



August 28, 2019

VIA CM/ECF

The Honorable Leonard P. Stark
United States District Court
844 North King Street
Wilmington, DE 19801

Re: *Arendi S.A.R.L. v. LG Elecs., Inc., et. al., C.A. No. 12-1595 (LPS)*;
Arendi S.A.R.L. v. Apple Inc., C.A. No. 12-1596 (LPS);
Arendi S.A.R.L. v. Microsoft Mobile, Inc., C.A. No. 12-1599 (LPS);
Arendi S.A.R.L. v. Motorola Mobility LLC, et. al., C.A. No. 12-1601 (LPS);
Arendi S.A.R.L. v. Sony Mobile Commc'ns (USA) Inc., et. al., C.A. No. 12-1602 (LPS);
Arendi S.A.R.L. v. Google LLC, C.A. No. 13-919 (LPS);
Arendi S.A.R.L. v. Oath Holdings Inc., et. al., C.A. No. 13-920 (LPS)

Dear Chief Judge Stark:

In accordance with the Court's August 19, 2019 Oral Order, D.I. 145,¹ Plaintiff Arendi S.A.R.L. ("Arendi") submits this letter in response to Defendants' August 23, 2019 letter, D.I. 148, regarding the impact, if any, of the Court's claim construction decisions on the pending 101 motions. Defendants take the position that the Court's constructions "do not alter" their arguments, and that if anything, the Court's constructions "bolster" their arguments. Defendants are wrong.

A. The Court's Indefiniteness Findings Are Not Dispositive of Eligibility

Defendants argue that the Court's ruling that the means-plus-function terms of the '854 patent are indefinite "further confirms that the asserted claims are not patent eligible." D.I. 148 at 1-2. The '854 patent claims to which Defendants refer are exclusively mean-plus-function (or ruled to be so by the Court as it pertains to claim 98), and the Court ruled that the specification did not disclose an actual algorithm to implement these claims. D.I. 143 at 24-34. That the specification did not, in the Court's view, provide a sufficient algorithm does not bear on—let alone confirm—whether the claims of the '854 patent or of any of the other patents-in-suit are patent-eligible under §101. Defendants do not provide any authority for their view that indefiniteness militates against eligibility. Indeed, the case law disconnects the two analyses. *See Research Corp. Techs. v. Microsoft Corp.*, 627 F.3d 859, 869 (Fed. Cir. 2010) (noting that "a patent that presents a process sufficient to pass the coarse eligibility filter may nonetheless be invalid as indefinite"); *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1315 (Fed. Cir. 2016) (Reyna, J., dissenting) ("Because §101 is a 'coarse eligibility filter,' the recited way of accomplishing a goal need not be extensively detailed or even complete.") (quoting *Research Corp.*, 627 F.3d at 869); *Evolved Wireless, LLC v. Apple, Inc.*, 221 F. Supp. 3d 485, 494 (D. Del. 2016) ("section 101 eligibility should not become a substitute for a patentability analysis related to prior art, adequate disclosure, or other conditions and requirements of Title 35").

¹ Docket cites are to Case No. 13-919, unless otherwise noted.

Defendants likewise overlook that this Court rejected their indefiniteness challenges to the *non-means-plus-functions* terms in the '843 and '993 patents. Most relevant, in finding that the '843 patent term “to determine if the first information belongs to one or more several predefined categories of information that can be searched for,” the Court rejected Defendants’ complaint that the claim term “fails to describe (1) what kind of ‘information’ is claimed and (2) where the search is performed.” D.I. 143 at 13-15. In their §101 Motion and recent letter, Defendants lodge largely identical complaints about the asserted claims’ alleged absence of “how to” perform certain actions, arguing that they recite “only result-based, functional aspirations and completed actions. D.I. 148 at 2. That argument was not enough to find the claim term indefinite, and it is even less persuasive in light of recent Federal Circuit authority holding patent-eligible claims that did not describe “how to” perform the claims. As explained in Arendi’s Opposition, D.I. 139, at 12-13, the patent-eligible claims in *Ancora Technologies, Inc. v. HTC America, Inc.*, 908 F.3d 1343 (Fed. Cir. 2018), *Data Engine Technologies LLC v. Google LLC*, 906 F.3d 999 (Fed. Cir. 2018), *Core Wireless Licensing S.A.R.L. v. LG Electronics, Inc.*, 880 F.3d 1356 (Fed. Cir. 2018), and *Finjan, Inc. v. Blue Coat Systems, Inc.*, 879 F.3d 1299 (Fed. Cir. 2018), did not explain “how to engineer or program” the claimed components or tasks. Defendants’ letter does even attempt to reconcile their argument with these cases.

