

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MANTIS COMMUNICATIONS, LLC,

Plaintiff,

v.

CULVER FRANCHISING SYSTEM,
INC.,

Defendant.

CASE NO. 2:17-cv-324
PATENT CASE
JURY TRIAL DEMANDED

**CULVER FRANCHISING SYSTEM, INC.'S RULE 12(b)(6)
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

TABLE OF CONTENTS

	Page(s)
I. STATEMENT OF THE ISSUE.....	1
II. BACKGROUND	2
A. Case Background.....	2
B. The Patents-in-Suit disclose nothing more than using generic computer components to deliver coupons, offers, and promotions to users who have requested them.	2
III. LEGAL STANDARD.....	7
A. This case should be disposed of at the pleading stage through Rule 12(b)(6).	7
B. The law of 35 U.S.C. § 101	8
IV. ARGUMENT	9
A. The Patents-in-Suit are invalid under 35 U.S.C. § 101.	10
1. <i>Alice</i> Step 1: The asserted claims in the Patents-in-Suit are directed to the abstract idea of coupon distribution and redemption.....	10
2. <i>Alice</i> Step 2: The claims contain no inventive concept to transform the abstract idea into patent-eligible subject matter.....	17
V. CONCLUSION	25

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.</i> , 728 F.3d 1336 (Fed. Cir. 2013)	23
<i>Alice Corp. Pty. Ltd. v. CLS Bank Int'l</i> , 134 S. Ct. 2347 (2014)..... <i>passim</i>	
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	7
<i>Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada (U.S.)</i> , 687 F.3d 1266 (Fed. Cir. 2012)	1, 8, 13, 21
<i>Bilski v. Kappos</i> , 561 U.S. 593 (2010).....	8, 9, 10
<i>buySAFE, Inc. v. Google, Inc.</i> 765 F.3d 1350 (Fed. Cir. 2014)	14, 15, 20
<i>Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n</i> , 776 F.3d 1343 (Fed. Cir. 2014)	10, 21
<i>Cuvillier v. Sullivan</i> , 503 F.3d 397 (5th Cir. 2007)	7
<i>CyberFone Sys., LLC v. Cellco Partnership</i> , 885 F. Supp. 2d 710 (D. Del. 2012).....	10
<i>CyberSource Corp. v. Retail Decisions, Inc.</i> , 654 F.3d 1366 (Fed. Cir. 2011)	9
<i>DDR Holdings, LLC v. Hotels.com, L.P.</i> , 773 F.3d 1245 (Fed. Cir. 2014)	19
<i>Diamond v. Chakrabarty</i> , 447 U.S. 303 (1980).....	8
<i>Diamond v. Diehr</i> , 450 U.S. 175 (1981).....	9
<i>Eclipse IP LLC v. McKinley Equip. Corp.</i> , No. SACV 14-154, 2014 WL 4407592 (C. D. Cal. Sept. 4, 2014)	17

<i>Enfish, LLC v. Microsoft Corp.</i> , 822 F.3d 1327 (Fed. Cir. 2016)	19, 20
<i>Fort Props., Inc. v. Am. Master Lease LLC</i> , 671 F.3d 1317 (Fed. Cir. 2012)	9
<i>Glory Licensing LLC v. Toys "R" Us, Inc.</i> , No. 09-4252, 2011 WL 1870591 (D.N.J. May 16, 2011)	10
<i>GT Nexus, Inc. v. Inttra, Inc.</i> , No. C 11-02145-SBA, 2015 WL 6747142 (N.D. Cal. Nov. 5, 2015).....	23
<i>Intellectual Ventures I LLC v. Capital One Bank U.S.A.</i> , 792 F.3d 1363 (Fed. Cir. 2015)	21
<i>Intellectual Ventures I LLC v. J. Crew Group, Inc.</i> , No. 6:16-CV-196, 2016 WL 4591794 (E.D. Tex., Aug. 24, 2016).....	16
<i>Internet Patents Corp. v. Active Network, Inc.</i> , 790 F.3d 1343 (Fed. Cir. 2015)	13, 16
<i>Lovelace v. Software Spectrum</i> , 78 F.3d 1015 (5th Cir. 1996)	7
<i>Loyalty Conversion Sys. Corp. v. Am. Airlines, Inc.</i> , 66 F. Supp. 3d 829 (E.D. Tex. 2014)	16
<i>Mayo Collaborative Servs. v. Prometheus Labs., Inc.</i> , 132 S. Ct. 1289 (2012).....	9
<i>Morales v. Square, Inc.</i> , 75 F. Supp. 3d. 716 (W.D. Tex. 2014), <i>aff'd</i> , 621 F. App'x 660 (Fed. Cir. 2015), <i>cert. denied</i> , 136 S. Ct. 1461 (2016)	11
<i>Open Text S.A. v. Box, Inc.</i> , 78 F. Supp. 3d 1043 (N.D. Cal. 2015)	23
<i>OpenTV Inc. v. Apple Inc.</i> , No. 14-cv-01622, 2015 WL 1535328 (N.D. Cal. Apr. 6, 2015)	17
<i>Parker v. Flook</i> , 437 U.S. 584 (1978).....	9
<i>Phoenix Licensing, L.L.C. v. Consumer Cellular, Inc.</i> , No. 2:16-cv-152-JRG-RSP, 2017 WL 1065938 (E.D. Tex. Mar. 8, 2017)	10, 13, 14

