

No. 23-1096

**In the United States Court of Appeals
for the Federal Circuit**

AUDIO EVOLUTION DIAGNOSTICS, INC.,

Plaintiff-Appellant

v.

UNITED STATES OF AMERICA & GLOBALMEDIA GROUP, LLC,

Defendants-Appellees

Appeal from the United States Court of Federal Claims in
No. 1:20-cv-01384-PEC, Judge Patricia E. Campbell-Smith

**APPELLANT AUDIO EVOLUTION DIAGNOSTICS, INC.'S
PETITION FOR PANEL REHEARING AND
REHEARING EN BANC**

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**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 23-1096

Short Case Caption Audio Evolution Diagnostics, Inc. v. US

Filing Party/Entity Audio Evolution Diagnostics, Inc.

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Name: Peter J. Corcoran III

<p>1. Represented Entities. Fed. Cir. R. 47.4(a)(1).</p>	<p>2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).</p>	<p>3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).</p>
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<p>Audio Evolution Diagnostics, Inc.</p>		

Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

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INTRODUCTION

This Court's “rulings on patent eligibility have become so diverse and unpredictable as to have a serious effect on the innovation incentive in all fields of technology.” *Am. Axle & Mfg. v. Neapco Holdings LLC*, 966 F.3d 1347, 1357 (Fed. Cir. 2020) (Newman, J. dissenting) (Moore, O’Malley, Reyna, Stoll, JJ., joining). “The victim is not only this inventor . . . ; the victims are the national interest in an innovative industrial economy, and the public interest in the fruits of technological advance.” *Id.*

“In the current state of Section 101 jurisprudence, inconsistency and unpredictability of adjudication have destabilized technologic development in important fields of commerce.” *Yanbin Yu v. Apple Inc.*, 1 F.4th 1040, 1049 (Fed. Cir. 2021) (Newman, J., dissenting). “Although today’s Section 101 uncertainties have arisen primarily in the biological and computer-implemented technologies, all fields are affected.” *Id.* “The case before us enlarges this instability in all fields, for the court holds that the question of whether the components of a new device are well-known and conventional affects Section 101 eligibility, without reaching the patentability criteria of novelty and nonobviousness.” *Id.*

Since *Alice*, this Court has refused to address en banc the most serious issue in its history: How should this Court uniformly apply the Supreme Court’s *Alice/Mayo* steps? This Court has the jurisdiction to decide en banc how to apply

the *Alice/Mayo* steps uniformly without conflicting with the Supreme Court. Uniformity would bring long and desperately-needed stability and predictability to the public, the patent bar, the courts, the USPTO, and the government and would fulfill this Court's purpose in the patent system. The government, who is the Defendant/Appellee in this appeal, through the Office of the Solicitor General ("SG") agrees.

FEDERAL CIRCUIT RULE 35(b) STATEMENT

Based on my professional judgment, I believe this appeal requires an answer to one or more of the following precedent-setting questions of exceptional importance.

(1) Whether this Court's Section 101 precedent since the Supreme Court's *Alice/Mayo* decisions requires clarification due to the economic damage and unpredictability that it has caused to the point that claimed processes, machines, manufactures, compositions of matter, and new and useful improvements thereof are now abstract ideas under this Court's overbroad and non-uniform application of the *Alice/Mayo* steps that *Alice/Mayo* do not require; and

(2) whether this Court's application of the *Alice/Mayo* steps has created a precedent of conflicting positions between the Department of Justice ("DOJ") and the SG's Office whom this Court and the Supreme Court rely on for legal guidance regarding the patent laws.

**POINTS OF LAW AND FACTS THE COURT OVERLOOKED OR
MISAPPREHENDED IN THIS APPEAL**

(1) The Court of Federal Claims (“CFC”) and this Court misapplied *Alice/Mayo*, Step One, when the system and apparatus claims recite a “machine” as statutorily permitted under Section 101;

(2) the CFC and this Court misapplied *Alice/Mayo*, Step One, by devising and applying an abstract idea to claims that do not recite the abstract idea;

(3) the CFC and this Court misapplied *Alice/Mayo*, Step Two, to the extent they found the patent specifications provide statements constituting clear “admissions” that individual claim elements are “well-understood, routine, or conventional”;

(4) the CFC’s abstract idea statement does not focus on the claims as a whole;
and

(5) the CFC and this Court misapplied *Alice/Mayo*, Step Two, finding that individual elements of the claims were “well-understood, routine, or conventional” under Section 101 versus Sections 102 and 103.

ARGUMENT

I. REASONS WHY THIS COURT SHOULD REHEAR THIS APPEAL EN BANC AND CLARIFY ITS SECTION 101 PRECEDENT

A. This Court has set destructive precedent under *Alice/Mayo*, Step One, of fabricating abstract ideas from claims that recite statutorily permissible processes, machines, manufactures, compositions of matter, and new and useful improvements thereof and broadly applying the abstract ideas to invalidate the claims.

This Court's Section 101 precedent since *Alice/Mayo* desperately requires clarification. Its precedent has caused chaos and economic damage in the market because no one knows exactly what inventions are patent eligible anymore. Under *Alice/Mayo*, Step One, courts "determine whether the claims at issue are directed to one of [the] patent-ineligible concepts." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 77 (2012)). "Determine" does not mean "fabricate." The Supreme Court in *Alice* and *Mayo* never intended this Court to fashion unclaimed abstract ideas from patent claims that are directed to processes, machines, manufactures, compositions of matter, and new and useful improvements thereof and use the abstract ideas to invalidate the claims. Fabricating abstract ideas from claim language that is permissible under Section 101 is the kind of danger the Supreme Court warned of "lest it swallow all of patent law." *Id.* (citing *Mayo*, 566 U.S. at 71). "At some level, 'all inventions . . . embody, use, reflect, rest upon, or apply

laws of nature, natural phenomena, or abstract ideas.” *Id.* This Court sitting en banc before the Supreme Court’s *Alice* opinion agreed:

Any claim can be stripped down, simplified, generalized, or paraphrased to remove all of its concrete limitations, until at its core, something that could be characterized as an abstract idea is revealed. Such an approach would “if carried to its extreme, make all inventions unpatentable because all inventions can be reduced to underlying principles of nature which, once known, make their implementation obvious.” [*Diamond v. Diehr*, 450 U.S. 175, 189 n.12 (1981)]; *see also Prometheus*, 132 S. Ct. at 1293. A court cannot go hunting for abstractions by ignoring the concrete, palpable, tangible limitations of the invention the patentee actually claims.

CLS Bank Int’l v. Alice Corp. Pty, 717 F.3d 1269, 1298 (Fed. Cir. 2013) (en banc) (per curiam).

The SG also agrees. It argued for clarification of the Supreme Court’s *Alice/Mayo* decisions in its *Brief for the United States as Amicus Curiae* in *Interactive Wearables, LLC v. Polar Electro Oy* and *Tropp v. Travel Sentry*, Nos. 21-1281 and 22-22 (U.S. Apr. 2023) (“*Interactive Wearables Amicus Br.*”), and *Brief for the United States as Amicus Curiae* in *American Axle & Manufacturing, Inc. v. Neapco Holdings LLC*, No. 20-891 (U.S. May 2022). The Supreme Court declined writ of certiorari in those cases leaving this Court and/or Congress to clarify the law. This Court has jurisdiction to decide how to apply *Alice/Mayo* uniformly without treading on the Supreme Court’s decisions. The Supreme Court provided general guidance in *Alice/Mayo* and left this Court to decide the details of how to apply it.

The SG correctly states that “the Federal Circuit has repeatedly divided in recent years over the content of the abstract-idea exception and the proper application of the two-step methodology under Section 101.” *Interactive Wearables* Amicus Br. at 11. “Section 101 authorizes the patenting of ‘any new and useful process [or] machine.’ 35 U.S.C. 101.” *Id.* at 12. The SG rightfully emphasizes that “[r]ecent Federal Circuit precedent reflects significant confusion over the application of [the Supreme] Court’s Section 101 decisions.” *Id.* at 19. “In recent years, Section 101 cases have repeatedly fractured the Federal Circuit” on the proper application of *Alice/Mayo*, Steps One and Two. *Id.* at 20 (citing, e.g., *Int’l Bus. Machs. Corp. v. Zillow Grp., Inc.*, 50 F.4th 1371 (2022); *Weisner v. Google LLC*, 51 F.4th 1073 (2022); *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, 967 F.3d 1285 (Fed. Cir. 2020), cert. denied, 142 S. Ct. 2902 (2022); *Athena Diagnostics, Inc. v. Mayo Collaborative Servs., LLC*, 915 F.3d 743 (2019), cert. denied, 140 S. Ct. 855 (2020); *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371 (2015), cert. denied, 579 U.S. 928 (2016)); see also *Impact Engine, Inc. v. Google LLC*, No. 2022-2291, 2024 U.S. App. LEXIS 16254 (Fed. Cir. July 3, 2024); *Int’l Bus. Machs. Corp. v. Zillow Grp., Inc.*, No. 2022-1861, 2024 U.S. App. LEXIS 546 (Fed. Cir. Jan. 9, 2024); *Realtime Data LLC v. Array Networks Inc.*, Nos. 2021-2251, 2021-2291, 2023 U.S. App. LEXIS 19857 (Fed. Cir. Aug. 2, 2023).

“The Federal Circuit has repeatedly invoked the abstract-idea exception by describing technological inventions at a high level of generality, and it has repeatedly imported distinct patent-law doctrines into the abstract-idea analysis.” *Interactive Wearables* Amicus Br. at 20 (citing, e.g., *Yu*, 1 F.4th at 1043 (upholding machine claims for a digital camera as “directed to the abstract idea of taking two pictures . . . and using one picture to enhance the other in some way”), cert. denied, 142 S. Ct. 1113 (2022); *Chamberlain Grp., Inc. v. Techtronic Indus. Co.*, 935 F.3d 1341, 1346 (2019) (affirming machine claims to a garage-door opener as directed to the abstract idea of “wirelessly communicating status information about a system”), cert. denied, 141 S. Ct. 241 (2020); *Charge-Point, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 766 (2019) (upholding apparatus and system claims to networked electric vehicle charging stations as directed to the abstract idea of merely “communicating over a network for device interaction”), cert. denied, 140 S. Ct. 983 (2020); *Yu*, 1 F.4th at 1047 (Newman, J., dissenting) (accusing the majority of applying novelty considerations, which are “not the realm of Section 101 eligibility”); *Am. Axle*, 967 F.3d at 1305 (Moore, J., dissenting) (contending that “the majority has imbued § 101 with a new superpower—enablement on steroids” that the court may raise *sua sponte* without an evidentiary record)); see *Am. Axle*, 977 F.3d 1379, 1382 (Fed. Cir. 2020) (Moore, J., concurring) (“Our confusion has driven

commentators, amici, and every judge on this court to request Supreme Court clarification.”).

But the Supreme Court has refused to provide any clarification while this Court continues to “repeatedly invoke[] the abstract-idea exception by describing technological inventions at a high level of generality, and . . . repeatedly import[] distinct patent-law doctrines into the abstract-idea analysis.” *Interactive Wearables* Amicus Br. at 20. The Supreme Court’s refusal to clarify its law should not stop this Court from clarifying how it applies Supreme Court law. But this Court too has declined to do so leaving the public, the patent bar, the courts, the USPTO, and the government guessing what inventions are patent eligible and how to claim them and enforce them without fear of wasting infinite time and resources in the process. It is time that this Court clarify en banc this Court’s uniform application of the Supreme Court’s *Alice/Mayo* steps.

Patent claims “must be considered as a whole.” *Diehr*, 450 U.S. at 177; *see Parker v. Flook*, 437 U.S. 584, 594 (1978) (“Our approach . . . is . . . not at all inconsistent with the view that a patent claim must be considered as a whole.”). Audio Evolution Diagnostic’s (“AED”) patent claims considered as a whole in view of the specifications and persons of ordinary skill in the art are directed to a new and useful diagnostic system and apparatus (*i.e.*, a “machine”) comprising a customizable display that tailors the operation of the system and apparatus and

numerous concretely-recited electronic components in an ordered combination that together provide medical care to patients. The claims “recite the kind of ‘machine,’ 35 U.S.C. § 101, that has always been patent-eligible.” *Interactive Wearables* Amicus Br. at 15.

B. This Court’s confusing and unpredictable Section 101 precedent has split the government into opposing factions.

This Court’s non-uniform application of the *Alice/Mayo* steps has created a precedent of conflicting positions between the DOJ and the SG’s Office whom this Court and the Supreme Court rely on for guidance regarding the patent laws. Such guidance is not credible when the government has one opinion when it is sued for patent infringement and a different opinion when advocating for the best interests of the public. The government should speak with one voice.

