

NOTE: This disposition is nonprecedential.

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

IN RE OLIVER WENDEL GAMBLE,
Appellant

2026-1126

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. 17/490,077.

Decided: October 7, 2026

OLIVER WENDEL GAMBLE, New York, NY, pro se.

MAI-TRANG DUC DANG, Office of the Solicitor, United
States Patent and Trademark Office, Alexandria, VA, for
appellee John A. Squires. Also represented by WILLIAM
LAMARCA, NICHOLAS THEODORE MATICH, IV, AUSTIN PHILIP
MAYRON, ROBERT J. MCMANUS, SHEHLA WYNNE.

Before MOORE, *Chief Judge*, DYK and TARANTO, *Circuit
Judges*.

PER CURIAM.

Oliver Wendel Gamble appeals a decision of the Patent
Trial and Appeal Board (“Board”) that affirmed the exam-

iner's rejection of claims 1–8, 10, 13–15, and 18 of U.S. Patent Application No. 17/490,077 (the “077 application”) as indefinite under 35 U.S.C. § 112(b). Mr. Gamble also appeals the Board's denial of a request for rehearing on claims 9, 11, 12, 16, 17, 19, and 20, newly rejected by the Board as indefinite under § 112(b). Because Mr. Gamble forfeited any substantive argument both in this Court and before the Board, we *affirm*.

BACKGROUND

On September 30, 2021, Mr. Gamble filed the '077 application with the U.S. Patent and Trademark Office. The '077 application, titled “Method and System for Notation and Grouping of Messages Stored on a Mobile Device,” is directed to “[a] messaging system with methods for adding descriptive notes to Emails and Text Messages stored on a mobile device.” '077 application, Abstract. The specification describes a mobile-device application that stores a user's text messages and emails in a database along with metadata in corresponding fields (for instance, date). The resulting database contains fields that are editable (allowing users to, for instance, annotate messages) and searchable (allowing users to, for instance, search annotations). The '077 application explains that annotations are accessible when viewing stored messages in the future, reminding the user of relevant context they may have forgotten. Claim 1 is illustrative:

A mobile device message notation management system comprising: a memory and at least one processor coupled to the memory, wherein the at least one processor is configured to execute instructions stored in the memory to cause said apparatus to; capture and store E-communication in editable fields of a record of a searchable table in a database; each record in said database contains fields for storing a single alphanumeric text message and editable fields that are specifically set aside for the

storage of user entered notation and grouping tags that can be searched upon by the user.

App'x 490.¹

On September 20, 2022, the examiner issued a non-final office action rejecting claims 1–15 and 18 as indefinite under 35 U.S.C. § 112(b), identifying “insufficient antecedent basis” for various limitations.² App'x 460–62. In response, Mr. Gamble amended claims 1, 3, 11, and 12. Relevant to this appeal, Mr. Gamble made three amendments to claims 1, 11, and 12 addressing specific issues identified in the examiner's non-final office action. Mr. Gamble's response did not include any amendments or written argument related to the examiner's other § 112(b) indefiniteness rejections for claims 1–8, 10, 13–15, and 18.

On June 7, 2023, the examiner issued a final office action. The examiner dropped the rejections resolved by Mr. Gamble's amendments but otherwise repeated the § 112(b) rejections identified in the first office action. Claims 1–8, 10, 13–15, and 18 thus stood rejected under § 112(b) as indefinite. Mr. Gamble appealed the final rejection to the Board. In his appeal brief, he did not provide any argument as to the § 112(b) rejections. Instead, Mr. Gamble simply noted that the “[r]equested 35 USC 112 errors will be corrected,” App'x 207, and appended the same amended claims he submitted in response to the first office action.

The Board “summarily sustain[ed] the Examiner's rejection of claims 1–8, 10, 13–15, and 18 under 35 U.S.C. § 112(b) as being indefinite” after finding that appellant

¹ Citations to “App'x” refer to the corrected appendix filed by Mr. Gamble, Dkt. No. 14.

² The examiner also rejected claims 1–19 under 35 U.S.C. § 103(a). That rejection was overturned on appeal to the Board and is therefore not before us.

had “waived or forfeited” argument by failing to address the examiner’s rejection in his appeal brief. App’x 167 (citing 37 C.F.R. § 41.37(c)(1)(iv); *In re Google Tech. Holdings*, 980 F.3d 858, 863 (Fed. Cir. 2020); *Hyatt v. Dudas*, 551 F.3d 1307, 1314 (Fed. Cir. 2008); Manual of Patent Examining Procedure § 1205.02 (9th ed., Rev. 07.2022, Feb. 2023)). Additionally, the Board rejected all other claims (9, 11, 12, 16, 17, 19, and 20) as indefinite by virtue of “inherit[ing] the same deficiency” from the claims from which they depended. App’x 167–68. The Board designated this a “new ground of rejection” pursuant to 37 C.F.R. § 41.50(b) and explained to Mr. Gamble that he could either reopen prosecution or request a rehearing “upon the same Record.” App’x 180–81.

