

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TEMPUS AI, INC.,
Plaintiff,
v.
GUARDANT HEALTH, INC.,
Defendant.

Case No. [25-cv-06622-TLT](#)

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

Re: Dkt. No. 11

In this case, Plaintiff alleges that Defendant infringed four healthcare technology patents. Defendant asks the Court to dismiss Plaintiff’s infringement claims on the grounds that the patents are not patent-eligible under 35 U.S.C. § 101. The Court concludes that the four asserted claims are directed to abstract ideas rather than a specific technological improvement or inventive concept. As a result, the asserted claims are not eligible for patent protections and the Court dismisses Plaintiff’s associated infringement claims.

Before the Court is Defendant’s motion to dismiss. ECF 11.

After review of the parties’ briefs, the relevant legal authority, and for the reasons stated below, the Court **GRANTS** Defendant’s motion to dismiss.

I. PROCEDURAL HISTORY

On March 14, 2025, Tempus AI filed a complaint against Guardant Health, Inc, in the U.S. District Court for the Southern District of California, *Tempus AI, Inc. v. Guardant Health, Inc.*, No. 25-cv-621-JO-MMP. ECF 1. Plaintiff alleges infringement of four patents, U.S. Patent Nos. 12,112,839 (the “’839 Patent”), 11,640,859 (the “’859 Patent”), 10,957,041 (the “’041 Patent”), and 10,991,097 (the “’097 Patent”) (collectively, the “Patents-in-Suit”). *Id.* ¶ 3. Specifically, Plaintiff brings four causes of action: (1) infringement of the ‘859 Patent; (2) infringement of the

1 ‘839 Patent; (3) infringement of the ‘041 Patent; and (4) infringement of the ‘097 patent. *Id.* ¶¶
2 99–122.

3 On May 23, 2025, Defendant filed a motion to dismiss for failure to state a claim under
4 Rule 12(b)(6) and 35 U.S.C. § 101. ECF 11. Plaintiff timely filed an opposition. ECF 16.
5 Defendant timely filed a reply. ECF 18.

6 On May 27, 2025, Defendant filed a motion to transfer this case to the U.S. District Court
7 for the Northern District of California. ECF 12. Plaintiff timely filed an opposition. ECF 17.
8 Defendant timely filed a reply. ECF 19. On July 31, 2025, the Southern District of California
9 court granted the motion to transfer the case to this Court. *See* ECF 25; ECF 26; ECF 27.

10 On August 14, 2025, Defendant re-noticed the motion to dismiss in this Court. ECF 35.

11 **II. FACTS ALLEGED IN THE COMPLAINT**

12 Plaintiff is a “healthcare technology company advancing precision medicine through the
13 practical application of artificial intelligence (“AI”). ECF 1 ¶ 1. Plaintiff “combin[es] real-world
14 data from laboratory tests with other clinical datasets and AI to enhance the diagnosis and
15 treatment or, and research into, multiple major deceases.” *Id.*

16 Defendant’s business initially focused on “liquid biopsy tests,” including Defendant’s first
17 product, Guardant 360. *Id.* ¶ 2. Defendant has also “introduce[ed] healthcare records platforms
18 that leverage the power of AI and multi-source data,” including GuardantINFORM, Guardant
19 Galaxy, Guardant INFINITY, and the integrated Guardant360 TissueNext and Guardant360 CDx
20 biopsy tests.” *Id.*

21 **A. U.S. Patent No. 10,991,097 (the “097 Patent”)**

22 On April 27, 2021, the USPTO issued the ‘097 Patent, “Artificial intelligence
23 segmentation of tissue images.” *Id.* ¶ 60. Plaintiff owns both the right to enforce the ‘097 Patent
24 and the right to seek damages for infringement. *Id.*

25 The ‘097 Patent generally “discloses and claims methods for generating an overlay map on
26 a digital medical image of a slide.” *Id.* ¶ 61. “The methods involve receiving a medical image,
27 such as an image of a tissue affixed to a slide, separating the image into tiles, and performing tile
28 classifications and tissue classifications based on a multi-tile analysis.” *Id.*; *see* ECF 1-6 (“097

1 Patent”) at 2:30–35.

2 The complaint alleges infringement of “at least Claim 1 of the ‘097 Patent.” *Id.* ¶ 118.

3 **B. U.S. Patent No. 10,957,041 (the “041 Patent”)**

4 On March 21, 2021, the USPTO issued the ‘041 Patent, “Determining biomarkers from
5 histopathology slide images.” *Id.* ¶ 45. Plaintiff owns both the right to enforce the ‘041 Patent
6 and the right to seek damages for infringement. *Id.*

7 The ‘041 Patent generally “discloses and claims methods for identifying biomarkers in a
8 sample of target tissue.” *Id.* ¶ 46. “The methods involve ‘an imaging-based biomarker prediction
9 system formed of a deep learning framework configured and trained to directly learn from
10 histopathology slide images and predict the presence of biomarkers in medical images.” *See* ECF
11 1-5 (“041 Patent”) at 3:41–47.

12 The complaint alleges infringement of “at least Claim 1 of the ‘041 Patent.” *Id.* ¶ 112.

13 **C. U.S. Patent No. 12,112,839 (the “839 Patent”) and U.S. Patent No. 11,640,859**
14 **(the “859 Patent”)**

15 On October 8, 2024, the USPTO issued the ‘839 Patent, “Data Based Cancer Research and
16 Treatment Systems and Methods.” *Id.* ¶ 20. Plaintiff owns both the right to enforce the ‘839
17 Patent and the right to seek damages for infringement. *Id.* The ‘839 Patent is “a continuation of
18 U.S. Application No. 16/657,804 (the ‘804 Application), which issued as U.S. Patent No.
19 11,705,226.” *Id.* ¶ 21.

