

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

INGENIOSPEC, LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 1:25-cv-00867-ADA
(LEAD CASE)

INGENIOSPEC, LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 1:25-cv-00877-ADA
(MEMBER CASE)

DEFENDANT’S OPENING CLAIM CONSTRUCTION BRIEF

TABLE OF CONTENTS

I. INTRODUCTION AND OVERVIEW OF THE ASSERTED PATENTS..... 1

 A. The ’104 Patent and Its Claim Terms 1

 B. The ’789 Patent and Its Claim Terms 1

 C. The ’693, ’355, and ’901 Patents and Their Claim Terms..... 1

 D. The ’599 Patent and Its Claim Term..... 2

II. DISPUTED CLAIM TERMS 2

 A. “provide[d] that . . . the wireless headset is active” / “provide[d] that said determining determines . . . the wireless headset is active” and “provide[d] that . . . said determining comprises determining whether the wireless headset is active” (’104 patent, claims 2, 6, 10) 2

 B. Preamble, including “input signals” (’789 patent, claim 13)..... 6

 1. The preamble is limiting. 6

 2. “input signals”..... 7

 C. “head-worn personal electronic apparatus” / “head-worn wearable electronic device” / “head-worn electronic personal audio apparatus”/ “head-worn electronic device” / Preamble (’355 patent) (’355 patent, claims 1-3, 5-19, 21-54, 57-70, 72, 75-82, 85-92, 95-100; ’693 patent, claims 24-27, 30, 31, 33-38, 42, 49, 50, 52-54, 61, 64, 70-73; ’901 patent, claims 1-7, 9-10, 12-15 18, 20-21, 25-28, 30-31, 35, 38-50 53-54, 56-58)..... 8

 1. The intrinsic records demonstrate that the “head-worn” terms are limited to “eyewear or headwear.”..... 9

 i. The inventors characterized their invention as eyewear or headwear. 9

 ii. Any interpretation beyond “electronic eyewear or headwear” lacks support in the specifications. 13

 2. “A head-worn personal electronic apparatus” is a limiting part of the ’355 patent’s preambles. 14

 D. “[a/the] speaker[s] . . . proximate to an ear of the user” / “the first speaker . . . proximate to a first ear of the user” / “the second speaker . . . proximate to a second ear of the user” (’355 patent, claims 1, 17, 65, 77, 87; ’693 patent, claims 24, 42, 75; ’901 patent, claims 1 and 35) 15

E. Preamble, including “to at least help [a/the] user hear audio outputs produced by the device” (’599 patent, claims 1, 20, 22, 24) 17

1. The preamble is limiting. 17

2. “[H]elp the user hear audio outputs” is indefinite. 18

III. CONCLUSION..... 20

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Am. Hoist & Derrick Co. v. Sowa & Sons</i> , 725 F.2d 1350 (Fed. Cir. 1984).....	18
<i>Bio-Rad Lab 'ys, Inc. v. 10X Genomics Inc.</i> , 967 F.3d 1353 (Fed. Cir. 2020).....	7, 14, 17
<i>Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.</i> , 289 F.3d 801 (Fed. Cir. 2002).....	6, 7, 14, 17
<i>Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.</i> , 868 F.2d 1251 (Fed. Cir. 1989).....	15
<i>Cypress Lake Software, Inc. v. Samsung Elecs. Am., Inc.</i> , 382 F. Supp. 3d 586 (E.D. Tex. 2019).....	19
<i>Datamize LLC v. Plumtree Software, Inc.</i> , 417 F.3d 1342 (Fed. Cir. 2005).....	20
<i>Datanet LLC v. Dropbox, Inc.</i> , No. 6:22-CV-001142-OLG-DTG, 2023 WL 7545234 (W.D. Tex. Nov. 10, 2023)	19
<i>Forest Lab 'ys, LLC v. Sigmapharm Lab 'ys, LLC</i> , 918 F.3d 928 (Fed. Cir. 2019).....	13
<i>Halliburton Energy Servs., Inc. v. M-I LLC</i> , 514 F.3d 1244 (Fed. Cir. 2008).....	19, 20
<i>In re Abbott Diabetes Care Inc.</i> , 696 F.3d 1142 (Fed. Cir. 2012).....	12
<i>In re Fought</i> , 941 F.3d 1175 (Fed. Cir. 2019).....	7, 14, 17
<i>In re Xencor, Inc.</i> , 130 F.4th 1350 (Fed. Cir. 2025)	17, 18
<i>Intell. Ventures I LLC v. T-Mobile USA, Inc.</i> , 902 F.3d 1372 (Fed. Cir. 2018).....	19, 20
<i>Interval Licensing LLC v. AOL, Inc.</i> , 766 F.3d 1364 (Fed. Cir. 2014).....	18, 19, 20

<i>Luminara Worldwide, LLC v. Liown Elecs. Co.</i> , 814 F.3d 1343 (Fed. Cir. 2016).....	16
<i>Nautilus, Inc. v. Biosig Instruments, Inc.</i> , 572 U.S. 898 (2014).....	19, 20
<i>Network Com., Inc. v. Microsoft Corp.</i> , 422 F.3d 1353 (Fed. Cir. 2005).....	12
<i>O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.</i> , 521 F.3d 1351 (Fed. Cir. 2008).....	3
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005).....	13
<i>Piggy Pushers, LLC v. Skidders Footwear, Inc.</i> , 544 F. App’x 984, 989 (Fed. Cir. 2013)	15
<i>Poly-Am., L.P. v. API Indus., Inc.</i> , 839 F.3d 1131 (Fed. Cir. 2016).....	12
<i>Poly-Am., L.P. v. GSE Lining Tech., Inc.</i> , 383 F.3d 1303 (Fed. Cir. 2004).....	14, 15
<i>Profectus Tech. LLC v. Huawei Techs. Co.</i> , 823 F.3d 1375 (Fed. Cir. 2016).....	12
<i>Resonant Sys., Inc. v. Apple, Inc.</i> , No. 7:23-cv-0077-ADA, Dkt. No. 103 (W.D. Tex. Aug. 23, 2024).....	15
<i>R.N. Nehushtan Tr. Ltd. v. Apple Inc.</i> , No. 22-cv-01832-WHO, 2023 WL 11643884 (N.D. Cal. Apr. 4, 2023).....	5
<i>Ruckus Wireless, Inc. v. Innovative Wireless Sols., LLC</i> , 824 F.3d 999 (Fed. Cir. 2016).....	13
<i>Schering Corp. v. Amgen Inc.</i> , 222 F.3d 1347 (Fed. Cir. 2000).....	11
<i>SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.</i> , 242 F.3d 1337 (Fed. Cir. 2001).....	9
<i>Silicon Graphics, Inc. v. ATI Techs., Inc.</i> , 607 F.3d 784 (Fed. Cir. 2010).....	13
<i>St. Clair Intell. Prop. Consultants v. Canon Inc.</i> , 412 F. App’x 270 (Fed. Cir. 2011)	18

