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NEPTUNE CIGARS, INC.

7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**

10 SHIPPING AND TRANSIT LLC, a
Florida Limited Liability Corporation,

11 Plaintiff,

12 vs.

13 NEPTUNE CIGARS, INC., a Florida
Corporation; and DOES 1 through 10,
14 Inclusive,

15 Defendants.

Case No. 2:16-cv-3836 AG (SSx)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM
(FRCP 12(B)(6))**

Judge: Hon. Andrew J. Guilford

Date: September 12, 2016

Time: 10:00a.m.

Courtroom: 10D

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STATUTES

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1 **INTRODUCTION**

2 Patent law protects only concrete and tangible inventions: “process[es],
3 machine[s], [articles of] manufacture, [and] compositions of matter.” 35 U.S.C. § 101.
4 It does not protect abstract ideas or concepts, even when those concepts are
5 implemented using conventional computers or through conventional processing steps.
6 *Alice Corp. Pty. Ltd. v. CLS Bank Int’l.*, 134 S. Ct. 2347 (2014) (“*Alice*”). Nor does it
7 protect ideas broadly, such as where a patent claims an idea no matter how it may be
8 implemented. *See Halliburton Oil Well Cementing Co. v. Walker*, 329 U.S. 1, 8 (1946);
9 *O’Reilly v. Morse*, 56 U.S. 62, 113-14 (1853).

10 S&T allegedly owns a portfolio of related patents, two of which are asserted
11 here: U.S. Patent Nos. 6,763,299 (the “’299 Patent”), and 6,415,207 (the “’207
12 Patent”) (collectively the “patents-in-suit”).¹ S&T has filed over 300 lawsuits and sent
13 hundreds, if not thousands, more demand letters based on these patents. In its complaint
14 against Neptune Cigars (the “Complaint”), S&T asserts that Neptune Cigars infringes
15 these two patents, without identifying any specific claims.

16 The patents-in-suit are directed toward the idea of tracking the location of
17 vehicles and letting customers (*e.g.*, those waiting for a delivery or waiting for a bus)
18 know exactly where the vehicle is so that they can better plan for its arrival. *See* ’299
19 Patent at Col. 2, ll. 20-33; ’207 Patent at Col. 1, ll. 47-49. However S&T reads its
20 patents broadly to assert claims of infringement against online retailers who simply
21 ship a package and provide a tracking number, even if all that number can be used for

22
23 ¹ The ’207 Patent has been submitted to the Court as Exhibit A to the
24 Complaint [Dkt. No. 1-1]. The ’299 Patent has been submitted to the Court as
Exhibit B to the Complaint [Dkt. No. 1-2].

1 is to learn that a package has shipped.

2 All claims of the challenged patents are directed to abstract ideas and fail both
3 prongs of the test set forth in *Alice*, as well as every other test the Federal Circuit and
4 the Supreme Court have used to measure abstraction. Moreover, the claims are invalid
5 as indefinite because they claim functions without corresponding structure.

6 As construed by Shipping & Transit, LLC (“S&T”), the patents claim nothing
7 more than an idea, to be implemented using any structure on a generic computer and
8 generic communications equipment (such as a telephone or over the Internet).
9 Furthermore, the claims are specified at a high level of generality, and require the
10 performance of only conventional functions (such as sending an email with a
11 hyperlink). The claims, therefore, fall outside the scope of patentable subject matter
12 allowed under 35 U.S.C. §101.□

13 I. LEGAL STANDARDS

14 A. The *Alice* Test for Patentable Subject Matter

15 1) Patentable Subject Matter is a Question of Law that Can Be 16 Decided on the Pleadings

17 “Whether a claim is drawn to patent-eligible subject matter under § 101 is a
18 threshold inquiry” and “an issue of law.” *In re Bilski*, 545 F.3d 943, 950-51 (Fed. Cir.
19 2008), *aff’d Bilski v. Kappos*, 130 S. Ct. 3218, 3225 (2010) (describing § 101 as “a
20 threshold test.”); *SiRF Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319, 1331 (Fed.
21 Cir. 2010) (“Whether a claim is drawn to patent-eligible subject matter is an issue of
22 law.”).□

23 For this reason, many federal district courts have resolved disputes over
24 patentable subject matter on motions to dismiss under Federal Rules of Civil Procedure

