

Appeal Nos. 2022-1762, 2023-02029

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

ARENDI S.A.R.L.,
Plaintiff-Appellant

v.

OATH HOLDINGS INC., OATH INC.,
Defendants-Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
DELAWARE IN CASE NO. 13-cv-00920-GBW, CHIEF JUDGE LEONARD P. STARK

ARENDI S.A.R.L.,
Plaintiff-Appellant,

APPLE INC.,
Third-Party Defendant,

v.

GOOGLE LLC,
Defendant-Appellee,

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
DELAWARE IN CASE NO. 1:13-cv-00919-JLH, JUDGE JENNIFER L. HALL

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September 6, 2024

CERTIFICATE OF INTEREST OF ARENDI S.A.R.L.

Counsel for Plaintiff-Appellant Arendi S.A.R.L. certifies the following:

1. The full name of every party or amicus curiae represented by me is:

Arendi S.A.R.L.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

N/A

3. All parent corporations and any publicly held companies that own 10 percent of more of the stock of the party or amicus curiae represented by me are:

None

4. The names of all law firms and the partners or associates that appeared for the party or amicus curiae now represented by me in the trial court or agency or are expected to appear in this court (and who have not or will not enter an appearance in this case) are:

Susman Godfrey L.L.P.: Stephen D. Susman, Harry P. Susman, Alexandra G. White, Ibituroko-Emi Lawson, Robert Travis Korman, Burton DeWitt, Brenda Adimora, Beatrice Franklin

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5. The case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case is:

- *Arendi S.A.R.L. v. LG Electronics Inc., et al.*, No. 1:12-cv-01595-VAC (D. Del.)
- *Arendi S.A.R.L. v. Blackberry Limited, et al.*, 1:12-cv-01597-VAC-JLH (D. Del.)
- *Arendi S.A.R.L. v. Motorola Mobility LLC*, 1:12-cv-01601-JLH (D. Del.)
- *Arendi S.A.R.L. v. Sony Mobile Communications (USA) Inc.*, 1:12-cv-01602-VAC-JLH (D. Del.)
- *Arendi S.A.R.L. v. HTC Corp., et al.*, No. 1:12-cv-01600-VAC (D. Del.)
- *Arendi S.A.R.L. v. HTC Corp., et al.*, No. 2:18-cv-1725-BJR (W.D. Wash.)

6. Organizational victims in criminal cases and debtors and trustees in bankruptcy cases are:

N/A

Dated: September 6, 2024

/s/ Kalpana Srinivasan
Kalpana Srinivasan

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1. THE FINAL JUDGMENT RESTED EXCLUSIVELY ON NON-INFRINGEMENT.

Google omits a key fact: the district court exercised its discretion *not* to rule on Arendi’s post-trial challenge to the jury’s invalidity finding. The district court instead entered final judgment in Google’s favor based only on the jury’s non-infringement verdict. A jury’s finding cannot be an alternative basis for affirmance in such circumstances.

In declining to resolve Arendi’s post-trial motion, the district court made clear that the final judgment did not rest on Google’s affirmative defense of invalidity. It explained: “Notably, Google did not request a declaratory judgment of invalidity,” and found it need not resolve Arendi’s post-trial motion for judgment as a matter of law reversing the jury’s invalidity findings because final judgment had to be entered in Google’s favor based on non-infringement. The district court concluded it “must enter judgment on that claim in favor of Google—*regardless of what the Court thinks about the merits of Arendi’s arguments about Google’s affirmative defenses.*” Appx98 (emphasis added).

A comparison of the district court’s provisional “Judgment Following Verdict” and the final judgment confirms the latter’s deliberate omission of judgment of invalidity. The “Judgment Following Verdict” cited the jury’s invalidity findings before declaring, “judgment is entered in favor of Defendant and against Plaintiff *on Defendant’s invalidity defenses.*” Appx10221. In its final judgment, the

court removed all reference to the jury's invalidity findings. It instead stated only "Judgment is entered in favor of Defendant and against Plaintiff on Plaintiff's claim of patent infringement of U.S. Patent No. 7,917,843." Appx1.

Between those two judgments, the parties briefed Arendi's post-trial motion contesting the jury's invalidity verdict. Appx10227-10254. The district court then advised the parties it had reviewed the briefing and had "also reviewed Defendant's Answer to Amended Complaint (D.I. [99]), which raises the issue of invalidity as an affirmative defense (but not in the form of a counterclaim)." Appx108. The court requested "the parties' views on whether the Court can (or should or must) *decline to address the merits of Plaintiff's validity arguments* and instead enter an Amended Judgment that says (in substance) that 'Judgment is entered in favor of Defendant.'" *Id.* (emphasis added).

