then, the specification it sets
9 out, it says what you want to try to do is turn them before an
10 overload occurs and then figure out what loads you're going to
11 connect. The specification goes through setting up priorities,
12 for example, and now it's measuring the output of your power
13 sources, measuring the current draw by your loads setting a
14 priority. And it's really doing this intelligent matching and
15 timing when you can connect these to avoid the problems of
16 shutting them all down. It doesn't happen anymore with our
17 system.

18 So let me show you and describe. This is going to
19 highlight a few of the components a couple slides back that I
20 mentioned to you. This is Figure 8 of our patent, and it's
21 representative of the preferred embodiment of the invention. So
22 Figures 2 and 3 were the prior art. Figure 8 is what we did do
23 again, provide that specific improvement to the technological
24 process. So you'll recognize some of the same componentry here.
25 You've got a transfer switch, but now you'll notice there's not

1 just one and two there annotated in the transfer switch, there's
2 a third option, Number 3. I've annotated it here.

3 Number 3 connects to the solar panel. That's what I
4 mentioned to you a moment ago as being this kind of new system
5 architecture. Now, you've got a solar panel. You add an
6 inverter to the output of it. It can be a power supply. And
7 since it doesn't have to power everything, it can just power
8 some loads. It can be smaller. It can be more cost efficient.
9 It can be more efficient.

10 Now, you've got an input. I mentioned an input a
11 moment ago. This is where every power system is different.
12 Your Honor, I should have asked you earlier, do you have one of
13 these backup power supplies at your house?

14 THE COURT: No.

15 MR. GUNTER: I know you can deal with adverse winters
16 here. Well, I am sure you can appreciate every environment is a
17 little bit different. So a backup power system that's here
18 might have to have other things to consider, temperature,
19 altitude, age of the system. That would be, perhaps, all
20 different things and whatever your house had hooked up to it.
21 Maybe you've got a hot tub. Maybe, you've got other patio
22 lights, things that are specific to your environment.

23 Well, that type of system would be vastly different
24 from one that, perhaps, I might have in Texas. We don't get the
25 winters that you get up here. We got a lot of sun but no

1 winter. So you would want to be able to enter all of that
2 through the user input, kind of set the specifications unique to
3 your situation.

4 Then, you've got what is highlighted here, the
5 power-source monitors, the processor circuitry that I was
6 mentioning a moment ago, and it's doing that monitoring of the
7 output of the power sources, and it's doing the monitoring of
8 the -- what the current that's being drawn from the loads. It's
9 doing that by -- It's adding in the power sensing circuitry.
10 You can see that 23A and 23C. That's what's doing that
11 monitoring.

12 Then, it's got the load control down here. And the
13 load control is affecting those different switches, and now
14 you'll notice there's not just a load switch. Previously, there
15 was a load switch. Now, there's also load limiting that. That
16 goes to the idea I mentioned a minute ago about connecting,
17 disconnecting, limiting, doing all three of those things to kind
18 of really intelligently match power sources with power supplies
19 and getting out front of any potential overloads.

20 So the patentee described that. It's not just in
21 figures. It's throughout the specification. The idea of
22 connecting, disconnecting, limiting describes the idea of now
23 you're having this economically sized operated power sources,
24 you can prioritize by various parameters. I mentioned a moment
25 ago, you can input power source operation parameters which might

1 depend from system to system. And now, you've got power sources
2 that -- Now, you've got improved power sources I should say.

3 Let me hit just on a couple of highlights just for the
4 Court's benefit. Again, this is found throughout the
5 specification, but here's some good I thought simpler points in
6 the specification about all of this. The efficient managing and
7 matching of loads to power sources. That's called lines 57 to
8 59. And knowing the parameters, that's column 26, lines 4 to
9 25. The whole idea about intelligent connection and
10 disconnection, limiting. That's column 9, lines 59 to column
11 10, line 21. There's some discussion of priorities. There's
12 actually a pretty in-depth discussion of priorities at column
13 26.

14 And finally, the whole new small backup power systems.
15 I would urge the Court if you were to go back whenever you're
16 creating your opinion, to me one of the most instructive and
17 important sections of the patent was really column 59, line 47
18 through column 62, line 55. That was really describing this
19 small backup power system that I'm going to describe, this new
20 architecture and how that works with managing the loads.

21 And so what we have is if we set the specification
22 aside for a moment, if we turn to the claims. The claims
23 include all of those ideas that I just ran through. You've got
24 in Claim 37 of the 727 patent, you've got a small backup power
25 system. You've got a transfer switch. You have the inverter

1 that I've been talking about, the battery. Then, you have the
2 processor circuitry that's programmed to do all this intelligent
3 monitoring and timing. That's found in Limitation B. It's
4 controlling the transfer switch, this patent claim.

5 Then, it's got the processor circuitry that timely
6 monitors the output of the inverters proactively to prevent
7 damage. Those are all concepts that are found in the
8 specification that serve as an improvement under Step One that
9 are found in the claims.

10 Same thing for the 618 patent, Claim 17. This is a
11 lengthy patent. I had to break it up into two slides, but
12 you've got the same ideas. You've got the second AC power
13 source, that's the inverter. You've got the small backup power
14 source and Limitation A. The transfer switch is present here.
15 You've got -- In this claim, you're not only taking about the
16 transfer switch, you're also talking about all the contactors
17 that are connected to the loads. So not only are you
18 controlling the transfer switch in a way that improves from the
19 prior art, you're also controlling all of the contactors in the
20 way that what loads you're connecting.

21 Again, all of that is being done by the processor
22 circuitry that's found in Limitation C, the processor circuitry.
23 You've got the user input circuitry that I talked about a moment
24 ago. That's in Limitation D. You've got the processor circuit
25 that's doing the load sheds in response to the overload. That's

1 in Limitation E.

2 And then very quickly, same thing for the 857 claim,
3 Claim 1. You've got an inverter. You've got, you know,
4 measuring maximum power outputs. You've got the power sensing
5 circuitry that is monitoring that inverter. It is monitoring
6 the outputs, controlling the frequency even in this claim. And
7 then finally in Limitation C, you've got the processor circuitry
8 operating in response to that frequency and deciding whether --
9 what to control.

10 What I just heard counsel -- One of the main thrusts
11 of counsel's argument seems to be look at how conventional some
12 of these components were. That seems to be a main concept found
13 in the briefing and in oral argument here today. What we know
14 from *Thales* and several other cases is that it's okay to use
15 conventional components. That doesn't doom a claim. That's
16 what the courts -- That is language that the courts use. It
17 doesn't doom the claim to have conventional components. Same
18 thing using math. Just because you use math or have an
19 algorithm, that doesn't doom the claims.

