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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

HYBRID AUDIO, LLC,

Plaintiff,

v.

ASUS COMPUTER INTERNATIONAL, et  
al.,

Defendants.

Case No. [3:17-cv-05947-JD](#)

**ORDER RE MOTION TO DISMISS**

Re: Dkt. No. 49

In this patent dispute, Asus Computer International and ASUSTeK Computer Inc. (together, “Asus”) move to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). Dkt. No. 49. The motion is denied.

**BACKGROUND**

The patent-in-suit is U.S. Reissue Patent No. RE40,281 (“’281 patent”), entitled “Signal Processing Utilizing a Tree-Structured Array.” Dkt. No. 1 ¶¶ 10-15. It is a reissue of U.S. Patent No. 6,252,909, and a reexamination certificate was issued in December 2015. *Id.* The original patent was issued on June 26, 2001, and claimed priority to September 21, 1992. Dkt. No. 1-2 at 1. The patent expired on September 21, 2012. Dkt. No. 1 ¶ 16. The claimed invention “relates to audio compression and decompression systems,” Dkt. 1-2 at 1:22-23, and is alleged to be a component of the MP3 audio format, Dkt. No. 1 ¶ 22; Dkt. No. 1-4 at 1.

Hybrid Audio, LLC (“Hybrid Audio”) filed this patent infringement suit against Asus in April 2016, seeking royalties from when Asus received notice of the patent, January 5, 2011, to the expiration date, September 21, 2012, among other relief. Dkt. No. 1 ¶ 18. The previous owner of the ’281 patent was prevented from seeking royalties during the pendency of a patent reexamination from June 2012 to December 2015. *Id.* at ¶ 16.



1 too, evaluation of a patent claim’s subject matter eligibility under § 101 can proceed even before a  
2 formal claim construction.” *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1373-74 (Fed.  
3 Cir. 2016) (citations omitted); *see also Aatrix*, 882 F.3d at 1125. But as the circuit has recently  
4 emphasized, the question of eligibility may be determined at the pleadings stage “only when there  
5 are no factual allegations that, taken as true, prevent resolving the eligibility question as a matter  
6 of law.” *Aatrix*, 882 F.3d at 1125 (citing *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089,  
7 1097 (Fed. Cir. 2016)); *see also Cellspin Soft, Inc. v. Fitbit, Inc.*, No. 18-2178, 2019 WL 2588278,  
8 at \*10 (Fed. Cir. June 25, 2019) (vacating Rule 12(b)(6) and Rule 12(c) dismissals where  
9 complaint made plausible and “well-pleaded allegations” of eligibility). This is particularly true  
10 for the element of an inventive concept, which raises a question of fact that can be resolved in a  
11 motion to dismiss only if the answer may be found in the complaint, the patent, and matters  
12 subject to judicial notice. *Aatrix*, 882 F.3d at 1128.

13 To be sure, a patentee cannot avoid dismissal for ineligible claims purely on the basis of  
14 conclusory or generalized statements, and fanciful or exaggerated allegations that later prove to be  
15 unsupported may lead to fee shifting or other sanctions. *See Cellspin*, 2019 WL 2588278, at \*8  
16 (“While we do not read *Aatrix* to say that any allegation about inventiveness, wholly divorced  
17 from the claims or the specification, defeats a motion to dismiss, plausible and specific factual  
18 allegations that aspects of the claims are inventive are sufficient.”); *Berkheimer v. HP Inc.*, 890  
19 F.3d 1369, 1373 (Fed. Cir. 2018) (Moore, J., concurring in denial of rehearing en banc) (“[I]f the  
20 allegations in the complaint about the invention as claimed ultimately lack evidentiary support or  
21 if the case is exceptional, district courts can award attorneys’ fees to the accused infringer under  
22 either Rule 11 or [35 U.S.C.] § 285 to compensate the accused infringer for any additional  
23 litigation costs it incurs.”). But the inquiry in a motion to dismiss is focused on the contents of the  
24 complaint and the plain words of the patent that is incorporated by reference. To the extent claim  
25 construction issues might arise, the Court should adopt the patentee’s proposed constructions.  
26 *Aatrix*, 882 F.3d at 1125; *IPLearn-Focus, LLC v. Microsoft Corp.*, No. 14-cv-00151-JD, 2015 WL  
27 4192092, at \*3 (N.D. Cal. July 10, 2015), *aff’d*, 667 F. App’x 773 (Fed. Cir. July 11, 2016).