AED agrees with the SG that clarification is needed regarding the proper scope of this Court’s application of the abstract idea exception to patent eligibility. *See Interactive Wearables* Amicus Br. at 10. This Court’s clarification should provide uniformity and predictability to the patent laws and return Section 101’s reach to new and useful claimed processes, machines, manufactures, or compositions of matter, or any new and useful improvements thereof without encouraging courts to fabricate unclaimed abstract ideas from statutorily permissible claims and invalidate them under Step One. When searching for an inventive concept under Step Two, this Court should not place undue emphasis on

considerations of novelty, obviousness, and enablement which are the purview of Sections 102, 103, and 112. *See id.* at 11.

II. REASONS WHY THE PANEL SHOULD REHEAR THIS CASE

A. The CFC misapplied *Alice/Mayo*, Step One, when the system and apparatus claims recite a “machine” as statutorily permitted under Section 101.

The CFC cited independent claim 39 of the '343 patent and independent claim 17 of the '791 patent in its order but found that the claims are “directed at the abstract idea of ‘collecting, analyzing, manipulating, and displaying data,’ . . . and ‘filtering patient [physical] signals to increase accuracy.’” *Audio Evolution Diagnostics, Inc. v. United States*, 160 Fed. Cl. 513, 518, 527 (2022); *id.*, 162 Fed. Cl. 73, 78 (2022).

Claim 39 of the '343 patent reads as follows:

An apparatus for acquiring and processing physiological sounds comprising:

a plurality of sensors each respectively comprising a corresponding diaphragm, wherein at least one sensor is configured to be positioned on a body surface, and at least two sensors of said plurality of sensors are configured to convert said physiological sounds, in response to vibration of said corresponding diaphragms by said physiological sounds, into a corresponding plurality of electrical signals; and

processing unit operatively coupled to said plurality of sensors[,] said processing unit configured to process a plurality of streams of digital data representative of said corresponding plurality of electrical signals, wherein at least a portion of said plurality of streams of digital data are input into a parallel to serial converter to generate a serial output.

Id., 160 Fed. Cl. at 518.

And Claim 17 of the '791 patent reads:

An apparatus for acquiring, processing and transmitting physiological sounds comprising:

a plurality of sensors each respectively comprising a corresponding diaphragm, wherein at least one corresponding diaphragm is configured to be positioned on a body surface, and at least two sensors of said plurality of sensors are configured to convert said physiological sounds, in response to vibration of said corresponding diaphragms by said physiological sounds, into a corresponding plurality of electrical signals;

a corresponding plurality of analogue to digital converters each operatively coupled to a corresponding one sensor of said plurality of sensors, said analogue to digital converters configured to convert at least a portion of said plurality of electrical signals into a plurality of streams of digital data;

a processing unit operatively coupled to the plurality of analogue to digital converters, said processing unit configured to process said plurality of streams of digital data, wherein at least a portion of said plurality of streams of digital data are input in parallel into a parallel to serial converter to generate a serial output; and

a wireless network device configured for wireless transmission of at least a portion of said serial output in a first direction away from said processing unit, and said wireless network device is further configured for reception of an input that is wirelessly transmitted in a second direction towards said processing unit.

Id.

These claims recite a diagnostic apparatus that comprise real-world electronic components. Electronic components are not abstract ideas. A radio is not an abstract idea. A television is not an abstract idea. AED's diagnostic system and apparatus

is not an abstract idea. Whether the claims ultimately satisfy the substantive requirements for patentability under Sections 102, 103, and/or 112 is a separate inquiry. “The question therefore of whether a particular invention is novel is ‘wholly apart from whether the invention falls into a category of statutory subject matter.’” *Diehr*, 450 U.S. at 190 (quoting *In re Bergy*, 596 F.2d 952, 961 (C.C.P.A. 1979), vacated as moot, *Diamond v. Chakrabarty*, 444 U.S. 1028 (1980)).

B. The CFC misapplied *Alice/Mayo*, Step One, by applying an abstract idea to claims that do not recite the abstract idea.

The CFC found that AED’s patent claims are “directed at the abstract idea of ‘collecting, analyzing, manipulating, and displaying data,’ . . . and ‘filtering patient [physical] signals to increase accuracy.’” *Audio Evolution Diagnostics*, 160 Fed. Cl. at 518, 527; *id.*, 162 Fed. Cl. at 78. As seen above, claim 39 of the ’343 patent and claim 17 of the ’791 patent do not recite “manipulating” and “displaying data” or “filtering patient [physical] signals.” The CFC and this Court erred by invalidating claims under an alleged abstract idea that do not recite the abstract idea.

C. The CFC and this Court misapplied *Alice/Mayo*, Step Two, to the extent they found that the patent specifications contain statements constituting clear “admissions” that individual claim elements are “well-understood, routine, or conventional.”

The CFC in its order quotes the government’s argument that “the specifications and prosecution histories of the patents ‘concede’ that they are ‘generic computer components performing their conventional functions to carry out

that abstract idea.” *Audio Evolution Diagnostics*, 160 Fed. Cl. at 526. The government in its response brief before this Court also argues that the “disclosures and prosecution histories of the Asserted Patents admit that *all* of the hardware and software elements of their claims were components already known in the prior art and performing their conventional functionality.” Resp. Br. at 35 (emphasis added). To the extent that the CFC and this Court relied on the government’s “admission” arguments, the arguments mischaracterize the true claim language and AED’s description of the elements in the patents.

First, the claim elements listed on pages 36 to 42 of the response brief are not accurate citations of the claims, which the government admits with its “see generally” citation on page 37. The government instead rewrites and simplifies the claim language to fit its narrative that the elements are known, generic, and/or conventional. For example, the government oversimplifies the language of the customizable display claims simply as “A display device operatively coupled to said processing unit, said display device configured to display a plurality of icons.” Resp. Br. at 41. The actual language of claim 1 of the ’343 patent is:

a display device operatively coupled to said processing unit, said display device configured to display a plurality of icons, wherein each icon of said plurality of icons displayed respectively correspond to at least one operation of a plurality of operations that said processing unit is configured to perform, wherein a sequence of said plurality of operations is configured for customization by a user through insertion of an additional icon in said plurality of icons displayed and modification of at least

one operation of said plurality of operations by said user through interaction with at least one icon of said plurality of icons displayed, and wherein said processing unit is further configured to process said processed signal by said customized sequence, and said display device further is configured to display a characterization of said processed signal.

Appx87 (11:12–28). Claim 29 of the '343 patent and claims 1 and 8 of the '791 patent recite nearly identical language. *See* Appx88 (14:49–64), Appx147 (11:29–46), Appx147 (12:39–54).

Second, the government's citations to the patents and the provisional application do not disclose the claim language as recited. The cited portions merely disclose the invention in the context of the background, features, and operation of the invention to persons of ordinary skill in the art. The government attempts to spin these disclosures into admission arguments that AED knew the claim language was known in the prior art. For example, the government cites the disclosure of DasyLab software and a 2004 Guler et al. reference in the provisional application and the '343 patent (Appx734 (17:11–14), Appx729 (12:14–16), Appx083 ('343 patent 9:5–8)) as evidence that AED knew that its claimed customizable display device was known in the prior art. *Resp. Br.* at 41. Those citations in no way, shape, or form disclose the actual recited language of claim 1 and merely describe the background of general display technology in the art. Moreover, AED disclosed the DasyLab and Guler references to the USPTO during prosecution which did not find the references as relevant prior art to the claims.

D. The CFC’s abstract idea statement does not focus on the claims as a whole.

The CFC’s manufactured abstract idea does not consider the claims as a whole. *Diehr*, 450 U.S. at 177; *Flook*, 437 U.S. at 594. In addition to the claims not reciting “manipulating” and “displaying data” or “filtering patient [physical] signals,” claims 1 and 29 of the ’343 patent and claims 1 and 8 of the ’791 patent are directed to much more than simply “displaying data.” The claim language clearly states that “each icon” corresponds to at least one “operation that the processing unit is configured to perform,” which has absolutely nothing to do with performing the function of simply “displaying data.” Appx87 (11:12–28); Appx88 (14:49–64); Appx147 (11:29–46); Appx147 (12:39–54).

Furthermore, the claim language also clearly specifies that “at least one operation” can be “modified” by a “user through interaction with at least one icon displayed.” The “display device” provides a specific interface that enables a user to improve the functioning of the system and apparatus by modifying its operations. It is not a “generic display device” that does nothing more than “display data.” “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.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016) (citing *Alice*, 134 S. Ct. at 2354).

E. The CFC and this Court misapplied *Alice/Mayo*, Step Two, finding that individual elements of the claims were “well-understood, routine, or conventional” under Section 101 versus Sections 102 and 103.

Against *Diehr*'s explicit distinction between Sections 101 and 102, the CFC and this Court held that AED's claimed diagnostic system and apparatus is an abstract idea because the claimed components were well-known and conventional and perform only their basic functions. *Audio Evolution Diagnostics*, 160 Fed. Cl. at 527–29. “That is not the realm of Section 101 eligibility.” *Yu*, 1 F.4th at 1047 (Newman, J., dissenting). The Supreme Court disposed of this position in *Diehr*:

It has been urged that novelty is an appropriate consideration under §101. Presumably, this argument results from the language in § 101 referring to any “new and useful” process, machine, etc. Section 101, however, is a general statement of the type of subject matter that is eligible for patent protection “subject to the conditions and requirements of this title.” Specific conditions for patentability follow and § 102 covers in detail the conditions relating to novelty. The question therefore of whether a particular invention is novel is “wholly apart from whether the invention falls into a category of statutory subject matter.”

Diehr, 450 U.S. at 189–90 (citations omitted). “A valid patent must meet the ‘conditions and requirements’ of the patent statute; eligibility under Section 101 is not the same as patentability under the substantive statutory provisions of novelty (§ 102), non-obviousness (§ 103), and description and enablement (§ 112).” *Am. Axle*, 966 F.3d at 1359 (Newman, J. dissenting) (Moore, O'Malley, Reyna, Stoll, JJ., joining).

CONCLUSION

For these reasons, the panel should rehear this appeal, and this Court should rehear this appeal en banc.

Dated: July 26, 2024

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ADDENDUM

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Neutral

As of: July 26, 2024 10:04 PM Z

[Audio Evolution Diagnostics, Inc. v. United States](#)

United States Court of Appeals for the Federal Circuit

May 14, 2024, Decided

2023-1096

Reporter

2024 U.S. App. LEXIS 11641 *; 2024 WL 2143376

AUDIO EVOLUTION DIAGNOSTICS, INC.,
Plaintiff-Appellant v. UNITED STATES,
GLOBALMEDIA GROUP, LLC, Defendants-
Appellees

Circuit Judges.

Opinion

Notice: DECISION WITHOUT PUBLISHED
OPINION

JUDGMENT

Prior History: [*1] Appeal from the United States
Court of Federal Claims in No. 1:20-cv-01384-
PEC, Judge Patricia E. Campbell-Smith.

THIS CAUSE having been heard and considered, it
is

ORDERED and ADJUDGED:

PER CURIAM

[Audio Evolution Diagnostics, Inc. v. United States,](#)
[160 Fed. Cl. 513, 2022 U.S. Claims LEXIS 1413,](#)
[2022 WL 2384026 \(July 1, 2022\)](#)

AFFIRMED. See Fed. Cir. R. 36.

Counsel: PETER JOSEPH CORCORAN, III,
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Judges: REYNA, TARANTO, and HUGHES,

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Neutral

As of: July 26, 2024 10:04 PM Z

[Audio Evolution Diagnostics, Inc. v. United States](#)

United States Court of Federal Claims

September 21, 2022, E-Filed

No. 20-1384C

Reporter

162 Fed. Cl. 73 *; 2022 U.S. Claims LEXIS 2158 **; 2022 U.S.P.Q.2D (BNA) 877; 2022 WL 4364179
be futile.

AUDIO EVOLUTION DIAGNOSTICS, INC.,
Plaintiff, v. UNITED STATES, Defendant, and
GLOBALMEDIA GROUP, LLC, Third-party
Defendant.

Outcome

Motion to vacate judgment denied. Motion for
leave to file amended complaint denied. Motion to
amend judgment denied.

Subsequent History: As Corrected September 23,
2022.