20 So just to refresh, the *Thales* invention did involve
21 conventional components. In fact, it had these inertial
22 sensors. It was a patent for doing tracking of moving objects.
23 So it had conventional inertial sensors, and it used a processor
24 to perform math on measurements that were taken from that
25 conventional sensor. It would measure inertial track changes,

1 and it would kind of provide an improved way that you could
2 measure and you could track.

3 That was different than the prior methodology in
4 *Thales*. In the prior methodology, you still used the
5 conventional sensors, that you measured position relative to
6 earth and position relative to the platform. That was fraught
7 with errors *Thales* described. And so what *Thales* did is it took
8 the same conventional component, but it used them in a little
9 bit different way. It put them on the helmet of the track
10 device. And instead of measuring position to earth and position
11 to platform, it now measured gravity changes and then made
12 corrections with position to platform. So it used the same
13 components but in a slightly different way. And importantly
14 using them in that way and in that arrangement, that provided an
15 improved technological process to that tracking system.

16 Let me touch on another cases that's very similar, the
17 *Diamond v. Diehr* case. This is one that *Thales* mentioned in all
18 of cases that both parties have cited. Look back to the *Diamond*
19 *v. Diehr* case. In *Diamond v. Diehr*, it was the exact same
20 thing. It was a patent for rubber curing, rubber curing
21 process. Now, *Diamond v. Diehr*, the patent there didn't invent
22 rubber curing, but it was an improvement to rubber curing. And
23 importantly, it didn't invent a new type of sensor, and it
24 didn't improve the math that was used; although, it did use
25 math. Instead what it did it said, let's look at the sensors.

1 Let's place a sensor inside the mold, and let's use that
2 temperature.

3 So again, conventional sensor, which may be used in a
4 slightly different way. Let's put it in the mold. Let's take
5 the temperature there, and then let's make some decisions much
6 like our patent is making decisions on this. It would open and
7 close the clamps in a different way based on that measurement.
8 So again, that was using conditional components. It was using
9 math, but it was doing it in a way that improved the process.
10 That's why it's eligible under Step One. Same thing for us.

11 Let me contrast those examples with the examples that
12 defendant has provided in its briefing. One of its chief cases
13 I mentioned *Michigan Motors* earlier. That's the case that
14 confirmed the correct Step One inquiry that we're arguing before
15 the Court.

16 *Michigan Motors* involved a claim that was merely math.
17 If you look -- I went and pulled the preamble to the claim
18 involved in *Michigan Motors*. It was a claim that was directed
19 to a method for calculating. It was just doing math.

20 *Parker v. Flook*, same thing, merely math. It was a
21 method for updating an alarm limit. That is what the patentee
22 was concerned about there. The alarm limit was just a number.
23 So take a measurement, you update that number and save it. It
24 was just providing a different mathematical equation. It was
25 just math, and that is ineligible under 101. That's not what we

1 are.

2 Let's look at the claims of our patents that are using
3 algorithms to improve the technological process. You look at
4 our claim preambles. We're not just a method for calculating.
5 We're an apparatus for controlling power provided from a
6 plurality of power sources to a group of loads. That's the 727
7 patent.

8 The 618 patent, a small backup power system comprising
9 it. It has all the hardware. It has the processor circuitry.
10 It's all monitoring and controlling in a unique way that serves
11 as an improvement. Same thing for the preamble of our third
12 patent.

13 You've got a power system which provides AC power with
14 a controlled AC frequency to assist in managing the loading
15 thereof. So that's really the stark contrast between the cases
16 that defendant is citing for you to rely on and the cases that
17 we're relying on.

18 Finally, I'll walk through this pretty quickly, but
19 the lens that I mentioned at the very start of my presentation
20 was let's look at the claims and look at the statements in the
21 complaint, see if they are well-pleaded allegations. And we
22 know that they are because they are supported by and based in
23 the statements found in the specification.

24 And so what we've done is we've walked through -- At
25 the Court's convenience, you can refer back to specifically

1 paragraphs 15 through 19. Those are the paragraphs that we've
2 cited in our -- that are kind of called out in our briefing.
3 Those paragraphs talk about controlling the load where you've
4 got a power source, a backup power generator, selectively
5 connecting, disconnecting, limiting, controlling the loads in
6 order to avoid overloads. Those are all concepts that I've just
7 been discussing.

8 In paragraph 16, the same thing, talking about again
9 the specific improvement. That's Step One about power sources
10 of a smaller size, more economically feasible. That's the solar
11 panel example I gave, more economically attractive to consumers,
12 resistant against overloads. And you're doing that by
13 disconnecting before there is -- that power before the bad stuff
14 happens.

15 Claim 17 is the same example. I would encourage the
16 Court to revisit Claim 17 because this hits again not in a
17 conclusory fashion, but hits all of the statements that should
18 be taken as true at that stage and in favor of plaintiff about
19 how this originated in a technical field. It focused on a
20 problem.

21 Look back at Figures 2 and 3 and why that is different
22 from Figure 8. It focussed on an improvement of power system
23 functionality. It includes all of the hardware. It has the
24 specific concrete way that is serves as an improvement.

25 And the idea that the concepts aren't well understood,

1 routine or conventional in the art. Again, all of those
2 examples that I just walked through where we were pointing to
3 limitations in the claims, those are all examples of not being
4 well understood, routine or conventional. And we know that they
5 are because they're different than the way that the prior art
6 systems were doing it.

7 We know that it's not enough that you're just using
8 conventional componentry. You're not doing it in a new way.
9 That can be patent eligible. That's what *Thales* said and the
10 other cases.

11 Same thing with paragraph 18. That includes a
12 discussion of the prior art that we just walked through.
13 Figures 1 through 3 talks about the way that those systems were
14 not preferred, the way that we've now provided improvement.

15 Same thing in paragraph 19. It's talking about
16 Figure 4, but you'll see in the patent, Figure 4 and Figure 8
17 are quite similar, both refer to monuments to the patents too.

18 So in summary, Step One, the claims aren't directed to
19 an abstract idea, whether they are improvement to a
20 technological process. We're basing that on statements in the
21 specification statements and limitations in the claims as
22 alleged in the complaint in detail.