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1 Here, the Rule 12(b)(6) evaluation has been substantially streamlined by the complaint and  
2 the parties' arguments. Plaintiff does not object to resolving the Section 101 question in the  
3 context of defendants' motion and neither side has called for claim construction as part of the  
4 eligibility inquiry. No construction disagreements were identified in the briefs. Consequently, the  
5 Section 101 inquiry may properly be made at this stage of the case.

6 For the merits of the Section 101 issue, the scope of patentable subject matter includes  
7 "any new and useful process, machine, manufacture, or composition of matter, or any new and  
8 useful improvement thereof." 35 U.S.C. § 101. The "laws of nature, physical phenomena, and  
9 abstract ideas" are "specific exceptions to § 101's broad patent-eligibility principles." *Bilski v.*  
10 *Kappos*, 561 U.S. 593, 601 (2010) (citation omitted). These exclusions are intended to guard  
11 against undue preemption of innovation and invention. *Alice*, 573 U.S. at 216 (citing U.S. Const.  
12 art. I, § 8, cl. 8). The Court must "distinguish between patents that claim the 'buildin[g] block[s]'  
13 of human ingenuity and those that integrate the building blocks into something more," because  
14 overbroad patent protection "would risk disproportionately tying up the use of the underlying  
15 ideas." *Id.* at 217 (alterations in original) (internal quotation marks and citation omitted).

16 Hybrid Audio proposes that the recent decision in *Henry Schein, Inc. v. Archer and White*  
17 *Sales, Inc.*, 139 S. Ct. 524 (2019), has changed this well-mapped terrain. As Hybrid Audio puts it,  
18 the "decision in *Henry Schein* calls into question whether the judicial exceptions to patentable  
19 subject matter courts have recognized -- laws of nature, natural phenomena, and abstract ideas --  
20 are similarly inconsistent with the plain text of Section 101." Dkt. No. 70 at 2. That is an  
21 idiosyncratic reading of *Henry Schein*, and the Court sees no indication in the opinion that the  
22 Supreme Court intended to change the *Alice* landscape. In any event, the question need not be  
23 taken up in detail because the Court finds patent eligibility.

24 *Alice* established a two-part test for the Section 101 inquiry. First, the Court determines  
25 "whether the claims at issue are directed to a patent-ineligible concept" such as an abstract idea,  
26 law of nature or natural phenomenon. *Alice*, 573 U.S. at 218. It is often "sufficient to compare  
27 claims at issue to those claims already found to be directed to an abstract idea in previous cases"  
28 for purposes of the step one analysis. *Enfish*, 822 F.3d at 1334; *see also Alice*, 573 U.S. at 221.

1           The “purely functional nature of the claim confirms [whether the patent] is directed to an  
2 abstract idea, not to a concrete embodiment of that idea.” *Affinity Labs of Tex., LLC v.*  
3 *Amazon.com, Inc.*, 838 F.3d 1266, 1269 (Fed. Cir. 2016); *see also SAP Am., Inc. v. InvestPic,*  
4 *LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (describing “abstract” as turning on “the specificity  
5 required to transform a claim from one claiming only a result to one claiming a way of achieving  
6 it”); *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1287 (Fed. Cir. 2018) (“For an  
7 application of an abstract idea to satisfy step one, the claim’s focus must be something other than  
8 the abstract idea itself.”). But oversimplifying the claims should be avoided because “[a]t some  
9 level, ‘all inventions . . . embody, use, reflect, rest upon, or apply laws of nature, natural  
10 phenomena, or abstract ideas.’” *Alice*, 573 U.S. at 217 (second alteration in original) (internal  
11 citation omitted).