<i>Therasense, Inc. v. Becton, Dickinson & Co.</i> , 649 F.3d 1276 (Fed. Cir. 2011).....	18
<i>Transdata, Inc. v. Centerpoint Energy Houston Elec. LLC</i> , No. 6:10-cv-557-RWS-JDL, 2016 WL 3172791 (E.D. Tex. June 7, 2016)	16
<i>Valve Corp. v. Ironburg Inventions Ltd.</i> , 8 F.4th 1364 (Fed. Cir. 2021)	15, 16
<i>Versata Software, Inc. v. Zoho Corp.</i> , 213 F. Supp. 3d 829 (W.D. Tex. 2016).....	19
<i>Wang Labs., Inc. v. Am. Online, Inc.</i> , 197 F.3d 1377 (Fed. Cir. 1999).....	9
<i>Wisc. Alumni Rsch. Found. v. Apple Inc.</i> , 905 F.3d 1341 (Fed. Cir. 2018).....	13
<i>Xerox Corp. v. X Corp.</i> , No. 2023-1913, 2025 WL 1692962 (Fed. Cir. June 17, 2025)	16
Other Authorities	
MPEP § 211.05	12

LIST OF EXHIBITS

Number	Title
Ex. 1	U.S. Patent No. 8,112,104
Ex. 2	U.S. Patent No. 11,921,355
Ex. 3	U.S. Patent No. 11,644,693
Ex. 4	U.S. Patent No. 12,001,599
Ex. 5	U.S. Patent No. 8,8582,789
Ex. 6	U.S. Patent No. 12,044,901
Ex. 7 ¹	Excerpts of Infringement Contentions Claim Chart for the '901 Patent in <i>IngenioSpec, LLC v. Apple Inc.</i> , No. 1:25-cv-00877 (W.D. Tex.)
Ex. 8	Excerpts of Infringement Contentions Claim Chart for the '355 Patent in <i>IngenioSpec, LLC v. Apple Inc.</i> , No. 1:25-cv-00867 (W.D. Tex.)
Ex. 9	Excerpts of Infringement Contentions Claim Chart for the '693 Patent in <i>IngenioSpec, LLC v. Apple Inc.</i> , No. 1:25-cv-00867 (W.D. Tex.)
Ex. 10	U.S. Patent No. 7,192,136
Ex. 11	Excerpts of Merriam-Webster's Collegiate Dictionary (11th Ed. 2004)
Ex. 12	Excerpts of The American Heritage College Dictionary (4th Ed. 2002)
Ex. 13	Excerpts of The Authoritative Dictionary of IEEE Standards Terms (7th Ed. 2007)
Ex. 14	Excerpts of Prosecution History of U.S. Patent App. No. 11/183,262
Ex. 15	Excerpts of Prosecution History of U.S. Patent App. No. 16/424,018
Ex. 16	Plaintiff's Preliminary Identification of Extrinsic Evidence in <i>IngenioSpec, LLC v. Apple Inc.</i> , No. 1:25-cv-00867 (W.D. Tex.)
Ex. 17	Excerpts of U.S. Provisional App. No. 60/493,441
Ex. 18	Excerpts of U.S. Patent App. No. 16/182,969
Ex. 19	Excerpts of U.S. Provisional App. No. 60/605,191
Ex. 20	Excerpts of U.S. Provisional App. No. 60/620,238
Ex. 21	Apple's Proposed Constructon for U.S. Patent No. 8,112,104
Ex. 22	U.S. Patent No. 7,922,321
Ex. 23	U.S. Patent No. 8,500,271
Ex. 24	U.S. Patent No. 8,905,542
Ex. 25	U.S. Patent No. 9,547,184
Ex. 26	U.S. Patent No. 10,061,144
Ex. 27	U.S. Patent No. 11,204,512
Ex. 28	U.S. Patent No. 11,086,147
Ex. 29	U.S. Patent No. 10,330,956
Ex. 30	U.S. Patent No. 9,033,493
Ex. 31	U.S. Patent No. 8,109,629
Ex. 32	U.S. Patent No. 7,581,833
Ex. 33	U.S. Patent No. 8,465,151

¹ Citations to Exhibits 7-9 and 11-20 use the native page numbers in each document.

I. INTRODUCTION AND OVERVIEW OF THE ASSERTED PATENTS

Apple Inc. asks the Court to construe or find indefinite terms from the six patents asserted by IngenioSpec, LLC: U.S. Patent Nos. 8,112,104; 8,582,789; 11,644,693; 11,921,355; 12,044,901; and 12,001,599.

A. The '104 Patent and Its Claim Terms

The '104 patent discloses converting text to audio via a wireless communication device and playing the audio in a wireless headset. '104 patent, 2:23-33; Figs. 6-7. Claims 2, 6, and 10 recite that the text-to-audio conversion occurs “provided that” a wireless headset is “active.” The intrinsic and extrinsic evidence shows that the text-to-audio conversion must be performed “upon establishing a communication link between the wireless headset and the wireless communication system,” as Apple proposes. The conversion is not predicated on other conditions, as IngenioSpec contends.

B. The '789 Patent and Its Claim Terms

The '789 patent discloses a hearing enhancement system with an audio system and a wireless receiver. '789 patent, claims 1, 13. The audio system converts received input signals to be wirelessly transmitted. *Id.* The wireless receiver receives the converted signals and modifies signals based on a user’s hearing characteristic. *Id.* The “input signals” should be construed as “signals input to the audio system,” and not as any signal. “Input” must mean something, and in the '789 patent, it identifies the signals input into the audio system.

C. The '693, '355, and '901 Patents and Their Claim Terms

The '693, '355, and '901 patents are directed to wearable devices, such as eyeglasses, with electrical components. The '355 patent is a continuation of the '693 patent. These patents belong to large families of earlier-filed provisional and non-provisional patent applications.

