IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

GARFUM.COM CORPORATION
Plaintiff,
v.
REFLECTIONS BY RUTH D/B/A BYTEPHOTO.COM

Defendant.

Case No. 1:14-cv-05919-JEI-KMW
Hon. Judge Joseph E. Irenas

BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT

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Reflections by Ruth submits this brief in support of its motion to dismiss Plaintiff's complaint, pursuant to Fed. R. Civ. P. 12(b)(6).

I. INTRODUCTION

Patent law protects only concrete and tangible inventions. It does not protect abstract ideas, even when a patent's claims are directed to the use of those ideas on a computer. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014). To satisfy § 101 of the Patent Act, claims must do "significantly more" than simply describe an abstract idea. *Id.* at 2355. Mere recitation of conventional computer processes is not enough to satisfy this requirement. *Id.* at 2358-59. Similarly, a patent must do more than state an abstract idea and apply it on the Internet. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir. 2014).

The patent asserted in this case—U.S. Patent No. 8,209,618—is invalid under this standard. It does not claim an invention. Instead, the '618 patent describes the abstract idea of running a competition by popular vote and the claims simply implement this long-prevalent idea in the modern context of the Internet.

To be sure, the claims make bare references to computer features such as a "user interface," "multi-media content," and a "computer network." But they are nothing more than generic computers, used for their generic purposes. Indeed, the specification of the '618 patent repeatedly emphasizes that the claimed methods may be carried out on any and all computers and networks. As the Supreme Court made clear, this is not enough to render "a patent-ineligible abstract idea into a patent-eligible invention." *Alice*, 134 S. Ct. at 2358.

The claims of the ’618 patent simply say to implement a competition by popular vote using a generic computer network. The claims therefore fail the *Alice* test and the Court should grant Defendant’s motion to dismiss.

II. FACTUAL BACKGROUND

For the purposes of this motion, the Court may consider the pleadings and documents that the pleadings incorporate by reference. *See Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006); *McDowell v. U.S. ex rel. Holder*, No. CIV.A. 12-1302-SLR, 2013 WL 1953340, at *1 n.1 (D. Del. May 10, 2013). As a written instrument attached to the Complaint as an exhibit, the ’618 patent is considered part of the pleadings for all purposes. Fed. R. Civ. P. 10(c).

A. Procedural History

Garfum.com Corporation (“Garfum”) filed this action against Reflections By Ruth d/b/a bytephoto.com on September 23, 2014. The Complaint accuses the website at www.bytephoto.com of infringing “one or more” claims of U.S. Patent No. 8,209,618. *See* Complaint ¶¶ 10-11 (Doc. 1). The present motion to dismiss is timely filed pursuant to the order signed by the Court on February 4, 2015. *See* Stipulation and Order (Doc. 15).

B. The ’618 Patent

Garfum’s patent is entitled “Method of Sharing Multi-Media Content Among Users in a Global Computer Network.” It describes a method for running a

competition on a social network. The ’618 patent has only two independent claims: claim 1 and claim 5. These claims provide:

> 1. A method for sharing multi-media content among a plurality of users in a computer network consisting essentially of:
>
> - creating a plurality of user accounts, each of the user accounts corresponding to one of the plurality of users, and having a plurality of interactive features including a first feature that permits the user to upload the multi-media content to the computer network;
> - forming a user network including one or more of the plurality of user accounts in communication with one or more other user accounts and to the uploaded multi-media content via the computer network;
> - categorizing the uploaded multi-media content in accordance with the subject matter of the uploaded multi-media content;
> - organizing the uploaded multi-media content in a competitive format; and
> - establishing a hierarchy for the uploaded multi-media content within the competitive format by implementing a competitive measurement system;
> - wherein the competitive measurement system consists of:
>   - enabling each user to designate a single point to one of a plurality of multi-media content for each one of a plurality of competitive rounds; and