1 12(b)(6) or on motions for judgment on the pleadings under Federal Rules of Civil
2 Procedure 12(c). *See, e.g., FairWarning IP, LLC v. Iatric Systems, Inc.*, No. 8:14-cv-
3 02685, 2015 WL 3883958 (M.D. Fla. June 24, 2015); *Eclipse v. McKinley Corp.*, No.
4 SACV 14-154-GW(AJWx), 2014 WL 4407592 (C.D. Cal. Nov. 3, 2014) (“*Eclipse*”).
5 The Federal Circuit has repeatedly affirmed district court rulings finding patent claims
6 subject-matter-ineligible on the pleadings. *See, e.g., OIP Techs., Inc. v. Amazon.com,*
7 *Inc.*, 788 F.3d 1359, 1362 (Fed. Cir. 2015); *Content Extraction & Transmission LLC*
8 *v. Wells Fargo Bank*, 776 F.3d 1343, 1349 (Fed. Cir. 2014); *Ultramercial, Inc. v. Hulu,*
9 *LLC*, 772 F.3d 709, 717 (Fed. Cir. 2014); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d
10 1350, 1352 (Fed. Cir. 2014).

11 **2) A Patent May Not Claim an Abstract Idea Implemented on a** 12 **Generic Computer**

13 In *Alice*, the Supreme Court applied a two-step framework for determining
14 patent- eligibility, previously articulated in *Mayo Collaborative Services v.*
15 *Prometheus Laboratories., Inc.*, 566 U.S. ___, 132 S. Ct. 1289 (2012):

16 First, we determine whether the claims at issue are directed to one of those
17 patent-ineligible concepts. If so, we then ask, “what else is there in the
18 claims before us?” To answer that question, we consider the elements of
19 each claim both individually and as an ordered combination to determine
20 whether the additional elements transform the nature of the claim into a
patent-eligible application. We have described step two of this analysis as
a search for an inventive concept—*i.e.*, an element or combination of
elements that is sufficient to ensure that the patent in practice amounts to
significantly more than a patent upon the ineligible concept itself.

21 *Alice*, 134 S. Ct. at 2355 (internal quotations and citations omitted).

22 The Court did not endorse a specific approach for evaluating whether a claimed
23 invention is directed to a patent-ineligible abstract idea for the first step of the
24 *Alice/Mayo* framework. Instead, the Court compared the claims at issue to those it had

1 previously evaluated for claiming ineligible subject matter and found that it “follows
2 from our prior cases, and *Bilski* in particular, that the claims at issue here are directed
3 to an abstract idea.” *Alice*, 134 S. Ct. at 2356.

4 For the second step of the *Alice/Mayo* framework, the Court explained that, to
5 survive a patentability challenge “a claim that recites an abstract idea must include
6 ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed
7 to monopolize the [abstract idea].” *Id.* at 2357 (citation omitted). Thus, “appending
8 conventional steps, specified at a high level of generality [is] not ‘enough’ to supply
9 an ‘inventive concept.’” *Id.* (citation omitted).

10 In line with this principle, the second step cannot be satisfied by reciting the use
11 of generic computers to perform conventional steps. As the Court put it, “the mere
12 recitation of a generic computer cannot transform a patent-ineligible abstract idea into
13 a patent-eligible invention.” *Id.* at 2358. Indeed, “[g]iven the ubiquity of computers . .
14 . wholly generic computer implementation is not generally the sort of ‘additional
15 feature’ that provides any ‘practical assurance that the process is more than a drafting
16 effort designed to monopolize the [abstract idea] itself.’” *Id.* (citation omitted).

17 In *Alice*, the Court expressly rejected the petitioner’s argument that
18 implementation with a computer was sufficient for eligibility where the claimed steps
19 “require a substantial and meaningful role for the computer.” *Id.* at 2359. To the
20 contrary, the Court found the claim inadequate in part because “each step does no more
21 than require a generic computer to perform generic computer functions” and because
22 “[v]iewed as a whole, petitioner’s method claims simply recite the concept of
23 intermediated settlement as performed by a generic computer.” *Id.*