23 And then Step Two, not routine or conventional. Same
24 concepts that we just ran through. And then at a minimum, I
25 would again just urge the Court that, you know, at a minimum so,

1 there's some suggestion a moment ago about claim construction.
2 We believe under the *Berkheimer* test at a minimum there's an
3 issue here that is not appropriate to resolve at a 12(b)(6)
4 motion. It should be saved for a later time. That's what the
5 *Berkheimer* case stands for. It says there's questions of fact,
6 and there can be questions of fact in Step Two. That's what we
7 think is here.

8 Yeah, I think unless, Your Honor, if you have further
9 questions for me, I'm happy to address those.

10 THE COURT: The only thing I would be interested in
11 hearing you respond to is the defendant's argument, you
12 mentioned earlier that all of these are -- they are conventional
13 components. And the defendant argues, okay, you take away all
14 those conventional components, which I agree with you it does
15 not doom -- The fact they are conventional components involved
16 does not doom a claim.

17 But the defendant's argument, as I understand it, if
18 you take all that away -- excuse me, I have a cold -- all those
19 conventional components away, what you're left with is let's do
20 a process using these components by computer that we otherwise
21 could have done either by hand or in some other fashion.

22 And so the defendant's argument, as I understand it,
23 the argument simply is all you all are doing is layering on the
24 let's do a process by computer that otherwise in the prior art
25 maybe even was done by computer but not, you know, this

1 particular way. So I'd like you to respond to that. I realize
2 I didn't exactly restate your argument.

3 MR. GUNTER: Sure, Your Honor. I'd be happy to. We
4 certainly do have conventional components that are being used
5 here, but they are being used in a new way, in a new manner, a
6 new arrangement that provides for that improved process. That's
7 exactly what *Thales* and *Diehr*, that's what those cases stand
8 for.

9 So you're not just stripping it all away and left with
10 a computer. You're actually doing something different even with
11 that algorithm, if you will. You're doing things like now
12 placing an inverter on a solar panel, a small power supply
13 that's only capable of powering some but not all of your loads,
14 and you're doing this intelligent connection, disconnection,
15 limiting. You're now considering all of that. You're
16 considering it with the parameters that are being input by the
17 user specific to your system, and you're doing this intelligent
18 load matching that wasn't found in the prior art. That's what
19 our patentee says.

20 That wasn't the way that they used to do it. We're
21 improvement to the way they used to do it. That is exactly what
22 *Thales* says is eligible under Step One and the cases that rely
23 on *Diamond v. Diehr*.

24 THE COURT: Thank you.

25 MR. GUNTER: Thank you, Your Honor.

1 THE COURT: Brief response.

2 MR. AVERS: Your Honor, I would ask, where is
3 intelligent load mapping in the claims? The focus of these
4 analyses are predominately focused -- almost exclusively focused
5 on the claims themselves. Yes, we can go to the specification
6 to learn things about what parts are conventional. We can also
7 go to the specification to understand the claim themselves. But
8 at the end of the day, the claimed invention needs to actually
9 encompass this inventive concepts.

10 We saw a long portion of the presentation just now
11 that focused on the benefits that could be received from
12 implementing the purported invention, but that's only part of
13 what we need to do here. Now, we need to see those inventions
14 as captured in the claims.

15 When we get down to the claims like we showed you,
16 this would end up being conventional components. And you
17 understood our argument correctly, you recited it right. If you
18 take all those components away, what remains is really just this
19 idea of automated load shedding or proactive automated load
20 shedding, whichever way it is, but it's just the result.

21 They don't tell us the means. They don't tell us how
22 we're doing this intelligent load management. They don't tell
23 us what the steps are that we should be taking. They don't tell
24 us specifically all of these other things that should be in
25 there, should be in means in order to show us why this claim is

1 not abstract.

2 As for the inventive concept side of things, *Thales*
3 and *Diehr* fail to argue that you can use math and still have a
4 patentable invention, that's true, but *Thales* and *Diehr* end up
5 looking a lot different from the claims that we have here.
6 There, the court picked up on the specific configuration of
7 sensors. That's what was unconventional, the specific
8 configuration. You can put your finger on it and figure out why
9 that was unconventional.

10 In *Diehr*, it wasn't just that they had math, they had
11 all these other components. It was a specific thermocouple that
12 can take a new measurement that couldn't be done before.

13 An interesting discussion of this happens in *Alice*.
14 Justice Thomas actually walks through in back-to-back
15 paragraphs. The Supreme Court's decision in *Flook*, and the
16 Supreme Court's decision in *Diehr*, and he actually separates
17 those two in a way that's very helpful to understand. They were
18 quite similar. Yes in *Flook*, they involve -- The claims were
19 directed to use of an algorithm right, a catalytic conversion
20 process. That was unpatentable because that would be
21 monopolizing the equation itself. But *Diehr* was patentable,
22 according to Justice Thomas, because they had used a sensor in a
23 new way, in a way that couldn't be done before. That was that
24 inventive concept. That's what took it beyond just mere use of
25 the equation.

1 Now, Your Honor, I want to be clear, the Federal
2 Circuit has said that novelty is not the test for Section 101.
3 So just because we have a slightly new arrangement of components
4 doesn't necessarily mean that this is the kind of
5 unconventionality that makes this inventive.

6 We have to tie the unconventionality into a way that
7 transforms the abstract idea that we identified in Step One.
8 And here, I just don't think these claims are doing that.

9 Lastly, Your Honor, we talk about this in our
10 briefing. The 101 issue is ripe at this stage. There's no
11 reason to give leave to amend at this point. Yes, we have to
12 take all the pleaded facts as true. But the Federal Circuit has
13 said that we don't need to accept as true factual allegations
14 that directly contradict the specification.

15 Here, our arguments are based in the specification of
16 the patent's claims. We point out in the specification where
17 things are identified as being part of the prior art,
18 conventional, and we show where they are happening in the
19 claims. If you agree with our arguments, the only way that they
20 could amend their complaint to create an argument that these are
21 not abstract or are unconventional and inventive in Step Two
22 would be to contradict the specification in the patent itself.
23 We don't need to accept those allegations as true.

24 Your Honor, these claims are directed to an abstract
25 idea, and they failed to provide any inventive concept. Unless

1 Your Honor has any further questions, thank you.

2 THE COURT: I don't. Thank you.

3 MR. GUNTER: Your Honor, if I could very quickly
4 address that.

5 THE COURT: I don't think you need to, Mr. Gunter.
6 And the reason I don't and I appreciate the arguments that both
7 of you made, but let me -- I'm prepared to give you all a
8 decision, and I realize this is probably not the practice that
9 you're used to, an oral ruling on the day of argument.