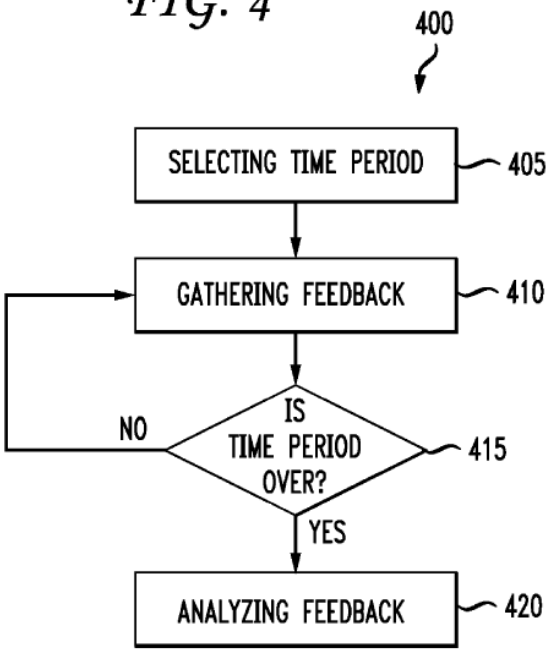
- ranking a position in the hierarchy for the uploaded multi-media content based on a summation of points.

The only other independent claim, Claim 5, is identical except that it requires multiple rounds of competition based on the "quantity" of multi-media content and specifies that there is a media player in the user interface.

The claims of the '618 patent take the well-known concept of a competition by popular vote and describe it in the modern context of computer networks. The claims begin by describing a computer service with user accounts through which a user can upload media content—a conventional photo-sharing website. The content is then categorized by subject matter. The claimed "competitive measurement system" consists of allowing users "to designate a single point" for each round of competition and ranking the content "based on a summation of points." In other words, one vote per digital citizen and the winner is whoever gets the most votes. Though it is dressed up in the language of patent claims, what Garfum claims to have invented here is a photo competition by popular vote, except on a web site.

The basic structure of the method is revealed in Figure 4. This figure is "a flow chart that describes a method for organizing the shared content in accordance with feedback provided by the users." Col. 3:28-30. It shows that competitions are run for a period of time. During that time the method involves collecting feedback (i.e. the votes or "points" designated by the users) and then, once the period ends, counting the votes (i.e. the "summation of points").

FIG. 4



The patent's specification emphasizes that the claimed method for running an online contest may be performed on *any* computer and over *any* network. With respect to the "computer" used in the claims, the patent describes a generic "computer system" with a "processor" and "memory." Col. 6:24-45. The system has a generic "input device" such as a "keyboard" or a "mouse." Col. 7:1-15. And the system has a generic display. Col. 7:23-38.

The patent's description of the network is similarly broad. The specification makes it clear that the claimed method can be performed over any kind of computer network whatsoever. *See* Col. 8:23-24 ("as used herein, the term 'Internet' refers to any computer network"). And the server apparatus for performing the claimed method is also generic. It could be "a multi-media server," a "web application server," a "computer server . . . among others." Col. 8:49-54.

The specification explains that the computers used to access the network are also generic. These can "include, but are not limited to, a general purpose computer; a special purpose computer; a computer workstation; a terminal computer; a notebook/laptop computer; a server computer; a handheld device[.]" Col. 5:55-60. Indeed, out of an apparent concern that the term "general purpose computer" was not generic enough, the specification suggests that the claimed method could be performed using any "equipment capable of executing a sequence of instructions that specify an action to be taken by that machine." Col. 5:66-67. The specification similarly emphasizes that the user interface (i.e., the web pages) illustrated in Figures 5 through 13 are merely illustrative and may be "run on any suitable machine." *See* Col. 16:58-63.

The specification of the '618 patent assiduously avoids providing specific examples of computer architecture required to perform the claimed method. Indeed, it explains that since "such broad concepts of architecture, software and the like currently exist in the art, a detailed explanation of the relevant architecture and such concepts is not needed." Col. 10:44-47. In short, the patent makes clear that the claimed method can be performed using any generic computer and network.