20 On January 6, 2023, the applicant of the ‘804 Application filed a terminal disclaimer over
21 U.S. Application No. 16/771,451, which issued as the ‘859 Patent. *Id.* ¶ 22. On May 2, 2023, the
22 U.S. Patent and Trademark Office (“USPTO”) issued the ‘859 Patent, “Data Based Cancer
23 Research and Treatment Systems and Methods.” *Id.* ¶ 19. Plaintiff owns both the right to enforce
24 the ‘859 Patent and the right to seek damages for infringement. *Id.*

25 The ‘839 Patent and ‘859 Patent are collectively referred to as the “Data Storage Patents.”

26 Both the ‘839 Patent and the ‘859 Patent “disclose and claim methods for storing and
27 structuring clinical and genomic sequencing patient data for specific application programs.” *Id.* ¶
28 23. “The methods involve ‘obtaining and employing data related to physical and genomic patient

1 characteristics as well as diagnosis, treatments and treatment efficacy to provide a suite of tools to
2 healthcare providers, researchers and other interested parties enabling those entities to develop
3 new cancer state-treatment-results insights and/or improve overall patient healthcare and treatment
4 plans for specific patients.” See ECF 1-2 (“’859 Patent”) at 1:30–37; ECF 1-4 (“’839 Patent”) at
5 2:64–3:4.

6 The complaint alleges infringement of “at least Claim 1 of the ‘859 Patent,” ECF 1 ¶ 99,
7 and “at least Claim 1 of the ‘839 Patent,” *id.* ¶ 106.

8 **III. THE COURT DENIES PLAINTIFF’S REQUEST FOR JUDICIAL NOTICE**

9 Plaintiff attaches USPTO records to its opposition and argues in a footnote that the Court
10 should take judicial notice of these records. See ECF 16 at 6. Specifically, Plaintiff requests
11 judicial notice of (1) a copy of an October 13, 2022 Non-Final Rejection communication from the
12 USPTO for Application No. 16/771,451 (issued as the ‘859 Patent); (2) the USPTO’s December
13 11, 2020 Notice of Allowance for Application No. 16/732,242 (issued as the ‘097 Patent); (3) the
14 USPTO’s October 15, 2020 Notice of Allowance for Application No. 16/830,186 (issued as the
15 ‘041 Patent); and (4) a copy of Applicant’s November 22, 2022 Response to Non-Final Office
16 Action for Application No. 16/771,451 (issued as the ‘859 Patent). See ECF 16-1, Declaration of
17 Margaret Shyr (“Shyr Decl.”). Defendant does not dispute that USPTO records are proper
18 subjects of judicial notice. However, Defendant argues that the Court should “decline to consider
19 PTO findings on subject matter eligibility” because those findings do not bear on the Court’s
20 patent eligibility determination. See ECF 18 at 9; ECF 11 at 25.

21 “The [C]ourt may judicially notice a fact that is not subject to reasonable dispute because
22 it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately
23 and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R.
24 Evid. 201(b). Alternatively, the Court may “consider materials that are submitted with and
25 attached to the Complaint. [The Court] may also consider unattached evidence on which the
26 complaint ‘necessarily relies’ if: (1) the complaint refers to the document; (2) the document is
27 central to the plaintiff’s claim; and (3) no party questions the authenticity of the
28 document.” *United States v. Corinthian Colls.*, 655 F.3d 984, 999 (9th Cir. 2011); *see also In re*

1 *Diamond Foods, Inc. Sec. Litig.*, No. 11-cv-05386, 2012 WL 6000923, at *16 (N.D. Cal. Nov. 30,
2 2012) (“Under the incorporation by reference doctrine, a court may also consider documents
3 submitted by defendants that were referenced in the complaint and whose authenticity has not
4 been questioned.”).

5 Courts routinely take judicial notice of USPTO records since they are matters of public
6 record. See *Roar Spirits, LLC v. Sutter Home Winery, Inc.*, No. 23-cv-04809, 2025 WL 523898,
7 at *4 (N.D. Cal. Feb. 18, 2025) (taking judicial notice of trademark registrations from USPTO
8 Trademark Status and Document Retrieval system); *Threshold Enters. Ltd. v. Pressed Juicery,*
9 *Inc.*, 445 F. Supp. 3d 139, 145–46 (N.D. Cal. 2020) (taking judicial notice of “File History”
10 downloaded from USPTO website). However, “a patent examiner’s consideration of Section 101
11 issues does not “in any way shield the patent’s claims from Article III review for patent
12 eligibility.” *Beteiro, LLC v. DraftKings Inc.*, 104 F.4th 1350, 1359 (Fed. Cir. 2024). Thus, the
13 Court need not consider the USPTO’s findings on subject matter eligibility in ruling on the instant
14 motion to dismiss. *Recentive Analytics, Inc. v. Fox Corp.*, 692 F. Supp. 3d 438, 449 (D. Del.
15 2023), *aff’d*, 134 F.4th 1205 (Fed. Cir. 2025) (“PTO guidance ‘is not, itself, the law of patent
16 eligibility, does not carry the force of law, and is not binding on our patent eligibility analysis.’”)
17 (quoting *In re Rudy*, 956 F.3d 1379, 1382 (Fed. Cir. 2020)); *Fitbit Inc. v. AliphCom*, No. 16-cv-
18 118, 2017 WL 819235, at *18 (N.D. Cal. Mar. 2, 2017) (holding that courts “need not defer to the
19 examiner’s conclusions on patent eligibility” in determining eligibility)).

20 Accordingly, the Court **DENIES** Plaintiff’s request for judicial notice because the Court
21 does not rely on the USPTO records in its patent eligibility analysis. See *Arroyo v. AJU Hotel*
22 *Silicon Valley LLC*, No. 20-cv-08218, 2021 WL 2350813, at *2 (N.D. Cal. Mar. 16, 2021)
23 (denying request for judicial notice as moot where “[t]he [c]ourt does not rely on the documents
24 submitted”); *City of Royal Oak Ret. Sys. v. Juniper Networks, Inc.*, 880 F. Supp. 2d 1045, 1059
25 (N.D. Cal. 2012) (same).

1 **IV. LEGAL STANDARDS**

2 **A. Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(6)**

3 Pursuant to Rule 12(b)(6), a party may move to dismiss for “failure to state a claim upon
4 which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To overcome a motion to dismiss, a
5 plaintiffs’ “factual allegations [in the complaint] ‘must . . . suggest that the claim has at least a
6 plausible chance of success.’” *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th Cir. 2014) (citing
7 *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)).
8 Courts may dismiss claims that lack “sufficient facts to support a cognizable legal theory.”
9 *Mendonado v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008) (citation omitted).