LexisNexis® Headnotes

Prior History: [Audio Evolution Diagnostics, Inc.
v. United States, 160 Fed. Cl. 513, 2022 U.S.
Claims LEXIS 1413, 2022 WL 2384026 \(July 1,
2022\)](#)

Civil Procedure > Judgments > Relief From
Judgments > Altering & Amending Judgments

Core Terms

patents, amend, motion to vacate, second amended
complaint, amended complaint, motion to amend,
motion to dismiss, infringement, allegations,
futility, independent claim, motion for leave,
articulate

Governments > Courts > Courts of Claims

[HNI](#) **Relief From Judgments, Altering & Amending Judgments**

Case Summary

Overview

HOLDINGS: [1]-The court declined to disturb the judgment dismissing plaintiff's patent infringement action on the ground that the patents were directed at ineligible subject matter because plaintiff articulated no intervening change in the controlling law, relevant newly discovered evidence, or need to correct clear factual or legal error or to prevent manifest injustice in its motion, and failed to articulate more than its disagreement with the court's conclusions; [2]-The court declined to grant plaintiff leave to amend because amendment would

[U.S. Ct. Fed. Cl. R. 59\(e\)](#) allows a party to file a motion to alter or amend a judgment no later than 28 days after the entry of the judgment. A motion seeking a substantive change in the judgment—that is a revision which disturbs or revises legal rights and obligations that were settled by the previous judgment—will be considered an [Rule 59\(e\)](#) motion. The court will grant a motion pursuant to [Rule 59\(e\)](#) under extraordinary circumstances, including: (1) an intervening change in the controlling law; (2) the availability of new evidence; or (3) the need to correct clear error or prevent manifest injustice.

Civil Procedure > ... > Pleadings > Amendment of Pleadings > Leave of Court

Governments > Courts > Courts of Claims

[HN2](#) **Amendment of Pleadings, Leave of Court**

[U.S. Ct. Fed. Cl. R. 15\(a\)\(2\)](#) governs a motion for leave to amend a complaint, which requires that leave to amend be freely given when justice so requires. Where an amendment after judgment has issued would do no more than state an alternative theory for recovery, and where the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief. The leave sought should, as the rules require, be freely given. Such leave, however, may be given only in the absence of an apparent or declared reason to refuse it, such as futility of amendment or repeated failure to cure deficiencies by amendments previously allowed.

Civil Procedure > Judgments > Relief From Judgments > Altering & Amending Judgments

[HN3](#) **Relief From Judgments, Altering & Amending Judgments**

A motion for reconsideration is not a vehicle for giving an unhappy litigant an additional chance to sway the judge, nor is it intended to allow a party to make arguments already presented to, and rejected by, the court.

Civil Procedure > ... > Pleadings > Amendment of Pleadings > Leave of Court

[HN4](#) **Amendment of Pleadings, Leave of Court**

Where an amendment after judgment has issued would do no more than state an alternative theory for recovery, and where the underlying facts or circumstances relied upon by a plaintiff may be a

proper subject of relief, the leave sought should, as the rules require, be freely given. Such leave must be given in the absence of an apparent or declared reason to refuse it, such as futility of amendment or repeated failure to cure deficiencies by amendments previously allowed.

Headnotes/Summary

Headnotes

Reconsideration; RCFC 59(e); Amendment; RCFC 15; Futility; Failure to Cure Deficiencies.

Counsel: **[**1]** Joel B. Rothman, Boca Raton, FL, for plaintiff. Layla T. Nguyen and Peter J. Corcoran, III, of counsel.

Grant D. Johnson, Trial Attorney, with whom were Brian M. Boynton, Principal Deputy Assistant Attorney General, and Gary L. Hausken, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for defendant. Scott Bolden, of counsel.

Brett W. Johnson, Phoenix, AZ, for third-party defendant.

Judges: PATRICIA E. CAMPBELL-SMITH, Judge.

Opinion by: PATRICIA E. CAMPBELL-SMITH

Opinion

[*74] CAMPBELL-SMITH, Judge.

Before the court are plaintiff's motion to vacate judgment and plaintiff's motion to alter **[*75]** or amend judgment pursuant to [Rule 59\(e\) of the Rules of the United States Court of Federal Claims](#) (RCFC), and plaintiff's motion for leave to amend its complaint pursuant to [RCFC 15\(a\)\(2\)](#). See ECF No. 60 (motion to vacate judgment); ECF No. 62 (motion to amend judgment); ECF No. 61 (motion

for leave to file amended complaint, attaching proposed third amended complaint). Plaintiff filed its motions on August 3, 2022, see ECF Nos. 60-62, and defendant filed its responses to each motion on August 31, 2022, see ECF No. 63 (response to plaintiff's motion to vacate); ECF No. 64 (response to plaintiff's motion for leave to amend); ECF No. 65 (response to plaintiff's [**2] motion to amend judgment).

Briefing is now complete, and the motions are ripe for decision. The court has considered all of the parties' arguments and addresses the issues that are pertinent to the court's rulings in this opinion. For the reasons set forth below, plaintiff's motions are each **DENIED**.

I. Background

Plaintiff filed its original complaint on October 13, 2020, alleging patent infringement by the United States. See ECF No. 1 (complaint). Defendant moved to dismiss plaintiff's complaint on December 14, 2020, arguing in relevant part that plaintiff's claims should be dismissed for failure to state a claim because plaintiff's asserted patents are "ineligible for protection under 35 U.S.C. § 101" as abstract ideas. ECF No. 9 at 6 (motion to dismiss). In response, plaintiff moved to amend its complaint, which the court permitted, see ECF No. 25 (order), and plaintiff filed its first amended complaint on February 24, 2021, see ECF No. 26 (first amended complaint). Defendant then moved to dismiss plaintiff's amended complaint on the same basis as its first motion to dismiss. See ECF No. 27 (motion to dismiss amended complaint). After briefing on defendant's motion was complete, the court ordered [**3] plaintiff to file a more definite statement of its claim pursuant to RCFC 12(e) in the form of a second amended complaint, and, consequently, denied defendant's second motion to dismiss as moot. See ECF No. 41 at 2-3 (order).

On November 5, 2021, plaintiff filed its second amended complaint. See ECF No. 42 (second

amended complaint). In response, defendant filed a third motion to dismiss, again making the same arguments. See ECF No. 47 (motion to dismiss second amended complaint). The court dismissed plaintiff's complaint on July 1, 2022, and judgment was entered that same day. See ECF No. 54 (opinion, reported at Audio Evolution Diagnostics, Inc. v. United States, 160 Fed. Cl. 513 (2022)); ECF No. 55 (judgment). In so doing, the court held that "plaintiff's asserted patents are directed at the abstract idea of 'collecting, analyzing, manipulating, and displaying data,' and 'filtering patient [physical] signals to increase accuracy.'" Id. at 16 (citations omitted). And the court further held that, "plaintiff's complaint does not recite specific, plausible factual allegations 'sufficient to ensure that the patent in practice amounts to significantly more' than the abstract idea itself," or "'point[] to evidence suggesting [its] techniques had not been implemented in [**4] a similar way,' or 'in a specific combination' that would rise to the level of inventiveness." Id. at 18 (citations omitted). The court thus determined that plaintiff's asserted patents are directed at ineligible subject matter and that plaintiff failed to state a claim upon which relief can be granted. See id. at 19.

II. Legal Standards

A. Motion to Vacate Judgment & Motion to Alter or Amend Judgment

Plaintiff made both its motion to vacate judgment and its motion to alter or amend judgment pursuant to RCFC 59(e). See ECF No. 60 at 5; ECF No. 62 at 2. HNI [↑] Rule 59(e) allows a party to file "[a] motion to alter or amend a judgment . . . no later than 28 days after the entry of the judgment." A motion seeking "a substantive change in the judgment"—that is "a revision which disturbs or revises legal rights and obligations that were settled by the previous judgment"—will be considered an RCFC 59(e) motion. Johnson v. United States, 127 Fed. Cl. 661, 663 (2016) (quoting Maxus Energy Corp. & Subsidiaries v. United States, 31 F.3d 1135, 1139 (Fed. Cir. 1994); N. States [**76]

Power Co. v. United States, 79 Fed. Cl. 748, 749 (2007)). The court will grant a motion pursuant to RCFC 59(e) under "extraordinary circumstances," including: "(1) an intervening change in the controlling law; (2) the availability of new evidence; or (3) the need to correct clear error or prevent manifest injustice." IAP Worldwide Servs., Inc. v. United States, 141 Fed. Cl. 788, 801 (2019) (internal citations omitted); see also Ajinomoto Co., Inc. v. Archer-Daniels-Midland Co., 228 F.3d 1338, 1350 (Fed. Cir. 2000) (discussing [**5] the correlative Federal Rule of Civil Procedure and applicable standard).

B. Motion to Amend a Complaint

HN2 [↑] Rule 15(a)(2) governs a motion for leave to amend a complaint, which requires that leave to amend be "freely given when justice so requires." Where an amendment after judgment has issued would do "no more than state an alternative theory for recovery," and where "the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief . . . the leave sought should, as the rules require, be 'freely given.'" Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962). Such leave, however, may be given only in the absence of an "apparent or declared reason" to refuse it, such as futility of amendment or "repeated failure to cure deficiencies by amendments previously allowed." Id.

III. Analysis

A. Plaintiff Has Not Demonstrated that Vacating or Amending the Judgment Is Appropriate Here

In its first motion, plaintiff argues that the court should "vacate the findings in the judgment" because the court "erred in failing to view the well-pled facts in the [complaint] in the light most favorable to [p]laintiff," relied on case law that is "factually distinguishable and should have no bearing over" plaintiff's claims, and "ignored the well-pled [**6] [facts] of the [complaint] . . .

contravening controlling law."¹ ECF No. 60 at 5-6. Plaintiff asserts in its motion to amend judgment that, if the court denies its motion to vacate the judgment, the court should amend its judgment, which contains "a correctable error." ECF No. 62 at 2. According to plaintiff, it "only asserted patent infringement" of two independent claims of its patents, but the court's judgment "does not delineate which specific claims in the asserted patents are directed to ineligible subject matter." Id. Plaintiff therefore requests that the court "limit its invalidity finding to apply only" to those independent claims. Id. at 6.

Defendant responds that plaintiff's arguments "merely reassert[] near-identical arguments" from its opposition to the motion to dismiss and plaintiff "offers no argument or evidence that could justify the extraordinary relief of vacating the [c]ourt's carefully considered opinion." ECF No. 63 at 4-5. According to defendant, the court "has already thoroughly considered and rejected" each of plaintiff's arguments. Id. at 8; see also id. at 9, 10. Defendant further argues in its response to plaintiff's motion [**7] to amend the judgment that plaintiff "points to no legal or factual error in the [c]ourt's carefully considered opinion," that would justify amending the judgment. ECF No. 65 at 4. Defendant contends that plaintiff's second amended complaint asserted claims about the patents in their entirety, the court "analyzed the asserted patents and their claims in their entirety," and plaintiff

¹ Plaintiff also asserted that the recent issuance of another of its patents constitutes newly discovered evidence of eligibility. See ECF No. 60 at 6-7. According to plaintiff, this newly discovered evidence renders meritless defendant's argument in its motion to dismiss that the United States Patent Office rejected the similar claims of that patent on ineligibility grounds. See id. The court's decision was not premised on this argument, nor did the court find it pertinent to address as part of its eligibility analysis. See generally ECF No. 54; see also id. at 2 (noting that the court "has considered all of the parties' arguments and addresses only the issues that are pertinent to the court's ruling" in its opinion). The court, therefore, cannot credit plaintiff's argument that any newly discovered evidence on this point is relevant to its decision and declines to address the argument further in this opinion.

cannot retroactively cabin the court's judgment to only two claims. Id. at 12; see also id. at 10-13.

The court agrees with defendant that plaintiff has not demonstrated that vacating [*77] or amending the judgment is appropriate in this case. Plaintiff articulates no intervening change in the controlling law, relevant newly discovered evidence, or need to correct clear factual or legal error or to prevent manifest injustice in its motion. See IAP Worldwide Servs., 141 Fed. Cl. at 801. Although plaintiff asserts in its motion to vacate that the court failed to follow the controlling law, it did so by arguing that its "allegations were sufficient to contradict the court's conclusion." ECF No. 60 at 9 (citing Aatrix Software, Inc. v. Green Shades Software, Inc., 882 F.3d 1121, 1126 (Fed. Cir. 2018)). The court, however, stated in its opinion that it had reviewed plaintiff's allegations and its patents and determined that "plaintiff has not [**8] articulated a clear description of its patents" that would allow the court to find in its favor. ECF No. 54 at 16 (citing Aatrix, 882 F.3d at 1125). Likewise, plaintiff's claims of error fail to articulate more than plaintiff's disagreement with the court's conclusions. See ECF No. 60 at 10-14. Plaintiff's motion to vacate, therefore, fails to demonstrate the "extraordinary circumstances" necessary for the court to grant leave for reconsideration. IAP Worldwide Servs., 141 Fed. Cl. at 801.