As noted above, the claims of the '618 patent are directed to a "competitive measurement system" that involves "ranking" content "based on a summation of points." Col: 19:23-33; 20:17-25. The specification suggestions that "*any* competitive format is contemplated within embodiments of the present invention." Col:16:13-14 (emphasis added). Formats can include "head-to-head, bracket, open popularity forum, and the like." Col:16:14-15. The only limitation on the kind of

competition is the claims' requirement that each user can "designate a single point" to the content and that the result of the competition is then determined based on a "summation" of these points. In other words, the claims require that each round of competition must be determined by a vote from website users.

III. ARGUMENT

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)(citation omitted). Here, even if one accepts the complaint's factual assertions as true, the Supreme Court's decision in *Alice* renders the complaint defective as a matter of law.

Alice holds that a patent is invalid if it claims an implementation of an abstract idea using generic and conventional computer technology. Because the claims of the '618 patent are all directed to abstractions with (at most) generic computer components, the claims are ineligible under § 101 as a matter of law, and the Court should dismiss the Complaint with prejudice.

A. Patentable Subject Matter May Be Decided On a Motion To Dismiss.

"Whether a claim is drawn to patent-eligible subject matter under § 101 is a threshold inquiry" and "an issue of law." *In re Bilski*, 545 F.3d 943, 950-51 (Fed. Cir. 2008), *aff'd sub nom Bilski v. Kappos*, 561 U.S. 593, 602 (2010) (describing § 101 as "a threshold test."); *Parker v. Flook*, 437 U.S. 584, 593 (1978) (inquiry under § 101 "must precede the determination of whether [a] discovery is, in fact,

new or obvious"); *SiRF Tech., Inc. v. Int'l Trade Comm'n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010) ("Whether a claim is drawn to patent-eligible subject matter is an issue of law."). For this reason, a district court, in many circumstances, may decide whether a patent improperly claims ineligible subject matter prior to any formal claim construction or discovery occurs. For example, in *Bancorp Services, LLC v. Sun Life Assurances Company of Canada*, the Federal Circuit considered a case in which the district court "declined to construe numerous disputed terms prior to considering invalidity under § 101." 687 F.3d 1266, 1273 (Fed. Cir. 2012). The Federal Circuit "perceive[d] no flaw" in the district court's approach to deciding the § 101 issue first, and affirmed the district court's holding of invalidity. *Id.*

Many other federal district courts have resolved disputes over patentable subject matter on motions to dismiss or equivalent motions on the pleadings. *See, e.g.*, *UbiComm, LLC v. Zappos IP, Inc.*, No. 13-1029-RGA, 2013 WL 6019203, at *6 (D. Del. Nov. 13, 2013) (holding patent invalid as an abstract idea pursuant to Rule 12(b)(6)); *Cardpool, Inc. v. Plastic Jungle, Inc.*, No. C 12-04182 WHA, 2013 WL 245026, at *4 (N.D. Cal. Jan. 22, 2013) (holding patent invalid as an abstract idea pursuant to Rule 12(b)(6)); *Wolf v. Capstone Photography, Inc.*, No. 2:13-CV-09573, 2014 WL 7639820, at *13-14 (C.D. Cal. Oct. 28, 2014) (holding patents invalid as abstract ideas pursuant to Rule 12(c)); *DietGoal Innovations LLC v. Bravo Media LLC*, 33 F. 3d 271, 271 n.1 (S.D.N.Y. July 8, 2014) (granting defendants' "motions for summary judgment, which could equally validly have been styled motions for judgment on the pleadings"); *Lumen View Tech. LLC v. Findthebest.com, Inc.*, 984 F. Supp. 2d 189, 191, 196 (S.D.N.Y. 2013) (holding

patent invalid as an abstract idea pursuant to Rule 12(c)); *buySAFE, Inc. v. Google Inc.*, 964 F. Supp. 2d 331, 334 (D. Del. 2013), *aff'd*, 765 F.3d 1350, 1351 (Fed. Cir. 2014) (holding a patent invalid under § 101 pursuant to Rule 12(c), "the same standard as a Rule 12(b)(6) motion to dismiss"). Indeed, the sole case in which the Federal Circuit had suggested that an early adjudication of § 101 eligibility might be difficult due to potential for factual issues was vacated by the Supreme Court in the wake of *Alice*. *See Wild Tangent v. Ultramercial*, 134 S. Ct. 2870 (2014). On remand, the Federal Circuit reversed its earlier decision. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 719 (Fed. Cir. 2014) (holding that "the district court properly invoked section 101 to dismiss Ultramercial's infringement suit on the pleadings").