In the '693/'355 patents, electrical components produce audio output tailored to a user’s

hearing characteristics. '693 patent, 2:66-3:22. In the '901 patent, electrical components are provided for audio output and/or pickup. '901 patent, 6:57-7:13. These patents include two disputed terms: (1) a “speaker” that is “proximate to” a user’s ear; and (2) a “head-worn” electronic device or apparatus.” Apple’s proposed construction for “proximate to” is its plain meaning: “near.” The record dictates that the “head-worn” terms can only cover “electronic eyewear or headwear.”

D. The '599 Patent and Its Claim Term

The '599 patent discloses wearable electronic devices. '599 patent, claim 1. The claimed device is configured “to at least help [a/the] user hear audio outputs produced by the device.” *Id.* The Examiner rejected other “help” terms as indefinite in a parent application. The Applicant never traversed the rejection because the Examiner was right, and again, the term here is likewise indefinite.

II. DISPUTED CLAIM TERMS

A. “provide[d] that . . . the wireless headset is active” / “provide[d] that said determining determines . . . the wireless headset is active” and “provide[d] that . . . said determining comprises determining whether the wireless headset is active” ('104 patent, claims 2, 6, 10)

Apple’s Construction	IngenioSpec’s Construction
“upon establishing a communication link between the wireless headset and the wireless communication system” ²	Plain and ordinary meaning

Claims 2, 6, and 10 recite automatically converting a text message to an audio message “provided that” a determination has been made that a wireless headset is “active.” There are numerous ways to interpret these terms using their ordinary meanings, leaving jurors equipped only with their ordinary understanding of them to sort through and apply complex technical

² The phrase to be construed does not appear identically in each of the relevant claims. For clarity, Ex. 21 shows Apple’s proposed construction as it would be inserted into the claims.

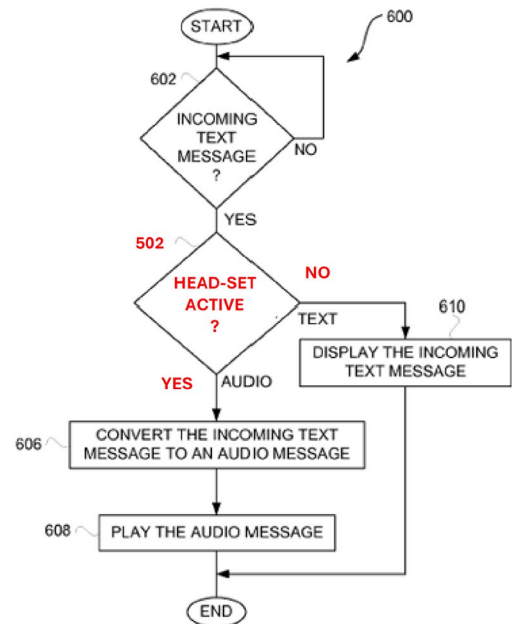
evidence. Apple’s proposed construction clarifies the scope of the ’104 patent’s claimed “provided that” prerequisite for converting text to audio. *See, e.g., O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1361 (Fed. Cir. 2008) (“A determination that a claim term ‘needs no construction’ or has the ‘plain and ordinary meaning’ may be inadequate when a term has more than one ‘ordinary’ meaning or when reliance on a term’s ‘ordinary’ meaning does not resolve the parties’ dispute.”).

Construing “Provided that”: The express claim language supports construing “provided that” to mean “upon.” In the claims, “provided that . . . the wireless headset is active” is the necessary prerequisite for converting the text message into an audio message. ’104 patent, claims 2, 6, 10. For example, claim 2 recites “automatically . . . *convert[ing]* the incoming text message to the incoming audio message, *provided that* said determining determines that the wireless headset is *active*.” ’104 patent, claim 2.

The specification confirms this understanding. Figure 6 is the only embodiment that discusses converting text to audio. ’104 patent, Fig. 6 (steps 602-606), 10:43-56. The accompanying disclosure explains that deciding whether to present a message to a user as either text or audio can be “automatic[]” and “[w]hen the decision 604 determines that an audio presentation is to be utilized, the incoming text message is converted 606 to an audio message.” *Id.* at 10:47-52, 10:53-55. But the Figure 6 embodiment never discloses determining whether that headset is “active,” let alone performing text-to-audio conversion provided that an “active” determination is met. Instead, the ’104 patent only discusses determining whether a headset is “active” in connection with Figure 5 (step 502), which is a separate embodiment for “an automated call response process.” *Id.* at Fig. 5, 8:41-10:21. The Figure 5 embodiment, however, never discusses converting text to audio. Thus, there is no embodiment in the specification that describes

converting a text message to audio “provide[d] that . . . the wireless headset is active,” as the claims require.

The only way to understand this claim term is to somehow combine Figures 5 and 6 to incorporate these two teachings from two distinct embodiments in a manner that is never explained in the specification. Indeed, the only way to show converting a text message to audio provided that the wireless headset is active is by piecing together step 604 in Figure 6 with step 502 from Figure 5 (as shown here). There is no support for this claim element otherwise.³



But this confirms that “provided that” means “upon.” In the combined figure, *once* the determination is made that the wireless headset is active (step 502), *then* the process immediately converts the incoming text message to an audio message (step 606). The specification does not disclose or contemplate any other intervening steps or checks in making this determination. Thus, in the only disclosure that could reasonably be read as corresponding to this claim term, the text-to-audio conversion occurs automatically *upon* determining that the wireless headset is active.

The extrinsic record supports this understanding. IngenioSpec cites definitions for “provide” and “provided” that exemplify precisely the sufficient and “necessary condition” that Apple’s construction of “upon” requires. *See* Ex. 16 at 20-21. These plain meanings, in light of the specification’s lack of any disclosure of intervening steps between a determination and the immediately subsequent conversion, confirm that “provided that” should be construed as “upon.”

³ Apple maintains its position that claims 2, 6, and 10 are invalid for lack of written description because the ’104 patent is devoid of any written description support for these terms.

Construing “Active”: “[T]he wireless headset is active” should be construed to require “establishing a communication link between the wireless headset and the wireless communication system.” This is consistent with the plain meaning in light of the intrinsic and extrinsic record. The specification uses the term “active” only four times, all in the context of Figure 5’s automated call response embodiment. ’104 patent, Fig. 5 (step 502), 8:48-57. When describing text-to-audio conversion, the specification explains that the determination for conversion may depend on “hardware components,” including a “headset.” *Id.* at 10:47-52. Relatedly, the specification explains that audio from such a conversion may either be “output to a speaker of the mobile communication device or a headset used therewith.” *Id.* at 11:12-14. Thus, the “active” term must be consistent with being “used” with a wireless communication device, which requires some form of communication between the mobile wireless communication device and the wireless headset. *See id.* at 1:50-52 (“For example, one popular type of wireless head-set uses Bluetooth wireless transmissions to communicate between the head-set and the corresponding mobile phone.”).

