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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HYBRID AUDIO, LLC,)	CV 17-08968-RSWL-AGR
)	
Plaintiff,)	
)	ORDER re: Defendant's
)	Motion to Dismiss [35]
v.)	
)	
VISUAL LAND, INC.,)	
)	
Defendant.)	
_____)	

Currently before the Court is Defendant Visual Land, Inc.'s ("Defendant") Motion to Dismiss ("Motion") [35]. Having reviewed all papers submitted pertaining to this Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:** the Court **DENIES** Defendant's Motion.

I. BACKGROUND

A. Factual Background

Plaintiff Hybrid Audio, LLC ("Plaintiff") is a limited liability corporation existing under the laws of Virginia, with its principal place of business in

1 Virginia. Compl. ¶ 2, ECF No. 1. Defendant is a
2 corporation existing under the laws of California, with
3 its principal place of business in California. Id.
4 ¶ 3.

5 On February 25, 1997, Aware, Inc., Plaintiff's
6 predecessor-in-interest, filed an application for a
7 patent entitled Signal Processing Utilizing a Tree-
8 Structured Array, which the United States Patent and
9 Trademark Office ("PTO") issued as U.S. Patent No.
10 6,252,909 (the "'909 Patent") on June 26, 2001. Id.
11 ¶ 10. After a reissue application was filed for the
12 '909 Patent, the '909 Patent reissued with certificate
13 number RE40,281 (the "'281 Patent"), the patent at
14 issue in this Action. Id. ¶ 11.

15 On December 22, 2010, Aware, Inc. assigned all
16 right, title, and interest in the '281 Patent to Hybrid
17 Audio-Texas, which subsequently sent Defendant a letter
18 providing notice that Hybrid Audio-Texas believed that
19 Defendant's products infringed claims of the '281
20 Patent. Id. ¶¶ 12-13.

21 On June 18, 2012, during the pendency of an
22 unrelated litigation, a request for reexamination of
23 the '281 Patent was filed with the PTO. Id. ¶ 15. The
24 '281 Patent expired on September 21, 2012. Id. ¶ 16.
25 The PTO issued a reexamination certificate for the '281
26 Patent on December 1, 2015 confirming patentability of
27 the reexamined claims. Id. ¶ 15. During the period of
28 reexamination, Hybrid Audio-Texas was prohibited from

1 seeking royalties or filing lawsuits. Id. ¶ 16.

2 On March 28, 2016, Hybrid Audio-Texas assigned all
3 right, title, and interest in the '281 Patent to
4 Plaintiff. Id. ¶ 17.

5 The '281 Patent relates to audio signal processing
6 technology used in conjunction with MP3 technologies.
7 Id. ¶ 19.

8 **B. Procedural Background**

9 Plaintiff filed its Complaint on May 18, 2017 in
10 the District of Massachusetts seeking royalties from
11 Defendant for the alleged infringement of the '281
12 Patent from January 5, 2011, the date on which
13 Plaintiff's predecessor-in-interest notified Defendant
14 of its alleged infringement, through September 21,
15 2012, the expiration of the '281 Patent. Id. ¶ 18.
16 Specifically, Plaintiff alleges that Defendant has and
17 continues to directly infringe Claims 5-6, 9-13, 15-22,
18 24-30, 32-35, 38-42, 45-49, 50-51, 53, 55-61, 63, and
19 65-121 (the "Asserted Claims") of the '281 Patent. Id.
20 ¶ 33.

21 On September 27, 2017, Plaintiff filed its
22 unopposed Motion to Transfer Venue to the Central
23 District of California [9]. The Motion to Transfer
24 Venue was granted on September 28, 2017 [10], and the
25 Action was transferred to this Court on December 14,
26 2017 [11].

27 Defendant filed the instant Motion [35] on February
28 3, 2018. Plaintiff opposed on February 20, 2018 [41],

1 and Defendant replied on February 27, 2018 [44].