In the court's view, plaintiff's arguments in its motion to vacate amount to an attempt to relitigate its prior arguments. See Froudi v. United States, 22 Cl. Ct. 290, 300 (1991) (HN3[↑]) "[A] motion for reconsideration is not a vehicle for giving an unhappy litigant an additional chance to sway the judge, nor is it intended to allow a party to make arguments already presented to, and rejected by, the court."). Plaintiff's claims of error are therefore more appropriate for resolution on appeal.

Likewise, in its motion to alter or amend the judgment, plaintiff fails to articulate any extraordinary circumstance that would support its

argument that the court's judgment should be amended to apply to only two of plaintiff's independent claims. See ECF No. 62 at 3-6. Although plaintiff is correct that the court noted the independent [**9] claims specified by plaintiff in its opinion, plaintiff's argument that it "only asserted patent infringement over [two] independent claim[s]" is disingenuous. Id. at 2; see also id. at 5 (noting that the court referred to the two specific claims in its opinion). Plaintiff emphasized in its second amended complaint that defendant had infringed "at least" the two independent claims, ECF No. 42 at 33-34, and stated in its response to defendant's motion to dismiss that its second amended complaint "identifies many more claims from the patents," and that it "reserve[d] the rights to assert all the claims of the Asserted Patents that are infringed," ECF No. 51 at 15 n.8. The court thus analyzed the patents in their entirety in its opinion. See generally ECF No. 54. In the court's view, the judgment as to the whole of both patents is appropriate, and plaintiff fails to articulate a proper basis for altering or amending the judgment in this case.

The court declines to disturb its judgment in this case, and both plaintiff's motion to vacate judgment and plaintiff's motion to alter or amend judgment are denied.

B. Plaintiff's Amendment Would Be Futile

HN4[↑] In Foman, the Supreme Court of the United States [**10] held that where an amendment after judgment has issued would do "no more than state an alternative theory for recovery," and where "the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief . . . the leave sought should, as the rules require, be 'freely given.'" Foman, 371 U.S. at 182. The Court went on to clarify that such leave must be given in the absence of an "apparent or declared reason" to refuse it, such as futility of amendment or "repeated failure to cure deficiencies by amendments previously allowed." Id. The United States Court of Appeals for the Federal Circuit has

not addressed [Foman](#) and the applicable standard for post-judgment motions to amend pleadings. Therefore, despite the fact that a judgment has been entered in this case and reconsideration under [RCFC 59\(e\)](#) is not warranted, the court must consider plaintiff's motion to amend its complaint and will proceed with the analysis set forth in [Foman](#) to determine whether amendment is appropriate here.

In its opinion dismissing plaintiff's second amended complaint, the court set forth in [*78] detail the reasons that plaintiff could not state the infringement claims alleged in its complaint. See ECF No. 54 at 12-19. Plaintiff [**11] now seeks leave to amend its complaint a third time to "recite[] sufficient allegations that overcome [Alice I Corp. Pty, Ltd. V. CLS Bank Int'l, 573 U.S. 208, 134 S. Ct. 2347, 189 L. Ed. 2d 296 \(2014\)](#) and the deficiencies noted in the court's order dismissing the second amended complaint." ECF No. 61 at 4 (capitalization removed). Plaintiff argues that in addition to "satisfy[ying] the concerns and deficiencies identified by this [c]ourt's decision," its proposed third amended complaint "asserts additional factual allegations that the claims are patent eligible, based on new evidence of the issuance" of a related patent. *Id.* at 5 (capitalization removed). Defendant responds that the amendment "cannot change the fact that the underlying asserted patents are directed to patent-ineligible subject matter." ECF No. 64 at 6. Defendant also argues that the proposed third amended complaint "merely reasserts arguments previously raised by [p]laintiff." *Id.*; see also *id.* at 7-11 (comparing allegations in the third amended complaint with arguments previously raised by plaintiff).

In the court's view, leave to amend should be denied because plaintiff's amendment would be futile, and plaintiff has "repeated[ly] fail[ed] to cure deficiencies by amendments previously allowed." [Foman, 371 U.S. at 182](#); see also [Chapman v. United States, 130 Fed. Cl. 216, 219 \(2017\)](#) (collecting [**12] cases regarding futility of

amendments). Prior to the court's decision, plaintiff amended its complaint twice, first in response to defendant's motion to dismiss on eligibility grounds and once in response to the court's request for a more definite statement. See ECF No. 25 (order granting first motion to amend); ECF No. 41 (order directing plaintiff to file a more definite statement). In its opinion dismissing plaintiff's second amended complaint, the court reviewed the patents and determined that "[t]he facts regarding the 'character as a whole' of the asserted patents are clear and undisputed," that they are "directed at the abstract idea of 'collecting, analyzing, manipulating, and displaying data,' and 'filtering patient [physical] signals to increase accuracy.'" ECF No. 54 at 16 (citations removed). The court also found that plaintiff failed to sufficiently allege inventiveness, and therefore, its patents "are directed to ineligible subject matter." *Id.* at 19. Given the history of this case and the court's thorough consideration of the patents as a whole, a [third amendment](#) would be futile. Plaintiff's motion to amend is therefore denied.

IV. Conclusion

Accordingly, for the foregoing reasons:

- [**13] (1) Plaintiff's motion to vacate judgment, ECF No. 60, is **DENIED**;
- (2) Plaintiff's motion for leave to file an amended complaint, ECF No. 61, is **DENIED**; and
- (3) Plaintiff's motion to amend judgment, ECF No. 62, is **DENIED**.

IT IS SO ORDERED.

/s/ Patricia E. Campbell-Smith

PATRICIA E. CAMPBELL-SMITH

Judge

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As of: July 26, 2024 10:03 PM Z

[Audio Evolution Diagnostics, Inc. v. United States](#)

United States Court of Federal Claims

July 1, 2022, Filed

No. 20-1384C

Reporter

160 Fed. Cl. 513 *; 2022 U.S. Claims LEXIS 1413 **; 2022 U.S.P.Q.2D (BNA) 609; 2022 WL 2384026

AUDIO EVOLUTION DIAGNOSTICS, INC.,
Plaintiff, v. UNITED STATES, Defendant, and
GLOBALMEDIA GROUP, LLC, Third-party
Defendant.

Subsequent History: Motion denied by [Audio Evolution Diagnostics, Inc. v. United States, 162 Fed. Cl. 73, 2022 U.S. Claims LEXIS 2158, 2022 WL 4364179 \(Sept. 21, 2022\)](#)

Affirmed by [Audio Evolution Diagnostics, Inc. v. United States, 2024 U.S. App. LEXIS 11641 \(Fed. Cir., May 14, 2024\)](#)

Core Terms

patent, inventive, abstract idea, sounds, physiological, infringement, processing, products, plaintiff's claim, collecting, plurality, motion to dismiss, manufactured, signals, conventional, allegations, converter, digital, Clinic, defense motion, corresponding, displaying, ineligible, sensors, configured, recording, contends, software, serial, amended complaint

Case Summary

Overview

HOLDINGS: [1]-Because the Assignment of Claims Act was not implicated in this case, defendant's motion to dismiss plaintiff's claims arising prior to April 19, 2016, was denied; [2]-Plaintiff's allegations related to the manufacture of infringing products in the United States were

sufficient to establish the court's jurisdiction despite the final location of the use of the products. Defendant's motion to dismiss plaintiff's claims involving products used outside the United States was therefore denied; [3]-Plaintiff's asserted patents were directed to the abstract idea of of collecting, analyzing, manipulating, and displaying data, and filtering patient physical signals to increase accuracy. They lacked an inventive concept; [4]-Under [35 U.S.C.S. § 101](#), plaintiff's asserted patents were directed to ineligible subject matter. As such, plaintiff failed to state a claim for relief.

Outcome

Motion to dismiss granted.

LexisNexis® Headnotes

Evidence > Burdens of Proof > Allocation

Governments > Courts > Courts of Claims

Evidence > Burdens of Proof > Preponderance of Evidence

[HNI](#) **Burdens of Proof, Allocation**

When a challenge is mounted pursuant to [U.S. Ct. Fed. Cl. R. 12\(b\)\(1\)](#), plaintiff bears the burden of establishing this court's subject-matter jurisdiction by a preponderance of the evidence. In reviewing plaintiff's allegations in support of jurisdiction, the court must presume all undisputed facts are true

and construe all reasonable inferences in plaintiff's favor. Abrogated on other grounds by If, however, a motion to dismiss challenges the truth of the jurisdictional facts alleged in the complaint, the court may consider relevant evidence in order to resolve the factual dispute. If the court determines that it lacks subject-matter jurisdiction, it must dismiss the complaint. [U.S. Ct. Fed Cl. R. 12\(h\)\(3\)](#).

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

Civil Procedure > ... > Pleadings > Complaints > Requirements for Complaint

[HN2](#) [↓] **Motions to Dismiss, Failure to State Claim**

When considering a motion to dismiss brought under [U.S. Ct. Fed. Cl. R. 12\(b\)\(6\)](#), the court must presume that the facts are as alleged in the complaint, and make all reasonable inferences in favor of the plaintiff. It is well-settled that a complaint should be dismissed under [Rule 12\(b\)\(6\)](#) when the facts asserted by the claimant do not entitle him to a legal remedy. To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. This requires more than a sheer possibility that a defendant has acted unlawfully, and threadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice. The court is not required to accept the asserted legal conclusions in a plaintiff's complaint when assessing a motion to dismiss.

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

Evidence > Judicial Notice > Adjudicative Facts > Public Records

[HN3](#) [↓] **Motions to Dismiss, Failure to State Claim**

In evaluating a motion to dismiss for failure to state a claim, the court primarily considers the allegations in the complaint, but is not limited to the four corners of the complaint, and may also look to the matters incorporated by reference or integral to the claim. The court may consider the allegations contained in the complaint, exhibits attached to the complaint, public records of which the court may take judicial notice, and documents appended to the motion to dismiss that are central to plaintiff's complaint.

Civil Procedure > Preliminary Considerations > Jurisdiction > Subject Matter Jurisdiction

Governments > Courts > Authority to Adjudicate

[HN4](#) [↓] **Jurisdiction, Subject Matter Jurisdiction**

Jurisdiction is a threshold issue that the court must consider before reaching the merits of a case.

Patent Law > Ownership > Conveyances > Assignments
Business & Corporate Compliance > ... > Ownership > Conveyances > Assignments

Governments > Federal Government > Claims By & Against

[HN5](#) [↓] **Conveyances, Assignments**

The Assignment of Claims Act (ACA) prohibits the

assignment of a claim against the United States unless the claim is allowed, the amount is decided, and a warrant for payment of the claim has been issued. [31 U.S.C.S. § 3727\(b\)](#). The statute applies to the assignment of patent claims with respect to the right to recover for past infringements of the patent. Congress intended that the government would only be subject to claims from the original claimant, such that unliquidated claims could not be assigned after they had accrued. Thus, voluntary assignments of patent claims are ineffective against the government unless they qualify for one of the judicially-recognized exceptions or otherwise do not run afoul of the purposes of the Act. The court has previously held that where assignments are to an alter-ego partnership and the same individual or partners possessed the equitable ownership of the claims for purposes of infringement, the ACA is not applicable because none of the Act's purposes were implicated in the assignment.

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

Governments > Courts > Courts of Claims

[HN6](#) [↓] **Motions to Dismiss, Failure to State Claim**

In evaluating a [U.S. Ct. Fed. Cl. R. 12\(b\)\(6\)](#) motion, the court presumes all undisputed facts are true and construes all reasonable inferences in plaintiff's favor if jurisdictional facts are not challenged.

Patent Law > Jurisdiction & Review > Subject Matter Jurisdiction

[HN7](#) [↓] **Jurisdiction & Review, Subject Matter Jurisdiction**

The United States Court of Appeals for the Federal

Circuit has held that [28 U.S.C.S. § 1498\(c\)](#) has no application where a United States patent was allegedly infringed by activities that took place within the United States.

Evidence > Inferences & Presumptions > Inferences

Patent Law > Jurisdiction & Review > Subject Matter Jurisdiction

[HN8](#) [↓] **Inferences & Presumptions, Inferences**

Where the defendant does not challenge the jurisdictional facts, the court presumes all undisputed facts are true and construes all reasonable inferences in plaintiff's favor.

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

Governments > Courts > Courts of Claims

Patent Law > Subject Matter

[HN9](#) [↓] **Motions to Dismiss, Failure to State Claim**

Patent eligibility under [35 U.S.C.S. § 101](#) is a question of law that may involve underlying questions of fact. Whether the claim supplies an inventive concept that renders it significantly more than an abstract idea to which it is directed is a question of law. And, not every [§ 101](#) determination contains genuine disputes over the underlying facts material to the [§ 101](#) inquiry. The court may, therefore, determine patent eligibility on a motion to dismiss pursuant to [U.S. Ct. Fed. Cl. R. 12\(b\)\(6\)](#) only when there are no factual allegations that, taken as true, prevent resolving the eligibility question as a matter of law.