In the present case, the § 101 issue is ripe for decision because the validity of the asserted claims does not turn on claim construction. *See Bancorp Servs.*, 687 F.3d at 1273 (finding "no flaw in the notion that claim construction is not an inviolable prerequisite to a validity determination under § 101," although the court went on to construe some of the terms). Specifically, there is no construction that would render the claims patent-eligible. As discussed above, the specification of the '618 patent makes clear that particular technology or technological innovation is unrelated to the purported invention. *See* Section II.B, *supra*. To the extent Garfum thinks its preferred construction of a particular term would make a difference to the eligibility analysis, it should come forward with that construction, provide the supporting intrinsic evidence and explain how its construction would change the result. *See Cyberfone Sys., LLC v. Cellco P'ships*, 885 F. Supp. 2d 710,

715 (D. Del. 2012) (because "plaintiff did not explain how claim construction might alter [the court's § 101] analysis . . . the court concludes that it may proceed without the benefit of claim construction."). Absent such a showing, however, the § 101 issue may properly be decided without claim construction. *See Ultramercial*, 772 F.3d at 719 (holding "no formal claim construction was required").

B. A Patent May Not Claim an Abstract Idea Implemented on Conventional Computers.

The Supreme Court has long held that abstract ideas are not patentable. In June of last year, however, a unanimous decision of the Supreme Court made it clear that applicants cannot patent the *implementation* of abstract ideas using generic computer technology.

The Supreme Court set forth a two-part framework for analyzing patent eligibility: (1) determining whether the claims "are directed to [a] patent-ineligible concept[,]" and (2) if they are, determining whether they contain "additional elements [that] 'transform the nature of the claim' into a patent-eligible application." *Alice*, 134 S. Ct. at 2355, citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289 (2012) ("*Mayo*").

In evaluating whether claims satisfy the second prong of this framework, the Court reaffirmed its prior holding that "'[s]imply appending conventional steps, specified at a high level of generality' is not 'enough' to supply an 'inventive concept.'" *Alice*, 134 S. Ct. at 2357 (quoting *Mayo*, 132 S. Ct. at 1300, 1297, 1294). As a result, claims that recite abstract ideas implemented using conventional computer technologies are not patent-eligible:

> Stating an abstract idea "while adding the words 'apply it'" is not enough for patent eligibility[.] Nor is limiting the use of an abstract idea "'to a particular technological environment.'" . . . Stating an abstract idea while adding the words "apply it with a computer" simply combines those two steps, with the same deficient result. Thus, if a patent's recitation of a computer amounts to a mere instruction to "implement" an abstract idea "on . . . a computer," . . . that addition cannot impart patent eligibility.

Id. at 2358. As a result, claims which "merely require generic computer implementation, fail to transform [an] abstract idea into a patent eligible invention." *Id.* at 2357.

In *Alice*, the challenged patent claimed a "method of exchanging financial obligations between two parties using a third-party intermediary to mitigate settlement risk." *Id.* at 2356. Observing that this "concept of intermediated settlement" was "a fundamental economic practice long prevalent in our system of commerce," the court concluded that the claims were directed to an abstract idea. *Id.* Moving to the second step of the analysis, the Court noted that Alice's patent claims required only conventional computer operations and thus did not transform the abstract idea into a patent eligible invention. *See id.* at 2359-60.

Since the Supreme Court decided *Alice*, several Federal Circuit panels and more than a dozen district courts have found that the implementation of an abstract idea does not give rise to a patentable invention if the claims call for that process to be performed using conventional computer technology.