10 The Court “accept[s] factual allegations in the complaint as true and construe[s] the
11 pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire &
12 Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). However, “conclusory allegations of law
13 and unwarranted inferences are insufficient to avoid a Rule 12(b)(6) dismissal.” *Cousins v.
14 Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009).

15 **B. Motion to Dismiss for Patent Eligibility Challenges Under 35 U.S.C. § 101**

16 Patent eligibility under Section 101 is a threshold issue. *Bilski v. Kappos*, 561 U.S. 593,
17 602 (2010). Although the inquiry may contain underlying issues of fact, patent eligibility is
18 ultimately a question of law. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365 (Fed. Cir. 2018). Thus,
19 the issue of patent eligibility under Section 101 may be resolved by way of a motion to dismiss.
20 *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 765 (Fed. Cir. 2019). However, dismissal
21 at this stage is appropriate “only when there are no factual allegations that, taken as true, prevent
22 resolving the eligibility question as a matter of law.” *Id.* (quoting *Aatrix Software, Inc. v. Green
23 Shades Software, Inc.*, 882 F.3d 1121, 1125 (Fed. Cir. 2018)); *see also Coop. Ent., Inc. v.
24 Kollektive Tech., Inc.*, 50 F.4th 127, 130 (Fed. Cir. 2022) (patent eligibility “may be resolved at
25 the Rule 12 stage only if there are no plausible factual disputes after drawing all reasonable
26 inferences from the intrinsic and Rule 12 record in favor of the non-movant.”)

27 “If there are claim construction disputes at the Rule 12(b)(6) stage,” the Court “must
28 proceed by adopting the non-moving party’s constructions,” or the Court “must resolve the

1 disputes to whatever extent is needed to conduct the § 101 analysis, which may well be less than a
2 full, formal claim construction.” *Aatrix Software*, 882 F.3d at 1125.

3 “A plaintiff is not required to plead infringement on an element-by-element basis.” *Bot*
4 *M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1352 (Fed. Cir. 2021) (citing *Nalco Co. v. Chem-*
5 *Mod, LLC*, 883 F.3d 1337, 1350 (Fed. Cir. 2018)). However, in patent cases, “a plaintiff cannot
6 assert a plausible claim for infringement under the *Iqbal/Twombly* standard by reciting the [patent]
7 claim elements and merely concluding that the accused product has those elements.” *Bot M8*, 4
8 F.4th at 1353. “There must be some factual allegations that, when taken as true, articulate why it
9 is plausible that the accused product infringes the patent claim.” *Id.* at 1353.

10 C. Patent Eligibility Under 35 U.S.C. § 101

11 Under Section 101, patent-eligible subject matter includes “any new or useful process,
12 machine, manufacture, or composition of matter, or any new or useful improvement thereof.”
13 *Bilski*, 561 U.S. at 601 (quoting 35 U.S.C. § 101). However, Section 101 “contains an important
14 implicit exception: [l]aws of nature, natural phenomena, and abstract ideas are not patentable.”
15 *Alice Corp. Pty. Ltd. V. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Assoc. for Molecular*
16 *Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

17 To determine patent eligibility, the Supreme Court articulated a two-step analysis in *Mayo*
18 *Collaborative Servs. v. Prometheus Lab’ys Inc.*, 566 U.S. 66 (2012) and further delineated in
19 *Alice*, 573 U.S. at 217. In step one, the Court “determine[s] whether the claims at issue are
20 directed to one of those patent-ineligible concepts.” *Alice*, 573 U.S. at 217. “At step one . . . , we
21 ‘look at the focus of the claimed advance over the prior art to determine if the claim’s character as
22 a whole is directed to excluded subject matter.’” *See Koninklijke KPN N.V. v. Gemalto M2M*
23 *GmbH*, 942 F.3d 1143, 1149 (Fed. Cir. 2019). “Abstract ideas” are excepted from patent
24 protection under 35 U.S.C. § 101. *Id.* at 216. If the claims are directed to a patent-ineligible
25 concept, then moving to step two, the Court begins the “search for an ‘inventive concept’—i.e., an
26 element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts
27 to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 573 U.S. at 217–
28 218 (quoting *Mayo*, 566 U.S. at 72–73).

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5 **V. DISCUSSION**6 **A. The Court Proceeds to the § 101 Analysis Despite Plaintiff’s Claim Constructions**

7 Plaintiff asserts that “it is unclear whether the parties disagree as to the construction of . . .
 8 relevant [claim] terms” and “[i]f there is a substantive disagreement as to claim construction,
 9 Guardant’s Motion should be denied.” ECF 16 at 12 n.5. Specifically, Plaintiff argues that
 10 Guardant offers no proposed construction of the relevant terms such as “trained marker
 11 classification models,” “trained deep learning multiscale classifier models,” or “trained cell
 12 segmentation model.” *Id.* Separately, Plaintiff offers claim constructions for the ‘097 Patent but
 13 does not make any substantive argument about the materiality of those constructions to this
 14 motion. ECF 16 at 5 n.1. Defendant argues that to defeat the motion to dismiss, Plaintiff must
 15 “identify terms for construction, propose actual constructions of those terms, demonstrate that
 16 those proposed constructions are not frivolous, and explain how those constructions ‘would make
 17 any difference to the *Alice* analysis.” ECF 18 at 3 (citing *Sanderling Mgmt. Ltd. v. Snap Inc.*, 65
 18 F.4th 698, 704 (Fed. Cir. 2023)). Defendant argues that Plaintiff has not met this burden. *Id.*

19 The Court may “defer the § 101 analysis until after claim construction when a patentee
 20 identifies terms requiring construction and explains how resolution of construction disputes is
 21 material to resolving the § 101 challenge.” *Khn Sols. Inc. v. Vertisense Inc.*, No. 16-cv-00962,
 22 2016 WL 5725013, at *2 (N.D. Cal. Sept. 30, 2016). However, assessing patent eligibility
 23 requires only “a full understanding of the basic character of the claimed subject matter,” and
 24 “claim construction is not an inviolable prerequisite to a validity determination.” *Content
 25 Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1349 (Fed. Cir. 2014).