24 The Federal Circuit has consistently found that conventional implementation—

1 including the use of generic computers—cannot transform an otherwise patent-
2 ineligible abstract idea into a patent-eligible invention. *See, e.g., OIP Techs.*, 788 F.3d
3 at 1363; *Digitech Image Techs., LLC v. Electronics for Imaging, Inc.*, No. 2013-1600,
4 2014 WL 3377201 (Fed. Cir. July 11, 2014); *Accenture Global Servs. v. Guidewire*
5 *Software Inc.*, 728 F.3d 1336, 1342, 1345 (Fed. Cir. 2013); *Bancorp Servs., LLC v. Sun*
6 *Life Assurance Co. of Canada*, 687 F.3d 1266 (Fed. Cir. 2012); *Dealertrack, Inc. v.*
7 *Huber*, 674 F.3d 1315 (Fed. Cir. 2012); *CyberSource Corp. v. Retail Decisions, Inc.*,
8 654 F.3d 1366 (Fed. Cir. 2011).

9 **B. Claim Construction Is Not Necessary to Resolve the Issues and**
10 **It Is S&T’s Burden to Prove Otherwise Once a *Prima Facie***
 Case of Invalidity Has Been Made

11 In the present case, the § 101 issue is ripe for decision because the validity of
12 the claims can be determined from the specifications and the breadth S&T is apparently
13 giving its claims, which Plaintiffs are willing to accept for purposes of this motion
14 only. *Cf. Bancorp Servs.*, 687 F.3d at 1273 (finding “no flaw in the notion that claim
15 construction is not an inviolable prerequisite to a validity determination under § 101,”
16 although the court went on to construe some of the terms); *cf. also CLS Bank Int’l. v.*
17 *Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1275 (Fed. Cir. 2013) (noting without
18 disagreement that the parties could assume a construction presented by the patent
19 owner in resolving patentability), *aff’d sub nom Alice*, 134 S. Ct. 2347.

20 To the extent S&T believes this Court should construe claims differently than
21 what S&T relies on in order to make hundreds of infringement allegations, and such a
22 construction would make a difference to the eligibility or validity analysis, S&T has
23 the burden of coming forward with that construction, providing the supporting intrinsic
24 evidence, and explaining how its construction would change the result. *See, e.g.,*

1 *Cyberfone Sys., LLC v. CNN Interactive Grp.*, 588 Fed. App’x 968, 991 n.1 (Fed. Cir.
2 2014) (patent owner’s failure to explain which terms required construction, or how the
3 35 U.S.C. § 101 analysis would therefore differ, doomed argument that claim
4 construction was necessary before finding of invalidity).

5 **II. ARGUMENT**

6 **A. The Claims Are Drawn to an Abstract Idea**

7 The first step of the *Alice/Mayo* framework is to determine whether the claims
8 at issue are drawn to an abstract idea. They are. As discussed below, the claims of each
9 of the challenged patents are abstract for similar reasons for which the claims at issue
10 in *Alice* and in many other recent cases were found abstract.

11 The claims are very similar to invalidated claim 41 of U.S. Patent No. 7,119,716
12 (the “Eclipse Patent”). The Eclipse Patent is highly relevant because it is owned by a
13 related entity whose inventor and prosecuting attorney is the same attorney who drafted
14 the patents-in-suit. Furthermore, the Eclipse Patent claims very similar ideas as the
15 patents-in-suit. Specifically, it claims “monitoring travel data” and “initiating a []
16 notification... based upon the relationship of the mobile thing to a location.” *See*
17 *Eclipse*, 2014 WL 4407592, at *9-11. The Eclipse Patent was invalidated in 2014. *Id.*
18 Comparing the apparent scope of the claims with invalid claim 41 of the ‘716 patent
19 shows the striking similarity between the Eclipse Patent claim and the claims of the
20 patents asserted by S&T here. The claims here, like those in *Eclipse* , should be
21 invalidated under *Alice* for the same reasons.

22 **1) The Claims of the ’299 Patent Are Drawn to an Abstract Idea**

23 The ’299 Patent is also directed to the abstract idea of tracking the location of a
24 vehicle. The ’299 Patent has 156 claims. Twelve are independent claims: 1, 14, 27,

1 40, 53, 66, 79, 92, 105, 118, 131, and 144. The independent claims can be divided into
2 two groups: method claims (1, 14, 27, 40, 53, and 66) and system claims (79, 92, 105,
3 118, 131, and 144). The method and system claims correspond with one another: each
4 of the six method claims is reframed as a system claim (*i.e.*, a “method” for doing
5 something versus a “system” for doing something). All of the claims are identical with
6 the exception of one element that changes amongst them, as explained below.