The Federal Circuit's recent decision in *Ultramercial* is particularly relevant. In *Ultramercial*, the challenged patent claimed an "abstract idea of showing an advertisement before delivering free content." 772 F.3d at 715. The claims did not

transform this abstract idea into a patent eligible invention because they "simply instruct the practitioner to implement the abstract idea with routine, conventional activity." *Id.* Further, the court noted that adding "routine additional steps" such as "updating an activity log" or "requiring a request from the consumer to view the ad" similarly could not transform an abstract idea into patent-eligible subject matter. *Id.* at 716.

Similarly, in *BuySafe, Inc. v. Google Inc.*, 765 F.3d 1350 (Fed. Cir. 2014), the Federal Circuit found that claims directed to creating a "transaction performance guaranty" using a computer network were invalid under § 101. *Id.* at 1352. The court found the claims invalid because "[t]he computer functionality is generic" and because "it likewise cannot be enough that the transactions being guaranteed are themselves online transactions." *Id.* at 1355. "At best, that narrowing is an 'attempt[ ] to limit the use' of the abstract guarantee idea 'to a particular technological environment,' which has long been held insufficient to save a claim in this context." *Id. BuySafe* is relevant to this motion because it makes clear that applying an abstract idea in the context of a computational environment is not sufficient to confer patent eligibility.

In *Planet Bingo, LLC v. VKGS LLC*, 576 Fed. App'x 1005 (Fed. Cir. 2014), the court invalidated a patent directed to "the abstract idea of managing/playing the game of Bingo." *Id.* at 1006-07. The claims included steps such as "selecting, storing, and retrieving two sets of numbers, assigning a player identifier and a control number, and then comparing a winning set of bingo numbers with a selected set of bingo numbers." *Id.* at 1007-08. Since the claims recited only

generic computer implementation of these steps, the court found them ineligible. *Id.* at 1009. Although unpublished, *Planet Bingo* provides highly persuasive authority for this case as both involve patents that take an old competition format and apply it to a generic computer environment.

Numerous district court decisions take a similar approach. In *Wolf v. Capstone Photography, Inc.*, No. 2:13-CV-09573, 2014 WL 7639820 (C.D. Cal. Oct. 28, 2014), the patent claimed a method of providing event photographs organized by participant. In finding the patent ineligible, the court noted that the "claims do nothing more than recite a series of conventional steps carried out using basic camera and computer functions and mostly essential to placing searchable event photographs online for inspection and ordering." *Id.* at *12. Like this case, *Wolf* considered a patent that claimed an abstract method for organizing media content over a computer network.

In *DietGoal Innovations LLC v. Bravo Media LLC*, 33 F. Supp. 3d 271 (S.D.N.Y. July 8, 2014), the court considered a patent on computerized meal planning. The challenged claims disclosed a "user interface" where a computer user could choose meals from a "picture menu." *Id.* at 274. The system also included claims where the system would consult a "database of food objects" and display "the resulting meals' impact on customized eating goals." *Id.* Noting that meal planning is a "long prevalent" practice, the court concluded that the claims were directed to an abstract idea. *Id.* at 283-84 (quoting *Bilski*, 130 S. Ct. at 3231). The patent owner argued that the "display functionality" relating to the picture menus ensured that its claims were patent eligible. *Id.* at 287. The court disagreed,

concluding that simply visually displaying meals and nutrition results was even more "'routine' and 'conventional' than the computerized applications of the economic concepts invalidated in *Bilski* and *Alice*." *Id.* The decision in *DietGoal* is particularly relevant to this case. Like the patent struck down in that case, the '618 similarly takes a "long prevalent" practice and applies it to a modern computer environment.

Many other post-*Alice* decisions apply these principles to find patents impermissibly abstract. *See Every Penny Counts, Inc. v. Wells Fargo Bank, N.A.*, No. 8:11-cv-2826-T-23TBM, 2014 WL 4540319 (M.D. Fla. Sept. 11, 2014) (invalidating patent claiming a method of conducting electronic financial transactions); *Eclipse IP LLC v. McKinley Equipment Corp.*, No. SACV 14-742-GW(AJWx), 2014 WL 4407592 (C.D. Cal. Sept. 4, 2014) (invalidating set of patents directed to a computerized dispatch and location tracking system); *Walker Digital v. Google Inc.*, C.A. No. 11-318-LPS, 2014 WL 4365245 (D. Del. Sept. 3, 2014) (invalidating patent on method of information exchanges between anonymous parties); *Loyalty Conversion Systems Corp. v. American Airlines, Inc.*, No. 13-cv-655, 2014 WL 4364848 (E.D. Tex. Sept. 3, 2014) (decision by Senior Judge Bryson of the Federal Circuit, sitting by designation, invalidating patent claiming a method of operating a website that facilitated the exchange of one airline's frequent-flyer points for another).