In a request for rehearing, Mr. Gamble, for the first time, provided written argument in response to the examiner’s § 112(b) rejections of claims 1–8, 10, 13–15, and 18. However, the only mention of the Board’s designated grounds as to claims 9, 11, 12, 16, 17, 19, and 20 appeared in the conclusion. App’x 160 (“Since the rejections of Independent Claims 1, 5, and 13 under 35 USC § 112(b) have been overcome,” “Dependent Claims 9, 11, 12, 16, 17, 19, and 20, which were newly rejected under § 112(b), no longer inherit any alleged indefiniteness.”). The Board denied the request for rehearing. First, citing 37 C.F.R. § 41.52, it refused to consider Mr. Gamble’s new arguments concerning the claims rejected by the examiner. Second, because the request for rehearing did not present any argument relevant to the claims newly rejected by the Board, the Board likewise declined to reconsider its decision as to those claims.

Mr. Gamble appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(4)(A).

DISCUSSION

“We review the Board’s legal conclusions de novo.” *ESIP Series 2, LLC v. Puzhen Life USA, LLC*, 958 F.3d

1378, 1383 (Fed. Cir. 2020). We review all underlying factual findings for substantial evidence. *Id.* Indefiniteness is a question of law based on underlying factual findings. *Cox Commc'ns, Inc. v. Sprint Commc'n Co.*, 838 F.3d 1224, 1228 (Fed. Cir. 2016). We review the Board's determination of forfeiture for an abuse of discretion. *Implicit, LLC v. Sonos, Inc.*, 169 F.4th 1107, 1110 (Fed. Cir. 2026) (citing *Centripetal Nets., LLC v. Palo Alo Nets., Inc.*, 156 F.4th 1368, 1374 (Fed. Cir. 2025)).

First, Mr. Gamble contends the merits of the § 112(b) rejections are “[t]he heart of this appeal.” Appellant’s Reply Br. 6. Yet he made no substantive argument until his reply brief with respect to any of the rejected claims. As we explained in a previous case involving a related application of the ’077 application whose claims were rejected on the same grounds, “[t]he absence of any meaningful argument at all in the opening brief is a forfeiture of the indefiniteness challenge, as an appellant cannot wait until the reply brief to present a meaningful argument.” *In re Gamble (Gamble I)*, No. 2025-1133, 2025 WL 1341621, at *3 (Fed. Cir. May 8, 2025); *see also McIntosh v. Dep’t of Def.*, 53 F.4th 630, 641 (Fed. Cir. 2022) (“Our law is well established that arguments not raised in the opening brief are forfeited.” (quoting *SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1319 (Fed. Cir. 2006))). Therefore, Mr. Gamble has forfeited any arguments concerning the indefiniteness rejections of claims 1–8, 10, 13–15, and 18 and of newly rejected claims 9, 11, 12, 16, 17, 19, and 20.

Second, independent of our conclusion that Mr. Gamble forfeited his substantive indefiniteness arguments before us, Mr. Gamble forfeited those same arguments before the Board. As the Board pointed out, “[w]hen the appellant fails to contest a ground of rejection to the Board,” the Board has “no burden . . . to consider the merits of that ground of rejection” and “may treat any argument with respect to that ground of rejection as waived.” *Hyatt*,

551 F.3d at 1314; *see also Google*, 980 F.3d at 863 (“Because [appellant] failed to present these . . . arguments to the Board, [it] forfeited [these] arguments.”). Here, we agree that Mr. Gamble’s appeal brief to the Board “does not rebut the Examiner’s rejection of claims 1–8, 10, 13–15, and 18 under 35 U.S.C. § 112(b) as being indefinite.” App’x 167. Therefore, the Board did not abuse its discretion by finding forfeiture and summarily sustaining those rejections. *See Gamble I*, 2025 WL 1341621, at *2 (affirming Board’s determination that claims were indefinite where “Mr. Gamble, in not rebutting this ground for rejection, forfeited any challenge to it”).

Third, with respect to the new ground of rejection for claims 9, 11, 12, 16, 17, 19, and 20, we see no reversible error in the Board’s decision to deny Mr. Gamble a rehearing. Mr. Gamble’s request for rehearing “simply assert[ed] that in view of the arguments presented” with respect to the examiner-rejected claims, the newly rejected claims “no longer inherit any alleged indefiniteness.” App’x 142 (quoting App’x 160). Because Mr. Gamble failed to address the examiner-rejected claims in his appeal to the Board, this cryptic statement was insufficient to raise arguments with respect to the newly rejected claims.

CONCLUSION

We find Mr. Gamble’s remaining arguments unpersuasive. For the foregoing reasons, we *affirm* the Board’s decision.

AFFIRMED

COSTS

No costs.