2 II. DISCUSSION

3 A. Legal Standard

4 1. Motion to Dismiss

5 Federal Rule of Civil Procedure 12(b)(6) allows a
6 party to move for dismissal of one or more claims if
7 the pleading fails to state a claim upon which relief
8 can be granted. A complaint must contain sufficient
9 facts, accepted as true, to state a plausible claim for
10 relief. Ashcroft v. Iqbal, 556 U.S. 662, 678
11 (2009)(quotation omitted). Dismissal is warranted for
12 a "lack of a cognizable legal theory or the absence of
13 sufficient facts alleged under a cognizable legal
14 theory." Balistreri v. Pacifica Police Dep't, 901 F.2d
15 696, 699 (9th Cir. 1988)(citation omitted).

16 "In ruling on a 12(b)(6) motion, a court may
17 generally consider only allegations contained in the
18 pleadings, exhibits attached to the complaint, and
19 matters properly subject to judicial notice." Swartz
20 v. KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007)(citation
21 omitted). A court must presume all factual allegations
22 to be true and draw all reasonable inferences in favor
23 of the non-moving party. Klarfeld v. United States,
24 944 F.2d 583, 585 (9th Cir. 1991). The question is not
25 whether the plaintiff will ultimately prevail, but
26 whether the plaintiff is entitled to present evidence
27 to support the claims. Jackson v. Birmingham Bd. of
28 Educ., 544 U.S. 167, 184 (2005)(quoting Scheuer v.

1 Rhodes, 416 U.S. 232, 236 (1974)). While a complaint
2 need not contain detailed factual allegations, a
3 plaintiff must provide more than "labels and
4 conclusions" or "a formulaic recitation of the elements
5 of a cause of action." Bell Atl. Corp. v. Twombly, 550
6 U.S. 544, 555 (2007).

7 2. Patent Eligibility Under 35 U.S.C. § 101

8 Patent eligibility is a question of law. OIP
9 Techs., Inc. v. Amazon.com, Inc., 788 F.3d 1359, 1362
10 (Fed. Cir. 2015). Section 101 of the Patent Act
11 provides that a patent may be obtained for "any new and
12 useful process, machine, manufacture, or composition of
13 matter, or any new and useful improvement thereof." 35
14 U.S.C. § 101. The Supreme Court has "long held that
15 this provision contains an important implicit
16 exception: laws of nature, natural phenomena, and
17 abstract ideas are not patentable." Alice Corp. Pty.
18 v. CLS Bank, Int'l, 134 S. Ct. 2347, 2354
19 (2014)(quotation omitted). "The concern that drives
20 this exclusionary principle [is] one of preemption."
21 Id. In other words, the concern is "'that patent law
22 not inhibit further discovery by improperly tying up
23 the future use of' these building blocks of human
24 ingenuity." Id. (quoting Mayo Collaborative Servs. v.
25 Prometheus Labs, Inc., 566 U.S. 66, 85 (2012)). The
26 Supreme Court in Alice warned courts, however, to
27 "tread carefully in construing this exclusionary
28 principle lest it swallow all of patent law," because

1 "[a]t some level, 'all inventions . . . embody, use,
2 reflect, rest upon, or apply laws of nature, natural
3 phenomena, or abstract ideas.'" Id. (quoting Mayo, 566
4 U.S. at 71).

5 Under the two-step framework established in Alice
6 and Mayo, the court first asks "whether the claims at
7 issue are directed to one of those patent-ineligible
8 concepts," as opposed to "patent eligible applications
9 of those concepts." Id. at 2354-55. If so, the court
10 then "consider[s] the elements of each claim both
11 individually and 'as an ordered combination' to
12 determine whether the additional elements 'transform
13 the nature of the claim' into a patent-eligible
14 application." Id. at 2355 (quoting Mayo, 566 U.S. at
15 78-79). In this second step, the court looks for an
16 "inventive concept," or "an element or combination of
17 elements that is 'sufficient to ensure that the patent
18 in practice amounts to significantly more than a patent
19 upon the [ineligible concept] itself.'" Id. (quoting
20 Mayo, 566 U.S. at 73).