7 Claim 1 of the '299 Patent recites:

8 Claim 1 of the '299 Patent (annotations in bold)

9 1. A method, comprising the steps of:

10 [a] maintaining delivery information identifying a plurality of stop
11 locations;

12 [b] monitoring travel data associated with a vehicle in relation to the
13 delivery information;

14 [c] when the vehicle approaches, is at, or leaves a stop location:

15 [c1] determining a subsequent stop location in the delivery
16 information;

17 [c2] determining user defined preferences data associated with
18 the stop location, the user defined preferences data
19 including a distance between the vehicle and the
20 subsequent stop that corresponds to when the party
wishes to receive the communication; and

[c3] sending a communication to a party associated with the
subsequent stop location in accordance with the user
defined preferences data to notify the party of impending
arrival at the subsequent stop location.

21 Claim 79, which is the system claim that corresponds to Claim 1, recites:

22 Claim 79 of the '299 Patent (annotations in bold)

23 1. A system, comprising:
24

- 1 [a] means for maintaining delivery information identifying a
2 plurality of stop locations;
- 3 [b] means for monitoring travel data associated with a vehicle in
4 relation to the delivery information;
- 5 [c] means for, when the vehicle approaches, is at, or leaves a stop
6 location:
- 7 [c1] determining a subsequent stop location in the delivery
8 information;
- 9 [c2] determining user defined preferences data associated with
10 the stop location, the user defined preferences data
11 including a distance between the vehicle and the
12 subsequent stop that corresponds to when the party
13 wishes to receive the communication; and
- 14 [c3] sending a communication to a party associated with the
15 subsequent stop location in accordance with the user
16 defined preferences data to notify the party of
17 impending arrival at the subsequent stop location.

18 The only limitation of the remaining independent claims that differ from the two
19 claims set forth above is the “user defined preferences data” limitation, as follows:

Claims	“User Defined Preferences Data” Limitation
1 and 79	“determining user defined preferences data associated with the stop location, the user defined preferences data including a distance between the vehicle and the subsequent stop that corresponds to when the party wishes to receive the communication”
14 and 92	“determining user defined preferences data associated with the stop location, the user defined preferences data including a time period for the vehicle to reach the subsequent stop that corresponds to when the party wishes to receive the communication”
27 and 105	“determining user defined preferences data associated with the stop location, the user defined preferences data including a time of day that corresponds to when the party wishes to receive the communication”

40 and 118	“determining user defined preferences data associated with the stop location, the user defined preferences data including a geographical region about the subsequent stop that, when the vehicle enters, that corresponds to when the party wishes to receive the communication”
53 and 131	“determining user defined preferences data associated with the stop location, the user defined preferences data including one of the stop locations that corresponds to when the party wishes to receive the communication”
66 and 144	“determining user defined preferences data associated with the stop location, the user defined preferences data including a predetermined number of stop locations along the vehicle’s route that will occur prior to the subsequent stop location, the predetermined number corresponding that corresponds to when the party wishes to receive the communication”

In all other respects, each of the method and systems claims is identical.

Like claim 41 of the Eclipse Patent, the claims of the '299 Patent are of sweeping scope that covers a specific task management work process: updating someone on where their package is. In *Eclipse*, Judge Wu invalidated a similar claim that encompassed the idea of “asking someone to do a task, getting an affirmative response, and then waiting until the task is done, ‘while adding the words ‘apply it with a computer’.” *Eclipse*, 2014 WL 4407592 at *9 (quoting *Alice*, 134 S. Ct. at 2358). Specifically, Judge Wu invalidated claim 41 of the Eclipse Patent that took that same idea and then added, “‘monitoring travel data associated with a mobile thing’ and ‘initiating a second notification . . . based on upon the upon [sic] the relationship of the mobile thing or another mobile thing to the location or another location.’” *Id.* In other words, a “hotel calling the room to let a guest know that the bags have not yet arrived, and then calling again once they have.” *Id.* at *10.