12           If a patent is directed to a patent-ineligible concept, the second step in *Alice* is to look for  
13 an “‘inventive concept’ -- *i.e.*, an element or combination of elements that is sufficient to ensure  
14 that the patent in practice amounts to significantly more than a patent upon the [ineligible concept]  
15 itself.” *Id.* at 217-18 (alteration in original) (internal quotation marks and citation omitted). This  
16 step asks, “[w]hat else is there in the claims before us?” *Mayo Collaborative Servs. v. Prometheus*  
17 *Labs., Inc.*, 566 U.S. 66, 78 (2012). The answer must include something “significantly more” than  
18 the abstract idea itself. *BSG Tech*, 899 F.3d at 1290. “It is well-settled that mere recitation of  
19 concrete, tangible components is insufficient to confer patent eligibility to an otherwise abstract  
20 idea. Rather, the components must involve more than performance of ‘well-understood, routine,  
21 conventional activit[ies] previously known to the industry.’” *In re TLI Commc’ns LLC Patent*  
22 *Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016) (alteration in original) (quoting *Alice*, 573 U.S. at 225).  
23 In addition, merely reducing an abstract concept to a particular technical platform is not enough to  
24 provide the inventive element needed to support a patent. *Elec. Power Grp., LLC, v. Alstom S.A.*,  
25 830 F.3d 1350, 1354 (Fed. Cir. 2016); *TriDim Innovations LLC v. Amazon.com, Inc.*, 207 F. Supp.  
26 3d 1073, 1080 (N.D. Cal. 2016). “If a claim’s only ‘inventive concept’ is the application of an  
27 abstract idea using conventional and well-understood techniques, the claim has not been  
28

1 transformed into a patent-eligible application of an abstract idea.” *BSG Tech*, 899 F.3d at 1290-  
2 91.

3 The *Alice* steps are sequential. If the Court finds that “the claims are not directed to an  
4 abstract idea under step one of the *Alice* analysis,” it does not need to proceed to the second step.  
5 *Enfish*, 822 F.3d at 1339 (citing *Alice*, 573 U.S. at 217); *see also Ancora Techs., Inc. v. HTC Am.,*  
6 *Inc.*, 908 F.3d 1343, 1349 (Fed. Cir. 2018).

7 **II. REPRESENTATIVE CLAIMS**

8 The parties have not agreed on a representative claim for the motion. Asus says that  
9 claims 5 and 18 are representative, Dkt. No. 49 at 9-10, although it also addresses arguments to the  
10 other claims, albeit in rather cursory form, *id.* at 26-28. Hybrid Audio rejects treating claims 5 and  
11 18 as representative. Dkt. No. 59 at 21-23. Even so, the Court “may treat a claim as  
12 representative in certain situations, such as if the patentee does not present any meaningful  
13 argument for the distinctive significance of any claim limitations not found in the representative  
14 claim.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365 (Fed. Cir. 2018). While the complaint  
15 features 104 asserted claims in total, Hybrid Audio does not offer any cogent reason or  
16 “meaningful argument for the distinctive significance” of the remaining 102. *See* Dkt. No. 59 at  
17 21-23. In addition, a plain reading of the patent indicates that claims 5 and 18 are properly treated  
18 as representative for purposes of evaluating the motion to dismiss. The Central District of  
19 California reached the same conclusion on the representativeness of claims 5 and 18 in another  
20 suit involving the ’281 patent. *Hybrid Audio, LLC v. Visual Land, Inc.*, No. 17-cv-08968-RSWL-  
21 AGR, 2018 WL 1684309, at \*3 (C.D. Cal. Apr. 5, 2018).