21 **B. Discussion**

22 1. Representative Claims

23 An invalidity challenge under § 101 is generally
24 analyzed on a claim-by-claim basis. However, the
25 Federal Circuit has acknowledged that the analysis can
26 also be performed by way of representative claims. See
27 Berkheimer v. HP Inc., 881 F.3d 1360, 1365 (Fed. Cir.
28 2018)("Courts may treat a claim as representative in

1 certain situations, such as if the patentee does not
2 present any meaningful argument for the distinctive
3 significance of any claim limitations not found in the
4 representative claim or if the parties agree to treat a
5 claim as representative."); Content Extraction &
6 Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n, 776
7 F.3d 1343, 1348 (Fed. Cir. 2014)(finding representative
8 claims appropriate where district court had found
9 claims were "substantially similar and linked to the
10 same abstract idea").

11 Here, Defendant argues that Claims 5 and 18 are
12 representative of the Asserted Claims in the '281
13 Patent. Mot. to Dismiss ("Mot.") 4:6-20, ECF No. 35.
14 Plaintiff briefly addresses this argument in its
15 Opposition. However, Plaintiff's conclusory discussion
16 only touches on three other claims and does not provide
17 "meaningful argument for the distinctive significance
18 of any claim limitations not found in the
19 representative claim." Berkheimer, 881 F.3d at 1365;
20 see Opp'n 20:22-21:2. Claim 5 states:

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

26 Compl., Ex. 2 ("'281 Patent") at 24:23-30.

27 Claim 18 states:

28 A signal processing method comprising:

1 synthesizing a signal using a plurality of
2 synthesis filter banks connected to form a tree-
3 structured array having greater than two leaf
4 nodes and a root node, wherein each of the nodes
5 comprises one synthesis filter bank having a
6 number of filters that differs from the number
7 of filters in a second leaf node.

8 Id. at 25:4-11.

9 Put more simply, Claim 5 focuses on the splitting
10 of the audio signal, while Claim 18 focuses on the
11 synthesizing of the processed signal. The remaining
12 claims are substantially similar to these two claims,
13 and the Court treats Claims 5 and 18 as representative
14 of the other Asserted Claims.

15 2. Nuijten Analysis

16 As a preliminary matter, the Court addresses
17 Defendant's argument that the '281 Patent is patent-
18 ineligible under the holding in In re Nuijten, 500 F.3d
19 1346 (Fed. Cir. 2007). In Nuijten, which the Federal
20 Circuit decided prior to both Mayo and Alice, the
21 Federal Circuit held that transitory signals did not
22 fall within one of the four categories of patentable
23 subject matter and thus were patent ineligible.
24 Nuijten, 500 F.3d at 1357. Defendant misses a key
25 holding in Nuijten—the Federal Circuit allowed
26 processing claims and only denied patent eligibility
27 for claims that covered the signals themselves. Id. at
28 1351.

Here, Claims 5 and 18 describe the process of
splitting and synthesizing signals. See '281 Patent at
24:23-30, 25:4-11. In fact, both claims begin with, "A

1 signal processing method." Id. at 24:23, 25:4. Both
2 claims are therefore processing claims. Neither claim
3 covers a signal, and thus, a Nuijten analysis is
4 unnecessary. See Femto-Sec Tech, Inc. v. Lensar, Inc.,
5 2016 U.S. Dist. LEXIS 189327 at *7-8 (C.D. Cal. June 8,
6 2016)("The Court, however, need not address the
7 question because neither of the two independent claims
8 of the '894 Patent purports to claim a [signal] *per*
9 *se.*").

10 3. Alice Analysis

11 Defendant argues that the Asserted Claims are
12 directed to the abstract idea of splitting and
13 combining signals into a tree-structured array. Mot.
14 10:16-24. "The Supreme Court has not established a
15 definitive rule to determine what constitutes an
16 'abstract idea.'" Enfish, LLC v. Microsoft Corp., 822
17 F.3d 1327, 1334 (Fed. Cir. 2016). Rather, "the
18 decisional mechanism courts now apply is to examine
19 earlier cases in which a similar or parallel
20 descriptive nature can be seen—what prior cases were
21 about, and which way they were decided." Amdocs (Isr.)
22 Ltd. v. Openet Telecom, Inc., 841 F.3d 1288, 1294 (Fed.
23 Cir. 2016).