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

Evidence > Burdens of Proof > Clear & Convincing Proof

Governments > Courts > Courts of Claims

Patent Law > Subject Matter

[HN10](#) [📄] **Motions to Dismiss, Failure to State Claim**

While factual issues related to a patent's validity must be proven by clear and convincing evidence, the court does not resolve any factual disputes on a motion to dismiss pursuant to [U.S. Ct. Fed. Cl. R. 12\(b\)\(6\)](#). Instead, if a factual allegation arises that, taken as true, would prevent the court from resolving the eligibility determination, the court cannot, as a matter of law, grant a motion to dismiss.

Patent Law > Subject Matter

[HN11](#) [📄] **Patent Law, Subject Matter**

[Section 101](#) of the Patent Act defines patent-eligible subject matter as any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof. [35 U.S.C.S. § 101](#). Laws of nature, natural phenomena, and abstract ideas, however, are not eligible for patent protection.

Patent Law > Subject Matter

[HN12](#) [📄] **Patent Law, Subject Matter**

The Supreme Court of the United States has therefore established a two-part test for evaluating claims for patent-eligible subject matter. First, the court must determine whether the claims at issue

are directed to one of those patent-ineligible concepts. The inquiry in this step looks at the "focus" of the claims. If the court concludes that the patents at issue are directed toward ineligible subject matter, then the court must determine whether the application contains an inventive concept. It does so by considering the elements of each claim both individually and as an ordered combination to determine whether the additional elements transform the nature of the claim into a patent-eligible application.

Patent Law > Subject Matter

[HN13](#) [📄] **Patent Law, Subject Matter**

The court must first consider the asserted patent claims in their entirety to ascertain whether their character as a whole is directed to excluded subject matter. The court asks what the patent asserts to be the focus of the claimed advance over the prior art to determine whether the claim's character as a whole is directed to ineligible subject matter.

Patent Law > Subject Matter

[HN14](#) [📄] **Patent Law, Subject Matter**

If the court finds that a patent is directed at ineligible subject matter, the court next looks for an "inventive concept," defined as an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more than a patent on the abstract idea itself. The transformation into a patent-eligible application requires more than simply stating the abstract idea while adding the words apply it. Simply appending conventional steps, specified at a high level of generality, to laws of nature, natural phenomena, and abstract ideas cannot make those laws, phenomena, and ideas patentable. Inventive concepts must be more than well-understood, routine, conventional activity. An inventive concept

reflects something more than the application of an abstract idea using well-understood, routine, and conventional activities previously known to the industry. If a claim's only inventive concept is the application of an abstract idea using conventional and well-understood techniques, the claim has not been transformed into a patent-eligible application of an abstract idea.

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

Patent Law > Subject Matter

[HN15](#) [↓] **Motions to Dismiss, Failure to State Claim**

Determining whether a claim contains an inventive concept may turn on underlying questions of fact. The court must accept plaintiff's factual allegations as true, and where plaintiff asserts plausible and specific factual allegations that aspects of the claim are inventive, those allegations are sufficient survive a motion to dismiss.

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

[HN16](#) [↓] **Motions to Dismiss, Failure to State Claim**

The court is not required to accept the asserted legal conclusions in a plaintiff's complaint when assessing a motion to dismiss.

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

Governments > Courts > Courts of Claims

Patent Law > Subject Matter

[HN17](#) [↓] **Motions to Dismiss, Failure to State Claim**

In the context of a [U.S. Ct. Fed. Cl. R. 12\(b\)\(6\)](#) motion, the court must and does make all inferences in plaintiff's favor, however, the court cannot infer an inventive concept without specific allegations that are more than simply labeling techniques as inventive.

Headnotes/Summary

Headnotes

Motion to Dismiss; RCFC 12(b)(1); RCFC 12(b)(6); 35 U.S.C. § 101; Patent-Eligible Subject Matter; Abstract Idea; Inventive Concept.

Counsel: [**1] Joel B. Rothman, Boca Raton, FL, for plaintiff.

Grant D. Johnson, Trial Attorney, with whom were Brian Boynton, Acting Assistant Attorney General, Gary L. Hausken, Director, Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC, for defendant. Scott Bolden, of counsel.

Brett W. Johnson, Phoenix, AZ, for third-party defendant.

Judges: PATRICIA E. CAMPBELL-SMITH, Judge.

Opinion by: PATRICIA E. CAMPBELL-SMITH

Opinion

[*517] CAMPBELL-SMITH, Judge.

Before the court is defendant's motion to dismiss pursuant to [Rules 12\(b\)\(1\)](#) and [12\(b\)\(6\) of the Rules of the United States Court of Federal Claims](#) (RCFC). See ECF No. 47. Defendant filed its

motion on December 3, 2021, in which third-party defendant joined, see ECF No. 48, and plaintiff filed its response on January 24, 2022, see ECF No. 51. Defendant filed a reply on February 7, 2022, see ECF No. 52, in which third-party defendant also joined, see ECF No. 53. The motion is now fully briefed and ripe for decision.

The court has considered all of the parties' arguments and addresses the issues that are pertinent to the court's ruling in this opinion. For the following reasons, defendant's motion to dismiss is **GRANTED**.

I. Background¹

A. The Patents

At issue in this case are United States Patent Number 8,920,343, entitled "Apparatus for Acquiring and Processing of Physiological [**2] Auditory Signals" (the "'343 Patent"), and United States Patent Number 8,870,791, entitled "Apparatus for Acquiring, Processing and Transmitting Physiological Sounds" (the "'791 Patent"). See ECF No. 42 at 1, 3 (second amended complaint).

Both the '343 Patent and the '791 Patent describe and claim "an apparatus and system . . . for collecting, processing, and recording sounds associated with the physiologic activities of various human organs." ECF No. 42 at 2; see also ECF No. 42-5 at 50 ('343 Patent describing the invention as the "digital recording, processing and analysis of . . . physiologic sounds"). To do so, the system utilizes one or more transducers, which are placed on the body and detect the organ sounds as analog data signals. See ECF No. 42 at 2. The analog data signals are then converted to digital signals by a converter, and the digital signals are transmitted to an electronic apparatus (e.g., a computer workstation) that processes, views, and analyzes the

data through an analysis program. See id. The data is displayed on a "compact, customizable device" that uses "a simple interface" to allow medical professionals with limited knowledge of technology to analyze and manipulate the data. ECF No. 42-5 at 50; see also ECF No. 42-7 at 48 ('791 Patent). The object of the apparatus [**3] described in the patents is "facilitating the diagnosis of certain diseases" using the analyzed data, ECF No. 42-5 at 50, thereby "dramatically improv[ing] efficiency in the healthcare system and clinical outcomes for patients," id. at 51.

The inventions described in the '343 Patent and the '791 Patent purport to improve on other, similar devices in a number of ways. See ECF No. 42 at 4 ("The technology field for acquiring, processing, and transmitting physiological organ sounds experienced disadvantages by March 23, 2006, that the invention disclosed and claimed in the Asserted Patents overcame."). The patents purport to describe a device that is more useful to physicians of "ordinary ability" working in a clinical setting. Id. at 4-5 (describing the disadvantages of other systems available prior to the system at issue here to physicians of "ordinary ability"). According to plaintiff, the device does so by "providing a simple interface which allows medical professionals with limited technical background to easily manipulate vital parameters . . . , and applying data windows without the need for computer programming knowledge." ECF No. 42-5 at 50.

Additionally, the '343 Patent and the '791 Patent claim to "boost the accuracy" of [**4] the recorded physiological sounds by taking additional measures to prevent extraneous sounds from influencing the analysis of the physiological sounds collected. ECF No. 42 at 10; see also ECF No. 42-5 at 50 ("Another object of this invention is to boost the accuracy of recording physiological sounds by providing the physician with an efficient method of eliminating background noise . . . from the desired signal in real time."). Plaintiff claims that this is done, at least in part, through the use of a "parallel

¹ The facts are taken from plaintiff's second amended complaint and are undisputed by defendant in its motion to dismiss. The court makes no findings of fact here.

to serial converter," which [*518] converts the physiological sounds collected "from and to" the analog data signals. ECF No. 42 at 10 (referring to portions of the patent describing the "parallel to serial converter" and "serial to parallel converter" as support for the patents' goal of boosting the accuracy of physiological sounds by eliminating background noise).

B. Plaintiff's Claims of Infringement

The specific claims at issue in this case are independent claim 39 of the '343 Patent and independent claim 17 of the '791 Patent. See ECF No. 42 at 33-34. Claim 39 reads as follows:

An apparatus for acquiring and processing physiological sounds comprising:

a plurality of sensors each respectively comprising [**5] a corresponding diaphragm, wherein at least one sensor is configured to be positioned on a body surface, and at least two sensors of said plurality of sensors are configured to convert said physiological sounds, in response to vibration of said corresponding diaphragms by said physiological sounds, into a corresponding plurality of electrical signals; and
 processing unit operatively coupled to said plurality of sensors[,] said processing unit configured to process a plurality of streams of digital data representative of said corresponding plurality of electrical signals, wherein at least a portion of said plurality of streams of digital data are input into a parallel to serial converter to generate a serial output.

ECF No. 42-5 at 56 (alteration pursuant to the Certificate of Correction, id. at 60). And Claim 17 of the '791 Patent reads:

An apparatus for acquiring, processing and transmitting physiological sounds comprising:

a plurality of sensors each respectively comprising a corresponding diaphragm, wherein at least one corresponding diaphragm

is configured to be positioned on a body surface, and at least two sensors of said plurality of sensors are configured to convert said physiological sounds, [**6] in response to vibration of said corresponding diaphragms by said physiological sounds, into a corresponding plurality of electrical signals;

a corresponding plurality of analogue to digital converters each operatively coupled to a corresponding one sensor of said plurality of sensors, said analogue to digital converters configured to convert at least a portion of said plurality of electrical signals into a plurality of streams of digital data;

a processing unit operatively coupled to the plurality of analogue to digital converters, said processing unit configured to process said plurality of streams of digital data, wherein at least a portion of said plurality of streams of digital data are input in parallel into a parallel to serial converter to generate a serial output; and

a wireless network device configured for wireless transmission of at least a portion of said serial output in a first direction away from said processing unit, and said wireless network device is further configured for reception of an input that is wirelessly transmitted in a second direction towards said processing unit.

ECF No. 42-7 at 54.

According to plaintiff, defendant has used certain accused products "manufactured [**7] by or for [d]efendant" by GlobalMed and Iron Bow. See ECF No. 42 at 27-28. Plaintiff includes an extensive list of telemedicine stations, stethoscopes, cameras, probes, and system software manufactured by the two companies. See id. Plaintiff further provides a table of specific "illustrative" examples of the infringement, which the court has condensed and reproduced below²:

²For purposes of evaluating defendant's motion the court has partially reproduced the above table, contained in plaintiff's complaint. The table has been altered to omit internal citations and to

[*519]

 [Go to table I](#)

[*520] Id. at 28-33 (condensed and internal citations omitted).

C. The Prosecution History of the Patents

Dr. [**9] Michael Edward Sabatino, M.D., the named inventor of the patents and the president, CEO, and ninety-percent owner of plaintiff, filed the provisional application for the patents with the United States Patent and Trademark Office (PTO) on March 23, 2006. See id. at 2-3 (citing ECF No. 42-1, Provisional Application for Patent). On November 20, 2006, Dr. Sabatino filed the non-provisional application for the '343 patent. See id. at 3 (citing ECF No. 42-2, patent application). Before the PTO acted on the non-provisional application for the '343 Patent, on March 26, 2012, Dr. Sabatino filed the non-provisional application for the '791 Patent. See id. (citing ECF No. 42-4, patent application). The non-provisional application for the '791 Patent noted that it was a continuation of the non-provisional application for the '343 Patent. See id.

The PTO examined the patent applications for more than eight years and ultimately issued the '791 Patent on October 28, 2014, [*521] and the '343 Patent on December 30, 2014. See id. Both patents were issued to Dr. Sabatino. See id. On April 19, 2016, Dr. Sabatino assigned the '343 Patent and the '791 Patent to plaintiff pursuant to an assignment agreement. See id. at 4; see also ECF No. 47-1 at 418-20 (agreement). On August 27, 2020, plaintiff and Dr. Sabatino [**10] executed a new assignment agreement that expressly revoked the 2016 agreement and granted plaintiff "all right, title and interest in the Patents, including the right to sue for all past, present, and future infringement since the date of issue of the Patents." ECF No. 47-1 at 422.

omit two columns of information that were not pertinent to the issues raised in defendant's motion. See ECF No. 42 at 28.