Courts interpreting similar terms have reached consistent conclusions. For example, in *R.N. Nehushtan Trust Ltd. v. Apple Inc.*, the court construed the phrase “active connection” to mean “a communication link that is intermittently exchanging data,” consistent with general dictionary definitions. No. 22-cv-01832-WHO, 2023 WL 11643884, at *4-8 (N.D. Cal. Apr. 4, 2023). This construction parallels Apple’s proposed construction, which is also supported by dictionary definitions. Merriam-Webster defines “active” as “disposed to action” or “marked by present operation,” while the American Heritage College Dictionary defines it as “functioning or capable of functioning” or “currently in use or effect.” The American Heritage College Dictionary (4th ed. 2002) (Ex. 12 at 14); Merriam-Webster’s Collegiate Dictionary (11th ed. 2004) (Ex. 11 at 13). IngenioSpec cites the American Heritage Dictionary as well. Ex. 16 at 18.

While IngenioSpec cites numerous other definitions for “active,” they are inconsistent with the ’104 patent. *See* Ex. 16 at 17-19. For example, the definitions for “active component” and “active device” are both defined unhelpfully as a “component that is capable of increasing the power of a signal.” *Id.* This definition is inapposite to the field of the ’104 patent and intrinsic record that refer to an established communication link, not increasing signal power. The variety of cited dictionary definitions, including those that are not relevant to the claims, highlight the risk of leaving the jury with only the guidance to use plain and ordinary meaning.

In summary, “provided that” should be construed as “upon” to properly capture the necessary and sufficient conditional relationship between determining whether to perform text-to-audio conversion and the headset’s “active” status. Combining this with the construction for “active” results in “upon establishing a communication link between the wireless headset and the wireless communication system,” which is the proper conditional predicate for invoking the claims’ conversion process in view of the only possible support in the specification.

B. Preamble, including “input signals” (’789 patent, claim 13)

Apple’s Construction	IngenioSpec’s Construction
Preamble is limiting + “signals input to the audio system”	Plain and ordinary meaning

1. The preamble is limiting.

Claim 13’s preamble recites “[a] hearing enhancement apparatus for a user, the apparatus being wirelessly coupled to an audio system, which is configured to up-convert input signals into up-converted signals to be wireless transmitted, the apparatus comprising” The preamble is limiting because it (1) provides antecedent basis for four claim terms, (2) is necessary to understand the invention, and (3) includes limitations that the patent describes as the “present invention.” *See Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002).

First, four claim terms derive antecedent basis from the preamble: “a user,” “an audio system,” (recited in dependent claim 29), “up-converted signals,” and “hearing enhancement apparatus” (recited in dependent claims 29-44, 46, 55, 62, 70, 78, 79, 81). “We have repeatedly held a preamble limiting when it serves as antecedent basis for a term appearing in the body of a claim.” *In re Fought*, 941 F.3d 1175, 1178 (Fed. Cir. 2019); *Bio-Rad Lab ’ys, Inc. v. 10X Genomics Inc.*, 967 F.3d 1353, 1371 (Fed. Cir. 2020) (“provid[ing] antecedent basis for . . . terms in the body of the claim is a strong indication that the preamble” is limiting).

Second, the preamble is required to understand the overall structure of the claim and terms contained therein. For example, claim 13 requires a “wireless receiver configured to wirelessly receive the up-converted signals.” That limitation only makes sense in the context of the preamble, which explains both how that reception happens (because the “apparatus [is] wirelessly coupled to an audio system”) and where the up-converted signals come from (the system is “configured to up-convert input signals into up-converted signals to be wirelessly transmitted”). These are not merely intended uses. They are fundamental parts of the claim that elucidate its later limitations.

Third, the specification states that the “system” in the preamble is not just important—it is the invention of the ’789 patent. That is, while claim 13 ostensibly recites “[a] hearing enhancement *apparatus*,” the preamble explains that the apparatus is “coupled to an audio *system*.” And the specification twice explains the “*present invention*” “pertains to” or “relates . . . to” “a hearing enhancement *system*,” not just the apparatus coupled to it. ’789 patent, 1:53-55, 5:44-45.

2. “input signals”

This term should be construed to be “signals input to the audio system.” The plain meaning of an “input signal” is a signal that is input into the system. In the context of claim 13, that system is the recited “audio system” which is configured to up-convert the input signals.

The ’789 specification is consistent with this understanding. It describes two examples of

signals that are up-converted or converted as claim 13 requires. ’789 patent, 4:53-67, 12:7-16. In both instances, the signals are input to the system from other instruments. *Id.* (both explaining that “[a]udio signals from these instruments can be transmitted through wire *to the systems*” or can be transmitted “wireless[ly]”). Incorporated Provisional Application No. 60/493,441 likewise describes “convert[ing] the received audio signals into ultrasonic signals” and describes those signals as “audio-in” being input into the audio delivery device 220. Ex. 17, Fig. 2B, ¶ [00127].

General and technical dictionaries confirm Apple’s construction. In the context of computer software, the Authoritative Dictionary of IEEE Standard Terms defines “input” as “[p]ertaining to data *received from an external source*.” Ex. 13 at 556-557. Likewise, the American Heritage dictionary defines “input” in the context of “Computer Science” as “[i]nformation put into a communications system for transmission or *into a computer system* for processing.” Ex. 12 at 716. Merriam-Webster’s dictionary is in accord, defining “input” as “information *fed into* a data processing system or computer.” Ex. 11 at 646. The Court should therefore construe “input signals” consistent with its plain meaning, which is “signals input to the audio system.”