10 But as I've told you when I came in here before
11 hearing your argument, I had kind of a sense of where I thought
12 you'd be going. I haven't heard anything that's particularly
13 surprising; although, I've heard a little bit more emphasis on
14 some of the details in the briefing, but I don't think anyone
15 said anything today that I've suddenly gone oh my goodness, I
16 didn't know that or didn't realize that.

17 So I am prepared to give you all a decision. Let me
18 just tell you, you may be wondering well how's that going to
19 happen, and the answer is we are recording by audio this hearing
20 today. All of your arguments have been recorded up to now. The
21 ruling I'm about to give you will be recorded.

22 At the end of this hearing, it may be a day or so. It
23 takes us a little time to do it, but we will be attaching the
24 audio recording to the docket so you can sit in your offices if
25 you choose to do so and listen to the ruling right from your

1 computers.

2 In addition, at the end of the ruling, I'll give you
3 two other ways that you can get it if you prefer to get it in a
4 more, you know, traditional way.

5 So if you'll bear with me for just a moment. And
6 please know I'm going to skip over a lot of the factual
7 allegations because you all have gone through them. I've read
8 them. I think everybody is fairly familiar with what the
9 complaint alleges, and so I want to move to the analysis, but I
10 think it's important to note the procedural history.

11 So the plaintiff filed a complaint on October 7th of
12 2024. It's at Docket Number 1. And on December 2nd, the
13 defendant filed a Motion to Dismiss the claims, and that motion,
14 as you all have both noted, is under Rule 12(b)(6). That motion
15 is at Docket Number 9.

16 The same day, the defendant filed an answer,
17 affirmative defenses and counterclaims. That's at Docket Number
18 10. I should say as an aside, I don't know if that's a common
19 practice in the districts where you all normally practice. I'm
20 assuming it is because the counterclaims are compulsory.
21 Normally, we don't get the answer until after the Motion to
22 Dismiss has been ruled upon. And then, the defendant files an
23 answer if the Motion to Dismiss is denied, but there's nothing
24 wrong with it. Usually, it is an in lieu of situation.

25 On December 23, 2024, the plaintiff filed a brief in

1 opposition to the Motion to Dismiss at Docket Number 12, and the
2 defendant then filed an unopposed Motion for an Extension of
3 Time. Defense counsel referred to this to file its reply brief
4 "up to and including January 20, 2025." That's Docket Number
5 14.

6 I granted that motion, and I ordered that the time for
7 the defendant to file a reply -- this is a quote -- "the time
8 for the defendant to file a rely in support of its Motion to
9 Dismiss is extended until the end of the day on January 20,
10 2025." That's Docket Number 15.

11 As defense counsel pointed out, January 20th of this
12 year was Dr. Martin Luther King day. It's a federal holiday.
13 The court building was closed, and there were no hearings going
14 on here. And I use the word building for a reason, and I'll get
15 to that in a moment.

16 The defendant did file a reply brief, and it was
17 docketed. It was filed on January 21, 2025, which is the
18 following day, Docket Number 17. Two days later, the plaintiff
19 filed a Motion to Strike that reply brief as untimely or in the
20 alternative for a request to file a sur-reply, Docket Number 18.
21 And then the defendant filed a brief in opposition to that,
22 Docket Number 19. I'm going to address the Motion to Strike
23 first.

24 The plaintiff argues that the reply brief should be
25 stricken because it was unquestionably late. It was filed a day

1 after the January 20th deadline, Docket Number 18 at page 1.
2 And the plaintiff says that "when a court sets a specific date
3 by which filing must occur, Federal Rule of Civil Procedure
4 6(a)(1) is inapplicable and a party is not entitled to wait
5 until the following day regardless of whether the date selected
6 by the Court is a federal holiday or a weekend." That's citing
7 *Miller v. The City of Ithaca*, Case No. 3:10CV-597, 2012 U.S.
8 Dist. LEXIS 63433 at pages 2 through 11. That's a Northern
9 District of New York case, May 4, 2012.

10 The plaintiff says the defendant asked for
11 January 20th of 2025, and the defendant was given permission to
12 file a brief no later than January 20, 2025. And so according
13 to the plaintiff, the defendant was obligated to file its reply
14 brief on or before that date, page 2 of the brief.

15 The plaintiff asserts that the defendant could have
16 contacted the plaintiff and said, hey, can we have an extra day,
17 could have contacted the Court and asked for a slight extension,
18 which the plaintiff anticipates probably would have been granted
19 but did not do so.

20 The defendant responded that its untimely filing was
21 the product of excusable neglect. This is Docket Number 19 at
22 5. And counsel has kind of repeated the argument today. The
23 defendant says that the reply brief was ready to go, it was
24 completed and done and in the can on January 20th but then
25 counsel learned that the court was closed due to the Dr. King

1 holiday. And I think -- I don't know whether the word is
2 determined or concluded, but defense counsel concluded that
3 because it was a federal holiday, I think there was an
4 assumption made, well, then it's actually due the following day,
5 the first business day.

6 And the defense goes further and says even if we're
7 wrong about that, even if that's incorrect, there's not any real
8 impact on the proceedings because the court was closed anyway on
9 January 20th, and no other deadlines were altered by that delay.
10 That's page 7 of Docket Number 19. And so in the end, the
11 defendant says "a miscalculation on a routine matter made in
12 good faith" is excusable neglect in this circuit, page 7.

13 The reply brief was not timely filed. I think the
14 defense concedes that. And the plaintiff's reading of the rule
15 is correct. Only when "a period is stated in days or a longer
16 unit of time" do the federal rules provide that "if the last day
17 is a legal holiday, the period continues to run until the next
18 day that is not a legal holiday." That's Federal Rule of Civil
19 Procedure 6(a)(1)(C). But as the courts in this circuit have
20 said, that rule does not apply when the court selects a specific
21 deadline and says file by January 5th or October 15th.

22 And one of the cases that says that is 4295 N.
23 *Teutonia Inc. v. The City of Milwaukee*, Case No. 23-CV-1509,
24 2025 WL 720975 at page 2, Eastern District of Wisconsin case by
25 my colleague, Judge Stadtmueller, on March 6, 2025, citing

1 *Curtis v. TransCor Am., LLC*, Case No. 10 C 4570, 2012 U.S. Dist.
2 LEXIS 51939 at pages 2 through 3. That's a Northern District of
3 Illinois case, April 13, 2012.