26 The Court finds that Plaintiff has not met its burden to show that claim constructions must
 27 be resolved before the pending motion to dismiss. *See Sanderling Mgmt.*, 65 F.4th at 704
 28 (affirming resolution of motion to dismiss prior to claim construction when plaintiff “identified

1 terms it wanted the district court to construe” but “failed to explain why any proposed
2 constructions were not frivolous or how its constructions would make any difference to the *Alice*
3 analysis). Here, Plaintiff identifies three claim terms from the ‘097 Patent (“tissue features,”
4 “tissue classification,” and “predicted class”) and asserts that “a POSA would understand [these
5 terms] to be related to AI image analysis.” ECF 16 at 5 n.1. However, Plaintiff does not explain
6 how this conclusion impacts the Court’s patent eligibility analysis. Thus, Plaintiff does not
7 present any construction disputes that are material to resolving the § 101 challenge. *Protegrity*
8 *USA, Inc. v. Netskope, Inc.*, No. 15-cv-02515, 2015 WL 6126599, at *3 (N.D. Cal. Oct. 19, 2015)
9 (“[W]here a patentee fails to ‘explain which terms require construction or how the analysis would
10 change’ were those constructions adopted, the Court may rule on the validity challenge prior to
11 construing claims.”) (quoting *Cyberfone Sys., LLC v. CNN Interactive Grp., Inc.*, 558 Fed. Appx.
12 988, 991 n.1 (Fed. Cir. 2014))

13 Accordingly, the Court proceeds to the § 101 analysis below.

14 **B. Claim 1 of the ‘097 Patent is Invalid Under 35 U.S.C. § 101**

15 **i. Claim 1 of the ‘097 Patent is Representative of the ‘097 Patent**

16 Defendant argues that Claim 1 of the ‘097 Patent is representative of the ‘097 Patent
17 because all claims are directed to the same abstract idea. ECF 11 at 14–15. Plaintiff does not
18 dispute this.

19 “There must be some factual allegations that, when taken as true, articulate why it is
20 plausible that the accused product infringes the patent claim.” *Bot M8*, 4 F.4th at 1353. Such
21 pleading requirements ensure that Defendants are fairly “on notice of what activity . . . is being
22 accused of infringement” with respect to the allegedly unique claims. *AlexSam, Inc. v. Aetna, Inc.*,
23 119 F.4th 27, 42 (Fed. Cir. 2024). Thus, in patent cases, courts are permitted to analyze
24 representative claims. *See Content Extraction & Transmission*, 776 F.3d at 1348 (upholding
25 district court’s analysis of representative claim); *see also Splunk Inc. v. Cribl, Inc.*, 662 F. Supp.
26 3d 1029, 1041–42 (N.D. Cal. 2023) (treating the first claim of each asserted patent as
27 representative for Section 101 purposes where plaintiff “mapped . . . only the first claim of each
28 asserted patent [] in the complaint”).

1 Here, Plaintiff’s operative complaint details how Defendant’s Accused Products infringe
 2 Claim 1 of the ‘097 Patent. ECF 1 ¶¶ 117–122. Plaintiff’s complaint references the remaining
 3 “dependent claims” but does not allege infringement of those claims. *Id.* ¶ 72. “Because the
 4 operative complaint fails to plead facts to plausibly allege infringement of any claims of the
 5 [asserted] patents beyond each patent’s first claim, the Court need not resolve the dispute about
 6 representativeness [of other claims] at this time.” *Netflix, Inc. v. Broadcom Inc.*, 793 F. Supp. 3d
 7 1168, 1178 (N.D. Cal. 2025). Additionally, the Court treats Plaintiff’s failure to dispute that
 8 Claim 1 of the ‘097 Patent is representative as a concession that Claim 1 is representative. *See*
 9 *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365 (Fed. Cir. 2018) (“Courts may treat a claim as
 10 representative in certain situations, such as if the patentee does not present any meaningful
 11 argument for the distinctive significance of any claim limitations not found in the representative
 12 claim or if the parties agree to treat a claim as representative.”).

13 Accordingly, the Court addresses only Claim 1 of the ‘097 Patent.

14 **ii. Claim 1 of the ‘097 Patent is Directed to a Patent-Ineligible Subject Matter**

15 Claim 1 of the ‘097 Patent reads as follows:

'097 Patent
16 17 1. A method for creating an overlay map on a digital image of a slide, the method 18 comprising: 19 receiving the digital image; 20 separating the digital image into a plurality of tiles, each tile of the plurality of tiles 21 containing a respective portion of the digital image of the slide; and 22 for each time of the plurality of the tiles: identifying features of the tile; identifying 23 structural tissue features of a second portion of the digital image of the slide including 24 at least part of one or more other tiles of the plurality of tiles, wherein the second 25 portion of larger than the respective portion of the digital image contained in the tile; 26 and 27 identifying the majority class of tissue visible within the tile based at least in part on 28 the features of the tile and the structural tissue features of the second portion of the digital image of the slide.

1 '097 Patent at 28:27–54.

2 Defendant argues that Claim 1 of the '097 Patent “is a classic example of claiming an
3 abstract idea and doing it on the computer.” ECF 11 at 7. Specifically, Defendant argues that
4 Claim 1 is directed to the abstract idea of “looking at different parts of an image and analyzing the
5 visual information in each part.” *Id.* Plaintiff argues that the '097 Patent recites a “specific and
6 concrete technological advance:” “improvements in computer functionality that enable digital
7 image analysis of tissue slide.” ECF 16 at 4–5. Plaintiff argues that the novel approach in the
8 '097 Patent is the “multi-tile approach” for classifying tissue within a digital image and creating
9 an overlay map. *Id.*

10 At *Alice* step one, courts “look at the focus of the claimed advance over the prior art to
11 determine if the claim’s character as a whole is directed to excluded subject matter.” *Recentive*,
12 134 F.4th at 1211–12 (internal quotations and citation omitted). This inquiry determines “whether
13 the claims focus on ‘the specific asserted improvement in computer capabilities or, instead, on a
14 process that qualifies as an abstract idea for which computers are invoked merely as a tool.” *Id.* at
15 1212 (cleaned up, citation omitted). Thus, for Claim 1 of the '097 Patent to encompass patent-
16 eligible subject matter, Plaintiff must identify a “specific and concrete technological advance, for
17 example an improvement to a technological process or in the underlying operation of a machine.”
18 *Adasa Inc. v. Avery Dennison Corp.*, 55 F.4th 900, 908 (Fed. Cir. 2022).