C. “head-worn personal electronic apparatus” / “head-worn wearable electronic device” / “head-worn electronic personal audio apparatus”/ “head-worn electronic device” / Preamble (’355 patent) (’355 patent, claims 1-3, 5-19, 21-54, 57-70, 72, 75-82, 85-92, 95-100; ’693 patent, claims 24-27, 30, 31, 33-38, 42, 49, 50, 52-54, 61, 64, 70-73; ’901 patent, claims 1-7, 9-10, 12-15 18, 20-21, 25-28, 30-31, 35, 38-50 53-54, 56-58)

Apple’s Construction	IngenioSpec’s Construction
“electronic eyewear or headwear”	plain and ordinary meaning

The ’355, ’693, and ’901 patents recite one or more of the “head-worn” terms. The intrinsic evidence confirms these “head-worn” terms mean “electronic eyewear or headwear.” While the term appears in the preamble of some ’355 patent claims, those preambles are limiting. The “head-worn” terms require construction because IngenioSpec improperly attempts to expand the claims’

scope towards certain devices not contemplated—and expressly excluded—by the asserted patents: in-ear devices supported entirely by the ear. *See* Exs. 7 at 16-20, 8 at 4-7, 9 at 287-292.

1. The intrinsic records demonstrate that the “head-worn” terms are limited to “eyewear or headwear.”

i. The inventors characterized their invention as eyewear or headwear.

The patents limit the inventions to “eyewear or headwear” by explaining that the inventors were addressing eyewear-related problems, repeatedly defining the “invention” as pertaining to “eyewear” and “glasses,” and disclosing only eyeglasses or headwear as embodiments. *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1342-44 (Fed. Cir. 2001) (specification’s background discussion of prior art, coupled with the description of the “present invention” supported a finding of disclaimer); *Wang Labs., Inc. v. Am. Online, Inc.*, 197 F.3d 1377, 1383 (Fed. Cir. 1999) (“[W]hen the ‘preferred embodiment’ is described as the invention itself, the claims are not entitled to a broader scope than that embodiment.”) (citations omitted).

Starting at the “Background of the Invention,” all three patents make clear that the inventors were incorporating electronic components into “eyeglasses,” “eye worn products,” and/or “eyewear.” ’693 patent, 2:45-62; ’355 patent, 2:52-3:33; ’901 patent, 5:62-6:53. All three explain that “incorporating a small electrical component, such as a microphone, *into an eyeglass frame* may not be a simple task” because of “space” and “weight” constraints and because “eyeglass frames are often fashionable items whose designs are important.” ’693 patent, 2:48-59; ’355 patent, 2:55-67; ’901 patent, 5:65-6:9. The ’693 and ’355 patents also explain that incorporating this functionality into glasses is useful because it “can remove the associated stigma of conventional hearing aids” such that “[a] third party may not be able to tell whether the user is wearing the glasses to hear music or whether the user is wearing the glasses to have his hearing enhanced.” ’693 patent, 5:22-26; ’355 patent, 5:60-64. Thus, the inventors were focused on

problems directed to electronic eyewear.

All three patents then proceed to describe the “invention” as electronic “eyewear.” For example, the “Detailed Description” of the ’693 and ’355 patents begins: “The *invention pertains to* techniques for providing *eyewear with electrical components*.” ’693 patent, 14:16-17; ’355 patent, 14:47-48. It continues, describing purported advantages of this eyewear-related invention: “[t]he electrical components can provide electrical technology to *eyewear* (e.g., eyeglasses) without having to substantially compromise aesthetic design principles of *the eyewear*. . . . *The eyewear* with electronic components can, for example, provide audio output, audio enhancements, or event-related audio content.” ’693 patent, 14:17-24; ’355 patent, 14:48-55. Indeed, the *only* type of head-worn device/apparatus referred to in the ’693/’355 specification as “the present invention” is eyewear/eyeglasses. *See, e.g.*, ’693 patent, 40:30-36; ’355 patent, 40:61-67 (“A number of embodiments according to the *present invention regarding glasses* with one or more electrical component partially or fully embedded, will be described. Many of them are applicable to different types of glasses”); ’693 patent, 62:27-28; ’355 patent, 62:55-65 (“*The present invention* provides different embodiments of *glasses* that can be applied to multiple functions.”).

The ’901 patent does the same. Its parent application—which is incorporated by reference at ’901 patent, 1:8-12—explains that “the *invention pertains to* techniques for providing *eyewear with electrical components*,” such that “[t]he electrical components can provide electrical technology to *eyewear* (e.g., eyeglasses) without having to substantially compromise aesthetic design principles of the *eyewear*.” Ex. 18, ¶ [0015].

The asserted patents’ descriptions of the “invention” were repeated from identical statements in multiple parent applications in each patent’s long priority chains. *See, e.g.*, Ex. 22, 5:3-4 (stating that “[t]he invention pertains to techniques for providing eyewear with electrical

components.”); Ex. 23, 4:46-47 (same); Ex. 24, 4:26-27 (same); Ex. 25, 4:32-33 (same); Ex. 26, 4:34-35 (same); Ex. 27, 5:66-67 (same); Ex. 28, 5:48-49 (same); Ex. 29, 5:37-38 (same); Ex. 30, 5:30-31 (same); Ex. 31, 5:24-25 (same); Ex. 32, 5:13-14 (same); Ex. 33, 6:51-52 (same); Ex. 10, 3:44-45 (stating “[t]he invention relates to tethered electrical components for eyeglasses.”).

Indeed, even the provisional applications that first disclosed hearing enhancement capabilities did so only in the context of eyewear. *See* Ex. 19, ¶ [00218] (section titled “Eyewear with Hearing Enhancement” discloses “[e]yewear [that] can include a hearing enhancement system that enhances the hearing of a person wearing the eyewear.”); Ex. 20 at 1-2 (titled “Eyeglasses with Hearing Enhanced and Other Audio Signal-Generating Capabilities” and stating that “[t]he present invention provides different embodiments of glasses that can be applied to multiple functions.”).

But when the Applicant filed the applications that became the asserted patents—which were continuations of their parents—it amended a sentence in the “Summary” to introduce the phrase “head-worn” in its characterization of “the invention.” With this change, the ’693 and ’355 patents now state: “the invention pertains to techniques for providing wearable electronic devices (e.g., head-worn electronic devices, such as eyewear).” ’693 patent, 2:66-3:1 (underlining added to show amended language); ’355 patent, 3:37-39. And the ’901 patent now states: “[t]he invention pertains to techniques for providing eyewear or other head-worn personal electronic apparatus with electronic components.” ’901 patent, 8:40-42 (underlining added to show amended language).