After obtaining the parties' views, the court adopted that proposed language in its final judgment: "Judgment is entered in favor of Defendant." Appx1. It held that "because Google did not seek a declaratory judgment of invalidity, the Court [] has discretion to *not* consider Arendi's arguments. And under the circumstances of this case, *the Court will exercise its discretion to not do so*, as it would be a waste of judicial resources." Appx99 (emphasis added). Accordingly, the court declined to consider "Arendi's arguments that the jury got it wrong on anticipation and

obviousness”—denying Arendi’s motion for judgment of no invalidity without addressing its merits. *Id.* Those actions make plain the nature of the final judgment.¹

Judgments that do not reference an affirmative defense of invalidity do not invalidate patents. In *Hill-Rom Co. v. Kinetic Concepts, Inc.*, “[f]ollowing trial, the district court ruled that neither of [KCI’s products] infringe[d] the ’346 patent” and “rejected KCI’s affirmative defense of invalidity.” 209 F.3d 1337, 1340 (Fed. Cir. 2000). “In its judgment, the court made no reference to the invalidity issue but simply stated that ‘judgment is hereby entered in favor of Defendants.’” *Id.* On appeal, KCI argued this Court “should vacate the portion of the judgment relating to the validity of the ’346 patent.” *Id.* at 1343. This Court held “there is no need for us to vacate the district court’s validity ruling” because “[t]he invalidity argument was raised only as an affirmative defense by KCI, not in the form of a counterclaim, and the district court therefore did not include in the judgment any reference to its ruling on the issue of invalidity.” *Id.* at 1344. This Court further held: “the district court’s resolution of the issue of invalidity was not necessary to the judgment” and “was not incorporated in the judgment.” *Id.* Here too, the final judgment never mentions the jury’s invalidity finding, which does *not* form part of the judgment.

¹ The district court’s statement that the parties could make “whatever arguments on appeal that they are permitted to make under the law,” Appx99, does not sanction affirmance based on invalidity. It simply deferred the appropriate scope of appeal to this Court.

Because the district court declined to address invalidity and instead entered final judgment based on non-infringement, the jury's invalidity finding cannot provide this Court an alternative basis for affirmance. In *Multiform Desiccants, Inc. v. Medzam, Ltd.*, the district court entered judgment of non-infringement for the defendant following trial and concluded, as here, that it “need not reach the issue of whether [the defendant] has overcome the presumption of validity” because the defendant had only “assert[ed] patent invalidity as an affirmative defense to infringement.” 133 F.3d 1473, 1481 (Fed. Cir. 1998). Although the defendant “object[ed] to this exercise of judicial restraint,” this Court held that “*it is dispositive* that [the defendant] did not file a counterclaim for a declaration of invalidity,” and thus declined to consider invalidity as an alternative basis for affirmance: “We take note that if the Federal Circuit had reversed the judgment of non-infringement, the issue of validity *would have required remand and decision.*” *Id.*

Google's reliance on dissimilar cases shows its overreach. In *Shedden v. Principi*, the appellant did not challenge an alternative basis for judgment that the Court of Appeals for Veterans Claims had expressly identified. 381 F.3d 1163, 1167-68 (Fed. Cir. 2004). *Armstrong v. BNSF Railway Company* is a Seventh Circuit case, which addressed the issue only in dicta. 880 F.3d 377, 383 (7th Cir. 2018). *Sapuppo v. Allstate Floridian Ins. Co.* and Google's other out-of-circuit cases, Opp.16, are

likewise irrelevant; invalidity was not “one of the grounds on which the district court based its judgment” in those cases. 739 F.3d 678, 680 (11th Cir. 2014).

Google’s patent cases fare no better. Google quotes *Weinar v. Rollform*, 744 F.2d 797, 810 (Fed. Cir. 1984), as holding that an appellant must “show the absence from the record of substantial evidence to support each potential basis for the verdict”; but Google omits that the Court was referring to the multiple bases of invalidity supporting “the jury’s verdict that the ‘095 and ‘580 patents are invalid.” And in *Becton Dickinson v. C.R. Bard*, there was no question that the district court’s judgment rested on invalidity: “The parties themselves interpreted the judgment to be based on that invalidity ruling when the judgment was issued.” 922 F.2d 792, 800 (Fed. Cir. 1990). Here, in contrast, the district court’s final judgment did not rest on invalidity given its exercise of discretion *not* to resolve the issue, and Arendi consistently has interpreted the judgment as resting on non-infringement.

2. THE ASSERTED CLAIMS ARE PATENT-ELIGIBLE BECAUSE THEY FOCUS ON IMPROVING COMPUTER FUNCTIONALITY.

Arendi’s asserted claims are patent-eligible because they improve computers as tools. The district court agreed with respect to the ’843 patent—and Google hardly asserts that the eligibility analysis should differ between the asserted patents. This Court’s 2016 opinion also suggests the claims are directed to improving computers: “The ’843 patent is directed to providing beneficial coordination between a first computer program displaying a document and a second computer program for

searching an external information source.” *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1357 (Fed. Cir. 2016). “The patent allows a user to access and conduct a search using the second computer program while remaining in the first computer program displaying the document.” *Id.* As this Court explained: “Specifically, the ’843 patent discloses mechanisms for analyzing the document to identify the presence of name and address information, including by analyzing: (i) paragraph/line separations/formatting, etc.; (ii) street, avenue, drive, . . . zip code, country designators and abbreviations, etc. . . .” *Id.* at 1357-58.

Google’s reductionist characterization of the asserted claims as directed to “the abstract idea of information retrieval and processing” conflicts with this Court’s analysis and the claim language. Opp.22. “At Alice step one, ‘it is not enough to merely identify a patent-ineligible concept underlying the claim; we must determine whether that patent-ineligible concept is what the claim is ‘directed to.’” *Data Engine Techs. LLC v. Google LLC*, 906 F.3d 999, 1011 (Fed. Cir. 2018) (citation omitted). The asserted claims are directed to a particular computer-based problem: the cumbersome process of leaving one program, opening another (with which the user may be unfamiliar or to which the user may lack access), and conducting a manual search for information in the second program—plus subsequent user steps to retrieve and use the found information.