4 The other rule that governs extensions is Federal Rule
5 Civil Procedure 6(b)(1)(B). That states, that a court may
6 retroactively extend a deadline "on motion" and only "if the
7 party has failed to act because of excusable neglect." That's
8 distinct from prospective extensions of time.

9 Rule 6(b)(1)(A) states that for a prospective
10 attention -- prospective extension, that extension can be made
11 "with or without a motion as long as it's made before the
12 original time or its extension expires."

13 So the excusable neglect calculation is -- is -- is
14 discussed in the context of a request for a retroactive
15 extension of time. There was no such request made here. The
16 defendant did not say, okay, we missed it, we're sorry, now can
17 we have a retroactive extension because we erred, and it was
18 excusable neglect?

19 And in this circuit and under the Supreme Court's law,
20 inadvertence, and this is a quote. "Inadvertence, ignorance of
21 the rules, or mistake construing the rules do not usually
22 constitute excusable neglect." That's *Pioneer Inv. Servs. Co.*
23 *v. Brunswick Assocs. Ltd P'ship*, 507 US 380 at 392, Supreme
24 Court decision from 1993.

25 The last thing I would note, for whatever it's worth,

1 and only probably inside court geeks know this, but the clerk's
2 office of a federal court is deemed to be open 24 hours a day,
3 seven days a week. And, of course, now that we have electronic
4 filing, it really honest to goodness is open 24 hours a day,
5 seven days a week. There may not be a human being there
6 processing what comes in electronically 24/7. In fact, there
7 isn't. I can attest to that for being here late at night, but
8 the court is still open. It accepts filings, and it's capable
9 of accepting filings electronically.

10 And so one of the comments that you made in your oral
11 argument, counsel, was that "the court was closed." Technically
12 speaking, the judges were not holding hearings. There was not
13 anything going on in the building. But for filing purposes, the
14 court is never closed. And as far as I know, that's true for
15 every single federal court in the United States. So for future
16 reference in the event that it helps if there's a holiday and a
17 judge has given you a deadline for filing on a holiday, ask for
18 an extension of time.

19 So I'm granting the Motion to Strike, and I have not
20 considered the defendant's reply brief in ruling on the Motion
21 to Dismiss.

22 Turning to the Motion to Dismiss itself. Both of you
23 are correct, that this motion is a Motion to Dismiss under
24 Rule 12(b)(6). And you all know 12(b)(6) standards. Everybody
25 does. 12(b)(6) allows a party to assert by motion that a

1 complaint fails to state a claim for which a federal court can
2 grant relief.

3 Counsel for the plaintiff is absolutely correct, it's
4 usually limited to the four corners of the complaint and the
5 attachments to the complaint or documents referenced therein.
6 And what I'm supposed to be doing is judging the sufficiency of
7 the complaint from a legal standpoint, mostly under Rule 8(a).
8 In our district, that's *Gunn v. Cont'l Cas. Co.*, 968 F.3d 802,
9 806, Seventh Circuit decision from 2020.

10 And I can go on with *Twombly* and *Iqbal* standards, but
11 I'm not going to because I think it's important to note that
12 there's a slightly different set of jurisprudence that applies
13 to Motions to Dismiss in terms of patent eligibility. The
14 Federal Circuit has talked about this multiple times. Other
15 courts have talked about it as well. And one court that I find
16 particularly helpful in eliminating and discussing dismissals
17 involving patent eligibility arguments is a case called
18 *E-Numerate Solutions, Inc. v. United States*, 149 Fed. Cl. 563.
19 It's a decision filed August 7th of 2020. And I think this is
20 helpful, and I'm going to read you the section of the decision
21 that I think is useful, give you some sense of where I'm coming
22 from in the ruling.

23 At page 577 of the decision, the judge titles a
24 section Ruling on Patent Eligibility Under 101 at the pleading
25 stage. He then says, "The Federal Circuit has grappled with the

1 issue of deciding patent eligibility at the Rule 12(b)(6) stage
2 in the recent -- at that time recent -- decisions of *Berkheimer*
3 and *Aatrix*. *Berkheimer*, counsel has already mentioned, that's
4 *Berkheimer v. HP Inc.*, 881 F.3d 1360, Fed. Cir. decision from
5 2018. *Aatrix* is *Aatrix Software v. Green Shades Software*, 882
6 F.3d, 1121, Fed. Cir. from 2018.

7 So "The Federal Circuit has grappled with the issue of
8 deciding patent eligibility at the Rule 12(b)(6) stage in the
9 recent decision of *Berkheimer* and *Aatrix*, ultimately restricting
10 the invalidation of patents under Section 101 at the pleading
11 stage to instances where "there are no factual allegations that,
12 taken as true, prevent resolving the eligibility question as a
13 matter of law." That is a quote from *Aatrix*, 882 F.3d 1125.

14 The court of claims judge goes on. Despite these
15 decisions determining what constitutes factual allegations
16 sufficient to decide patent eligibility as a matter of law has
17 been a matter of great consternation for federal courts.
18 Another district court notes, the difficulty presented by such a
19 heightened burden at this early stage of proceedings: "Because
20 a patent is presumed valid and requires clear and convincing
21 evidence to provide its invalidity, a Rule 12(b)(6) Motion to
22 Dismiss is a procedurally awkward place for a court to resolve a
23 patent's Section 101 eligibility." *Slyce, S-l-y-c-e,*
24 *Acquisition, Inc. v. Syte, S-y-t-e, Visual Conception Ltd.*, Case
25 No. 19-257, 2020 WL 278, 481 at page 5, Western District of

1 Texas, January 10, 2020.

2 Additional procedural difficulties associated with
3 resolving patent eligibility under Rule 12(b)(6) Motion to
4 Dismiss include a lack of claim construction to fully understand
5 claims scope and lack of fact discovery to understand the prior
6 art, among other things -- amongst other things, forgive me.
7 *Id.* Pages 5 through 6.

8 The court of claims judge then goes on to cite a
9 number of scholarly articles talking about these difficulties
10 and these articles discuss things like on the one hand, the
11 defendant's cost of having to defend a summary judgment motion
12 or any litigation beyond a Motion to Dismiss. But then in
13 contrast, the lack of information that a judge has at the Motion
14 to Dismiss stage to be able to, in essence, invalidate a patent
15 so early on in the proceedings.