However, Applicant cannot undo its limiting statements in the surrounding disclosure and in the incorporated parent applications to expand the scope of its invention beyond what was originally disclosed in those earlier applications. *See, e.g., Schering Corp. v. Amgen Inc.*, 222 F.3d 1347, 1353-54 (Fed. Cir. 2000) (construing a claim term not used in the originally filed application

as being limited to the subspecies described and enabled in the originally filed application, and not the broader meaning which included other subspecies, to avoid new matter concerns); *Network Com., Inc. v. Microsoft Corp.*, 422 F.3d 1353, 1360 (Fed. Cir. 2005) (affirming a construction of “download component” based on the specification where the terminology was introduced after the original specification was filed). Here, the Applicant filed the asserted patents as continuations, representing that no new matter was added. *See* MPEP § 211.05 (“The disclosure of a continuation application must be the same as the disclosure of the prior-filed application; i.e., the continuation must not include anything which would constitute new matter if inserted in the original application.”). IngenioSpec cannot now expand the scope of its patents to broadly cover devices beyond eyewear or headwear merely because it added the “head-worn” terms to the specifications over 15 years after they were initially presented for examination.

Indeed, the only types of “head-worn” apparatuses/devices shown or described in all three patents are those worn over a user’s eyes and/or on top of a user’s head. *See, e.g.*, ’693 patent, FIGS. 1-3, 6-11, 12C, 13-15, 21-27, 28, 30, 37, 40-45, 47, 49-51, 58, 61, 65-69, 71, 75 (depicting or describing eyeglasses or a portion thereof), FIG. 38 (depicting an eye mask), FIG. 39 (depicting a night cap). This consistent disclosure confirms that the inventors viewed their invention as limited to eyewear or headwear. *See In re Abbott Diabetes Care Inc.*, 696 F.3d 1142, 1149 (Fed. Cir. 2012) (“[E]very embodiment disclosed in the specification shows an electrochemical sensor without external cables or wires.”); *Poly-Am., L.P. v. API Indus., Inc.*, 839 F.3d 1131, 1137 (Fed. Cir. 2016) (“Every embodiment described in the specification has inwardly extended short seals and every section of the specification indicates the importance of inwardly extended short seals.”); *Profectus Tech. LLC v. Huawei Techs. Co.*, 823 F.3d 1375, 1380–81 (Fed. Cir. 2016) (“In every embodiment disclosed in the specification, the picture display or frame includes a feature for

mounting the device to a wall or on a tabletop.”).

The inventors thus characterized their invention as eyewear or headwear by presenting it as the scope of the problem they were trying to solve, labeling it as their “invention,” and describing embodiments encompassing only these two things. And they touted the advantages of doing so—avoiding the stigma associated with hearing aids and allowing the user to maintain the aesthetic design of traditional eyewear. Their repeated description of their invention in this way limits the claims. *Silicon Graphics, Inc. v. ATI Techs., Inc.*, 607 F.3d 784, 791–92 (Fed. Cir. 2010); *see also Forest Lab’ys, LLC v. Sigmapharm Lab’ys, LLC*, 918 F.3d 928, 933 (Fed. Cir. 2019) (“When a patent describes the features of the ‘present invention’ as a whole, this description limits the scope of the invention.”) (cleaned up).

ii. Any interpretation beyond “electronic eyewear or headwear” lacks support in the specifications.

The meaning of the “head-worn” term also cannot reach beyond the specifications’ disclosures, and Apple’s proposed construction, because it would render the claims invalid under Section 112 for lacking written description support for any “head-worn” devices beyond electronic eyewear or headwear. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (en banc) (instructing a claim “should be construed to preserve its validity”). The Federal Circuit has consistently rejected proposed constructions that are not supported by the specification. *See, e.g., Ruckus Wireless, Inc. v. Innovative Wireless Sols., LLC*, 824 F.3d 999, 1004 (Fed. Cir. 2016) (“Because the specification makes no mention of wireless communications, construing the instant claims to encompass that subject matter would likely render the claims invalid for lack of written description.”); *Wisc. Alumni Rsch. Found. v. Apple Inc.*, 905 F.3d 1341 (Fed. Cir. 2018) (rejecting a broader construction that would have included scope that was not described in the specification). Apple’s construction, consistent with the specification, maintains appropriate written description

support for the full scope of the terms.

2. “A head-worn personal electronic apparatus” is a limiting part of the ’355 patent’s preambles.

“A head-worn personal electronic apparatus” in the preamble of independent claims 1, 17, 65, 77 and 87 of the ’355 patent is limiting because it (1) provides antecedent basis for “the head-worn personal electronic apparatus” recited in over 50 independent and dependent claims, and (2) recites structure “underscored as important by the specification.” *Catalina Mktg.*, 289 F.3d at 808.

First, the preamble is limiting because it provides antecedent basis for “*the* head-worn personal electronic apparatus,”⁴ which appears in the body of independent claims 65, 77, and 87 and dependent claims 3-7, 11, 12-16, 19-29, 33, 34, 36, 38-41, 43, 44, 46-49, 51, 54-57, 60-64, 66, 67, 71-74, 78, 79, 83, 84, 88, 93, 94, and 97-100. The Federal Circuit has “repeatedly held a preamble limiting when it serves as antecedent basis for a term appearing in the body of a claim.” *In re Fought*, 941 F.3d at 1178 (finding “a travel trailer” in the beginning of the preamble to be limiting because later claim elements relied on it for antecedent basis). The phrase “the head-worn personal electronic apparatus” appears 129 times in the claim bodies. Many of these limitations describe additional features of the “head-worn personal electronic apparatus,” demonstrating “it is a necessary component of the invention” and thus limiting. *Bio-Rad*, 967 F.3d at 1371.

Second, “a head-worn personal electronic apparatus” is limiting because it recites a “fundamental characteristic of the claimed invention.” *Poly-Am., L.P. v. GSE Lining Tech., Inc.*, 383 F.3d 1303, 1310 (Fed. Cir. 2004). As discussed, the specification repeatedly describes the “invention” as “eyewear,” discloses only embodiments comprising eyewear or headwear, and

⁴ Certain claims recite “the head-worn wearable electronic device,” “head-worn personal electronic structure,” or “the head-worn electronic personal audio apparatus,” but are included in the listing because the only possible antecedent basis for these terms is the prior-recited “a head-worn personal electronic device.”

characterizes the problem addressed by the patent in the context of eyewear. *See supra* § II.C.1.i; *see also* '355 patent, 3:37-39 (“the invention pertains to techniques for providing wearable electronic devices (e.g., head-worn electronic devices, such as eyewear) with electrical components”); *Corning Glass Works v. Sumitomo Elec. USA, Inc.*, 868 F.2d 1251, 1257 (Fed. Cir. 1989) (holding “[a]n optical waveguide” in the preamble to be limiting based on the specification’s description of the invention); *Piggy Pushers, LLC v. Skidders Footwear, Inc.*, 544 F. App’x 984, 989 (Fed. Cir. 2013) (same for “a sock”); *Resonant Sys., Inc. v. Apple, Inc.*, No. 7:23-cv-0077-ADA, Dkt. No. 103 at 12-14 (W.D. Tex. Aug. 23, 2024) (construing the preamble to be limiting where the specification consistently referred to the disputed claim term as the invention). The title of the '355 patent also describes a “Head-worn personal audio apparatus,” confirming it is part of the purported invention and thus a limiting part of the preamble. *See Poly-Am.*, 383 F.3d at 1310.