The abstract idea of the Eclipse Patent is very similar to the abstract idea

1 embodied in the claims of the '299 Patent. These claims cover an abstract idea of
2 sweeping scope—one that would preempt the activities of everyone from taxi
3 dispatchers to warehouse delivery coordinators to bike messengers to hotel bellboys.
4 Viewing, for example, claims 1 and 79 using the hotel analogy from *Eclipse*, a hotel
5 bellboy could [a] write down the list of rooms he needs to deliver luggage to; [b] travel
6 on his route, crossing off the rooms as he reaches them; [c1] as he leaves a room, look
7 at the next room on the list and [c2] see if and when the next room wants a warning
8 call before he arrives; and [c3] give the next room a call to say he's almost arrived.
9 The remaining independent claims simply specify when the room wants the warning
10 call (*e.g.*, when the bellboy is three doors away, when the bellboy is five minutes away,
11 when the bellboy is on the same floor as the guest, etc.).

12 These claims are very similar in scope to the invalidated Eclipse Patent, which
13 claimed the abstract idea of “the hotel calling the room to let a guest know that the bags
14 have not yet arrived, and calling again once they have.” *Eclipse*, 2014 WL 4407592, at
15 *10; *see also Pragmatus Telecom, LLC v. Genesys Telecommc'ns Labs., Inc.*, 114 F.
16 Supp. 3d 192, 203 (D. Del. 2015) (claim reciting elements of automated call center
17 system was directed to ineligible abstract idea).

18 The dependent claims add nothing further to elevate the claimed subject matter
19 beyond an abstract idea. They include limitations such as using a single computer or
20 a computer system, establishing communication via a link, conveying the number of
21 stops before arriving at the end location, indicating the travel status of the vehicle,
22 scanning an object that enters or leaves the vehicle, getting a signal from the vehicle
23 indicating it is approaching, etc. Notably, none of these additional limitations describes
24 or claims the use of any particular technology to implement the limitation, other than

1 a general purpose computer or database or “signal.” They are merely abstract ideas.

2 **2) The Claims of the '207 Patent Are Drawn to Abstract Ideas**

3 The claims of the '207 Patent are directed to the abstract idea of using
4 information about one thing to look up information about another, albeit limited to the
5 fields of people and vehicles. The '207 Patent has 15 claims. Of these, claims 1 and 5
6 are independent system claims, and claim 10 is an independent method claim.

7 Claim 1 recites:

8
9 Claim 1 (annotations in bold)

10 A system for monitoring and reporting status of vehicles,
11 comprising:

- 12 **[a]** a database storing information associated with a vehicle,
said status information indicative of a current proximity
13 of said identified vehicle;
- 14 **[b]** a communication interface configured to communicate
with communications devices remotely located from
15 said system; and
- 16 **[c]** a system manager configured to receive a message
transmitted from said vehicle and to update said status
17 information based on said message,
- 18 **[d]** said system manager further configured to analyze caller
identification information automatically transmitted to
19 said communication interface when a remote
communication device establishes communication with
20 said communication interface,
- 21 **[e]** said system manager further configured to automatically
search for and locate a set of said status information
22 based on said caller identification information,
- 23 **[f]** said system manager further configured to retrieve said set
of status information and to transmit said retrieved set of
24 status information to said remote communication
device.

1 The “system” of claim 1, which is not limited to any particular hardware, is
2 merely another abstract idea. Using the hotel analogy from *Eclipse*, a hotel concierge
3 could **[a]** keep a notepad for noting where a bellboy is currently located; **[b]** have a
4 telephone that has caller ID showing the guest’s room number; **[c]** get location
5 information from a bellboy over a walkie-talkie and note down where the bellboy
6 currently is; **[d]** see the room number shown on the caller ID display on his telephone;
7 **[e]** look at his notes to see where the bellboy is; and **[f]** let the guest know where the
8 bellboy is.

9 Indeed, because the steps of a claim do not need to be performed in any particular
10 order (*see Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1345 (Fed. Cir.
11 2008)), claim 1 could be reduced to: **[b, d]** getting a phone call from a guest whose
12 room number appears on the caller ID display; **[a, c, e]** contacting the bellboy to see
13 where he is in his delivery route, via walkie-talkie or even shouting across a room, and
14 making a mental note of where the bellboy is; and **[f]** using the telephone to tell the
15 guest where the bellboy is.

16 Other than the limitation that some of these tasks are carried out “automatically,”
17 there is little more to claim 1 than what a hotel concierge does daily.