19 The Court finds that Claim 1 of the '097 Patent is directed at a longstanding practice and
20 fails describe a “specific improvement in computer capabilities.” *See Recentive*, 134 F.4th at
21 1211–12. Claim 1 of the '097 Patent is directed at the practice of analyzing and classifying
22 component tissues on a digital tissue slide. *See* '097 Patent at 28:27–54 (describing the process of
23 analyzing whole tissue slides by “receiving the digital image,” “separating the digital image into a
24 plurality of tiles,” and analyzing the tissue features on each tile). There is no dispute that this
25 practice—tissue classification of a digital medical image—is already done by both humans and
26 computers. *See* ECF 16 at 5; ECF 11 at 8. However, “claims that merely implement longstanding
27 activities . . . using new data and generic computing components without explaining how these
28 arrangements actually result in the claimed improvement are . . . directed to unpatentable abstract

1 ideas.” *Longitude Licensing Ltd. v. Google LLC*, No. 2024-1202, 2025 WL 1249136, at *2 (Fed.
 2 Cir. Apr. 30, 2025). Here, the language of Claim 1 does not recite a technological improvement or
 3 even mention computer hardware at all. *See id.*; *People.ai, Inc. v. SetSail Techs., Inc.*, 575 F.
 4 Supp. 3d 1193, 1202 (N.D. Cal. 2021), *aff’d sub nom. People.ai, Inc. v. Clari Inc.*, No. 2022-1364,
 5 2023 WL 2820794 (Fed. Cir. Apr. 7, 2023) (“[T]he asserted claims of the ’129 patent do not
 6 appear to recite the technical solution that [plaintiff] describes.”). Thus, Claim 1 does not
 7 sufficiently describe a “specific and concrete technological advance” to the longstanding practice
 8 of analyzing parts of a digital image of a tissue sample. *See Adasa Inc.*, 55 F.4th at 908.

9 Accordingly, Claim 1 of the ’097 Patent is directed at a patent-ineligible abstract idea.

10 **iii. Claim 1 of the ’097 Patent Does Not Recite an Inventive Concept**

11 Defendant argues that at *Alice* step two, the ’097 Patent fails to recite any inventive
 12 concept that would elevate it beyond a patent-ineligible abstract idea. ECF 11 at 12. Specifically,
 13 Defendant argues that the process of separating a digital image into tiles and analyzing each tile by
 14 comparing it to other portions of the image is “conventional both for humans and computers.” *Id.*
 15 ¶ 13. Plaintiff argues that even if the Court finds that the ’097 Patent recites an abstract idea, the
 16 “novel multi-tile approach to AI-based analysis of tissue” is an improvement over conventional
 17 techniques and thus is an inventive concept. ECF 16 at 10.

18 Because Claim 1 of the ’097 Patent fails at *Alice* step one, the Court must “search for an
 19 ‘inventive concept,’” an element that ensures the patent “amounts to significantly more than a
 20 patent upon the [abstract idea] itself.” *Alice*, 573 U.S. at 217–18 (quoting *Mayo*, 566 U.S. at 72–
 21 73). A claim does not become inventive by “[s]tating an abstract idea while adding the words
 22 ‘apply it with a computer.’” *In re Killian*, 45 F.4th 1373, 1380 (Fed. Cir. 2022). “[A]t step two,
 23 an inventive concept must be evident in the claims.” *Two-Way Media Ltd. v. Comcast Cable*
 24 *Commc’ns, LLC*, 874 F.3d 1329, 1338 (Fed. Cir. 2017). Moreover, the Federal Circuit recently
 25 reiterated that “the abstract idea itself cannot supply the inventive concept.” *Optis Cellular Tech.,*
 26 *LLC v. Apple Inc.*, 139 F.4th 1363, 1380 (Fed. Cir. 2025). The Federal Circuit further held that
 27 the abstract idea “cannot contribute to the inventive concept” and that the “relevant inquiry is not
 28 whether the claimed invention as a whole is unconventional or non-routine, but whether the claim

1 limitations other than the invention’s use of the ineligible concept to which it was directed were
2 well-understood, routine and conventional.” *Id.* at n.11 (cleaned up).

3 The Court finds that Plaintiff fails to recite an inventive concept because the “novel multi-
4 tile approach” is merely the same abstract idea from *Alice* step one. *See* ECF 16 at 10; *Synopsys,*
5 *Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016). However, “the abstract idea
6 itself cannot supply the inventive concept, no matter how groundbreaking the advance.” *Optis*
7 *Cellular Tech., LLC*, 139 F.4th at 1380; *see also EcoFactor, Inc. v. Google LLC*, 757 F. Supp. 3d
8 978, 988 (N.D. Cal. 2024) (“[Plaintiff] argues that the patent improved conventional [technology
9 systems] by applying the abstract idea of calculating and accounting for [certain data] in operating
10 efficiency comparisons. But ‘[a] claim’s ‘use of the ineligible concept to which it is directed
11 cannot supply the inventive concept.’” (quoting *Caselas, LLC v. VeriFone, Inc.*, No. 23-cv-1036,
12 2024 WL 2720092, at *3 (Fed. Cir. May 28, 2024)). Thus, Plaintiff may not rely on the abstract
13 idea of analyzing parts of a digital image when pleading an inventive concept. *See Optis Cellular*
14 *Tech., LLC*, 139 F.4th at 1380.

15 Further, merely enhancing the “processing efficiency” of a preexisting practice does not
16 constitute an inventive concept. *See* ECF 1 ¶ 67 (citing ‘097 Patent at 6:54-56); *Intell. Ventures I*
17 *LLC v. Cap. One Bank (USA)*, 792 F.3d 1363, 1367 (Fed. Cir. 2015) (“Nor . . . does claiming the
18 improved speed or efficiency inherent with applying the abstract idea on a computer provide a
19 sufficient inventive concept.”). Thus, it is not sufficient to allege that Claim 1 recites a more
20 efficient way of accomplishing the abstract idea discussed above. *See People.ai, Inc.*, 575 F.
21 Supp. 3d at 1205, *aff’d*, 2023 WL 2820794.

