

A. Forfeited, Waived or Inadequate Appeal Arguments

“Evolved’s final argument that the district court applied the wrong infringement standard for claims directed to capability, we also find this argument unavailing. “The district court’s jury instruction—to which Evolved failed to object at trial or in a post-trial motion before the district court—echoed the INVT rule.” “Evolved’s legal error argument is too late.” *Exelixis, Inc. v. MSN Labs. Private Ltd.*, 2025-1236, 8/31/26.

“While Nine’s proposed construction at the district court uses more words than its construction on appeal, the gravamen is the same: In both fora, it has contended that an “internal diameter” is a measured diameter across the width of a casing string and cannot also mean a diameter parallel to the surface of the casing string.” “Accordingly, Nine neither changed its position on this issue between the trial and appellate levels nor forfeited its argument that “internal diameter” is a measured diameter.” *NCS Multistage Inc. v. Nine Energy Serv., Inc.*, 2025-1000, 9/14/26.

“TrackTime wholly fails to explain why the jury was not permitted to find that LiveNote discloses performing a data lookup. Moreover, that argument was not presented to the district court, so TrackTime has forfeited it.” *TrackTime, LLC v. Amazon.com Services LLC*, 2024-1102, 7/2/26 (citation omitted).

“Netlist includes a two-sentence argument that the Board violated the APA in addressing “most limitations of claim 1 and the vast majority of the challenged claims” by limiting its analysis to “summarizing Samsung’s ‘contentions’ and finding that Netlist ‘does not dispute’ them.” But Netlist does not specify which limitations it challenges or provide any further substantive argument on this point. We therefore find that Netlist failed to properly raise this argument for our consideration.” *Netlist, Inc. v. Micron Tech., Inc.*, 2024-1707, 9/2/26 (citation omitted).

“During oral argument, LG argued for the first time that if we determine—as we do here—that some asserted claims are patent ineligible, we should vacate the damages award. This argument was foreseeable and should have been raised in LG’s opening brief.” *Constellation Designs, LLC v. LG Elecs. Inc.*, n.4, 2024-1822, 8/31/26 (citation omitted).

B. Appellate Jurisdiction

“Exelixis, on the other hand, argues that MSN has a continued redressable injury not based on the existence of the ’349 patent itself, but rather by asserting that our holding on the inherency issue could potentially have collateral consequences in another case between Exelixis, MSN, and other defendants, which involves a patent related to the ’349 patent. We are not convinced. These purported collateral consequences are too speculative and hypothetical to confer standing.” *Exelixis, Inc. v. MSN Labs. Private Ltd.*, 2025-1236, 8/31/26.

“Both notices list only “Plaintiff VDPP, LLC” as an appellant and thus fail to specify Mr. Ramey as a party taking the appeal.” *VDPP, LLC v. Volkswagen Group of America, Inc.*, 2024-2226, 8/19/26.

“It is important to keep in mind this distinction between the two very different uses of “claim” when considering judgments in patent cases that are entered pursuant to Rule 54(b).” *ParkerVision, Inc. v. Qualcomm Inc.*, 2026-1033, 9/30/26.

“The question presented in this case is whether Rule 54(b) permits, under the circumstances of this case, final judgment to be entered with respect to infringement of only some *patent claims* when other *patent claims of the same patent* remain unresolved. As we explain below, our answer is no.” *ParkerVision, Inc. v. Qualcomm Inc.*, 2026-1033, 9/30/26 (emphasis in original).

C. Mootness of Appealed Rulings

“While our conclusion as to invalidity for anticipation suffices to resolve this appeal and the case in BSC’s favor, we think it worthwhile to address another contention made by BSC on appeal.” *Board of Regents v. Boston Scientific Corp.*, 2024-2062, 7/27/26.

D. Standards of Review and Record/Appendix on Appeal

“It is well established that Article III courts review judgments, not opinions.” *Intellectual Pixels Ltd. v. Sony Interactive Ent. LLC*, 2024-2174, 7/10/26.

E. Harmless Error

“Nielsen concedes that it does not identify any evidence or arguments that it was deprived of the opportunity to present had it been more explicitly put on notice that the Board would consider the reasonably pertinent prong. Because Nielsen has not established prejudice, any error was harmless.” *The Nielsen Company (US), LLC v. TVision Insights, Inc.*, 2025-1371, 8/14/26.

“However, any potential error was harmless because the Board alternatively found that Ellsberry alone, without relying on the ’537 patent, teaches adding one clock cycle to account for propagation delay through its switch ASICs.” *Netlist, Inc. v. Micron Tech., Inc.*, 2024-1707, 9/2/26.

No harmless error where “the district court’s construction put a thumb on the scale,” and “[a]t a minimum, the jury could have been confused about the effect of the size limitation and its importance.” “Thus, we reject NCS’s contention that Nine failed to demonstrate prejudice from the size limitation being included in the construction of casing string.” *NCS Multistage Inc. v. Nine Energy Serv., Inc.*, 2025-1000, 9/14/26.

F. Remand Determination

“Because the court did not sufficiently explain its rationale for rejecting Pen-Tech’s theory of unreasonable conduct based on notice of potential invalidity, we vacate and remand for further proceedings.” *Epic Tech, LLC v. Pen-Tech Assocs., Inc.*, 2025-1624, 9/30/26.

“On remand, the focus of the § 112(f) analysis should be on whether the disputed limitations, read in full and in context, recite enough structure to perform the claimed

functions. Here, the relevant claimed functions are annotation and synchronous play (1) on a mobile computing device and (2) integrable with the other functionality described in the claims.” “The parties’ arguments to date have not been focused on whether the claims reveal structure for those precise functions. In light of that fact, and of the foregoing elaboration of the required § 112(f) analysis, it may be appropriate and helpful to the court for the parties to have a new opportunity to present arguments and evidence directed to the correct questions.” *TrackTime, LLC v. Amazon.com Services LLC*, 2024-1102, 7/2/26 (citation omitted).

“A lower tribunal would be bound by any such holdings [by the appellate court on issues not passed on below] under the mandate rule.” *Intellectual Pixels Ltd. v. Sony Interactive Ent. LLC*, n.4, 2024-2174, 7/10/26.

“As to the second Board finding, any fact-finding the Board conducted regarding the compressing limitation during its first final written decision was not within the scope of the Board’s first judgment, which reached only the generating limitation, was not appealable or decided by us, and thus was not within the scope of our mandate.” “Since the Board’s decision as to obviousness was based on the generating limitation, any findings of fact as to the compressing limitation were not subject to appeal, were not decided by us, and were not part of our mandate” *Intellectual Pixels Ltd. v. Sony Interactive Ent. LLC*, 2024-2174, 7/10/26.