D. Procedural History

Plaintiff filed its original complaint on October 13, 2020, alleging patent infringement by the United States Department of Veterans Affairs (VA),³ the Department of Defense (DOD), and the Department of the Navy. See ECF No. 1. Defendant moved to dismiss plaintiff's complaint on December 14, 2020, arguing that plaintiff's claims should be dismissed for failure to state a claim because plaintiff's asserted patents are "ineligible for protection under 35 U.S.C. § 101" as abstract ideas. ECF No. 9 at 6. Defendant also argued that "several other categories" of plaintiff's claims should be dismissed for lack of jurisdiction. Id. at 6-7. In response, plaintiff moved to amend its complaint to "address[] the issues raised in the defendant's motion to dismiss." ECF No. 18 at 1. The court granted plaintiff's motion, see ECF No. 25 (order), and plaintiff filed its first amended complaint on February 24, 2021, [**11] see ECF No. 26 (first amended complaint).

Defendant moved to dismiss plaintiff's amended complaint, arguing as it had in its first motion to dismiss, that plaintiff's claims are not eligible for patent protection and should therefore be dismissed. See ECF No. 27 at 6. Defendant also again raised jurisdictional arguments to several components of plaintiff's claims. See id. at 7. In its motion, defendant noted that plaintiff's amended complaint failed to include "any specific examples of [defendant's] use of the accused products." Id. at 43. After briefing on defendant's motion was complete, the court ordered plaintiff to file a more definite statement of its claim pursuant to RCFC 12(e) in the form of a second amended complaint. See ECF No. 41 at 2-3 (order). Specifically, the

³ Plaintiff refers to the "Veterans Administration" in its complaint, see ECF No. 1 at 2, and the operative second amended complaint, see ECF No. 42 at 2. The court understands plaintiff to be referring to the Department of Veterans Affairs, as evidenced by plaintiff's referral to that agency elsewhere in its second amended complaint. See ECF No. 42 at 30-32 (listing the "infringing agency" as "Department of Veteran's Affairs").

court ordered plaintiff to provide additional detail regarding the "specific dates and locations of the alleged infringement," and "a comprehensive list of the specific agencies or government actors who committed the alleged acts of infringement," so that it can assess the jurisdictional issues raised by defendant, which must be considered before the court can reach the merits of the case. *Id.* The court consequently [**12] denied defendant's second motion to dismiss as moot. *See id.* at 3.

On November 5, 2021, plaintiff filed its second amended complaint (complaint). *See* ECF No. 42. In response, defendant filed the motion to dismiss currently before the court, again arguing that plaintiff's claims should be dismissed because they are "ineligible for patent protection under 35 U.S.C. § 101," and that the court lacks jurisdiction over "many of [p]laintiff's infringement allegations." ECF No. 47 at 7-8.

II. Legal Standards

A. Motions to Dismiss Pursuant to RCFC 12(b)(1)

HN1 [↑] When a challenge is mounted pursuant to RCFC 12(b)(1), plaintiff bears the burden of establishing this court's subject-matter jurisdiction by a preponderance of the evidence. *See Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988); *Cedars-Sinai Med. Ctr. v. Watkins*, 11 F.3d 1573, 1583 (Fed. Cir. 1993). In reviewing plaintiff's allegations in support of jurisdiction, the court must presume all undisputed facts are true and construe all reasonable inferences in plaintiff's favor. *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974), abrogated on other [**522] grounds by *Harlow v. Fitzgerald*, 457 U.S. 800, 814-15, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982); *Reynolds*, 846 F.2d at 747 (citations omitted). If, however, a motion to dismiss "challenges the truth of the jurisdictional facts alleged in the complaint, the . . . court may consider relevant evidence in order to resolve the factual dispute." *Reynolds*, 846 F.2d at 747. If the court determines that it lacks subject-matter jurisdiction,

it must [**13] dismiss the complaint. *See RCFC 12(h)(3)*.

B. Motions to Dismiss Pursuant to RCFC 12(b)(6)

HN2 [↑] When considering a motion to dismiss brought under RCFC 12(b)(6), the court "must presume that the facts are as alleged in the complaint, and make all reasonable inferences in favor of the plaintiff." *Cary v. United States*, 552 F.3d 1373, 1376 (Fed. Cir. 2009) (citing *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991)). It is well-settled that a complaint should be dismissed under RCFC 12(b)(6) "when the facts asserted by the claimant do not entitle him to a legal remedy." *Lindsay v. United States*, 295 F.3d 1252, 1257 (Fed. Cir. 2002). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). This requires "more than a sheer possibility that a defendant has acted unlawfully," and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice." *Id.*; *see also Am. Bankers Ass'n v. United States*, 932 F.3d 1375, 1380 (Fed. Cir. 2019) (the court is "not required to accept the asserted legal conclusions" in a plaintiff's complaint when assessing a motion to dismiss).

HN3 [↑] In evaluating a motion to dismiss for failure to state a claim, the court "primarily consider[s] the allegations in the complaint," but is "not limited to the four corners of the complaint," and may also look to the "matters incorporated by reference or integral [**14] to the claim." *See Dimare Fresh, Inc. v. United States*, 808 F.3d 1301, 1306 (Fed. Cir. 2015) (citations omitted); *see also Terry v. United States*, 103 Fed. Cl. 645, 652 (2012) (finding that the court may consider the allegations contained in the complaint, exhibits attached to the complaint, public records of which

the court may take judicial notice, and documents appended to the motion to dismiss that are central to plaintiff's complaint).

III. Analysis

A. This Court Has Jurisdiction Over All of Plaintiff's Claims

[HN4](#)^[↑] Jurisdiction is a threshold issue that the court must consider before reaching the merits of a case. See [OTI Am., Inc. v. United States](#), 68 Fed. Cl. 108, 113 (2005) ("Jurisdiction must be established as a threshold matter before the court may proceed with the merits of this or any other action.") (citing [Steel Co. v. Citizens for a Better Env't](#), 523 U.S. 83, 88-89, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998)). Accordingly, the court first addresses defendant's argument that it lacks jurisdiction over certain of plaintiff's claims. See [id.](#); see also ECF No. 47 at 5. Defendant contends that: (1) the Assignment of Claims Act (ACA), [31 U.S.C. § 3727](#), "divests this [c]ourt of jurisdiction" over those claims that arose prior to the patents being assigned to plaintiff in April 2016; (2) the court does not have jurisdiction over those claims that arose outside of the United States; and (3) any of the claims involving accused products that were manufactured or sold by AMD Global Telemedicine [\[**15\]](#) are precluded as a matter of law because plaintiff has already raised and settled infringement claims against that entity. [Id.](#); see also [id.](#) at 41-44.

Plaintiff responds that the court has jurisdiction over all claims asserted in the complaint, including those that pre-date the assignment of the patents and that involve products manufactured in the United States and later shipped out of the United States. See ECF No. 51 at 42-43. Plaintiff further contends that its claims do not involve products manufactured by AMD Global Telemedicine and, accordingly, defendant's preclusion argument is misplaced. See [id.](#) at 44.

i. The Assignment of Claims Act

[HN5](#)^[↑] The ACA, prohibits the assignment of a claim against the United States unless the claim "is allowed," the amount is [\[*523\]](#) decided, and "a warrant for payment of the claim has been issued." [31 U.S.C. § 3727\(b\)](#). The statute applies to the assignment of patent claims "with respect to the right to recover for past infringements of the patent." [MDS Assoc., Ltd. v. United States](#), 31 Fed. Cl. 389, 393 (1994). "Congress intended that the government would only be subject to claims from the 'original claimant,' such that unliquidated claims could not be assigned after they had accrued." [3rd Eye Surveillance, LLC v. United States](#), 133 Fed. Cl. 273, 277-78 (2017) (citing [United States v. Shannon](#), 342 U.S. 288, 291, 72 S. Ct. 281, 96 L. Ed. 321 (1952)). Thus, "voluntary assignments of patent claims [\[**16\]](#) are ineffective against the government unless they qualify for one of the[] judicially-recognized exceptions or otherwise do not run afoul of the purposes of the Act." [Id. at 277](#). The court has previously held that where assignments are to an "alter-ego partnership" and "the same individual or partners possessed the equitable ownership of the claims for purposes of infringement," [MDS Assocs](#), 31 Fed. Cl. at 394, the ACA is not applicable because "none of the Act's purposes were implicated" in the assignment, [Ideal Innovations, Inc. v. United States](#), 138 Fed. Cl. 244, 251 (2018) (holding that the ACA was not implicated where the inventor was also the president and CEO of the plaintiff company).

Defendant argues that Dr. Sabatino did not assign plaintiff the right to sue for past infringement until the August 27, 2020 agreement, "and there is nothing to suggest that any of the judicially recognized exceptions" to the ACA applies. ECF No. 47 at 43. Defendant therefore contends that the court lacks jurisdiction over any of plaintiff's infringement claims that occurred prior the 2016 assignment agreement. See [id.](#) at 42-43. Plaintiff responds that Dr. Sabatino is "a 90% owner of [plaintiff] and is its president and CEO," making him the alter-ego of plaintiff. ECF No. 51 at 42. According to plaintiff, [\[**17\]](#) as the alter-ego, Dr.

Sabatino "maintains the same or similar equity interest in the claims . . . as he did before the assignment," meaning the assignment does not implicate the ACA. *Id.* (citing [Kingan & Co. v. United States](#), 44 F.2d 447, 451, 71 Ct. Cl. 19 (Ct. Cl. 1930)).

[HN6](#)^[↑] In evaluating defendant's motion, the court presumes all undisputed facts are true and construes all reasonable inferences in plaintiff's favor if jurisdictional facts are not challenged. *See Scheuer*, 416 U.S. at 236. The facts related to the ownership interests of plaintiff are of importance to the court's determination regarding the application of the ACA. Defendant, however, has neither specifically challenged—nor presented any evidence to contradict—plaintiff's assertion in its complaint that Dr. Sabatino owns a ninety-percent interest in plaintiff. *See* ECF No. 47 at 41-43; ECF No. 52 (jurisdictional arguments not addressed in defendant's reply); *see also* ECF No. 42 at 2; ECF No. 51 at 42. The court therefore must take plaintiff's assertion as true.

Plaintiff has presented sufficient, unchallenged allegations that Dr. Sabatino, as the ninety-percent owner, president, and CEO of plaintiff, is "essentially the same claimant[]" as plaintiff. [Ideal Innovations](#), 138 Fed. Cl. at 251 (holding that an inventor who was also the president and CEO of the plaintiff [**18] was "effectively . . . the same" as plaintiff and "essentially the same claimant"). As such, and taking as true plaintiff's allegation that the equitable ownership of the claims has remained with Dr. Sabatino as ninety-percent owner of plaintiff, the purposes of the ACA are not implicated in the assignment of the patents. *See MDS Assocs.*, 31 Fed. Cl. at 394. Because the ACA is not implicated in this case, defendant's motion to dismiss plaintiff's claims arising prior to April 19, 2016, is denied.

ii. Claims Arising Outside the United States

Defendant next argues that plaintiff's claims arising outside the United States must be dismissed for

lack of jurisdiction pursuant to the plain language of [28 U.S.C. § 1498\(c\)](#), which provides that patent claims against the United States do not extend to "any claim arising in a foreign country." ECF No. 47 at 43 (quoting [28 U.S.C. § 1498\(c\)](#)). Plaintiff responds that its allegations relate to the use or manufacture of the infringing products in the United States prior to their use outside of the United States. *See* ECF No. 51 at 43. According to plaintiff, while an invention [**524] "may be shipped outside the U.S. for the government's use . . . liability remains for the unauthorized manufacture of the patented invention in [**19] the U.S. before the export." *Id.* (citing [Zoltek Corp. v. United States](#), 672 F.3d 1309, 1325 (Fed. Cir. 2012)).

[HN7](#)^[↑] The United States Court of Appeals for the Federal Circuit held that "[§ 1498\(c\)](#) has no application" where "a United States patent was allegedly infringed by activities that took place within the United States." [Zoltek](#), 672 F.3d at 1327.