22 Accordingly, Claim 1 of the ‘097 Patent does not recite an inventive concept.

23 **C. Claim 1 of the ‘041 Patent Is Invalid Under 35 U.S.C. § 101**

24 **i. Claim 1 of the ‘097 Patent is Representative of the ‘041 Patent**

25 Claim 1 of the ‘041 Patent reads as follows:

26 ’041 Patent

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1. A computer-implemented method of identifying biomarkers in a digital image of a hematoxylin and eosin (H&E) stained slide of target tissue, the method comprising:

receiving the digital image to an image-based biomarker prediction system having one or more processors;

separating, using the one or more processors, the digital image into a plurality of tile images, where each of the plurality of tile images contains a different portion of the digital image;

applying, using the one or more processors, the plurality of tile images to a deep learning framework comprising one or more trained biomarker classification models, each trained biomarker classification model being trained to classify a different biomarker, wherein the deep learning framework comprises a multiscale deep learning framework;

predicting, using the one or more processors, a biomarker classification for each of the plurality of tile images using the one or more trained biomarker classification models;

from the predicted biomarker classifications of each of the tile images, determining a predicted presence of one or more biomarkers in the target tissue; and

generating a report containing the digital image and digital overlay visualizing the predicted presence of the one or more biomarkers,

wherein each of the applying the plurality of time images to the deep learning framework and predicting the biomarker classification for each of the plurality of time images comprises, applying each of the tile images to one or more trained deep learning multiscale classifying models, each trained deep learning multiscale classifier models being trained to classify a different tissue classification for each tile image and determining a tissue classification for each of the plurality of tile images, using the multiscale deep learning framework, identifying, using the one or more processors, cells within the digital image using a trained cell segmentation model, and from the tissue classification determined for each tile image and from the identified cells within the digital image, predicting the biomarker classification for each tile image.

‘041 Patent at 77:35–78:12.

Defendant argues that Claim 1 of the ‘097 Patent is also representative of the ‘041 Patent, so the ’041 Patent is ineligible for the reasons discussed above. ECF 11 at 15–17. Specifically, Defendant argues that Claim 1 of the ‘097 Patent is substantially the same as Claim 1 of the ‘041

1 Patent and only has two differences: (1) the ‘041 Patent does not recite digital images of stained
2 tissue slides generally, it recites a “digital image of a hematoxylin and eosin (H&E) stained slide”
3 and (2) the ‘041 Patent uses “a deep learning framework comprising one or more trained
4 biomarker classification models” and “one or more trained deep learning multiscale classifier
5 models.” *See* ‘041 Patent at 77:35–78:12. Plaintiff argues that Claim 1 of the ‘097 Patent is not
6 representative of the ‘041 Patent because while they both relate to AI analysis of tissue samples,
7 the ‘041 Patent discloses a “deep learning framework” that is different from the “multi-tile
8 approach” in the ‘097 Patent. ECF 16 at 14.

9 The Court is “not required to separately address . . . ‘trivial variations of the abstract
10 idea.’” *Longitude Licensing*, 2025 WL 1249136, at *5. To establish that Claim 1 of the ‘097
11 Patent is representative of the ‘041 Patent, Defendant must establish that “any differences among
12 the claims are not material to the eligibility analysis (i.e., the claims are substantially similar and
13 are linked to the same ineligible concept).” *Mobile Acuity Ltd. v. Blippar Ltd.*, 110 F.4th 1280,
14 1291 (Fed. Cir. 2024). If Defendant fails to meet this burden, Defendant must prove that “each
15 separate claim (i.e., those not fairly represented by the purported representative claim) is ineligible
16 for patenting.” *Id.*

17 The Court finds that Defendant has met its burden to demonstrate that Claim 1 of the ‘097
18 Patent and Claim 1 of the ‘041 Patent are substantially similar. Here, nearly all of the claims’
19 elements are shared, and both claims are directed at the same abstract idea of analyzing digital
20 images of stained tissue slides. *See* ‘097 Patent at 28:27–54; ‘041 Patent at 77:35–78:12. Plaintiff
21 even concedes that both claims are “relate to methods of AI analysis of tissue samples.” ECF 16
22 at 14. Thus, Claim 1 of the ‘097 Patent and Claim 1 of the ‘041 Patent recite the same abstract
23 idea, for reasons discussed above. *See Longitude Licensing*, 2025 WL 1249136, at *4 (finding
24 claims substantially similar where both “similarly relate to locating a human subject of the image
25 and processing that image data in that area, [therefore] reciting the same abstract idea)

26 Further, while the parties identify a small number of differences between Claim 1 of the
27 ‘097 Patent and Claim 1 of the ‘041 Patent, none of these differences are “material to the
28 eligibility analysis.” *See Mobile Acuity*, 110 F.4th at 1291. First, Claim 1 of the ‘041 Patent

1 relates to “digital image[s] of a hematoxylin and eosin (H&E) stained slide,” instead of stained
2 tissue slides generally. *See* ‘041 Patent at 77:35–37. However, “limiting the use of an abstract
3 idea to a particular technological environment” is insufficient for patent eligibility. *Alice*, 573
4 U.S. at 223 (internal citation and quotations omitted). Thus, the particular H&E slide environment
5 recited in the ‘041 Patent is not material to the Court’s eligibility analysis. *Mobile Acuity*, 110
6 F.4th at 1291.

7 Second, Claim 1 of the ‘041 Patent recites analyzing stained tissue slides using a “deep
8 learning framework.” *See* ‘041 Patent at 77:35–78:12. However, Federal Circuit held that the
9 “use of generic machine learning technology in carrying out the claimed methods” does not
10 change the eligibility analysis. *See Recentive*, 134 F.4th at 1211–12. Thus, the fact that Claim 1
11 of the ‘041 Patent recites using a “deep learning framework” to undergo tissue slide analysis is not
12 “material to the eligibility analysis.” *See Mobile Acuity*, 110 F.4th at 1291.