18 Claim 5 is similarly directed to an abstract idea. Claim 5 recites:

19
20 Claim 5 (annotations in bold)

21 A system for monitoring and reporting status of vehicles,
22 comprising:

23 **[a]** means for maintaining status information associated with a
24 vehicle, said status information indicative of a current
proximity of said identified vehicle;

[b] means for communicating with a remote communication

1 device, said means for communicating including a
2 means for receiving caller identification information
automatically transmitted to said communicating means;

3 **[c]** means for utilizing said caller identification information to
4 automatically search for and locate a set of said status
information; and

5 **[d]** means for automatically retrieving and transmitting said
6 set of said status information.

7 Claim 5 is also directed to an abstract idea. For example, the same hotel
8 concierge above could be asked by the guests in room 410 to call a taxi. The concierge
9 could: **[a]** contact a taxi dispatch to order a taxi and make a note of when the taxi will
10 arrive; **[b]** see a call coming from “Room 410”; **[c]** use the “Room 410” identifier to
11 refer to his note about the taxi; and **[d]** let the guest know how soon the taxi is expected
12 to arrive. The “automatically” limitation does not remove from the realm of abstract
13 idea that which a hotel concierge does daily.

14 Claim 10 is a method claim that basically restates system claim 5 in terms of
15 steps to perform, as follows:

16 **Claim 10 (annotations in bold)**

17 A method for monitoring and reporting status of vehicles, comprising
18 the steps of:

19 **[a]** maintaining status information associated with a vehicle,
20 said status information indicative of a current proximity
of said identified vehicle;

21 **[b]** communicating with a remote communication device;

22 **[c]** receiving caller identification information automatically
23 transmitted in said communicating step;

24 **[d]** utilizing said caller identification information to

1 automatically search for and locate a set of said status
2 information;

3 [e] automatically retrieving said set of status information
4 based on said searching for and locating step; and

5 [f] transmitting said retrieved set of said status information to
6 said remote communication device.

7 Just as in claim 5, the hotel concierge could: [b] get a call from room 410 asking
8 for a taxi; [a] order a taxi and make a note about when it will arrive; [c] see a call
9 coming from “Room 410”; [d] look for and find his note about when room 410’s taxi
10 will arrive; [e] read his note; and [f] tell the guest the arrival time.

11 The “automatically” limitation in these claims adds nothing of technological
12 substance to save them from being abstract ideas. The ’207 Patent doesn’t pretend to
13 have invented anything other than being able to do it “automatically.” It states that
14 “having to provide either the operator or the computer with information identifying
15 which vehicle is of interest to the user is time consuming and burdensome.” ’207 Patent
16 at 1:47-49. The solution given by the patent is little more than to say, “do it
17 automatically!” This is no different than the invalid Eclipse Patent, which similarly
18 claimed the idea to let someone know “the car is now at the valet stand,” but
19 automatically. *Eclipse*, 2014 WL 4407592 at *10.

20 **B. Neither Patents’ Claims Contain Any Additional Elements that
21 Would Transform Them Into Patentable Subject Matter**

22 The second step of the *Alice/Mayo* framework requires examining the claims to
23 determine whether they contain an inventive concept sufficient to transform the recited
24 abstract idea into a patent-eligible invention. The Supreme Court warned that “[g]iven
the ubiquity of computers . . . [a] wholly generic computer implementation is not

1 generally the sort of ‘additional feature’ that provides any practical assurance that the
2 process is more than a drafting effort designed to monopolize the [abstract idea] itself.”
3 *Alice*, 134 S. Ct. at 2358 (quotation and citation omitted). Indeed, “the mere recitation
4 of a generic computer cannot transform a patent-ineligible abstract idea into a patent-
5 eligible invention.” *Id.*

6 Yet as S&T reads its claims, such a “wholly generic computer implementation”
7 is the only possible thing—beside the abstract idea itself—recited by the claims. As
8 discussed below, the patents are not directed to a “specific technical solution beyond
9 simply using generic computer concepts in a conventional way.” *See Bascom Global*
10 *Internet v. AT&T Mobility, LLC*, -- F.3d --, 2016 WL 3514158, at *8 (Fed. Cir. June
11 27, 2016). As the patents themselves make clear, the claims merely “recite the abstract
12 idea . . . along with the requirement to perform it . . . on a set of generic computer
13 components. Such claims [do] not contain an inventive concept.” *Id.* at *7.