The asserted claims address this computer-based problem. Claim 1 of the '843 patent, for example, focuses on “finding data related to the contents of a document” in a “first computer program,” including by “analyzing, *in a computer process*, first information from the document,” “providing an input device” “*configured by the first program*” that allows a user to enter a user command to initiate an operation,” and performing a search “using a *second computer program.*” Appx193-194 (10:38-11:3) (emphases added).

Reading the claims “in light of the specification,” Data Engine, 906 F.3d at 1007, confirms their focus on a “specific asserted improvement in computer capabilities,” Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1335–36 (Fed. Cir. 2016), rather than mere “information retrieval and processing,” Opp.22. The first exemplary embodiment explains that “single button addressing is achieved by providing an input device . . . in a computer program,” such that “in a word processor, the button is added and a user types information, such as an addressee’s name . . . in a document created with the word processor, . . . and then clicks . . . the button. . . . A program then executes and retrieves the typed information from the document, and searches . . . a database . . . to determine if the information . . . exists in the database.” Appx190 (3:35-54).

By allowing a user to search a database “while the user works simultaneously in another program,” Appx166, even if the user had “little or no training,” Appx193

(9:51-52), “the process of creating and updating records in an address database [was] significantly simplified.” Appx193 (9:58-60); Appx229 (12:4-6). As the specification shows, the claims are directed to improving computer functionality and eliminating user difficulties.

A. Google’s attempt to reduce the asserted claims to pen-and-paper routines oversimplifies the claims and ignores claim limitations.

Google’s false analogy of claim 93 of the ’854 patent to “pen-and-paper letter writing” ignores the invention’s computerized context. Opp.26. As in *Enfish*, “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 Section 101 swallow the rule.” 822 F.3d at 1337. Google analogizes to the shortest of the asserted claims—and even then its recitation of claim elements omits critical limitations, including: (i) “*assisting a computer operator* to retrieve information from a database that is related to text in a document,” (ii) “*using a first computer program*” to analyze the document “*without direction from the operator,*” and (iii) using “a *second computer program*” to search the database for related information. *Compare* Opp.26 with Appx290 (17:22-33).

Google’s analogy fails without those purposeful omissions: Rita does not use a first program in her mind to analyze the document and a second program in her mind to search her rolodex. Nor can Rita analyze the document “without direction from the operator” (herself), as the claim requires. Appx290 (17:26). Instead, Rita

must stop “drafting a letter to her penpal Penelope” and “turn[] to her rolodex to look for an entry for Penelope.” Opp.26. Google’s pen-and-paper analogies do not make sense when one tries to map the asserted claims here to non-computerized contexts.²

B. Google mischaracterizes the asserted claims as merely using “functional” language to cover “identifying, analyzing and presenting” data.

Google cites claims held ineligible for using “functional” language to broadly cover “identifying, analyzing, and presenting certain data.” Opp.23-25. But the claims asserted by Arendi go further by describing a specific process enabling coordination between separate computer programs and by teaching an improved interface.

Beyond functional language, the asserted claims use technical language specific to the computerized context of the claims to explain how separate computer programs can be coordinated to aid users in efficiently executing searches in computer programs external to the one in which the user works. E.g., Appx193-194 (10:38-11:3). They also teach an improved interface of an “input device, configured by the first computer program” that allows the user to search and obtain information

² Google advances *IBM v. Zillow Group, Inc.*, but the claims there of “presenting a map, having a user select a portion of that map, and then synchronizing the map and its corresponding list to display a more limited data set to the user,” “could be performed by hand, using a printed map.” 50 F.4th 1371, 1377-78 (Fed. Cir. 2022). But Arendi’s claims describe coordination between computer programs that cannot translate to pen-and-paper.

from a second program while remaining in the first computer program. Appx193 (10:50-51); Appx261 (10:61); Appx230 (13:56-58). The asserted claims thus go beyond “identifying, analyzing and presenting” data.

Google’s cases do not support its argument. In *Electric Power Group, LLC v. Alstom S.A.*, the ineligible claims disclosed no “specific improvement . . . in how computers could carry out one of their basic functions.” 830 F.3d 1350, 1354 (Fed. Cir. 2016) (emphasis added). Again, in *Beteiro, LLC v. DraftKings Inc.*, the asserted claims were “directed to the abstract idea of ‘exchanging information concerning a bet and allowing or disallowing the bet based on where the user is located’” without claiming “any improvement in the computer-related technology itself.” 104 F.4th 1350, 1355, 1357 (Fed. Cir. 2024) (emphasis added). But here the claims disclose specific improvements in how computers operate by enabling users to use a novel “button” to search for second information in an information management program external to a program for handling a document without leaving that latter program.

Google’s *Trinity* case clarifies the distinction between patent-ineligible abstract ideas and Arendi’s claims. The *Trinity* patent disclosed “a poll-based networking system that connects users based on similarities as determined through poll answering and provides real-time results to the users.” *Trinity Info Media, LLC v. Covalent, Inc.*, 72 F.4th 1355, 1358 (Fed. Cir. 2023). In concluding the claims were “directed to the abstract idea of matching based on questioning,” the Court

noted not only the claims' reliance on functional language but also that the "specifications frame the inventor's problem in terms of *how to improve existing polling systems* by performing progressive polling, *not how to improve computer technology.*" *Id.* at 1363. Here, by contrast, the claims and specification focus not on improving the management of contact information (*e.g.*, inserting the correct address into a Word document), but rather on *improving the computer's capabilities for handling contact information.*

C. The asserted claims use conventional computing elements in an inventive way.

In arguing that the claims do not disclose any improved computer process, Google ignores the claims' particularized instructions for analyzing the document to identify relevant first information and executing a search for related information in an external source. Opp.29.