D. “[a/the] speaker[s] . . . proximate to an ear of the user” / “the first speaker . . . proximate to a first ear of the user” / “the second speaker . . . proximate to a second ear of the user” ('355 patent, claims 1, 17, 65, 77, 87; '693 patent, claims 24, 42, 75; '901 patent, claims 1 and 35)

Apple’s Construction	IngenioSpec’s Construction
“[a/the] speaker[s] . . . near an ear of the user” / “the first speaker . . . near a first ear of the user” / “the second speaker . . . near a second ear of the user”	Plain and ordinary meaning

Claims of each of the '355, '693, and '901 patents recite a speaker “proximate to” a user’s ear. Again, IngenioSpec improperly attempts to expand the claims’ scope towards devices with speakers not “proximate to” an ear but actually “inside” an ear. *See* Exs. 7 at 21-25, 8 at 19-24, 9 at 287-292. Courts have consistently rejected such an interpretation, recognizing that the plain meaning of “proximate” is “near.” *See Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1380 (Fed. Cir. 2021) (“The ordinary meaning of ‘proximate’ in the context of physical positioning is to be ‘[c]losely neighboring, immediately adjacent, next, nearest.”); *Transdata, Inc. v.*

Centerpoint Energy Houston Elec. LLC, No. 6:10-cv-557-RWS-JDL, 2016 WL 3172791, at *3 (E.D. Tex. June 7, 2016) (“proximate” means “near to”); *see also Xerox Corp. v. X Corp.*, No. 2023-1913, 2025 WL 1692962, at *4-5 (Fed. Cir. June 17, 2025) (“The customary meaning of the terms ‘proximal’ and ‘information’ suggests that ‘proximal information’ is information that is near or next to something.”). The same is true here.

The ’901, ’693, and ’355 patents use “proximate” consistent with its plain meaning of “near.” They discuss a “temple tip” that “provides a surface for positioning proximate to the user’s ear.” ’901 patent, 10:6-10; ’693 patent, 15:32-43; ’355 patent, 16:3-6. The “temple tip attaches to the rearward end of the temple” and is thus near the ear. *Id.*; *see* ’901 patent, Fig. 1 (with temple tip 110, right). Moreover, the patents include embodiments with speakers positioned “[i]n the vicinity of each ear,” which is consistent with near the ear. ’901 patent, 26:4-14; ’693 patent, 25:1-9; ’355 patent, 25:30-38.

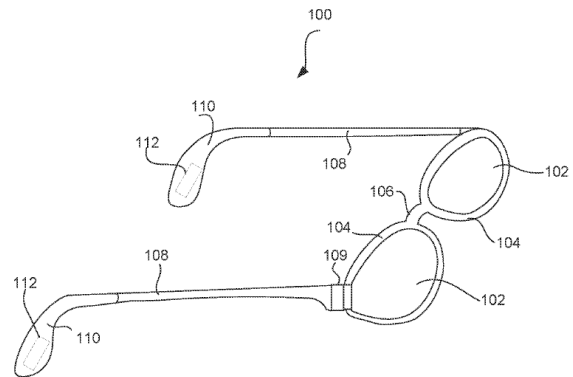


FIG. 1

The patents never use “proximate” inconsistently with this plain meaning, nor do they redefine the term. “Absent lexicography or disavowal, we do not depart from the plain meaning of the claims.” *Luminara Worldwide, LLC v. Liown Elecs. Co.*, 814 F.3d 1343, 1353 (Fed. Cir. 2016). As such, there is no basis to depart from the longstanding plain meaning of “near.”

Unsurprisingly, the parties’ dictionary definitions confirm the plain meaning of “proximate” is “near.” *Compare* Exs. 11 at 1002, 12 at 1123 (Apple’s dictionaries defining “proximate” as “very near : CLOSE” and “[v]ery near or next”), *with* Ex. 16 at 14-15 (IngenioSpec’s dictionaries defining “proximate” as “Closely related in space, time or order, very near,” “next, nearest; immediately before or after in order, place, occurrence, etc.,” “close; very near,” “Nearest or next

before or after (in place, order, time, causation, etc.),” or “nearness in space, time or relationship”). There is thus no basis to depart from the longstanding plain meaning of “near.”

E. Preamble, including “to at least help [a/the] user hear audio outputs produced by the device” (’599 patent, claims 1, 20, 22, 24)

Apple’s Construction	IngenioSpec’s Construction
Preamble is limiting + indefinite	Plain and ordinary meaning

1. The preamble is limiting.

The preambles of claims 1, 20, 22, and 24 recite, in part, “to at least help [a/the] user hear audio outputs produced by the device.” At least this portion of the preamble is limiting because it provides antecedent basis for two claim terms: a “user” (appearing later in independent claims 20, 22, 24 and dependent claim 5); and “audio outputs” (appearing in dependent claim 3).⁵ This is “a strong indication that the preamble is limiting.” *Bio-Rad*, 967 F.3d at 1371; *In re Fought*, 941 F.3d at 1178 (“We have repeatedly held a preamble limiting when it serves as antecedent basis for a term appearing in the body of a claim.”); *see also Catalina Mktg.*, 289 F.3d at 808.

This portion of the preamble is limiting in full because it “cannot be neatly packaged into two separate portions.” *Bio-Rad*, 967 F.3d at 1371; *see also In re Xencor, Inc.*, 130 F.4th 1350, 1358 (Fed. Cir. 2025) (discussing Federal Circuit’s “disinclination” to splice a preamble). Like in *Bio-Rad*, where “[t]he language relied upon for antecedent basis in the preamble at issue is intertwined with the rest of the preamble” (*Bio-Rad*, 967 F.3d at 1371), here too, “a user” is the object of “help” and “audio outputs” is the object of “hear,” so the antecedent terms are inseparable from the rest of the language. *See In re Xencor*, 130 F.4th at 1358 (portion of preamble was limiting where it was “directly connected with the word ‘by’” to an undisputedly limiting portion). This

⁵ The full preamble also supplies antecedent basis for a third term, “[a] wireless wearable device” (recited in claims 1-3, 5-11, 14-24).

portion of the preamble is therefore limiting.