14 **1) The Claims of the ’207 Patent Do Not Contain Any** 15 **Transformative Elements**

16 The claims of the ’207 Patent, beyond the abstract ideas they embody, contain
17 nothing more than completely generic and conventional technology that, if it could
18 transform the claims into patentable subject matter, would impermissibly make patent
19 eligibility “depend simply on the draftsman’s art.” *Alice*, 134 S. Ct. at 2360.

20 The technology used to accomplish the abstract ideas of the ’207 Patent is
21 described in the broadest terms. For example, the “means for maintaining status
22 information,” apparently disclosed in Figure 2, consists of nothing more than generic
23 interfaces, displays, input devices, and system managers such as are found in a generic
24 computer. ’207 Patent at 4:7-65 and Fig. 2. As another example, the specification

1 states that “[a]ny device capable of establishing communication with the interface []
2 and of automatically transmitting caller I.D. information to the interface [] should be
3 suitable for implementing the user interface [] of the present invention.” *Id.* at 7:34-38.
4 The specification goes on to claim any and all possible methods and means of
5 accomplishing the abstract idea:

6 It should be emphasized that the above-described embodiments of the
7 present invention, particularly, any “preferred” embodiments, are merely
8 possible examples of implementations, merely set forth for a clear
9 understanding of the principles of the invention. Many variations and
10 modifications may be made to the above-described embodiment(s) of the
invention without departing substantially from the spirit and principles of
the invention. All such modifications and variations are intended to be
included herein within the scope of the present invention and protected by
the claims.

11 ’207 Patent at 7:51-61.

12 Like the claims invalidated in *Alice*, the claims of the ’207 Patent “do[] no more
13 than require a generic computer to perform generic computer functions.” *Alice*, 134 S.
14 Ct. at 2359.

15 As shown above, the independent claims 1, 5, and 10 are directed to an abstract
16 idea that is merely implemented on a generic computer. The dependent claims add
17 “nothing of substance” (*see Alice*, 134 S. Ct. at 2360) that would transform them into
18 patentable subject matter.

19 Dependent claims 2, 6, 7, 11, and 12 add the conventional limitations of using a
20 telephone number or an email address as the “caller identification.” Dependent claim
21 3 merely requires that the caller identification information be a “source address” (such
22 as an email address) that is automatically included in the message transmitted over the
23 internet and received by the “communication interface” (*e.g.*, the concierge’s
24 computer). But telephone numbers and email addresses add “nothing of substance” to

1 the invention. *Id.* at 2360. As discussed above, the patent itself recognizes that how
2 caller I.D. is obtained is *immaterial* to the inventive concept of the patent. Even the
3 limitations of using a telephone number or email address as I.D. instead of a customer
4 name is not an inventive concept that can transform this patent-ineligible subject matter
5 into eligible subject matter.

6 Claim 4 adds the limitation that the system manager (conciierge) transmits status
7 information (bellhop's location) to the remote communication device (e.g., room 410's
8 telephone) in response to recognizing the caller identification information ("Room
9 410" caller ID). Claims 8 and 13 add the limitations that the system be able to
10 "receiv[e] a status message transmitted from said vehicle" (e.g., the bellhop informing
11 the conciierge where he is) and "updat[e] said status information based on said status
12 message" (e.g., note down where the bellhop currently is). Claim 9 and 14 add the
13 further limitation that the status information include a "proximity of said vehicle from
14 a particular location" (e.g., "I'm on the fourth floor"). Lastly, Claim 15 adds the
15 limitation that the steps of looking up and transmitting status information to the caller
16 is done in response to receiving a call with the caller's identification information (e.g.,
17 "Room 410"). These limitations, too, add "nothing of substance."

18 **2) The Claims of the '299 Patent Do Not Contain Any** 19 **Transformative Elements**

20 The lack of an inventive concept is apparent in the '299 Patent because its claims
21 are not limited to any specific implementation. The '299 Patent's specification states
22 that "all 'means' and 'logic' elements *are intended to include any structure, material,*
23 *or design for accomplishing the functionality* recited in connection with the
24 corresponding element." '299 Patent at 35:16-19. The patent claims nothing more than

1 an idea, and then attempts to claim *all possible ways of achieving it*, without claiming
2 any specific and inventive means to implement the abstract idea. This is explicitly
3 disallowed by *Alice*. 134 S. Ct. at 2355 (“The ‘abstract ideas’ category embodies the
4 longstanding rule that an idea of itself is not patentable.”) (internal quotations omitted);
5 *see also id.* at 2360 (system claims that recite hardware cannot be saved where the
6 hardware is “purely functional and generic”).