B. The Court’s Constructions Do Not Help Defendants Meet Their Burden

Defendants argue that the Court’s *Markman* Order found that “the disputed claim limitations cover broad, generic, conventional computing functionality.” D.I. 148 at 2. As explained in Arendi’s Opposition, the claims in *Ancora*, *Data Engine*, and *Finjan* were drawn to conventional components and programs, including “a conventional computer having a conventional BIOS” in *Ancora*, an “IBM-compatible personal computer” in *Data Engine*, and a “Intel Pentium microprocessor or a Motorola Power PC microprocessor in *Finjan*. D.I. 139 at 13-14. Defendants do not address these cases in their letter either. Rather, Defendants attempt to support their argument with reference to the Court’s *Markman* Order, arguing that this Court “repeatedly noted” that the patents describe “conventional word processing and spreadsheet files and conventional word processor and spreadsheet programs.” D.I. 148 at 2. Defendants ignore that the *Markman* Order says that the term “document” “is not solely limited to conventional word processing and spreadsheet files.” D.I. 143 at 5. Indeed, the Court’s construction and reasoning confirms that “document” means more than conventional word processor or spreadsheet files. *Id.* at 7 (noting that ... “it follows that ‘document includes not only conventional word processor files and spreadsheet files, but also files from similar programs.’”).

Defendants state that the Court’s constructions of the “user command” and “single execute command” limitations “suggest that the asserted claims may be implemented by virtually any type of input device ... belying Arendi’s argument that the claims are similar to the improved user interface” in *Core Wireless*. D.I. 148 at 2. To quote Chief Judge Prost in *Commil USA, LLC v. Cisco Systems, Inc.*, 720 F.3d 1361 (Fed. Cir. 2013), Defendants do little more than construct a straw man and set him ablaze. First, this argument disregards that the proper inquiry is whether the claims “as a whole” are directed to patentable subject matter. *MAZ Encryption Techs. LLC v. BlackBerry Corp.*, C.A. No. 13-304-LPS, 2016 WL 5661981, at *2 (D. Del. Sept. 29, 2016). Second, Arendi does not contend that its asserted claims disclose an “improved user interface.”

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The user interface through which a user provides commands is but one portion of a broader invention. Contrary to Defendants' gross mischaracterization, the link to *Core Wireless* is that those claims were "directed to a particular manner of summarizing and presenting information in electronic devices," 880 F.3d at 1362, just as the asserted claims disclose a specific manner of a specific way of improving information searching and retrieval between two different computer programs without disrupting the user's work or requiring the user to be familiar with and have access to an external information source. That this invention can be realized with a variety of input devices does not make it abstract.

C. Defendants Should Not Receive A Second Bite At the Claim Construction Apple

During claim construction, Defendants pressed for indefiniteness with respect to nearly all of the asserted claims of the '854 patent. Defendants did not, however, argue that claim 93 was indefinite. Claim 93 is not a means-plus-function claim, and Defendants did not ask this Court to treat it like one or otherwise argue that the claim was indefinite. Defendants now seek to lump claim 93 in with the other claims ruled indefinite by the Court and then argue that such indefiniteness justifies a determination that the claim is ineligible. As discussed above, indefiniteness is not a proxy for eligibility (and claim 93 is not indefinite in the first instance). Claim 93 is drawn to the same patent-eligible subject matter as the rest of the asserted claims, as explained in Arendi's Opposition. D.I. 139 at 12.

Defendants take the opportunity—arguably in contravention of this Court's instructions—to argue ineligibility against claim 93 afresh and offer a new analogy. As before, however, Defendants' current analogy for claim 93 eviscerates the entirety of the patent specification, the invention's purpose, and the advantages over the prior art. The analogy blurs the line between the "first computer program" and the "second computer program," assigning "Sam Smith" to both. It also hopelessly breaks down when it comes to Sam simply "recognizing" something. As the Federal Circuit said in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016), "describing the claims at such a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule."

Respectfully submitted,

/s/ Eve H. Ormerod

Eve H. Ormerod (No. 5369)

cc: Clerk of Court (via CM/ECF)
All Counsel of Record (via CM/ECF)