For example, claim 2 of the '356 patent teaches "following user selection of textual information in [a] document, analyzing" it, "providing an input device *configured by the document editing program* to allow the user to initiate an operation . . . comprising *identifying at least part of the selected textual information to use as a search term,*" and "in consequence of receipt *by the document editing program* of an execute command from the input device, performing the operation," including "causing an electronic search in the information source, *by an information management program external to the document editing program.*" Appx261-262

(10:42-11:21) (emphases added). These instructions disclose a specific architecture and user interface—an input device configured by the document editing program to launch a search for relevant information in an external source which the user need never access (or even know how to access). This is not mere “automation of looking up information.” Opp.29.

Google’s cases illustrate the difference between claims that merely automate manual processes and those that, as here, focus on improving computer operability. In *Credit Acceptance Corp. v. Westlake Services*, this Court found claims directed to “processing an application for financing a purchase” were patent-ineligible because they focused “on the method of financing, and the recited generic computer elements ‘[were] invoked merely as a tool.’” 859 F.3d 1044, 1055 (Fed. Cir. 2017) (quoting *Enfish*, 822 F.3d at 1335-36). In contrast, Arendi’s asserted claims focus on enabling a computer user to initiate the search of an external database for relevant information by using an input device in the first computer program.

Nor does *PersonalWeb Techs. LLC v. Google LLC* support Google. 8 F.4th 1310 (Fed. Cir. 2021). The patent there claimed “using content-based values as a name or identifier for a data item” to perform “data-management functions,” including “controlling access to data items,” “retrieving and delivering copies of data items,” and “marking copies of data items for deletion.” *Id.* at 1315-16. Nothing about this process was new, as “[l]ibrarians often locate books based on a ‘call

system” and these “content-based identifiers may be used to control access to books (e.g., authorize borrowing depending on book content), retrieve books (e.g., locate books on shelves based on their content), or purge duplicate books (e.g., discard duplicates identified by their content).” *Id.* at 1316. The asserted claims here instead coordinate the operation and use of two different computer programs—an issue unique to computing—without disrupting the user’s work or requiring familiarity with and access to an external information source.

The asserted claims also contain an “inventive concept” that makes them patent-eligible at *Alice* step two: they enable coordination between two computer programs to allow users to search for information in an external source without leaving the first computer program. The claims do not “simply recite the abstract idea” of “receiving information, searching for related information, and performing an action,” Opp.35, but instead describe how separate computer programs can be configured to interact, with the aid of an input device, such that the user can execute a search in a second program without leaving the first one, or knowing how to use the second.

3. A “DOCUMENT” IS NOT ONLY A “WORD PROCESSING, SPREADSHEET, OR SIMILAR FILE”

Google’s claim construction arguments run from the claims. Google never references the claims’ language when arguing that “documents” can only be “word processing, spreadsheet, or similar files,” Opp.40-45, because the claims do not

suggest that limitation. Google instead presses the Court to import limitations into the claims based on Google’s unsound reading of the specification.

According to Google, the specification “take[s] the dispositive step of expressly *defining* the ‘present invention ... in terms of word processing documents.’” Opp.41 (quoting Appx193 (9:61-67)). But Google fails to rebut Arendi’s argument that the cited passage does not limit the invention to word processing documents; indeed, Google does not even mention the principal case Arendi advances: *Continental Circuits LLC v. Intel Corp.*, 915 F.3d 788 (Fed. Cir. 2019).

Neither “the problem addressed” nor “inventive solution” proposed in the specification restricts the meaning of “document”—notwithstanding Google’s assertion. Opp.42. The invention addresses users’ need to access information from a source outside the document in which they are working and to which they may lack access. Appx189 (1:29-49). It does so by providing a button with which the user “initiates retrieval of name and address and/or other person or company related information, while the user works simultaneously in another program, e.g., a word processor.” Appx189 (2:14-23). Google does not—and cannot—explain why the patented invention is beneficial in word processing files but inoperable or unhelpful in other documents.

Finally, Google argues the specification “implicitly” defines “document” by “repeatedly and consistently discuss[ing] documents in the context of word processing.” Opp.42. But the Court “depart[s] from the plain and ordinary meaning of claim terms based on the specification in only two instances: lexicography and disavowal,” which requires “words or expressions of manifest exclusion or restriction.” *Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1371-72 (Fed. Cir. 2014). Google’s cases all involve unambiguous lexicography—unlike the Arendi patents, which refer to word processing as an exemplary environment in which the inventions operate. *See Tr. of Columbia Univ. v. Symantec Corp.*, 811 F.3d 1359, 1365 (Fed. Cir. 2016) (limiting “byte sequence feature” to “machine code instructions” because specification stated that “byte sequence feature” “represents the machine code.”); *Eon-Net LP v. Flagstar Bancorp.*, 653 F.3d 1314, 1322-23 (Fed. Cir. 2011) (finding specification “unequivocally” limited “document” to “hard copy” item when “defin[ing] the invention overall,” rather than specific “examples”—including by stating “invention [was] directed to . . . hard copy documents” and defining invention as providing API to input “hard copy documents” with “digitizing unit”); *GPNE Corp. v. Apple Inc.*, 830 F.3d 1365, 1368,

1370 (Fed. Cir. 2016) (limiting “nodes” to “pagers” when specification stated “the invention provides a two-way paging system”).³