[HN8](#)^[↑] Because defendant does not challenge the jurisdictional facts, the court presumes all undisputed facts are true and construes all reasonable inferences in plaintiff's favor. *See Scheuer*, 416 U.S. at 236. Plaintiff does not specifically allege that the accused products were manufactured in the United States, but does allege that the products were manufactured "by or for [d]efendant." ECF No. 42 at 27. Drawing all inferences in favor of plaintiff, the court credits plaintiff's assertion in its response that the infringing products were manufactured in the United States although they were ultimately used in foreign countries. *See* ECF No. 51 at 43; ECF No. 42 at 27-28, 33-34; *see also id.* at 28-33 (listing "infringing locations"). In the court's view, plaintiff's allegations related to the manufacture of infringing products in the United States are sufficient to establish this court's jurisdiction despite the final location of the use of the products. *See Zoltek*, 672 F.3d at 1327; *see also* [**20] ECF No. 51 at 43; ECF No. 42 at 27-28, 33-34. Defendant's motion to dismiss plaintiff's claims involving products used outside the United States is

therefore denied.

iii. Claims Involving AMD Global Telemedicine

Finally, defendant contends that "any claims that involve accused products that were manufactured and/or sold by AMD Global Telemedicine [(AMD)] are precluded as a matter of law." ECF No. 47 at 44. This is so, according to defendant, because plaintiff had previously filed a suit against AMD and that case was dismissed with prejudice. See id. Plaintiff responds that while this may be true, its complaint "does not accuse [defendant] of using AMD telemedicine systems." ECF No. 51 at 44. According to plaintiff, the accused systems "include some products" that AMD also sells, but AMD neither manufactures those products nor sells them to defendant or to the two companies from which defendant bought the products at issue. Id.

Defendant offers no more than bare assertions that the accused products in this case are manufactured by AMD and that AMD sold the products at issue to defendant. See ECF No. 47 at 44. On its face, plaintiff's complaint involves only products manufactured or sold [**21] by GlobalMed and Iron Bow Products. Without more, and presuming all undisputed facts are true and construing all reasonable inferences in plaintiff's favor, see Scheuer, 416 U.S. at 236, the court agrees with plaintiff that "the products are properly accused in this action," ECF No. 51 at 44. Defendant's motion as to claims involving AMD products must be denied.

Accordingly, the court has jurisdiction over all of plaintiff's claims.

B. Plaintiff's Claims Must Be Dismissed for Failure to State a Claim Upon Which Relief Can Be Granted

Defendant argues that plaintiff's complaint should be dismissed in its entirety pursuant to RCFC 12(b)(6) because plaintiff cannot state any claim since the patents at issue are not entitled to patent protection under 35 U.S.C. § 101. See ECF No. 47

at 23-41. Plaintiff responds that the asserted patents "are not directed to any patent ineligible concepts, but rather are directed to non-abstract telemedicine systems," ECF No. 51 at 28 (capitalization removed), and its claims require claim construction prior to a decision on eligibility, see id. at 33.

i. Determining Patent Eligibility on a Motion to Dismiss

HN9^[↑] "Patent eligibility under § 101 is a question of law that may involve underlying questions of fact." Simio, LLC v. FlexSim Software Prods., Inc., 983 F.3d 1353, 1358-59 (Fed. Cir. 2020) (citing [**22] Interval Licensing LLC v. AOL, Inc., 896 F.3d 1335, 1342 (Fed. Cir. 2018); see also Univ. of Fla. Research Found., Inc. v. GE Co., 916 F.3d 1363, 1367 (Fed. Cir. 2019) (stating that "[e]ligibility is a question of law based on underlying facts"). "[W]hether the claim 'supplies an inventive [**525] concept that renders [it] 'significantly more' than an abstract idea to which it is directed is a question of law.'" Simio, 983 F.3d at 1363 (quoting BSG Tech. LLC v. BuySeasons, Inc., 899 F.3d 1281, 1290 (Fed. Cir. 2018)). And, "not every § 101 determination contains genuine disputes over the underlying facts material to the § 101 inquiry."⁴ Berkheimer v. HP Inc., 881 F.3d 1360, 1368 (Fed. Cir. 2018). The court may,

⁴Plaintiff argues that defendant "failed to present clear and convincing evidence sufficient to show the Asserted Paten[t]s are ineligible for patent protection." ECF No. 51 at 31. Plaintiff also contends that the motion should be denied because "[f]actual determinations will be needed to decide the eligibility issue." Id. HN10^[↑] The court notes that while plaintiff is correct that factual issues related to a patent's validity must be proven by clear and convincing evidence, see Berkheimer v. HP Inc., 881 F.3d 1360, 1368 (Fed. Cir. 2018), the court does not resolve any factual disputes on a motion to dismiss pursuant to Rule 12(b)(6) of the Rules of the United States Court of Federal Claims. Instead, if a factual allegation arises that, taken as true, would prevent the court from resolving the eligibility determination, the court cannot, as a matter of law, grant a motion to dismiss. Defendant, therefore, need not present any clear and convincing evidence to the court at this stage of the case. The court will, however, consider whether any factual issues exist that may prevent the court from granting a motion to dismiss, as required by the rules and the case law.

therefore, determine patent eligibility on a motion to dismiss pursuant to [RCFC 12\(b\)\(6\)](#) only "when there are no factual allegations that, taken as true, prevent resolving the eligibility question as a matter of law." [Aatrix Software, Inc. v. Green Shades Software, Inc.](#), 882 F.3d 1121, 1125 (Fed. Cir. 2018); see also [Univ. of Fla.](#), 916 F.3d at 1369 (affirming dismissal of infringement claims where patents were found to be ineligible under [§ 101](#)).

ii. Determining Patent-Eligible Subject Matter

[HN11](#)^[↑] [Section 101](#) of the [Patent Act](#) defines patent-eligible subject matter as "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." [35 U.S.C. § 101](#). "Laws of nature, natural phenomena, and abstract ideas," however, are not eligible for patent protection. [Alice Corp. Pty. Ltd. v. CLS Bank Int'l](#), 573 U.S. 208, 216, 134 S. Ct. 2347, 189 L. Ed. 2d 296 (2014) (quoting [Ass'n for Molecular Pathology v. Myriad Genetics, Inc.](#), 569 U.S. 576, 589, 133 S. Ct. 2107, 186 L. Ed. 2d 124 (2013)). This is so because these areas comprise "the basic tools of scientific and technological work" and protecting them under the patent system "might tend **[**23]** to impede innovation more than it would tend to promote it, thereby thwarting the primary object of the patent laws." [Id.](#) (internal citations and quotation marks omitted).

[HN12](#)^[↑] The Supreme Court of the United States has therefore established a two-part test for evaluating claims for patent-eligible subject matter. See [id. at 217](#). First, the court must "determine whether the claims at issue are directed to one of those patent-ineligible concepts." [Id. at 218](#) (citing [Mayo Collaborative Servs. V. Prometheus Lab'y s, Inc.](#), 566 U.S. 66, 75-78, 132 S. Ct. 1289, 182 L. Ed. 2d 321 (2012)). The inquiry in this step "look[s] at the 'focus' of the claims." [Elec. Power Grp., LLC v. Alstom S.A.](#), 830 F.3d 1350, 1353 (Fed. Cir. 2016) (quoting [Enfish, LLC v. Microsoft Corp.](#), 822 F.3d 1327, 1335-36 (Fed. Cir. 2016)). If the court concludes that the patents at issue are

directed toward ineligible subject matter, then the court must determine whether the application contains an inventive concept. See [Alice](#), 573 U.S. at 217. It does so by "consider[ing] the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." [Alice](#), 573 U.S. at 217 (quoting [Mayo](#), 566 U.S. at 78, 79).

iii. Plaintiff's Claims Are Directed to an Abstract Idea

[HN13](#)^[↑] The court must first consider the asserted patent claims "'in their entirety to ascertain whether their character as a whole is directed to excluded subject matter.'" [ChargePoint, Inc. v. Semacnect, Inc.](#), 920 F.3d 759, 765 (Fed. Cir. 2019) (quoting [Internet Patents Corp. v. Active Network, Inc.](#), 790 F.3d 1343, 1346 (Fed. Cir. 2015)). The court "ask[s] **[**24]** what the patent asserts to be the focus of the claimed advance over the prior art to determine whether the claim's **[*526]** character as a whole is directed to ineligible subject matter." [Simio](#), 983 F.3d at 1359 (citations and quotation marks omitted).

Defendant contends that the asserted claims of the '343 Patent and the '791 Patent are directed to the "abstract idea of collecting, processing, and displaying sound data from the human body," and are therefore ineligible for patent. ECF No. 47 at 23. Defendant asserts that the abstract focus "is evident from the asserted patents' disclosures," [id.](#) at 25, and "the language of the asserted patent claims themselves," [id.](#) at 26; see also [id.](#) at 26-28 (detailing the claims in plaintiff's complaint that defendant argues "further highlight[]" the abstract idea). According to defendant, the data is "collected, processed, and displayed using conventional hardware and software," making it "precisely the type of patent claim that the Federal Circuit has consistently held to be directed to an abstract idea." [Id.](#) at 24; see also [id.](#) at 28-33 (arguing that the specifications and prosecution histories of the patents "concede" that they are

"generic computer components performing their conventional functions [**25] to carry out that abstract idea"); *id.* at 34-35 (collecting cases in which the Federal Circuit has found claims for collecting, analyzing, and manipulating data and to be directed to an abstract idea). And, defendant contends, plaintiff's allegations would result in exactly the sort of preemption that raised the Supreme Court's concern about the patenting of abstract ideas. *See id.* at 33-34.

According to plaintiff, however, its patented system is "directed to non-abstract telemedicine systems" for "use in patient treatment and diagnosis," and overcame "the inability of [prior inventions] to provide accurate, robust, flexible, easy-to-use and easy-to-modify systems." ECF No. 51 at 28 (capitalization removed). Plaintiff argues that when comparing "traditional physical examination by auscultation,"⁵ with plaintiff's patented technology, "the fallacy of [defendant's] argument" that the patent is directed at an abstract idea is "laid bare." *Id.* at 29. Plaintiff lists, in a table, the traditional physical examination procedures and "examples of examination by auscultation" using the system claimed in the asserted patents for each of the terms "collecting," "processing," "analyzing," and "displaying." [**26] *Id.* at 29-30 (capitalization removed). Plaintiff further contends that "preemption is not an issue," because defendant "is misreading and misunderstanding the asserted patents." *Id.* at 35 (capitalization removed). According to plaintiff, "[i]nfringement is limited to specific accused devices in combination that meet all the claimed limitations." *Id.* at 36 (emphasis in original).

In a recent decision, the Federal Circuit addressed patent allegations similar to those brought by plaintiff here. *See CardioNet, LLC v. InfoBionic, Inc., No. 2020-2123, 2020-2150, 2021 U.S. App.*

⁵ According to plaintiff, auscultation "is listening to the sounds of the body during a physical examination" to evaluate "frequency, intensity, duration, number [and] quality." ECF No. 51 at 8 n.1 (capitalization removed).

*LEXIS 32392, 2021 WL 5024388, at *3-4 (Fed. Cir. Oct. 29, 2021).* In *CardioNet*, the Circuit reviewed a patent for a heart monitoring device that filtered certain heart wave data to improve monitoring. *See 2021 U.S. App. LEXIS 32392, [WL] at *1-2.* Plaintiff argued that its invention was directed to "an improvement in cardiac monitoring technology," rather than the abstract idea of filtering data. *See 2021 U.S. App. LEXIS 32392, [WL] at *3.* The Circuit disagreed, holding that "the claim language and specification make clear [that] the invention is directed to the abstract idea of filtering patient heartbeat signals to increase accuracy." *2021 U.S. App. LEXIS 32392, [WL] at *4.* In another similar case, the Circuit held that an invention automating by computer the collection of data from various health monitoring systems was "directed to the abstract idea of collecting, analyzing, [**27] manipulating, and displaying data." *Univ. of Fla., 916 F.3d at 1368.*

In the court's view, at their core, plaintiff's asserted patents are directed to the abstract idea of collecting, analyzing, and displaying data. As in *CardioNet* and *University of Florida*, the invention at issue here is a physical monitoring and data collection device that collects and filters human physiological data and then displays it for a clinician to review. *See* ECF No. 42 at 2-3; ECF No. 42-5 at 50; ECF No. 42-7 at 48; *see also CardioNet, 2021 U.S. App. LEXIS 32392, 2021 WL 5024388, at *3-4; Univ. of Fla., 916 F.3d at 1368.* Plaintiff describes the asserted patents as a "novel apparatus [**527] and system . . . for collecting, processing, and recording sounds associated with the physiologic activities of various human organs." ECF No. 42 at 2. And, the patents themselves describe the invention as the "digital recording, processing and analysis of . . . physiologic sounds." ECF No. 42-5 at 50.