In re TLI Communications LLC Patent Litigation,
823 F.3d 607 (Fed. Cir. 206) 20

Ultramercial, Inc. v. Hulu, LLC,
772 F.3d 709 (Fed. Cir. 2014) (Mayer, J., concurring) 8, 12, 18

Virginia Innovation Sciences Inc. v. Amazon.com, Inc.,
No. 1:16-cv-00861, 2017 WL 64147 (E.D. Va. Jan 5, 2017) 16

Statutes

35 U.S.C. § 101 *passim*

Other Authorities

Federal Rules of Civil Procedure Rule 12(b)(6) 1, 2, 7, 10

The claims of the Patents-in-Suit are directed to the abstract idea of coupon distribution and redemption. The patentees acknowledged that they did not invent the concept of sending, receiving, or validating promotional offers and coupons. They further acknowledged that prior art systems existed whereby a user could request and receive promotional offers and coupons on a mobile device. The patentees simply wanted to provide a “faster and easier method[.]” *See Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“Using a computer to accelerate an ineligible mental process does not make that process patent-eligible”). But the claims merely cobble together generic computer components (*e.g.*, “server,” “client,” “mobile device,” and “database”), and then claim the end result of routing content, such as a coupon or promotion, and receiving, redeeming, or validating offers, that is not limited to a specific mechanism for achieving that result. Therefore, the Patents-in-Suit are invalid under 35 U.S.C. § 101 for failure to claim patent-eligible subject matter.

Resolving these issues does not require discovery or formal claim construction. Therefore, to avoid waste of judicial and party resources unnecessarily litigating invalid patents, Defendant Culver Franchising System, Inc. (“Culver’s” or “Defendant”) requests that the Court dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

I. STATEMENT OF THE ISSUE

Abstract ideas are ineligible for patentability under 35 U.S.C. § 101, absent an inventive concept that amounts to significantly more than the application of the abstract idea. The Patents-in-Suit are directed to the abstract idea of coupon distribution and

redemption. The Patents-in-Suit do not include an inventive concept beyond that idea. Should the Court therefore dismiss Mantis's Complaint pursuant to Rule 12(b)(6) for failure to state a claim?

II. BACKGROUND

A. Case Background

On April 18, 2017, Mantis filed this lawsuit accusing Culver's of infringing U.S. Patent Nos. 7,403,788 (the "'788 Patent"), 7,792,518 (the "'518 Patent"), 8,131,262 (the "'262 Patent"), 8,437,784 (the "'784 Patent"), 8,761,732 (the "'732 Patent"), 8,938,215 (the "'215 Patent"), and 9,092,803 (the "'803 Patent") (collectively, the "Patents-in-Suit"). Mantis accuses Culver's of infringing the Patents-in-Suit by Culver's' alleged use of "products or services for targeted content delivery on a mobile device," broadly accusing communications sent by or on behalf of Culver's through Culver's' mobile application, e-commerce website, and point-of-sale devices. (*See, e.g.*, Dkt. No. 1 at ¶ 38; *see also* Dkt. No. 1-8 at 1.)

B. The Patents-in-Suit disclose nothing more than using generic computer components to deliver coupons, offers, and promotions to users who have requested them.

The Patents-in-Suit share an identical specification, are continuations of one another, name the same five inventors, and are each entitled, "System and Method to Initiate a Mobile Data Communication Using a Trigger System." (Dkt. No. 1 at ¶ 4.) They concern direct marketing techniques and promotions through content delivery to mobile devices. *See, e.g.*, '788 Patent at 1:16-19 (systems and/or methods of "initiating a communication between an organization and a user of a mobile device triggered by an

initial request or interaction by the user"). More specifically, the Patents-in-Suit are directed to the abstract concept of "deliver[ing] coupons, offers and promotions to users that have requested them," and providing users the opportunity to receive, redeem, or validate the offers. *Id.* at 2:19-21. Put simply, they are directed to coupon distribution and redemption.