22 Claim 5 claims a method for data compression and recites:

- 23 5. A signal processing method comprising:  
24 splitting a signal into subbands using a plurality of filter banks  
25 connected to form a tree-structured array having a root node and  
26 greater than two leaf nodes, each node comprising one filter bank  
27 having greater than two filters, and at least one of the leaf nodes  
28 having a number of filters that differs from the number of filters in a  
second leaf mode.

Dkt. No. 1-2 at 23:23-30.

1 Claim 18 is essentially the reverse and claims a method for data decompression. It recites:

2 18. A signal processing method comprising:  
3 synthesizing a signal using a plurality of synthesis filter banks  
4 connected to form a tree-structured array having greater than two leaf  
5 nodes and a root node,  
6 wherein each of the nodes comprises one synthesis filter bank having  
7 greater than two filters, with at least one of the leaf nodes having a  
8 number of filters that differs from the number of filters in a second  
9 leaf node.

10 *Id.* at 25:4-11.

11 Hybrid Audio claims that the “inventions of the [’281] patent resolve technical problems  
12 related to the use of signal processing technology.” Dkt. No. 1 ¶ 27. Further, it alleges the  
13 “claims of the [’281] patent recite one or more inventive concepts that are rooted in signal  
14 processing technology [and] recite an invention that is not merely the routine or conventional use  
15 of signal processing technology.” *Id.* at ¶¶ 28-29.

16 **III. THE CLAIMED INVENTION IS PATENTABLE**

17 The *Alice* inquiry ends at step one on this motion because the representative claims are not  
18 directed to an abstract idea or other ineligible subject matter. They assert a specific and tangible  
19 improvement to computer functionality, namely the processing of audio data, that is not abstract.  
20 *See SRI Int’l, Inc. v. Cisco Sys., Inc.*, 918 F.3d 1368, 1375 (Fed. Cir. 2019); *Ancora*, 908 F.3d at  
21 1347-48 (and cases therein). This is not a case where the claims state an abstract idea “for which  
22 computers are invoked merely as a tool.” *Finjan, Inc. v. Blue Coat Sys, Inc.*, 879 F.3d 1299, 1303  
23 (Fed. Cir. 2018) (quoting *Enfish*, 822 F.3d at 1336). Nor is it one where the “basic thrust might  
24 more easily be understood as directed to an abstract idea” so that analysis of the claimed  
25 technological improvement should take place at *Alice* step two. *BASCOM Glob. Internet Servs. v.*  
26 *AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016).

27 Turning to the specifics of step one, the primary task is to ascertain “the focus of the  
28 claimed advance over the prior art to determine if the claim’s character as a whole is directed to  
excluded subject matter.” *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332,  
1338 (Fed. Cir. 2017) (internal quotation marks and citation omitted). To that end, the claim may

1 be “considered in light of the specification.” *Enfish*, 822 F.3d at 1335; *see also IPLearn-Focus*,  
2 2015 WL 4192092, at \*4. For the digital technology involved here, the relevant inquiry is  
3 “whether the claims are directed to an improvement to computer functionality versus being  
4 directed to an abstract idea.” *Enfish*, 822 F.3d at 1335; *see also Finjan*, 879 F.3d at 1304 (“The  
5 question, then, is whether [the claim] constitutes an improvement in computer functionality.”).

6 The purpose of the ’281 patent is to make better computers, specifically by enabling them  
7 to process audio signals more accurately and efficiently. Its plain language leaves no reasonable  
8 doubt that the representative claims are directed to a specific improvement in the way computers  
9 operate. According to the specification, “it is the object of the present invention to provide an  
10 improved multi-carrier transmission system.” Dkt. No. 1-2 at 2:26-27. It seeks “to allow  
11 playback of high fidelity recordings on the commonly used computer platforms without the  
12 addition of expensive special purpose hardware.” *Id.* at 5:4-6. In effect, the ’281 patent makes a  
13 better radio and not just changes the channel. The patent is also directed to improving the  
14 capacities of computer networks. *Id.* at 4:60-63 (Computer “based systems using compressed  
15 audio and video data promise to provide inexpensive playback solutions and allow distribution of  
16 program material on digital disks or over a computer network.”).