16 The judge says and I think this continues -- let me
17 just double check -- to be on page 577. The court of claims
18 judge says "while early resolution of patent eligibility 'can
19 dramatically reduce litigation costs' such 'quick resolutions on
20 a thin evidentiary record raise the risk that meritorious
21 patents will be erroneously held invalid, undercutting patents
22 as an incentive for innovation." Paul R Gugliuzza, Law, Fact
23 and Patent Validity, 106, Iowa Law Review forthcoming 2020.

24 As noted by another judge frequently handling patent
25 cases, "the cost for both parties of delaying the resolution of

1 101 eligibility until after claim construction is relatively
2 modest and limited to the cost of preparing the claim
3 construction briefing in preparing for the *Markman* hearing."
4 *Slyce Acquisition*, 2020 WL 278, 481 at page 8, note 3.

5 The judge then goes on to survey some other judges who
6 have handled patent cases and who have come to the same
7 conclusion, that there are concerns about dismissal early on in
8 the process. And he concludes by saying he, the court of claims
9 judge in *E-Numerate*, concludes by saying "the court recognizes
10 the many concerns present when attempting to resolve patent
11 eligibility at such an early stage of proceedings 'an issued
12 patent enjoys the presumption of validity, which requires clear
13 and convincing evidence to prove otherwise. Claim construction
14 and fact discovery can completely change the court's 101
15 analysis, and the court gains a greater understanding of the
16 patents and the technology by delaying the resolution of
17 eligibility.'" *Slyce Acquisition*, 2020 WL 278, 481 at page 8.

18 The court of claims agrees with other judges that "it
19 is wiser and more efficient to wait to determine a patent's 101
20 eligibility until after fact discovery has opened" and "after
21 issuing its claim construction order." *Id.* at page 6, emphasis
22 omitted.

23 The court of claims judge then went on to say, well,
24 but I have a motion in front of me, and so I guess I have to
25 resolve it and he did, in fact, go ahead and resolve it.

1 All of that to say, number one, that the 12(b)(6)
2 standard is -- I don't want to say necessarily tougher, but it's
3 a bit heightened in the words of the court of claims judge when
4 we're talking about eligibility at the Motion to Dismiss stage.
5 And looking at that and looking also at the language of the
6 claims that have been identified as representative claims, and
7 as I understand it, there's no disagreement that those are
8 representative claims, that plaintiff has not disputed that.

9 And so for those reasons, I am going to deny the
10 Motion to Dismiss at this stage -- at the Motion to Dismiss
11 stage, and I'll explain to you why.

12 Just briefly. As you know, Section 101 states
13 "whoever invents or discovers any new or useful process,
14 machine, manufacture, or composition of matter, or any new and
15 useful improvement thereof" may obtain a patent. "Laws of
16 nature, natural phenomena, and abstract ideas are not patent
17 eligible." That's from *Alice*, 573 US at 216. I'm sorry, my
18 full cite for *Alice* is somewhere back in my notes somewhere, but
19 I think both of you have it given the amount that you've cited
20 it. And there, *Alice* was quoting *Assoc. for Molecular Pathology*
21 *v. Myriad Genetics, Inc.*, 569 US 576 at 589 from 2013. So I
22 have to use that two-step *Alice* framework to determine
23 eligibility under Section 101.

24 As you all have stated, both of you, under the
25 framework, I first determine whether the claims are directed to

1 a "patent-ineligible concept," such as an abstract idea. That's
2 217 of *Alice*. "If the claims are not directed to a
3 patent-ineligible concept under *Alice* Step One, the claims
4 satisfy 101 and the court need not proceed to the second step."
5 That's *Data Engine Techs. LLC v. Google LLC*, 906 F.3d 999 at
6 1007, Fed. Cir. 2018, quoting *Core Wireless Licensing S.A.R.L.*
7 *v. LG Elcs. Inc.*, 880 F.3d 1356 at 1361, a Fed. Cir. case from
8 2018.

9 But if the patent is directed to a patent-ineligible
10 concept, I have to then move onto Step Two. Step Two requires
11 the Court to "consider the elements of each claim both
12 individually and as an ordered combination to determine whether
13 the additional elements transform the nature of the claim into a
14 patent-eligible application. *Alice*, 573 US at 217, quoting *Mayo*
15 *Collaborative Servs. v. Prometheus Labs., Inc.*, 556 US 66 at
16 78-79. That's a 2012 decision.

17 "The second step of the *Alice* test is satisfied when
18 the claim limitations involve more than performance of
19 well-understood, routine, and conventional activities previously
20 known to the industry." That's *Berkheimer v. HP Inc.*, 881 F.3d
21 1360 at 1367, Fed. Cir. 2018.

22 So I'm going to start with the 727 patent, the patent
23 ending in 727. Again, as I've noted, the representative claim
24 that's been selected here is Claim No. 37, and no one seems to
25 dispute that that is a representative claim and so I'm assuming

1 that it is. And it reads as follows, Claim No. 37 reads as

2 follows: "An apparatus for controlling power provided

3 from a plurality of power sources to a group

4 of loads, the apparatus including:

5 (a) a small backup power system transfer

6 switch which is controllable to select a

7 power grid service circuit or a DC to AC

8 Inverter to power a group of loads, a DC

9 to AC Inverter being powered by a battery

10 with the battery being charged by a battery

11 charger, the power grid service circuit and

12 the DC to AC Inverter each having a maximum

13 output current capability;

14 (b) a processor circuit being programmed to

15 control the transfer switch and the DC to AC

16 Inverter to power one or more loads of the

17 group of loads including the battery charger

18 from the power grid when the power grid

19 operates at an acceptable voltage and to cause

20 the one or more loads of the group of loads

21 but not the battery charger to be powered by

22 the DC to AC Inverter when the power grid

23 does not operate at the acceptable voltage;

24 (c) the processor circuit being programmed

25 to timely monitor the current provided to

1 the loads by said DC to AC Inverter and to
2 prevent exceeding the maximum current capacity
3 of the DC to AC Inverter."

4 That's Docket Number 1 at paragraph 28.

5 So the defendant's argued that Claim No. 37 is
6 directed to an abstract idea as was argued here today, and that
7 abstract idea is automated load management. Alice said "the
8 abstract ideas category embodies the longstanding rule that an
9 idea of itself is not compatible." Alice, 573 at 218. I
10 omitted the internal cite. But "applications" of such concepts
11 "to a new and useful end" are eligible for patent protection.
12 That's page 217 of Alice quoting *Gottschalk v. Benson*, 409 US 63
13 at 67 from 1972.