13 Accordingly, the Court considers Claim 1 of the ‘097 Patent to be representative of the
14 ‘041 Patent.

15 **ii. The ‘041 Patent is Ineligible for the Same Reasons as the ‘097 Patent**

16 Defendant argues that because Claim 1 of the ‘097 Patent is representative of the ‘041
17 Patent, the ‘041 Patent is ineligible under § 101 for the same reasons as the ‘097 Patent. ECF 11
18 at 15–17. Plaintiff does not dispute that if the Court finds Claim 1 of the ‘097 Patent to be
19 representative of the ‘041 Patent, the ‘041 Patent is ineligible.

20 The Court may limit its eligibility analysis only to representative claims. *See Mobile*
21 *Acuity*, 110 F.4th at 1292; *Longitude Licensing*, 2025 WL 1249136, at *4 (affirming dismissal of a
22 complaint based on eligibility analysis of only representative claims).

23 Here, because Claim 1 of the 097 Patent is also representative of the ‘041 Patent, the
24 Court’s finding that Claim 1 of the ‘097 Patent is ineligible under 35 U.S.C. § 101 extends to the
25 ineligibility of Claim 1 of the ‘041 Patent as well. Accordingly, for the reasons discussed above,
26 Claim 1 of the ‘041 Patent is invalid under 35 U.S.C. § 101.

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D. Claim 1 of the ‘859 Patent and Claim 1 of the ‘839 Patent are Invalid Under 35 U.S.C. § 101

i. Claim 1 of the ‘859 Patent is Representative of the ‘859 Patent and of the ‘839 Patent

Defendant argues that Claim 1 of the ‘859 Patent is representative of the ‘859 Patent because there is “no distinctive significance” between Claim 1 and any other claim of the ‘859 Patent. ECF 11 at 22–23. Defendant also argues that Claim 1 of the ‘859 Patent is representative of the ‘839 Patent because both patents “generally disclose and claim methods for storing and structuring clinical and genomic sequencing patient data for specific application programs.” ECF 11 at 23 (citing ECF 1 ¶ 23). Plaintiff does not dispute that Claim 1 of the ‘859 Patent is representative of the ‘859 Patent. Plaintiff also expressly concedes that Claim 1 of the ‘859 Patent is representative of Claim 1 of the ‘839 Patent. *See* ECF 16 at 16 n.1.

Here, Plaintiff’s operative complaint contains factual allegations detailing how Defendant’s Accused Products infringe Claim 1 of the ‘859 patent and Claim 1 of the ‘839 Patent. ECF 1 ¶¶ 99–110. For the reasons discussed above, the Court addresses Claim 1 of the ‘859 Patent as representative of both the ‘859 Patent and the ‘839 Patent.

ii. Claim 1 of the ‘859 Patent is Directed to a Patent-Ineligible Subject Matter

Claim 1 of the ‘859 Patent reads as follows:

’859 Patent
<p>1. A method for conducting genomic sequencing, the method comprising the steps of:</p> <p>storing a set of user application programs wherein each of the programs requires an application specific subset of data to perform application processes and generate user output;</p> <p>for each of a plurality of patients that have cancerous cells and that receive cancer treatment:</p> <p>(a) obtaining clinical records data in original forms where the clinical records data includes cancer state information, treatment types and treatment efficacy information;</p> <p>(b) storing the clinical records data in a semi-structured first database;</p> <p>(c) for each patient, using a next generation genomic sequencer to generate genomic sequencing data for the patient’s cancerous cells and normal cells;</p> <p>(d) storing the sequencing data in the first database;</p>

- 1 (e) shaping at least a subset of the first database data to generate system structured data
 2 including clinical record data and sequencing data wherein the system structured data
 3 is optimized for searching;
 4 (f) storing the system structured data in a second database;
 5 (g) for each user application program:
 6 (i) selecting the application specific subset of data from the second database; and
 7 (ii) storing the application specific subset of data in a structure optimized for
 8 application program interfacing in a third database.

9 ‘859 Patent at 60:44–61:5.

10 Defendant argues that each element of Claim 1 of the ‘859 Patent is directed to the abstract
 11 idea of “collecting, storing, and organizing data.” ECF 11 at 17. Defendant also argues that the
 12 claim is drafted in results-oriented language that does not supply practical information about how
 13 the data is selected or structured. *Id.* at 19–20. Plaintiff argues that the Data Storage Patents claim
 14 improvements to existing technical processes with a “multi-step, multi-database process that
 15 improves the way computer applications store and retrieve data.” ECF 16 at 17. Specifically,
 16 Plaintiff argues that the improvements integrate clinical records with genomic sequencing data.
 17 *Id.* at 16.

18 At *Alice* step one, courts “look at the focus of the claimed advance over the prior art to
 19 determine if the claim’s character as a whole is directed to excluded subject matter.” *Recentive*,
 20 134 F.4th at 1211–12 (internal quotations and citation omitted). This inquiry determines “whether
 21 the claims focus on ‘the specific asserted improvement in computer capabilities or, instead, on a
 22 process that qualifies as an abstract idea for which computers are invoked merely as a tool.” *Id.* at
 23 1212 (cleaned up, citation omitted). Thus, for Claim 1 of the ‘859 Patent to encompass patent-
 24 eligible subject matter, Plaintiff must identify a “specific and concrete technological advance, for
 25 example an improvement to a technological process or in the underlying operation of a machine.”
 26 *Adasa Inc.*, 55 F.4th at 908.

27 As a threshold matter, the Court focuses its eligibility analysis on the claim language itself.
 28 *See Longitude Licensing*, 2025 WL 1249136, at *1 (affirming district court’s decision not to
 “credit [plaintiff’s] conclusory allegations in the complaint that the claims ‘recite a specific way to

1 improve a prior computing process’ when that is not apparent from the claim language read in
2 light of the specification”); *USAA v. PNC Bank N.A.*, 139 F.4th 1332, 1338 (Fed. Cir. 2025) (“We
3 focus on the claims, not the specification, to determine eligibility...”). Thus, the fact that Plaintiff
4 argues that the Data Storage Patents recite technological improvements related to “purpose-
5 specific data structure, processes for creating them, and particular uses of the resulting data
6 structures” is inapposite. ECF 16 at 18. Plaintiff cites no claim language describing these
7 technological improvements. *Id.* Similarly, the fact that Plaintiff’s complaint describes the
8 current shortcomings of health care data storage systems does not bear on the Court’s
9 determination of whether the claim itself recites a specific technological improvement. *See*
10 *Mobile Acuity*, 110 F.4th at 1292–93 (focusing *Alice* step one analysis on claim language).