Google gets backwards the holding of *Sequoia Technology, LLC v. Dell, Inc.*, 66 F.4th 1317, 1322-23 (Fed. Cir. 2023). *Sequoia* did not “expressly refuse[] to give a claim term a broader construction where the specification as a whole makes clear that the object of the invention relates to a narrower understanding of the term.” Opp.44. Rather, “start[ing] with the claim language,” this Court reversed the construction of “computer-readable recording medium” to include transitory media, which the district court had improperly adopted by “look[ing] to the specification.” *Sequoia*, 66 F.4th at 1322-23. Moreover, that specification described the invention such that it “hardly ma[de] sense” and was “hard to imagine” how non-transitory media could even be used. *Id.* 1324. The specifications of Arendi’s patents, in contrast, do not suggest the inoperability of their inventions when applied to other types of documents.

Again, in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005), the *en banc* Court reversed construing “baffle” to exclude structures mounted at 90-degrees, which had been based on the specification’s consistent examples of baffles

³ Google also cites *Archer Daniels Midland Co. v. United States*, 561 F.3d 1308, 1313 (Fed. Cir. 2009). That inapposite non-claim-construction case interpreted a tariff schedule’s list of exemplary uses for “vegetable pitch” to describe a product’s classification.

mounted at other angles and its description of baffles' objective as deflecting bullets. *Id.* at 1309-10, 1237; *see also id.* at 1323 (warning against "import[ing] limitations from the specification" and "confin[ing] the claims to those embodiments" in the specification). The "critical language of the claim" did not impose that limitation; and an embodiment did not have to achieve each objective (like deflecting bullets) identified in the specification, *Id.* at 1324-25, 1327-28. Here, as in *Phillips*, the "critical" claim language includes no word-processing or spreadsheet limitation; and the specification identifies objectives that are agnostic to using word processing, spreadsheet or similar files. *E.g.*, Appx189 (1:53-2:13).

Google fails to meaningfully distinguish Arendi's cases. In *Hill-Rom*, it did not matter that the specification consistently referred to and depicted the datalink as a wired connection, 755 F.3d at 1383 (Reyna, J., dissenting), just as it is irrelevant that embodiments of the inventions at issue here depict them operating on spreadsheets and word processing documents. In contrast, in *UltimatePointer, L.L.C. v. Nintendo Co., Ltd.*, 816 F.3d 816, 823 (Fed. Cir. 2016), the specification "emphasize[d] that the invention is directed to a direct-pointing system," and "extoll[ed] the virtues of direct pointing" while repeatedly "disparag[ing] indirect pointing." *Id.* These statements, absent from the Arendi patents, caused the Court to overcome its general unwillingness to "import[] the 'direct pointing' limitation from the specification." *Id.* at 822. In *Honeywell International, Inc. v. ITT Industries, Inc.*,

452 F.3d 1312, 1318 (Fed. Cir. 2006), the Court relied on the specification’s repeated reference to a “fuel filter” as “this invention.”

4. A “DOCUMENT” NEED NOT ALWAYS BE EDITABLE.

The vast majority of Arendi’s claims can be practiced on a non-editable document. Yet Google illogically asserts that *any* document *must* be editable since *some* claims suggest that documents are *sometimes* editable. Google presses a false dichotomy. The term “document,” consistent with its plain and ordinary meaning, is agnostic to whether and when it may be edited.

Schoenhaus v. Genesco, Inc., 440 F.3d 1354, 1357 (Fed. Cir. 2006), which Google cites to support its arguments, reveals their flaw. In *Schoenhaus*, the Court refused to adopt a construction that, when substituted for the construed term, would render another claim “nonsensical.” *Id.* But all claims Google relies on still make sense using Arendi’s construction, which permits—but does not require—editability.

For example, applying the *Schoenhaus* test to Arendi’s proposed construction, claim 1 of the ’356 patent still reads cogently when rewritten as “allowing a user to enter textual information into a[n electronic document containing textual information] using the document editing program.” Appx261 (10:47-48). That element does require that a “document editing program” permit a user to edit a document when using such a program; but it does not mandate that the document

remain editable at all times. For example, the same “document” could be editable when opened in a document-editing program but non-editable when opened in a PDF viewer.

Arendi’s construction again passes the *Schoenhaus* test when applied to dependent claims requiring the “addition” or “insertion” of information into the document, *cf.* Opp.46-47 (citing Appx194-196 (claims 5, 18-19, 27, 40-41, and 44)): “performing the action includes causing addition of at least part of the second information to the first information in the [electronic document containing textual information].” Appx194 (11:13-15). Those claims require an ability to insert information only after the analyzing and displaying limitations are satisfied—and even then only when the “action” involves inserting. Appx193 (10:41-11:1, 11:13-15). They do not mandate editability under any other circumstances. Appx193 (10:41-48, 10:66-11:3).⁴

⁴ Google offers no evidence that documents do not “actually” transition between editable and non-editable modes—*i.e.*, that files cannot be opened as “read only.” Opp.52. Nor does the specification’s silence on this issue support limiting the plain and ordinary meaning of “document” to items that remain permanently editable. *Cf.* Opp.51-52. Google’s first case, *Sequoia*, 66 F.4th at 1323-24, refused to alter the ordinary meaning of a term, rejecting plaintiff’s specification-based construction. In its second case, *Inpro II Licensing, S.A.R.L. v. T-Mobile USA, Inc.*, 450 F.3d 1350, 1354-55 (Fed. Cir. 2006), the Court limited “host interface” to “a direct parallel bus interface,” which—without a parallel here—the specification described as a “very important feature.”