C. The '618 Patent Is Invalid Under *Alice*.

This case presents a straightforward application of *Alice*. Like the patent in *Alice*, the claims are directed to a long-standing practice implemented on modern, generic computers. Furthermore, the '618 patent repeatedly makes it clear that the claimed method can be performed using generic computer hardware. Thus, it does not transform the abstract idea into eligible subject matter and the court should find all claims invalid.

1. The Claims of the '618 Patent Are Directed to an Abstract Idea.

Under *Alice*, the first step is to determine whether the claims are directed to an abstract idea (*i.e.* a "patent-ineligible concept"). *Alice*, 134 S. Ct. at 2355.

The claims of the '618 patent recite the abstract idea of running a photo competition by popular vote. Following the recited steps of claim 1 of the '618 patent, we see the idea of a network "user" submitting "content" for a "competitive format" with a "measurement system" that involves the users designating a "point" for each round of competition and then ranking the content "based on a summation of points." Like the claims considered in *Ultramercial*, this "ordered combination of steps recites an abstraction[.]" 772 F.3d at 715. In this case, the steps simply describe the various stages of conducting a competition, albeit one that occurs online.

Claim 1 also recites that the content is to be categorized by "subject matter" but this does not make the claim non-abstract. Rather, it simply takes the abstract idea of a competition and applies it to more than one category (much like a county fair might have a separate competition for apple and raspberry pies). Indeed, the

classification of content by subject matter can be done either automatically or manually. *See* Col. 13:56-60 (explaining that content may be "assigned a genre" either "automatically" or by having the user select the genre).

Claim 5 is the '618 patent's only other independent claim. It is remarkably similar to claim 1. It is also a method claim and recites steps for applying a "competitive measurement system" to user-submitted media content. The claim states that the competitive format should include a "plurality of competitive rounds based on the quantity of multi-media content being organized."[1] For example, this could be a head-to-head or bracket format. *See* Col. 16:3-17. It merely adds the abstract idea of changing the number of rounds of competition depending on the number of entrants. This abstract idea will be familiar to anyone who's organized a high-school basketball tournament: a 64-team tournament bracket has more rounds than an 8-team tournament bracket.

The dependent claims of the '618 patent are directed to the same abstract idea with only minor variations. Claims 2, 3, and 4 simply add a user interface and include minor formatting details (such as having a separate area for uploading and

[1] The only other difference of substance is that claim 5 recites a "user interface" with an embedded "multi-media player." The specification explains that this can be a player embedded in an ordinary webpage. *See* Col. 11:58-12:5. Moreover, the media player can be one of any of a large number of pre-existing, off-the-shelf technologies. *See* Col 8:62-9:23 (extensively listing known digital media formats). Thus, claim 5 applies the abstract idea to generic technology. *See* Part III.C.2 *infra* (explaining that generic technology cannot transform abstract idea into a patent-eligible invention).

viewing or showing an advertisement). This conventional technology adds no inventive concept. Claims 6 merely specifies that the media player must be able to display video, audio, and pictures (which, in any event, are simply generic features of multi-media players). Claim 7, 8, and 9 add the abstract ideas of allowing network users to communicate and purchase goods. Finally, claim 10 adds the largely redundant requirement that users access the network using "one or more" of a "*computer*, a mobile phone, a personal data assistant (PDA), and a television" (emphasis added). Technology does not become much more generic and conventional than that.