The patentees acknowledged that they did not invent the concept of sending promotional offers to a user's mobile device. Indeed, the specification describes that a user could "trigger" a communication with an organization by texting a Mobile Originated ("MO") message to a service access code to request an offer, service, or promotion. *Id.* at 3:10-20. The patentees noted, however, that standardized service access codes were not available in all areas, and thus "it is awkward for an organization to publish different service access codes." *Id.* at 3:21-32. Moreover, not all users were familiar with how to send MO messages. *Id.* The patentees thus wanted to provide an alternative to MO messaging and a "faster and easier method[] . . . to instantly deliver offers, coupons and promotions to users in public places." *Id.* at 4:45-64. Their concern was increasing the speed and efficiency of extant content delivery methods.

Claim 1 of the '788 Patent, set forth below, is representative of the claims of the Patents-in-Suit:

1. A system for enabling targeted content delivery to a mobile device, said mobile device having a device address, said device address having associated therewith at least one unique identifier, said system comprising:
a message application server; and

a trigger system in communication with said message application server,
said trigger system comprising:

a trigger client component configured to generate a trigger signal comprising a trigger action, user content request data and said at least one unique identifier; and

a trigger server component in communication with said trigger client component, said trigger server component configured to:

receive said trigger signal, and

send to said message application server said trigger signal for processing by said message application server;

wherein said message application server is configured to:

receive from said trigger system said trigger signal, and in response thereto:

derive said **mobile device** address from said at least one unique identifier,

generate content based on said user request data, and

send said generated content to said device address of said mobile device;

an offer application component:

an offer entry system in communication with said offer application component, and **an offer database** in communication with said offer application component for storing said generated content and said user request data, wherein said offer entry system is configured to:

redeem said generated content,

generate content redemption information comprising said redeemed content, and send said content redemption information to said offer application component for storage in said offer database.

Despite its length, Claim 1 of the '788 Patent can be broken down into five main components: (1) **a message application server**; (2) **a trigger system**; (3) **an offer application**

component; (4) a mobile device; and (5) an offer database.¹ The patentees made clear through their own language that the claimed components are nothing more than generic computing and networking elements covering virtually “any system,” “any computing server,” “any software,” “any device,” and “any database”:

- **message application server:** “any computing server designed to process messages” (*Id.* at 9:25-27);
- **trigger system:** “any system capable of capturing a unique identifier” representative of the mobile device’s address (*id.* at 7:10-18), and the specification concedes that there were multiple existing ways for an organization to obtain a user’s mobile device address (*id.* at 1:50-53);
- **offer application component:** software responsible for simply selecting and creating coupons, offers and promotions for the user that is “known to those of skill in the art” (*id.* at 10:62-65 and 11:55-57);
- **mobile device:** “*any device* a user can carry along with him that is capable of receiving data messages . . .” (*id.* at 10:21-24); and
- **offer database:** a database used by the offer application to store available offers, maintain user profile information and maintain logs of completed offers, which is “well known to those of skill in the art” (*id.* at 7:43-49).

Figure 1, depicted below, shows “the basic architecture of one embodiment of a system for capturing a user mobile device address by means of a trigger system”:

¹ The ’262, ’784, ’732, ’215, and ’803 Patents do not include the claimed “offer application component” as set forth in Claim 1 of the ’788 Patent. Dependent claim 15 of the ’518 Patent includes the claimed offer entry system. Each patent, however, includes a message application server and trigger system. In those patents, the message application server provides the relevant system for receiving, redeeming, or validating generating content.

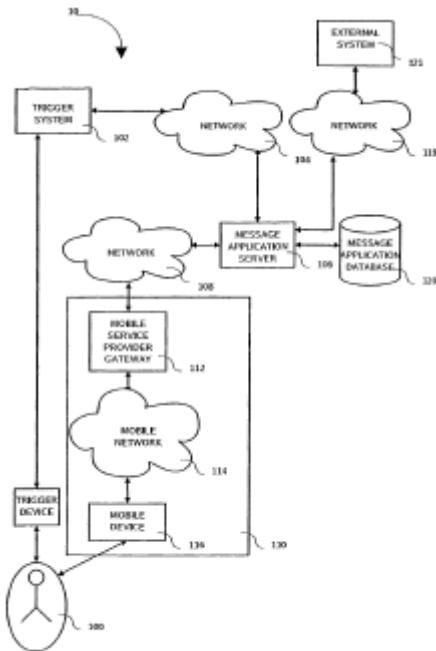


FIG. 1

Id. at 6:61-63 and Fig. 1. No details are provided for the claimed trigger system, except that it must be able to “directly or indirectly retrieve the mobile device address based on said unique identifier captured by the trigger system 102, and be able to use the mobile device address to send messages to the mobile device 116.” *Id.*, at 7:14-19. In other words, Figure 1 (and the Patents-in-Suit themselves) merely describes a basic communication pathway between the mobile device user and an organization through use of generic computing components.