Arendi did not concede Google’s faulty logic by agreeing to the “electronic” and “containing textual information” limitations. *Cf.* Opp.46. Google imposes editability limitations from claim 1 of the ’356 patent into claims that say nothing about editing. In contrast, every claim utilizes textual information from an electronic document. *E.g.*, Appx193 (10:41-48); Appx261 (10:49-50); Appx230 (13:21-24); Appx286 (10:48-51).

Google summarily rejects Arendi’s additional argument that requiring editability renders other claim limitations redundant and ignores most cases Arendi cited. *Compare* Opp.47-48 *with* Br.29-33. According to Google, *Phillips*, 415 F.3d at 1324–25 (Fed. Cir. 2005), and *Ancora*, 744 F.3d at 735, “would be apposite here only if some claims said ‘document that is editable.’” Opp.48. Google reads *Phillips* and *Ancora* too narrowly. In *Phillips*, no claim expressly required using “baffles not at 90-degree angles”; rather, a claim requiring that baffles be “oriented . . . at angles for deflecting projectiles” made it “likely that the patentee did not contemplate” all baffles being installed at 90-degree angles. 415 F.3d at 1324. Likewise, *Ancora* refused to limit “program” to “software program” partly because some claims used the distinct term “application software program.” 744 F.3d at 734. Here, as in *Phillips*, limitations highlighting the ability to edit documents make it “likely that the patentee did not contemplate” that documents always be editable. Appx261 (10:47-50) (claiming *both* “displaying” the document “using the document editing

program” *and* “allowing a user to enter textual information into” that document); *see also* Appx230 (13:11-12) (“a contact database that can also be . . . edited”). And, as in *Ancora*, the contrast between claims using a “computer program” and a “document editing program” to display a “document,” suggests that editing may not always be possible. *Compare* Appx193 (10:41-42) *with* Appx261 (10:47-48).

Google also attempts to import limitations from the specification. Google asserts that “[e]very embodiment and description of the invention describes documents in which text can be ‘entered,’ ‘typed,’ or ‘inserted.’” Opp.49-51. But “it is ‘not enough that the only embodiments, or all of the embodiments, contain a particular limitation’ to limit claims beyond their plain meaning.” *Unwired Planet, LLC v. Apple Inc.*, 829 F.3d 1353, 1359 (Fed. Cir. 2016). Google ignores that precedent—instead citing one inapposite case, *Eon-Net*. Opp.49; *supra* at 15.

The primary purpose of the invention is achieved without editing a document—contrary to Google’s assertion. Opp.49-50. In *Kaken Pharmaceutical Co. v. Iancu*, 952 F.3d 1346, 1350-51 (Fed. Cir. 2020), which Google advances, the Court limited “treating a subject having onychomycosis” to treatments “inside the nail plate or in the nail bed under it”—as opposed to skin surrounding the nail. It did so, in part, because the specification explained that the invention achieved its objectives by acting *in* the nail plate. *Id.* at 1352. Here, in contrast, the invention’s “objects are achieved” by providing a button that “initiates retrieval of name and

address and/or other person or company related information, while the user works simultaneously in another program, e.g., a word processor.” Appx189 (2:13-23). *Working* in another program is not limited to *typing*; ⁵ and the specification identifies a “word processor” as just one program in which the user might work.

Arendi preserved its challenge to the claim construction of “document” as applied to infringement using STS. Opp.53 (claiming, without authority, that issue was preserved only as to Linkify and Smart Linkify). Because Arendi pressed its construction at *Markman*, e.g., Appx2398-2405, the court’s “claim construction order . . . may be appealed upon resolution of the case and issuance of a final judgment.” *Lighting Ballast Control LLC v. Philips Elecs. N. Am. Corp.*, 790 F.3d 1329, 1337 (Fed. Cir. 2015); *see also id.* at 1336-38 (no waiver of claim-construction dispute omitted from pre- and post-verdict motions since defendant “made its claim construction opposition clear to the court and the court rejected it”); *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1359 (Fed. Cir. 2008) (no waiver of issues “fully litigated and decided at the Markman stage” notwithstanding non-objection to jury instruction).⁶

⁵ Google—a search powerhouse—professes confusion over “how a user could ‘work’ in an uneditable document.” Opp.51. Searching databases; analyzing judicial opinions; and reviewing articles are all examples.

⁶ Google cites no evidence supporting its argument that the noninfringement verdict should stand because it was “based on distinct noninfringement arguments.” Opp.53.

**5. “FIRST CONTACT INFORMATION” NEED NOT BE DISPLAYED
“IN THE DOCUMENT”**

The Court should construe “while it is electronically displayed” to mean simply “while the first contact information is electronically displayed” if it reverses the district court’s section 101 ruling on the ’993 patent. Arendi alleges that Google infringes claims with that term, and Google asserts the claims are invalid. Appx303-304; Appx10305. The disputed term thus sits at the center of an active “case or controversy.” See *Honeywell Int’l Inc. v. Universal Avionics Sys. Corp.*, 488 F.3d 982, 989 (Fed. Cir. 2007) (finding jurisdiction to construe five contested terms even though only two “contributed to the summary judgment of non-infringement”).