11 Focusing only on the language of Claim 1 of the ‘859 Patent, the Court finds that the claim
12 is directed at the abstract idea of collecting, storing, and organizing health information. *See Elec.*
13 *Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (“The advance [the claims]
14 purport to make is a process of gathering and analyzing information of a specified content, then
15 displaying the results, and not any particular assertedly inventive technology for performing those
16 functions. They are therefore directed to an abstract idea.”). Here, the claim describes “obtaining”
17 clinical records and genomic sequencing data and then “shaping” that data in “structured” or
18 “semi-structured” databases. *See* ‘859 Patent at 60:44–61:5. However, the claim language does
19 not specify what these structures are or how the data is organized. Without more detail, the Court
20 cannot conclude that the “structures” recited in Claim 1 are a technological improvement upon
21 existing ways of organizing health data. *Cf. Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327,
22 1332–37 (Fed. Cir. 2016) (finding “data storage and retrieval system” claim non-abstract where
23 “self-referential table recited in the claims on appeal is a specific type of data structure designed to
24 improve the way a computer stores and retrieves data in memory”). Thus, the claim here “is
25 drafted in a result-oriented fashion, without the requisite specificity needed to provide a non-
26 abstract technological solution.” *United Servs. Auto. Ass’n v. PNC Bank N.A.*, 139 F.4th 1332,
27 1337–38 (Fed. Cir. 2025) (finding claim directed at abstract idea where claim “merely recites a
28 system” to authenticate customer and process mobile check deposits “without providing *how* the

1 system is configured”).

2 Accordingly, Claim 1 of the ‘859 Patent is directed at a patent-ineligible abstract idea.

3 **iii. Claim 1 of the ‘859 Patent Does Not Recite an Inventive Concept**

4 Defendant argues that Claim 1 of the ‘859 Patent fails to recite any inventive concept
5 because the elements of the claim are all “well-understood and routine computer technologies.”
6 ECF 11 at 21. Defendant argues that the only possible “inventive concept” is merely an
7 application of the abstract idea of collecting and organizing patient data. *Id.* ¶ 22. Plaintiff argues
8 that the Data Storage Patents claim an inventive concept because they are directed to “specific,
9 nonconventional, non-routine methods” for overcoming previous challenges shaping and storing
10 genomic sequencing data. *See* ECF 16 at 24; ECF 1 ¶ 33. Specifically, Plaintiff argues that the
11 Data Storage Patents impose “specific requirements for arrangement and relationship on the stored
12 data.” ECF 16 at 24–25.

13 At *Alice* step two, courts consider “whether the claim elements, individually and as an
14 ordered combination, contain an inventive concept.” *Coop. Ent.*, 50 F.4th at 130. The inventive
15 concept must be “more than the abstract idea itself, and cannot simply be an instruction to
16 implement or apply the abstract idea on a computer.” *Bascom Glob. Internet Servs. V. AT&T*
17 *Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016).

18 The Court finds that Claim 1 of the ‘859 Patent does not recite an inventive concept
19 beyond the abstract idea discussed above. *See Optis Cellular Tech., LLC*, 139 F.4th at 1380
20 (“[T]he abstract idea itself cannot supply the inventive concept, no matter how groundbreaking the
21 advance.”); *EcoFactor*, 757 F. Supp. 3d at 988 (“A claim’s ‘use of the ineligible concept to which
22 it is directed cannot supply the inventive concept.’”) (quoting *Caselas, LLC*, 2024 WL 2720092, at
23 *3). Thus, Plaintiff may not rely on the abstract idea of “shaping” and “storing” data in certain
24 structured databases when pleading an inventive concept. *See Optis Cellular Tech., LLC*, 139
25 F.4th at 1380.

26 It is not sufficient for Plaintiff to assert that these limitations “are not well-understood,
27 routine, or conventional.” ECF 1 ¶¶ 33, 39; *Simio, LLC v. FlexSim Software Prods., Inc.*, 983 F.3d
28 1353, 1365 (Fed. Cir. 2020) (holding that courts “disregard conclusory statements when

1 evaluating a complaint”). Plaintiff’s only evidence in support of the statement that these
2 limitations are “not well-understood” is the USPTO’s findings, which are not binding on the Court
3 in ruling on a motion to dismiss. *See* ECF 16 at 24.

4 Accordingly, Claim 1 of the ‘859 Patent does not recite an inventive concept.

5 **VI. CONCLUSION**

6 For the reasons discussed, the claims for which Plaintiff has provided factual allegations
7 supporting its claims of infringement are invalid. Claim 1 of the ‘097 Patent, Claim 1 of the ‘041
8 Patent, Claim 1 of the ‘859 Patent, and Claim 1 of the ‘839 Patent are directed to patent-ineligible
9 concepts under 35 U.S.C. § 101.

10 Dismissal is with prejudice as to Defendant’s alleged infringements of Claim 1 of the ‘097
11 Patent, Claim 1 of the ‘041 Patent, Claim 1 of the ‘859 Patent, and Claim 1 of the ‘839 Patent.

12 Dismissal is with leave to amend as to the alleged infringements of the remaining claims of
13 the ‘097 Patent, ‘041 Patent, ‘859 Patent, and ‘839 Patent.

14 Any amended complaint shall be filed within fourteen days of this order and no later than
15 **February 4, 2026**. Fed. R. Civ. P. 15.

16 The Administrative Motion for Leave to Serve Infringement Contentions Out-of-Time,
17 ECF 64, was granted in part and denied in part. *See* ECF 76.

18 The Further Case Management Conference set for 5/21/2026 at 2:00 PM in San Francisco
19 via Videoconference Only is maintained. The Joint Case Management Statement due by
20 5/14/2026.

21 This order resolves ECF 11 and ECF 64.

22 IT IS SO ORDERED.

23 Dated: January 21, 2026

24 
25 TRINA L. THOMPSON
26 United States District Judge
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