As illustrated by the comprehensive comparative claim chart (attached hereto as Exhibit A), the remaining claims of the Patents-in-Suit relate to the same abstract concept of coupon distribution and redemption. The only differences are immaterial in the context of a § 101 analysis and relate to (i) the scope or type of generic computer components employed by the trigger system, (ii) the offer or content sent to the user, or

(iii) the network that employs the trigger system. Notably, four of the Patents-in-Suit filed after the '788 Patent were rejected by the Patent Office for claiming subject matter that was not patentably distinct and were only allowed after the filing of terminal disclaimers.

III. LEGAL STANDARD

A. This case should be disposed of at the pleading stage through Rule 12(b)(6).

Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint that fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion, a complaint “must provide the plaintiff’s grounds for entitlement to relief—including factual allegations that when assumed to be true raise a right to relief above the speculative level.” *Cuvillier v. Sullivan*, 503 F.3d 397, 401 (5th Cir. 2007) (internal citations and quotations omitted). In deciding a Rule 12(b)(6) motion, courts consider documents attached to or incorporated into the complaint as well as facts alleged in the complaint. *Lovelace v. Software Spectrum*, 78 F.3d 1015, 1017 (5th Cir. 1996). Although factual allegations are taken as true, legal conclusions are given no deference—those matters are left for the court to decide. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (tenet that allegations are taken as true on a motion to dismiss “is inapplicable to legal conclusions”). “[W]hen the allegations in a complaint, however true, could not raise a claim of entitlement to relief [as a matter of law], this basic deficiency should . . . be exposed at the point of minimum expenditure of time and money by the parties and the court.” *Cuvillier*, 503 F.3d at 401 (internal citations and quotations omitted).

Patentability under 35 U.S.C. § 101 is a threshold legal issue. *Bilski v. Kappos*, 561 U.S. 593, 602 (2010). Accordingly, the § 101 inquiry is properly raised at the pleadings stage if it is apparent from the face of the patent that the asserted claims are not directed to eligible subject matter. See *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 718-19 (Fed. Cir. 2014) (Mayer, J., concurring). In those situations, claim construction is not required to conduct a § 101 analysis. *Bancorp Servs.*, 687 F.3d at 1273 (“[W]e perceive no flaw in the notion that claim construction is not an inviolable prerequisite to a validity determination under § 101.”).

B. The law of 35 U.S.C. § 101

Section 101 of the Patent Act sets forth four categories of patentable subject matter: “any new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. Also, the law recognizes three exceptions to patent eligibility: “laws of nature, physical phenomena, and *abstract ideas*.” *Diamond v. Chakrabarty*, 447 U.S. 303, 308 (1980) (emphasis added). Abstract ideas are ineligible for patent protection because a monopoly over these ideas would preempt their use in all fields. See *Bilski*, 561 U.S. at 611-12. In other words, “abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work.” *Id.* at 653 (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

Determining whether a patent claim is impermissibly directed to an abstract idea involves two steps. First, the court determines “whether the claims at issue are directed to a patent-ineligible concept.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). Second, if the claim contains an abstract idea, the court evaluates whether there is

“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.” *Id.* (internal quotations and citations omitted).

Transformation into a patent-eligible application requires “more than simply stating the abstract idea while adding the words ‘apply it.’” *Id.* at 2357 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1294 (2012)). Indeed, if a claim could be performed in the human mind, or by a human using pen and paper, it is not patent-eligible. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372 (Fed. Cir. 2011). Also, a claim is not meaningfully limited if it includes only token or insignificant pre- or post-solution activity—such as identifying a relevant audience, category of use, field of use, or technological environment. *Mayo*, 132 S. Ct. at 1297-98, 1300-01; *Bilski*, 561 U.S. at 610; *Diamond v. Diehr*, 450 U.S. 175, 191-92 & n.14 (1981); *Parker v. Flook*, 437 U.S. 584, 595 n.18 (1978). Finally, “simply appending conventional steps, specified at a high level of generality, to laws of nature, natural phenomena, and abstract ideas cannot make those laws, phenomena, and ideas patentable.” *Mayo*, 132 S. Ct. at 1300; *see also Fort Props., Inc. v. Am. Master Lease LLC*, 671 F.3d 1317, 1323 (Fed. Cir. 2012) (“Such a broad and general limitation does not impose meaningful limits on the claim’s scope.”).