The authority Google cites to oppose review is irrelevant. *Pressure Products Medical Supplies, Inc. v. Greatbatch Ltd.* had nothing to do with review of a district court’s claim construction in comparable circumstances and instead concerned whether it was appropriate for the district court to revisit claim construction mid-trial. 599 F.3d 1308, 1315-16 (Fed. Cir. 2010). In Google’s other cases, the Court simply required proof of a live controversy over infringement to establish Article III standing—a requirement Arendi easily satisfies. *SanDisk Corp. v. Kingston Tech. Co.*, 695 F.3d 1348, 1353 (Fed. Cir. 2012) (no jurisdiction to construe claims plaintiff had *withdrawn*); *Personalized User Model, LLP v. Google Inc.*, 797 F.3d 1341, 1350 (Fed. Cir. 2015) (no jurisdiction to review constructions applicable to unchallenged noninfringement judgment); *Jang v. Bos. Sci. Corp.*, 532 F.3d 1330,

1331, 1336 (Fed. Cir. 2008) (no jurisdiction over appeal from stipulated noninfringement judgment after parties admitted some challenged constructions would not affect infringement). If the '993 patent is reinstated, the parties will actively contest Google's infringement of Arendi's claims.

Google illogically asserts '993 claims 1, 9, and 17 require “*the* first contact information” to be electronically displayed *in the document* while searching the contact database, Appx230-231 (13:35-36, 14:40-41, 15:53-54), because a different limitation requires “analyzing . . . textual information in a document . . . to identify a portion of the document as first contact information,” Appx230-231 (13:21-24, 14:26-29, 15:39-42). Arendi agrees that the two limitations reference the same contact information—which is all Google's cases establish. Opp.55 (citing *Wi-Lan, Inc. v. Apple, Inc.*, 811 F.3d 455, 462 (Fed. Cir. 2016); *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1356 (Fed. Cir. 1999)). But an instance of contact information need not remain in a single location. The claims themselves contemplate that same contact information residing outside the document—including when searching for “the first contact information” (e.g., the phone number 202-555-1234) “in the contact database,” which can “include[] *the* first contact information”; “initiating electronic communication using *the* first contact information” (e.g., dialing 202-555-1234); and saving “at least part of the first contact information in the contact database.” Appx230 (13:34-50).

Google’s attempt to import an “in the document” limitation from the specification violates this Court’s precedent, *supra* at 17, and misreads the specification. Paraphrasing the specification, Google asserts that the invention’s purpose is to “permit a user to initiate a search . . . while continuing to work in the document in which the first contact information is being displayed.” Opp.55 (citing Appx225 (4:1-16)). But the specification section Google paraphrases describes an exemplary embodiment—not the invention’s purpose—and does not mention displaying anything. None of Google’s remaining citations specifies that searching must occur while the first contact information is displayed in the document either. *See* Appx209-210 (Figs. 3, 4) (showing document before and after the search); Appx226-227 (6:21-31, 7:6-19, 7:27-34, 7:58-66, 8:40-47) (describing location of the first contact information in the document before the search).

6. CLAIM 98 IS NOT A MEANS-PLUS-FUNCTION CLAIM.

Arendi argued at *Markman* that ’854 claim 98 is not a means-plus-function claim, and the district court’s *Markman* order addressed that argument. Appx10016-17; Appx10319 n.3; Appx32. Arendi thus preserved the issue for appeal. *Lighting Ballast Control*, 790 F.3d at 1337. In asserting forfeiture, Google cites only *Chicago Board Options Exchange, Inc. v. International Securities Exchange, LLC*, 677 F.3d 1361, 1366 (Fed. Cir. 2012), in which the forfeited arguments were “not before the district court.”

Attempting to overcome the presumption against means-plus-function claiming that applies when—as here—the claim does not use the term “means,” *see Dyfan, LLC v. Target Corp.*, 28 F.4th 1360, 1365 (Fed. Cir. 2022), Google relies on *Williamson*, 792 F.3d at 1350, and *Egenera, Inc. v. Cisco Systems, Inc.*, 972 F.3d 1367, 1374 (Fed. Cir. 2020). Opp.58. Arendi already distinguished *Williamson*, which identified the term “module” *within the disputed claim limitations* as a nonce word for “means,” Br.50-51; and Google does not engage with those arguments. Likewise, in *Egenera*, the disputed claim element used “logic” as “a generic substitute for ‘means.’” 972 F.3d at 1375. Google identifies no comparable nonce word within the disputed limitations of claim 98. And unlike in *Egenera, id.* at 1374, claim 98 specifies a definite structure of “program instructions” for performing the steps of the claim, Appx290 (18:17-29).

Google tries to distinguish *Dyfan* and *Zeroclick, LLC v. Apple Inc.*, 891 F.3d 1003 (Fed. Cir. 2018)—which found the terms “code”/“application” and “program”/“user interface code,” respectively, to connote sufficient structure, *see* Br.47-50—on the grounds that claim 98’s analyzing and inserting limitations are overly complex. But Google’s own expert acknowledged “numerous” existing ways to program the analyzing function, Appx6348 ¶33, directly undercutting Google’s position. Opp.59; *see also Skky, Inc. v. MindGeek, s.a.r.l.*, 859 F.3d 1014, 1019 (Fed. Cir. 2017) (“[I]t is sufficient if the claim term is used in common parlance or by

persons of skill in the pertinent art to designate structure, even if the term covers a broad class of structures and even if the term identifies the structures by their function.” (citation omitted)). And the specification even provides suggestions of how to analyze. Appx283 (4:25-39).