17 Courts have previously recognized the particular advantages to computers that flow from  
18 the implementation of the ’281 patent as evidence of non-abstractness at *Alice*’s first step. For  
19 example, one of the objects of the ’281 patent is “to provide a multi-carrier transmission system  
20 having a lower computational workload than” other signal processing systems. *Id.* at 2:28-31.  
21 The patent accomplishes this, in part, by employing “narrower subchannels at the low frequencies  
22 and wider subchannels at the higher frequencies in a multicarrier modulation system.” *Id.* at 8:51-  
23 54; *see also id.* at 17:19-21:48 (describing other ways the invention provides “reduced  
24 computational workload”). Efficient computer processing is indicative of patent-eligible subject  
25 matter. *See Data Engine Techs. LLC v. Google LLC*, 906 F.3d 999, 1009 (Fed. Cir. 2018). With  
26 the ’281 patent, efficiency enables the claimed signal processing systems to be more adaptable to  
27 diverse system resources scenarios, which is itself a further indication of patentable subject matter  
28 in the software context. Dkt. No. 1-2 at 5:20-30; *see Finjan*, 879 F.3d at 1304; *Enfish*, 822 F.3d at



1 1333 (holding patent non-abstract, in part, because invention could be used without “extensive  
2 modeling and configuration of the various tables and relationships in advance of launching the  
3 database”).

4 Another technical improvement associated with patentable subject matter in this context is  
5 limiting the need for specialized computer equipment. *See Visual Memory LLC v. NVIDIA Corp.*,  
6 867 F.3d 1253, 1259 (Fed. Cir. 2017) (describing non-abstract improvements to computer based  
7 on “flexibility to operate with multiple different processors”). One of the advantages of the ’281  
8 patent is that it enables more computers to play higher quality audio under more circumstances  
9 “without the addition of expensive special purpose hardware.” Dkt. No. 1-2 at 4:53-5:19.  
10 Similarly in *Enfish*, “more effective storage” was one of the benefits to a computer that led the  
11 Federal Circuit to conclude the self-referential spreadsheet at issue was not abstract under *Alice*.  
12 *Enfish*, 822 F.3d at 1333; *see also BSG Tech*, 899 F.3d at 1288 (“Both *Enfish* and *Visual Memory*  
13 concerned claims that focused on improved ways in which systems store and access data.”). This  
14 invention is directed to creating “systems for compressing audio sound tracks to reduce the storage  
15 and bandwidth requirements.” Dkt. No. 1-2 at 2:46-48.

16 Overall, the ’281 patent embodies several types of improvements to computers that have  
17 been deemed to be non-abstract. *See, e.g., Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*,  
18 880 F.3d 1356, 1363 (Fed. Cir. 2018) (and cases therein). As in *Ancora*, the claims here are  
19 directed to “an improvement in computer functionality that has ‘the specificity required to  
20 transform a claim from one claiming only a result to one claiming a way of achieving it.’” *Ancora*,  
21 908 F.3d at 1349 (quoting *InvestPic*, 898 F.3d at 1167).

22 These characteristics distinguish the ’281 patent from the compression patent determined  
23 to be ineligible in the unreported decision in *Voit Technologies, LLC v. Del-Ton, Inc.*, 757 F.  
24 App’x 1000 (Fed. Cir. 2019). The patent in that case did not explain how it improved  
25 “compression techniques or the functioning of the computer,” and merely used “conventional  
26 compression techniques to carry out the claimed invention.” *Voit*, 757 F. App’x at 1003. But like  
27 the tabbed spreadsheet in *Data Engine*, the ’281 patent has “a specific structure . . . that performs a  
28 specific function.” *Data Engine*, 906 F.3d at 1010-11. Through the process of utilizing bands of

1 nonuniform length by splitting, and then synthesizing, signals into filter banks where “at least one  
2 of the leaf nodes [has] a number of filters that differs from the number of filters in a second leaf  
3 node,” Dkt. No. 1-2 at 25:9-11 (claim 18), the invention can better approximate audio (more signal  
4 relative to noise), without the system requirements of the prior art, *id.* at 3:43-4:63. *See also id.* at  
5 11:4-9 (“Ideally, an audio decomposition should exhibit a time and frequency dependency similar  
6 to that of human hearing. This may be accomplished by relating the frequency divisions or  
7 subbands of the decomposition to the critical bandwidths of human hearing.”).