14 So the question here is whether the claims and in
15 particular this claim, Claim No. 37, focuses on "a specific
16 means or method that improves the relevant technology or instead
17 are directed to a result or effect that itself is the abstract
18 idea and merely invoke generic processes and machinery." That's
19 *CardioNet, LLC v. InfoBionic, Inc.*, 955 F.3d 1358 at 1368, Fed.
20 Cir. decision from 2020, quoting *McRO, M-c-R-O, Inc. v. Bandai*
21 *Namco Games Am. Inc.*, 837 F.3d 1299 at 1314, Fed. Cir. decision
22 from 2016, and I think *CardioNet* is instructive here.

23 In *CardioNet*, the Federal Circuit examined a patent
24 for a cardiac monitoring device and concluded that it was patent
25 eligible because it represented an improvement over exiting

1 cardiac monitoring technology. That's *CardioNet* 955 F.3d at
2 pages 1368-69.

3 The *CardioNet* court found that the patent described
4 several technological improvements because it more accurately
5 depicted atrial fibrillation and atrial flutter, allowing for
6 more reliable and immediate treatment of those two conditions,
7 and that it more effectively avoided false positives and false
8 negatives in the testing. Same pages 1368-69.

9 The court determined that the claims didn't simply
10 automate known techniques, that they improved on them.
11 Page 1370 of Case No. 955 F.3d.

12 The Federal Circuit came to a similar conclusion in
13 the *McRO* case, which involved "a method for automatically
14 animating lip synchronization and facial expression of
15 three-dimensional characters." 837 F.3d at 1307. The *McRO*
16 Court rejected the argument that the claim in *McRO* simply use a
17 computer as a tool to automate conventional activity" because
18 there was no evidence in the record that "the process previously
19 used by animators was the same as the process required by the
20 claims." That's *McRO* at pages 13 -- sorry at page 13-14.

21 So here Claim No. 37 of the 727 patent describes a
22 system composed of the various components that both parties have
23 described but a system that is "programmed to timely monitor the
24 current provided to the loads by said DC to AC Inverter and to
25 prevent exceeding the maximum current capacity of the DC to AC

1 Inverter" -- and that's directly from Claim 37 -- thereby
2 proactively and automatically, as I understand it, preventing
3 the power overloads before they occur.

4 Based on the language of the patent, and that's what I
5 looked at was the language of the patent. I did not go outside
6 to specifications or anything of that nature. I looked at the
7 actual language of the claims. This represents a technological
8 improvement over the prior art similar to the advances that were
9 described in the *CardioNet* case and in the *McRO* case.

10 Now, I understand that the defense argues that prior
11 art systems also included load managers. Prior art systems also
12 automatically disconnected loads when there's an overload
13 scenario. Prior art systems also may have allowed an individual
14 to manually control the system that would present or avoid
15 overloads or maybe even a human being could manually proactively
16 prevent an overload. But the process that's described in Claim
17 37 represents an improvement over those pre-existing methods
18 because it describes an automated system that would proactively
19 rather than reactively prevent an overload and again is
20 automated rather than manual.

21 That's not an abstract idea. That is a system of both
22 conventional components. But the arrangement of those
23 conventional components, the placement of those conventional
24 components and the use of automation to for lack of a better
25 word I suppose anticipate simple overloads and address them

1 proactively.

2 So because I don't think -- because I find that that's
3 not an abstract idea, I think that the Motion to Dismiss should
4 be denied at Step One of the *Alice* process. I don't think I
5 need to get to Step Two. I do believe that the patent 727 is
6 directed, and I find that it's directed to patent-eligible
7 subject matter at the Motion to Dismiss stage.

8 The same is true for the 618 patent. Again, the
9 parties don't dispute that Claim 17, one, seven is
10 representative there. I'm not going to read in the entirety of
11 Claim 17 as plaintiff's counsel stated it's extensive. It's a
12 long claim. It is at Docket Number 1 at paragraph 40, but I am
13 going to emphasize just one paragraph, which is (e) of that
14 claim.

15 The claim itself goes through and talks about again
16 the system, the various components, a contractor, a power
17 supply, the processor unit, the user input unit, and then it
18 talks about how all of those components together would work with
19 a "processor circuit being programmed to cause a

20 load shed in response to at least one of
21 an actual or potential overload of the
22 second power source and further operating
23 to close the contractor -- I said contractor
24 earlier -- contractor to resupply power to
25 the first load after at least a known

1 time period after the load shed with the
2 known time period being responsive to the
3 first load coupler configuration by the
4 installer."

5 So (e) then takes those conventional components, which
6 I don't think there is a dispute existed in the prior art.
7 There's not a dispute that there's other prior art that talked
8 about programming load shed. No disagreement there. But it
9 talks about how those components and that processor work in
10 terms of timing and in terms of the failure of the backup and
11 how that would work.

12 So the defendant argues Claim 17 again is directed to
13 this abstract idea of automated load management, and I don't
14 agree that it has to do with automated load management. Just as
15 with the 727 patent, the 618 patent in Claim 17 of the 618
16 patent, describes this use of the processor circuit to control
17 the load and to proactively prevent an overload of the power
18 source. And in particular, to proactively prevent failure of
19 backup.

20 And based again on the language of the patent itself,
21 the automation and prevention of overloads represents a
22 technological improvement over the prior art, not an abstract
23 idea, and so I'm denying the Motion to Dismiss Count 2 for the
24 same reason I denied the motion as to Count 1.

25 And then finally, that takes us to the 857 patent, and

1 I'm assuming, for the purposes of the motion again, that Claim 1
2 is representative because no one disputes that. The Claim 1
3 reads, "a power system which provides AC power with a controlled
4 AC frequency to assist in managing the loading thereof, the
5 power system comprising:

6 (a) a non-utility type power source comprising
7 an Inverter which provides single or multiple
8 phase output AC power to one or more of a
9 plurality of loads, the power source having
10 at least one maximum amount power parameter
11 which if exceeded causes an overload of the
12 power source, the output AC power having
13 an AC frequency, which frequency is controlled
14 in response to the timely output -- I'm sorry --
15 amount of the output of AC power;

16 (b) a power sensing unit which may be part
17 of the power source or otherwise and is
18 responsive to the timely amount of the output
19 AC power, the power source operating in
20 response to the power sensing circuit to
21 control the frequency of the output AC
22 power to have a first frequency when the
23 power source is not overloaded. And a
24 second frequency when the power source is
25 overloaded or is near to being overloaded;

1 (c) a processor circuit compressing one or
2 more processors responsive to the AC power,
3 the processor circuit operating in response
4 to the occurrence of the second frequency to
5 control the output AC power consumed by at
6 least one load of the one or more loads thereby
7 helping to prevent or alleviate an overload
8 of the power source."