2. “[H]elp the user hear audio outputs” is indefinite.

“[H]elp the user hear audio outputs” is indefinite. While the ’599 patent discloses embodiments, such as noise cancellation, that help a user hear audio outputs and certainly fall within the scope of the claims, (*see* ’599 patent, 17:12-24, 26:25-38), the claim term does not provide “objective boundaries” for the *entire* claim scope. *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1371-73 (Fed. Cir. 2014). Such ambiguity falls within the “‘zone of uncertainty’ against which [the Supreme Court] has warned.” *Id.* (quoting *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 911 (2014)).

The Examiner reached this conclusion during prosecution of the parent: “‘help’ . . . is a relative term which renders the claim indefinite.” Ex. 15, Rejection at 3-4. As the examiner correctly recognized, “‘help’ is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.” *Id.* The Applicant did not traverse this rejection in the parent; it amended the claims to remove “help.” *Id.*, Claims & Remarks at 2, 5, 7-11, 20. It then added this term back into the ’599 patent.

The Examiner’s determination that “one of ordinary skill in the art” would not have understood the full scope of “help” carries significant weight. *Id.* Patent examiners are presumed “to be familiar from their work with the level of skill in the art.” *Am. Hoist & Derrick Co. v. Sowa & Sons*, 725 F.2d 1350, 1359 (Fed. Cir. 1984), *abrogated on other grounds by Therasense, Inc. v. Becton, Dickinson & Co.*, 649 F.3d 1276 (Fed. Cir. 2011); *St. Clair Intell. Prop. Consultants v. Canon Inc.*, 412 F. App’x 270, 276 (Fed. Cir. 2011) (“[b]ecause an examiner . . . can be considered one of ordinary skill in the art, his construction of the asserted claims carries significant weight”).

The Examiner’s determination is also correct. A “term of degree”—like “help”—is

indefinite if it is “purely subjective and depends on the unpredictable vagaries of any one person’s opinion.” *Intell. Ventures I LLC v. T-Mobile USA, Inc.*, 902 F.3d 1372, 1381 (Fed. Cir. 2018) (quotations omitted). That is the case here. The plain meaning of “help” is “to make more pleasant or bearable.” Ex. 11 at 579. The full scope of what makes hearing audio more pleasant or bearable for a user depends on that user’s opinion and ability. For example, users differ in whether particular operations (such as increases in volume) make that hearing more pleasant or bearable, or less so. As such, the claim does not provide “objective boundaries” for one skilled in the art to distinguish what helps a user hear the audio outputs from what does not. *Interval Licensing*, 766 F.3d at 1371.

The intrinsic record confirms the difficulty with assessing the outer boundaries of the claims because it demonstrates that users’ hearing abilities may vary. *See Datamet LLC v. Dropbox, Inc.*, No. 6:22-CV-001142-OLG-DTG, 2023 WL 7545234, at *10 (W.D. Tex. Nov. 10, 2023) (finding indefiniteness because “what impacts are perceptible may vary for different people, each of whom have different reaction times, quicker thinking, personalized expectations of computer speeds, etc.”). Patent Application No. 11/183,262 (incorporated by reference at ’599 patent, 2:61-65) explains that “[a] person with mildly-impaired hearing normally does not need the same degree of hearing assistance as one with severely-impaired hearing.” Ex. 14, ¶ [0008]. While “mild or moderate enhancement to their hearing” may provide some “benefit” to a mildly-impaired user, it will be of no help to a severely-impaired user. *Id.* What helps a user hear may even vary over time because “[h]earing ability tends to decrease gradually, particularly as we age.” *Id.* Put simply, “whether a certain user is infringing the asserted claims is context-dependent, and a context-dependent infringement determination is likely indefinite.” *Versata Software, Inc. v. Zoho Corp.*, 213 F. Supp. 3d 829, 838 (W.D. Tex. 2016) (citing *Halliburton Energy Servs., Inc. v. M-I LLC*, 514 F.3d 1244, 1251 (Fed. Cir. 2008)).

The terms “help” and “assist” are otherwise sparsely used in the specification and do not provide one skilled in the art with guidance on how to delineate between what is helpful or not helpful for a user’s hearing. For example, the specification describes “help[ing] guide the sound to [a retractable] tube,” a structure that “help[s] bring audio signals to the user,” and a speaker that “helps to provide information to the user in a relatively private manner.” ’599 patent, 7:60-8:1, 29:1-3, 38:23-54. But none of these instances of “help” inform the distinction between what “help[s] the user hear audio outputs” and what does not. As such, “a skilled artisan is still left to wonder” what does or does not “help” a user hear, and improperly “leav[es] the facially subjective claim language without an objective boundary.” *Interval Licesning*, 766 F.3d at 1372-74.

In similar circumstances, the Federal Circuit has found terms to be indefinite. In *Datamize LLC v. Plumtree Software, Inc.*, “aesthetically pleasing” was indefinite for “depend[ing] on the unpredictable vagaries of any one person’s opinion.” 417 F.3d 1342, 1350-52 (Fed. Cir. 2005), *abrogated on other grounds by Nautilus*, 572 U.S. at 901. In *Interval Licensing*, “in an unobtrusive manner that does not distract a user” was indefinite because “whether something distracts a user from his primary interaction depends on the preferences of the particular user and the circumstances under which any single user interacts with the display.” 766 F.3d at 1371. “QoS requirements” (quality of service requirements) were also indefinite because they “[we]re entirely subjective and user-defined.” *Intell. Ventures*, 902 F.3d at 1381. Likewise, the full scope of what “help[s] the user hear audio outputs” is judged from the perspective of the user and depends on the user’s individual opinion and ability. The claim term “help the user hear audio outputs” is therefore also indefinite because it lacks an objective boundary by which to ascertain its outer limits.

III. CONCLUSION

For the foregoing reasons, the Court should adopt Apple’s proposed constructions.

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CERTIFICATE OF SERVICE

I certify that on DATE, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system on January 14, 2026, which will send a notification of such filing to all counsel of record.

/s/ Steven J. Wingard
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