Plaintiff further claims that the advance over the prior art is that the device collects data and "provid[es] a simple interface which allows medical professionals with limited technical

background to easily manipulate vital parameters . . . and apply[] data windows without the need for computer programming knowledge." ECF No. 42 at 6; ECF No. 42-5 at 50. Additionally, [**28] the '343 Patent and the '791 Patent claim to "boost the accuracy" of the recorded physiological sounds by taking additional measures to prevent extraneous sounds from influencing the analysis of the physiological sounds collected. ECF No. 42 at 10; see also ECF No. 42-5 at 50 ("Another object of this invention is to boost the accuracy of recording physiological sounds by providing the physician with an efficient method of eliminating background noise . . . from the desired signal in real time.").

The court thus agrees with defendant that the patents describe a system that "collect[s], processe[s], and display[s] [data] using conventional hardware and software," making it "precisely the type of patent claim that the Federal Circuit has consistently held to be directed to an abstract idea." ECF No. 47 at 24; see also *CardioNet*, 2021 U.S. App. LEXIS 32392, 2021 WL 5024388, at *3-4; *Univ. of Fla.*, 916 F.3d at 1368. Reviewing plaintiff's allegations, along with the patents, plaintiff has not articulated a clear description of its patents that would permit the court to find otherwise. Plaintiff also does not present, and the court cannot discern, any factual dispute that prevents the court from making this determination. *Aatrix Software*, 882 F.3d at 1125. The facts regarding the "character as a whole" of the asserted patents are clear [**29] and undisputed. *ChargePoint*, 920 F.3d at 765; see also, e.g., ECF No. 42 at 2-3 (plaintiff describing the asserted patents); ECF No. 47 at 16-19 (defendant describing the asserted patents by quoting and citing to the patents themselves). The court must find, therefore, as the Federal Circuit did in *CardioNet* and *University of Florida*, that plaintiff's asserted patents are directed at the abstract idea of "collecting, analyzing, manipulating, and displaying data," *Univ. of Fla.*, 916 F.3d at 1368, and "filtering patient [physical] signals to increase accuracy," *CardioNet*, 2021 U.S.

*App. LEXIS 32392, 2021 WL 5024388, at *4.*

iv. Plaintiff's Claims Lack an Inventive Concept

HNI4 [↑] If the court finds that a patent is directed at ineligible subject matter, the court next looks for an "inventive concept," defined as "an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more" than a patent on the abstract idea itself. *Alice*, 573 U.S. at 217-18; see also *id.* at 221 (noting that the "transformation into a patent-eligible application requires more than simply stating the abstract idea while adding the words 'apply it'" (internal quotation marks and citation omitted); *Mayo*, 566 U.S. at 82 ("[S]imply appending conventional steps, specified at a high level of generality, to laws of nature, natural phenomena, and abstract [**30] ideas cannot make those laws, phenomena, and ideas patentable."). Inventive concepts "must be more than 'well-understood, routine, conventional activity.'" *Affinity Labs of Texas, LLC v. DirecTV, LLC*, 838 F.3d 1253, 1262 (Fed. Cir. 2016) (quoting *Mayo*, 566 U.S. at 79); see also *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1316 (Fed. Cir. 2019) ("An inventive concept reflects something more than the application of an abstract idea using well-understood, routine, and conventional activities previously known to the industry.") (internal quotation marks and citations omitted). "If a claim's only 'inventive concept' is the application of an abstract idea using conventional and well-understood techniques, the claim has not been transformed into a patent-eligible application of an abstract idea." *BSG Tech*, 899 F.3d at 1290-91.

HNI5 [↑] Determining whether a claim contains an inventive concept "may turn on underlying questions of fact." *Cellspin*, 927 F.3d at 1315 (internal quotation marks and citation omitted). The court must accept plaintiff's factual allegations as true, and [**528] where plaintiff asserts "plausible and specific factual allegations that aspects of the claim are inventive," those allegations are sufficient survive a motion to dismiss. *Id.* at 1317. In

Cellspin, the Circuit considered plaintiff's claim of inventiveness and determined that plaintiff made "specific, plausible factual allegations" that were "more than simply label[ing] ****31** . . . techniques as inventive," and "pointed to evidence suggesting these techniques had not been implemented in a similar way." *Id.* at 1318. The court noted that "implementing a well-known technique with particular devices in a specific combination . . . can be inventive," as plaintiff had specifically alleged its particular implementation to be. *Id.* The Circuit thus concluded that plaintiff had "sufficiently allege[d]" that it had patented "significantly more" than an abstract idea. *Id.* at 1319.

Defendant contends that the asserted claims lack an inventive concept sufficient to transform them into patent-eligible claims. See ECF No. 47 at 36-41. According to defendant, plaintiff's complaint recites "boilerplate conclusory statements" that are insufficient to state a claim. *Id.* at 38 (quotation marks and citation omitted). Defendant contends that the complaint "fails to identify any technical improvement or inventive concept," *id.*, and instead identifies limitations that are "directed to the abstract idea itself," *id.* at 39 (emphasis in original), and limitations that are "merely conventional computing components performing their conventional functionality," *id.* at 40.

Plaintiff in turn asserts that it "makes ****32** specific, plausible, factual allegations . . . about why aspects of its claimed inventions recite inventive concepts." ECF No. 51 at 37. According to plaintiff, at least three features of its patent are inventive concepts: (1) the use of a parallel to serial converter; (2) the conversion of physiological sounds to electrical signals and then to digital signals; and (3) the display device that permitted "easy operation, customization and modification by the clinician." *Id.* at 38. Plaintiff asserts that defendant "ignores the facts cited in the figures, specifications, claims, and prosecution history of the Asserted Patents" and incorrectly assumes that if a "claimed invention employs a 'conventional'

computer component" that fact "render[s] the entire combination of claimed elements patent ineligible." *Id.* at 39-40.

In the court's view, plaintiff's complaint does not recite specific, plausible factual allegations "sufficient to ensure that the patent in practice amounts to significantly more" than the abstract idea itself. *Alice*, 573 U.S. at 217-18 (citing *Mayo*, 566 U.S. at 73); *Cellspin*, 927 F.3d at 1318 (citing *Alice*, 573 U.S. at 217-18). Plaintiff's complaint repeatedly states that the asserted patents "recite technical improvements and inventive concepts that were not well-understood, ****33** routine, or conventional" at the time of the invention. ECF No. 42 at 6, 10, 16. This, however, is a conclusory statement of the kind that the court is not bound to accept as fact. See *Am. Bankers Ass'n*, 932 F.3d at 1380 [HNI6](#)^[↑] (the court is "not required to accept the asserted legal conclusions" in a plaintiff's complaint when assessing a motion to dismiss). Although plaintiff's statements are followed by tables quoting claim terms and specifications, see e.g., ECF No. 42 at 10-15, quoting or reciting the claims and specifications without additional explanation or "concrete allegations" does not constitute sufficiently specific allegations for the court to find inventiveness, *Aatrix Software*, 882 F.3d at 1128.

[HNI7](#)^[↑] The court must and does make all inferences in plaintiff's favor, see *Cary*, 552 F.3d at 1376, however, the court cannot infer an inventive concept without specific allegations that are "more than simply label[ing] . . . techniques as inventive," *Cellspin*, 927 F.3d at 1318. Plaintiff does not "point[] to evidence suggesting [its] techniques had not been implemented in a similar way," or "in a specific combination" that would rise to the level of inventiveness. *Id.*; see also, e.g., ECF No. 42 at 6-9 (quoting claim terms and specifications without making specific allegations), 10-15 (same), 16-26 (same). ****34** Plaintiff does not provide context that would demonstrate that its invention is "significantly more" than an abstract idea, *Alice*,

[573 U.S. at 218](#), or otherwise more than "the application of conventional and well-understood techniques," [BSG Tech, 899 F.3d at 1290](#). Its complaint quotes the "disadvantages" of the "technology field" that were listed in the patent, ECF No. 42 at 4, without providing [*529] additional context or explanation as to how plaintiff's invention applied an inventive concept to overcome the disadvantages. *Id.* at 4-5; see also [Mayo, 566 U.S. at 82](#) ("[S]imply appending conventional steps, specified at a high level of generality, to laws of nature, natural phenomena, and abstract ideas cannot make those laws, phenomena, and ideas patentable.").

Likewise, in its response, plaintiff states that it alleged inventive concepts were not "generic, conventional computing component[s]," without elaborating or otherwise pointing to facts alleged in the complaint that support that assertion. ECF No. 51 at 38; see also *id.* at 39-40. Without more, the court cannot find that plaintiff has adequately alleged an inventive concept. See [BSG Tech, 899 F.3d at 1290-91](#) ("If a claim's only 'inventive concept' is the application of an abstract idea using conventional and well-understood techniques, [**35] the claim has not been transformed into a patent-eligible application of an abstract idea.").

The court thus finds that plaintiff's asserted patents are directed to ineligible subject matter. See [35 U.S.C. § 101](#); [Alice, 573 U.S. at 216](#). As such, plaintiff has failed to state a claim upon which relief can be granted. See [Aatrix Software, 882 F.3d at 1125](#); [Univ. of Fla., 916 F.3d at 1369](#).

IV. Conclusion

Although defendant's motion was made on the basis of both [RCFC 12\(b\)\(1\)](#) and [12\(b\)\(6\)](#), the court has found that it has subject-matter jurisdiction over all of plaintiff's claims and thus dismisses plaintiff's complaint on the basis of [RCFC 12\(b\)\(6\)](#) alone.

Accordingly, for the foregoing reasons:

(1) Defendant's motion to dismiss, ECF No. 47, is **GRANTED**; and

(2) The clerk's office is directed to **ENTER** final judgment in defendant's favor, and **DISMISS** plaintiff's second amended complaint, ECF No. 42, with prejudice.

IT IS SO ORDERED.

/s/ Patricia E. Campbell-Smith

PATRICIA E. CAMPBELL-SMITH

Judge

Table1 ([Return to related document text](#))

Accused Product(s)	Infringing Agency(ies)/ Government Actor(s)	Infringement Location(s)	Date(s) of Infringement
GlobalMed Clinical Access Station ("CAS"), ClearSteth electronic stethoscope ("USB Chest Piece"), and eNCounter software with ClearSteth Module	Naval Medical Logistics Command, Fort Detrick, MD	U.S. Naval Medical Center Portsmouth, VA U.S. Naval Hospital Guantanamo Bay, Cuba; Naval Branch Health Clinic Bahrain; Naval Hospital Jacksonville, FL; Navy Branch Medical Clinic, Albany, GA Navy Branch Medical Clinic, China Lake, CA	12/8/2017 to 12/8/2018 for Naval Medical Center Portsmouth, VA 12/8/2017 to 12/8/2018 for Naval Hospital Jacksonville, FL
GlobalMed Transportable Exam Station ("TES"), ClearSteth electronic Stethoscope ("USB Chest Piece"), and eNCounter software with ClearSteth Module	Naval Medical Logistics Command, Fort Detrick, MD	Naval Health Clinic Annapolis, MD Naval Medical Center Portsmouth, VA [**8] U.S. Naval Hospital Sigonella, Sicily, Italy	12/31/2019 to 12/31/2020
GlobalMed i8500, electronic stethoscope (CareTone Ultra or StethOne streaming); and Capsure Vista software	Department of Veteran's Affairs	VA Rocky Mountain Network, 4100 E. Mississippi Ave., Suite 1100 Glendale, CO 80246	October 2009 to Present
GlobalMed i8500, electronic stethoscope (CareTone); and eNcounter software	Department of Veteran's Affairs	Ernest Childers VA Outpatient Clinic, 9322 E 41st St. Tulsa, OK 74145	04/14/2018
GlobalMed Clinical Access Station	Department of Veteran's Affairs	Oklahoma City VA Medical Center, 921 NE 13th St, Oklahoma City, OK	09/10/2020

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Accused Product(s)	Infringing Agency(ies)/ Government Actor(s)	Infringement Location(s)	Date(s) of Infringement
GlobalMed Clinical Access Station ("CAS") and Transportable Exam Station, ClearSteth electronic stethoscope ("USB Chest Piece"); and eNCounter software.	White House Medical Unit and Department of Veteran's Affairs	73104 The White House, Roosevelt Room, 1600 Pennsylvania Avenue NW, Washington, DC 20500	08/03/2017
GlobalMed i8500, CareTone Ultra Telephonic Stethoscope, and eNCounter software	Department of Veteran's Affairs	New Albany VA Clinic, 4347 Security Pkwy, New Albany, IN 47150	08/09/2017

Table1 ([Return to related document text](#))

 End of Document

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

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Case Number: 23-1096

Short Case Caption: Audio Evolution Diagnostics, Inc. v. US

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Date: 07/26/2024

Signature: /s/ Peter J. Corcoran III

Name: Peter J. Corcoran III

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF SERVICE

Case Number 23-1096

Short Case Caption Audio Evolution Diagnostics, Inc. v. US

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Date: 07/26/2024

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