9 Docket Number 1 at paragraph 52.

10 The defense has made pretty much the same arguments
11 with respect to this representative claim as the prior two, and
12 again I find that Claim No. 1 of Patent No. 857 describes the
13 use of this power sensing circuit that tracks the flow of the
14 power in the system in kind of a primary and secondary fashion.
15 And then a processor circuit that upon tracking and monitoring
16 that information prevents overload of the power source before
17 that overload occurs.

18 Again, based on the language of the claim itself, this
19 system represents a technological improvement over the prior
20 art, not an abstract idea. Again at Step One, this is a
21 patent-eligible claim, and therefore I'm denying the Motion to
22 Dismiss that Claim No. 3 as well.

23 So at the Motion to Dismiss stage under the standard
24 that I've described, I'm denying the Motion to Dismiss based on
25 the patent-eligibility arguments.

1 Obviously, that still leaves all sorts of discussions
2 to be had about other issues here. Let me turn for a moment to
3 next steps. As I pointed out earlier, the defense at the same
4 time that it filed its Motion to Dismiss filed an answer,
5 affirmative defenses, and counterclaims, and the plaintiffs
6 answered the counterclaims. I don't -- I haven't dug deep into
7 the answers, so I don't know if this ruling in anyway impacts
8 the answer or whether that answer can stand for the purposes of
9 moving forward. Any need to amend the answer that you can think
10 of right now?

11 MR. SUDER: I don't think so, Your Honor. Most of the
12 claims were as to non-infringement and invalidity 102, 103 and
13 other defenses. I don't think that affects why we can't go
14 ahead and address scheduling.

15 THE COURT: Okay. Well, given that the defendants are
16 the ones who filed an answer, I wanted to see. Any thoughts
17 about whether you need to amend it?

18 MR. ELLIS: We need to take a look, Your Honor.
19 Counsel's correct, the invalidity arguments are directed to 102,
20 and 103 but generally 101 is also looped in there, so we'll need
21 to take a second look at the answer.

22 THE COURT: Can you give me a sense of how much time
23 you may need to know whether or not you want to amend it or file
24 an amended answer?

25 MR. ESSER: Could we have a week, Your Honor?

1 THE COURT: Sure, that's fine. The reason I'm asking
2 is cause I want to go ahead and give you some time to file a
3 Rule 26 plan. So yeah, why don't we give you by the end of the
4 day on the 15th of August if you are going to amend your answer
5 to do so. If there's no amended answer filed by the end of the
6 day on the 15th, then we can all assume that the answer that is
7 on the docket right now will be the answer. That means the
8 plaintiff won't have to file any modifications to their answer
9 to the counterclaims. If there's any change to the
10 counterclaims, then, you know, we'll -- you all can file
11 whatever response you need to, whatever modified answer you need
12 to.

13 MR. SUDER: Your Honor, can we have a week?

14 THE COURT: That's fine. So that would put you by the
15 22nd if there's any modification. And I would ask -- Let's say
16 we know what we're going to know about the answer landscape and
17 the counterclaim landscape by the end of the day on the 22nd of
18 August, do you think that you all could get a 26(f) plan on file
19 by the 19th of September?

20 MR. SUDER: Absolutely.

21 MR. Ellis: Yes, Your Honor.

22 THE COURT: Great. Thank you. And then once you all
23 file that, then we'll schedule a Rule 16 conference. Again, I
24 will probably set that by phone and give you all the opportunity
25 to appear by phone. If you want to come back here, you're more

1 than welcome to do so. But most of that is going to be, you
2 know, talking about whether we need to make any modifications to
3 the scheduling that you all have agreed upon giving you some
4 ideas about just kind of housekeeping and how I do things so
5 that if you have any questions, you can ask them.

6 MR. SUDER: In terms of a trial date, will the Court
7 give us one or should we propose one?

8 THE COURT: I usually -- You can certainly propose one
9 if you want to. I rarely set a trial date at the Rule 16 stage
10 or ask you all to come up with one at the 26(f) stage because
11 number one, there's so much water that can pass under the
12 bridge. And number two, my criminal calendar ends up sometimes
13 being a driver of that.

14 So usually when we get closer to -- If we get to
15 dispositive motions, usually that's the time I start asking
16 people to think about how much time you need for trial and so
17 forth. Does that help? Any other questions about 26(f) and
18 scheduling?

19 MR. ELLIS: None from defendant, Your Honor.

20 THE COURT: Okay. All right. So I told you all at
21 the beginning when I started yammering that I would tell you how
22 you could get a copy of that ruling and the arguments here
23 today. I've already mentioned to you, you can sit at the
24 comfort of your desk and listen to them if you want to or if you
25 are having trouble sleeping, if you want a thumb drive with the

1 audio on it, you can call our clerk's office, and they'll tell
2 you how to get that. And if you want to actually order a good
3 old fashioned transcript, there's a transcript order form on our
4 website, so you can go onto the website and fill out the
5 transcript order form directly on the website and order a
6 transcript that way, so three different ways that you can get
7 ahold of the ruling if you need to.

8 And with that, anything else that you all can think of
9 we need to try to accomplish this afternoon from the plaintiff?

10 MR. SUDER: No, Your Honor.

11 THE COURT: Thank you. Anything else from the
12 defense?

13 MR. ELLIS: No, Your Honor.

14 THE COURT: Ya'll don't have to stand up. I know, me
15 too. I came here from the Northern District of Illinois. I
16 practiced there for years and everybody stood up there. If you
17 were going to hiccup you stood up to hiccup. And I got here and
18 it took me six or eight months. Ms. Zick (sic) probably
19 remembers because I used to appear in front of the Judge she
20 used to work for. And I would shoot up out of my chair and
21 people would say that's okay, we don't do that here, sit down.

22 What I tell people is I can't hear you at the
23 microphone if you stand up, so you can stay seated so you're
24 close to the microphone. All right. Well, thank you all very
25 much. Safe travels back home, and we will see you in the

1 future.

2 THE CLERK: All rise.

3 (Whereupon proceeding was concluded.)
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C E R T I F I C A T E

I, SUSAN ARMBRUSTER, RMR, FCRR, Official Court Reporter and Transcriptionist for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing pages are a true and accurate transcription of the audio file provided in the aforementioned matter to the best of my skill and ability.

Signed and Certified August 14, 2025.

/s/Susan Armbruster

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