7 The claims, and indeed the entirety of the ’299 Patent, do nothing more than
8 “simply instruct the practitioner to implement the abstract idea” through any possible
9 means. *Alice*, 134 S. Ct. at 2359. Put differently, the claims of the ’299 Patent are not
10 directed to a specific and inventive implementation but to a *concept* that may be
11 implemented with a wide variety of entirely *conventional* equipment.

12 The lack of patentable subject matter is not something that can be fixed by
13 amending a complaint. Defendant respectfully requests that the Court find that the
14 subject matter of the ’207 and ’299 Patents is not patent-eligible, and that these patents
15 are invalid as a result.

16 **C. The Complaint Does Not Comply With The Pleading**
17 **Requirement That Plaintiff Show A “Plausible Claim For**
Relief.”

18 As of December 1, 2015, the Federal Rules of Civil Procedure were amended to
19 require that all patent infringement complaints comply with the requirements of *Bell*
20 *Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662
21 (2009). Those cases require that a complaint “state a claim to relief that is plausible on
22 its face.” *Iqbal*, 556 U.S. at 697 (citing *Twombly*, 550 U.S. at 570).

23 The reviewing court's “inquiry is limited to the allegations in the complaint,
24 which are accepted as true and construed in the light most favorable to the plaintiff.”

1 *Lazy Y Ranch LTD v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008). A court need not,
2 however, accept as true the complaint's "legal conclusions." *Twombly*, 550 U.S. at 555.
3 "While legal conclusions can provide the framework of a complaint, they must be
4 supported by factual allegations." *Iqbal*, 556 U.S. at 679. Thus, a reviewing court may
5 begin "by identifying pleadings that, because they are no more than conclusions, are
6 not entitled to the assumption of truth." *Id.* Courts must then determine whether the
7 factual allegations in the complaint "plausibly give rise to an entitlement of relief." *Id.*
8 Though the plausibility inquiry "is not akin to a probability requirement," a complaint
9 will not survive a motion to dismiss if its factual allegations "do not permit the court
10 to infer more than the mere possibility of misconduct . . ." *Id.* at 678 (internal quotation
11 marks omitted) & 679. That is to say, plaintiffs must "nudge [] their claims across the
12 line from conceivable to plausible." *Id.* at 680 (quoting *Twombly*, 550 U.S. at 570).

13 In the context of patent cases, this requirement has been interpreted to require
14 plaintiff to allege facts sufficient to show that the accused product or method infringes
15 at least one claim of each asserted patent. For example, a trial court in the Northern
16 District of California has held that a complaint that identified a representative claim
17 but described the operations of the accused products without specifically linking them
18 to the representative claim was insufficient to state a claim that was plausible on its
19 face. *See Atlas IP LLC v. Pac. Gas & Elec. Co.*, 2016 U.S. Dist. LEXIS 60211 (N.D.
20 Cal. Mar. 9, 2016).

21 Here S&T asserted two patents, with a total of 171 claims, without identifying
22 even one representative claim that they allege was infringed. Further, even though the
23 Complaint purports to describe the accused system, it never links anything in that
24 description to the elements of any claim. The Complaint does not comport with the

1 *Iqbal/Twombly* requirements and should be dismissed on this ground as well.

2 **III. CONCLUSION**

3 S&T's patent claims are exactly the type of claims—those using generic
4 computer components—that the Supreme Court stated could not make an abstract idea
5 patentable. See *Alice*, 134 S. Ct. at 2360; *O'Reilly*, 56 U.S. at 113. “As a result, none
6 of the hardware recited by the claims offers a meaningful limitation beyond generally
7 linking the use of the method to a particular technological environment, that is,
8 implementation via computers.” *Alice*, 134 S. Ct. at 2360. These patents claim nothing
9 more than an abstract idea with the general command to “apply it” or “accomplish it”
10 using a computer, leaving the hard work of actually building it to others. Consequently,
11 the claims at issue here are invalid.

12
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Respectfully submitted,

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