Like the business methods claimed by the patents invalidated in *Bilski* and *Alice*, the abstract idea claimed by the '618 patent is a "long prevalent" practice. *Alice*, 134 S. Ct. at 2350 (quoting *Bilski*, 561 U.S. at 611); *see also DietGoal*, 33 F. Supp. 3d at 283 (noting that meal planning is a "long prevalent" practice that pre-dates computers). A competition by popular vote is an old and well-known concept. Indeed, national, state, and local elections all apply the same abstract idea. For "user accounts" we have registered voters. For categorized media content, we have categories of political office (such as treasurer, mayor, or president). And for "points" we have votes. Finally, the winner is determined by a "summation of points"—that is, the votes are counted. The same abstract idea is the basis for everything from a high school senior poll to determine "class clown" and "most likely to succeed" to juried art competitions to the Academy Awards. The idea of having a contest and determining a winner by counting votes is an ancient practice, not a patentable invention.

2. The Claims of the '618 Patent Require Only Conventional Computer Functions.

The second step of the *Alice* test asks whether the claims include an "inventive concept" sufficient to transform the abstract idea into a patent-eligible application. *Alice*, 134 S. Ct. at 2357. The claims of the '618 patent fail step two because they "merely require generic computer implementation [and thus] fail to transform [the] abstract idea into a patent eligible invention." *Id.*

The claims of the '618 patent recite only generic computer technology. They simply take the abstract idea of a competition and apply it to the Internet. The Federal Circuit recently addressed such a situation—where an abstract idea applicable in the real world is applied in the context of the Internet—in *Ultramercial*. There, the court explained that given "the prevalence of the Internet, implementation of an abstract idea on the Internet in this case is not sufficient to provide any 'practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.'" *Ultramercial*, 772 F.3d at 716 (quoting *Mayo*, 132 S. Ct. at 1297); *see also Bilski*, 561 U.S. at 610 ("[T]he prohibition against patenting abstract ideas cannot be circumvented by attempting to limit the use of the formula to a particular technological environment[.]"). Just as in *Ultramercial*, the patent here is designed to monopolize the idea of having a photo contest on the Internet. The Federal Circuit has held that such a patent is invalid.

The '618 patent can be easily distinguished from the patent recently upheld by the Federal Circuit in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). In that case, the claims related to an e-commerce outsourcing

system. *See id.* at 1249. The claims recited a "specific way to automate the creation of a composite web page." *Id.* at 1259. The court emphasized that the patent presented a solution "necessarily rooted in computer technology in order to overcome **a problem specifically arising in the realm of computer networks**." *Id.* at 1257 (emphasis added). In marked contrast, competitions determined by popular vote are not specific to the Internet or computers. Rather, as in *Bilski*, *Alice*, and *Ultramercial*, the '618 patent takes a long standing practice and merely applies it to the Internet context.

Garfum might argue that features like a "user interface" or "media player" render at least some of its claims sufficiently concrete for patent protection. But courts have repeatedly rejected similar arguments. *See*, *e.g.*, *Planet Bingo*, 576 Fed. App'x at 1008 (rejecting patentee's argument that a "video screen" limitation rendered claim patentable); *DietGoal*, 33 F. Supp. 3d at 284-85 (rejecting patentee's argument that "picture menu" display limitation rendered claim patentable). The network and user interface limitations merely apply the abstract idea to the Internet. Furthermore, the patent emphatically declines to limit itself to any particular technology. *See* Part II.B. *supra*. Thus, the recited technology cannot transform the claimed abstract idea into a concrete, patent-eligible invention. *See Open Text S.A. v. Box, Inc.*, No. 13-CV-04910-JD, 2015 WL 269036, at *1 (N.D. Cal. Jan. 20, 2015) (use of "standard technology like browsers, servers, and networks" is insufficient to confer patent-eligibility).

Ultimately, the claims of the ’618 patent are invalid because they claim a straightforward idea and implement it in standard, off-the-shelf computer technology.

IV. CONCLUSION

For the foregoing reasons, all of the claims of the ’618 patent are invalid for failing to claim patentable subject matter. Because the only claims in this case are for infringement of that patent, the Complaint should be dismissed with prejudice.

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