8       Asus’s suggestion that the ’281 patent is nothing more than a nonpatentable mathematical  
9 algorithm is not persuasive. *See* Dkt. No. 49 at 21-25; Dkt. No. 61 at 9-15. As Asus recognizes in  
10 its reply brief, Dkt. No. 61 at 12-15, the Supreme Court has long endorsed patenting inventions  
11 that use algorithms to improve a technological process. *See Alice*, 573 U.S. at 223 (discussing  
12 *Diamond v. Diehr*, 450 U.S. 175 (1981)). More recently, the Federal Circuit recognized this  
13 principle in *Thales Visionix Inc. v. United States*, 850 F.3d 1343 (Fed. Cir. 2017). Reversing a  
14 motion for judgment on the pleadings that invalidated a patent for an inertial tracking system, the  
15 court held that just because “a mathematical equation is required to complete the claimed method  
16 and system does not doom the claims to abstraction.” *Thales*, 850 F.3d at 1349. Similar to  
17 *Thales*, the mathematical algorithms in the ’281 patent are used to “reduce errors.” *Id.*; *see* Dkt. 1-  
18 2 at 3:26-42.

19       While the specification indicates the invention is likely to be “implemented on digital  
20 computers which may be general purpose computers or special computers designed to more  
21 efficiently carry out the operations,” Dkt. No. 1-2 at 3:3-5, this does not preclude patentability as  
22 Asus contends, Dkt. No. 49 at 29, because the claims are directed to an improvement in the  
23 functioning of a computer. *See Enfish*, 822 F.3d at 1338. Asus also goes too far in trying to  
24 portray the computer-centric audio processing in the ’281 patent as nothing more than an activity  
25 that can be done by a human or “directed to methods or organizing human activity.” Dkt. No. 49  
26 at 25. That is patently not the case.

27       Asus’s reliance on *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322 (Fed. Cir. 2017), is  
28 equally misdirected. Dkt. No. 49 at 25; Dkt. No. 61 at 10, 14-15. There, the Federal Circuit found

1 the patent embodied “standard encoding and decoding, an abstract concept long utilized to  
2 transmit information.” *RecogniCorp*, 855 F.3d at 1326. *RecogniCorp* is not germane because  
3 “the claims [here] are directed to ‘a specific means or method’ for improving technology [not] to  
4 an abstract end-result.” *Id.* (quoting *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d  
5 1299, 1314 (Fed. Cir. 2016)); *see also id.* at 1328 (“*RecogniCorp* has not alleged a particularized  
6 application of encoding and decoding image data.”). The ’281 patent does not claim standard  
7 compression, but rather “a specific means or method for improving technology”-- bands of  
8 nonuniform length. *See also* Dkt. No. 1-2 at 13:63-67 (noting “that a two level filter bank of the  
9 type used in the present invention significantly reduces the overall computational workload even  
10 in situations in which the frequency spectrum is to be divided into uniform bands”).

11 **CONCLUSION**

12 Since “it is clear for the reasons stated that the claims are not directed to an abstract idea,”  
13 the Court need not proceed to *Alice* step two. *Enfish*, 822 F.3d at 1339; *Ancora*, 908 F.3d at 1349.  
14 The motion to dismiss is denied.

15 **IT IS SO ORDERED.**

16 Dated: July 11, 2019

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20 JAMES DONATO  
21 United States District Judge  
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