24 The Federal Circuit in Enfish held that it did "not
25 read Alice to broadly hold that all improvements in
26 computer-related technology are inherently abstract."
27 Enfish, 822 F.3d at 1335. Instead, "[t]he Supreme
28 Court has suggested that claims 'purport[ing] to

1 improve the functioning of the computer itself,' or
2 'improv[ing] an existing technological process' might
3 not succumb to the abstract idea exception." Id.
4 (quoting Alice, 134 S. Ct. at 2358-59). Therefore,
5 "the first step in the Alice inquiry in this case asks
6 whether the focus of the claims is on the specific
7 asserted improvement in computer capabilities." Id. at
8 1335-36. If so, then the claim is not directed to an
9 abstract idea, and the court need not move on to the
10 second step of the Alice analysis. Id. at 1336.

11 Defendant avers that the Asserted Claims are not
12 directed to an improvement in computer technology and
13 are instead an abstract idea implemented on a general
14 purpose computer. Def.'s Reply 12:5-24, ECF No. 44.
15 However, "the invention's ability to run on a
16 general-purpose computer [does not] doom[] the claims."
17 Enfish, 822 F.3d at 1338. It is clear from the '281
18 Patent that the claims are directed to an improvement
19 in the functioning of a computer. The claimed
20 invention "requires less computational capability" than
21 the prior art. '281 Patent at 14:9-12. Further,
22 "[t]he present invention allows the quality of the
23 playback to be varied in response to the computational
24 capability of the playback platform without the use of
25 multiple copies of the compressed material." Id. at
26 17:35-38. Previously, computer audio systems were
27 limited to the use of costly equipment, which limited
28 the usefulness of the audio systems. Id. at 4:53-57.

1 The claimed invention aims to solve this problem and
2 allows for quality playback without the aliasing, or
3 distortion, effects of the prior art. Id. at 11:25-29.

4 Ultimately, the claimed invention makes computers
5 more efficient without sacrificing the quality of the
6 sound, thus making the claims patent eligible. See
7 Audio MPEG, Inc. v. HP Inc., No. 2:15-cv-00073-HCM-RJK,
8 2016 U.S. Dist. LEXIS 181710, at *38 (E.D. Va. June 29,
9 2016). The patent at issue in Audio MPEG, technology
10 that "allows audio files to be compressed and stored
11 using much less space," is very similar to the '281
12 Patent. Id. at *26. Dell, the defendant in Audio
13 MPEG, made similar arguments to Defendant here,
14 arguments that the court rejected. Id. at *36-39. For
15 example, Dell argued that the plaintiffs were trying to
16 patent mathematical formulas, an abstract idea. Id. at
17 *37. However, the court in Audio MPEG noted that the
18 plaintiffs were "not seeking to patent a mathematical
19 formula or the general idea of receiving and outputting
20 information," but rather, claims directed to "encode[]
21 and decode[] a wide-band signal in a manner that takes
22 into account the hearing capabilities of the human ear
23 . . . [to produce] a realistic replica of the original
24 signal . . . with the minimal amount of data." Id. at
25 *39. The court found this to be a patent-eligible
26 concept and thus denied Dell's motion at step one of
27 Alice. Id. at *39-40.

28 Here, the '281 Patent involves a similar process of

1 compressing and decompressing an audio signal, taking
2 into account the capabilities of the human ear and
3 reducing the computational power needed. See '281
4 Patent. The Asserted Claims thus resemble those at
5 issue in Enfish and Audio MPEG—claims directed to
6 patent-eligible concepts. See Enfish, 822 F.3d at 1338
7 (“[T]he claims here are directed to an improvement in
8 the functioning of a computer.”).

9 **III. CONCLUSION**

10 Based on the foregoing, the Court **DENIES**
11 Defendant’s Motion.

12 **IT IS SO ORDERED.**

13
14 DATED: April 5, 2018

/s/Ronald S. W. Lew

15 **HONORABLE RONALD S.W. LEW**
16 Senior U.S. District Judge
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