Google argues the “inserting” limitation, in particular, is too complex because it “involves inserting ‘related information’ found in a separate database.” Opp.59. But identifying “related information” is not part of the disputed limitation. Appx290 (18:28-29). Searching for and identifying “related information” is the subject of a separate claim limitation that Defendants never challenged as indefinite: “using a second computer program . . . to locate related information.” Appx290 (18:25-27).⁷ And expert declarations establish a skilled artisan could have “inserted” information. Appx6372 at ¶34; Appx6357 at ¶ 51.

Google finally argues that, because claim 101 is a means-plus-function claim, claim 98 must be one, too. But those claims differ in the critical respect that claim 98 provides a structure, whereas claim 101 claims means and functions. Claim 101 claims “a system for assisting a computer operator ... comprising” various listed “means.” Appx291 (19:7-20:9). Claim 98 does not. Appx290 (18:17-29). “[E]ach

⁷ Google states that Arendi “credits defense-expert testimony that some further ‘special programming’ would have been needed.” Opp.60. Arendi made no such concession; but, in any event, the need to integrate existing code into the claimed invention does not implicate means-plus-function claiming.

limitation of each claim must be independently reviewed to determine if it is subject to the requirements of § 112, paragraph 6.” *Generation II Orthotics Inc. v. Med. Tech. Inc.*, 263 F.3d 1356, 1368 (Fed. Cir. 2001) (“The mere fact that a method claim is drafted with language parallel to an apparatus claim with means-plus-function language does not mean that the method claim should be subject to an analysis under § 112, paragraph 6.” (citations omitted)).⁸

7. OATH INFRINGES THE ’ 843 PATENT

Oath never responds to Arendi’s theory of infringement: Oath sells its apps “for direct download onto a device.” Br.54. As a result, “[s]elling the Oath App *means* loading the app onto the user’s device—*i.e.*, encoding each device’s CRM with that software. . . Oath makes and sells the claimed ‘computer readable medium *encoded with instructions*’ when it loads its programmatic code onto users’ devices. *Id.*

Instead, Oath discusses the alleged inability of Oath-authored programmatic software, in isolation, to infringe the ’843 patent. Oath Opp.7-10. Oath complains that it does not make the Android framework libraries that its downloadable code invokes. Of course not. Neither does it manufacture cellphones onto which it loads its code. But “as long as a defendant adds the final limitations to complete a claimed

⁸ Because claim 98 is not a means-plus-function claim, Arendi agrees that the Court need not resolve the parties’ alternative disagreement over corresponding structures disclosed in the specification.

combination, the defendant infringes.” *Centrak, Inc. v. Sonitor Techs., Inc.*, 915 F.3d 1360, 1372 (Fed. Cir. 2019); *see also id.* at 1371-74 (reversing summary judgment and holding jury could find direct infringement based on defendant’s installation of components onto customers’ existing network and server hardware). It does so here by loading its code onto Android devices (and selling or offering to sell that service).

Oath relies on *Centillion Data System, LLC v. Qwest Communications International, Inc.*, 631 F.3d 1279, 1288 (Fed. Cir. 2011), for the proposition that its customers—rather than Oath—infringe the ’843 patent by downloading Oath’s software. But just as in *Centrak*, Arendi’s “infringement theory is comparing [Oath] not to the software maker Qwest, but to Qwest’s customers, who completed the claimed system by installing Qwest’s software onto their own hardware.” *Centrak*, 915 F.3d at 1371. Oath makes and sells the claimed CRM when it loads its programmatic code onto users’ devices. Furthermore, *Centillion* only examined liability for “making” and “using” an infringing system that required use of *both* Qwest’s back-end servers and users’ personal computers. 631 F.3d at 1282-88. Arendi also alleges that Oath is liable for *selling* (and offering for sale) the infringing CRM; and, unlike in *Centillion*, claim 23 of the ’843 patent requires only a single CRM.

Oath’s attempt to distinguish other cases fails for similar reasons. Oath Opp.10-11. *Finjan, Inc. v. Secure Computing Corp.*, 626 F.3d 1197, 1205 (Fed. Cir.

2010), supports Arendi’s claim because it establishes that Oath remains liable for downloading its products onto users’ phones—or selling and offering to sell that download—even if those users must take steps to permit that download such as clicking “buy” in an app store. Br.54-56. In *Versata Software, Inc. v. SAP America, Inc.*, 717 F.3d 1255, 1262-63 (Fed. Cir. 2013), the Court held that software could infringe a claim requiring “computer program instructions” to cause performance of various operations, even though a user first had to follow steps to implement the software’s functionality. And in *Fantasy Sports Properties, Inc. v. Sportsline.com, Inc.*, 287 F.3d 1108, 1118 (Fed. Cir. 2002), software could infringe a claim directed to a “*computer* for playing football,” even though the user had to “activate the functions programmed into” the software. Here, the user’s role in facilitating Oath’s sale and loading of its software onto smartphones is even more limited than users’ roles in *Finjan*, *Versata*, and *Fantasy Sports*.

8. CONCLUSION

The Court should enter grant Arendi the relief requested in its principal brief.

Dated: September 6, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Kalpana Srinivasan, hereby certify that the foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because the filing has been prepared using a proportionally-spaced typeface and includes 6,963 words.

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CERTIFICATE OF SERVICE

I, Kalpana Srinivasan, hereby certify that on September 6, 2024 I electronically filed the foregoing with the United States Court of Appeals for the Federal Circuit through the Court's CM/ECF system, which will serve all counsel of record registered to receive electronic notices.

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