IV. ARGUMENT

Mantis’s Complaint should be dismissed. The claims of the Patents-in-Suit are invalid under 35 U.S.C. § 101 because they fail both prongs of the *Alice* test. Each of the claims is directed to the abstract idea of coupon distribution and redemption. Abstract ideas are not eligible for patenting. None of the claims contains an “inventive concept

sufficient to ensure that the patent in practice amounts to *significantly more* than a patent upon the ineligible concept itself." *See Alice*, 134 S. Ct. at 2355 (emphasis added). Because Mantis has failed to state a claim upon which relief may be granted, Culver's respectfully requests that the Court grant its motion and dismiss this case with prejudice. Fed. R. Civ. P. 12(b)(6).

A. The Patents-in-Suit are invalid under 35 U.S.C. § 101.

1. Alice Step 1: The asserted claims in the Patents-in-Suit are directed to the abstract idea of coupon distribution and redemption.

In determining patent eligibility under § 101, the Court must first determine whether the claims are directed to an abstract idea. *Alice*, 134 S. Ct. at 2355. Under any plausible reading, the claims of the Patents-in-Suit are directed to an unpatentable, abstract idea because they claim nothing more than the "longstanding," "routine," and "conventional" concept of coupon distribution and redemption. *See Alice*, 134 S. Ct. at 2356; *Bilski*, 561 U.S. at 611.

Claim 1 of the '788 Patent is representative of the claims.² *See Phoenix Licensing,*

² Where claims are "substantially similar and linked to the same abstract idea," courts may look to representative claims in a § 101 analysis. *Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1349 (Fed. Cir. 2014). This is particularly true when, as here, the Patents-in-Suit belong to the same patent family, involve the same technology, and share identical specifications. *See, e.g., Bilski*, 561 U.S. at 611-13 (determining that eleven (11) claims in a patent application were abstract after only analyzing two (2) of the claims in detail); *CyberFone Sys., LLC v. Cellco Partnership*, 885 F. Supp. 2d 710, 719 (D. Del. 2012) (invalidating all twenty-four (24) claims of a patent for abstractness after only conducting an analysis of the first claim); *Glory Licensing LLC v. Toys "R" Us, Inc.*, No. 09-4252, 2011 WL 1870591, at *4-5 (D.N.J. May 16, 2011) (dismissing three (3) patents—each owned by an entity directly related to Plaintiff CET—containing 121 claims after analyzing only a single claim of a single patent in detail).

L.L.C. v. Consumer Cellular, Inc., No. 2:16-cv-152-JRG-RSP, 2017 WL 1065938, at *8-9 (E.D. Tex. Mar. 8, 2017) (invalidating 974 claims after analyzing only a few “representative claims” where the other claims were “substantially similar” and “linked to the same abstract idea.”). In assessing whether this claim is directed to an abstract idea, the Court must look past the claim language to the purpose of the claim to determine what the invention is trying to achieve. *Morales v. Square, Inc.*, 75 F. Supp. 3d. 716, 725 (W.D. Tex. 2014), *aff’d*, 621 F. App’x 660 (Fed. Cir. 2015), *cert. denied*, 136 S. Ct. 1461 (2016). All Claim 1 is “trying to achieve” is an efficient method of delivering coupons that can be redeemed. See *id.* In particular, a review of the claim language shows how Claim 1 is directed to nothing more than the conventional idea of sending, receiving, and redeeming information:

Claim Language	Claimed Idea
A system for enabling targeted content delivery to a mobile device, said mobile device having a device address, said device address having associated therewith at least one unique identifier, said system comprising: a message application server; and	A retail store provides a catalog service where, on a customer’s request, it mails a catalog along with a coupon for the customer’s first purchase to a customer’s physical mailing address.
a trigger system in communication with said message application server, said trigger system comprising: a trigger client component configured to generate a trigger signal comprising a trigger action, user content request data and said at least one unique identifier; and a trigger server component in communication with said trigger client component, said trigger server component configured to: receive said trigger signal, and send to said message application server said trigger signal for	A customer of the retail store indicates that she would like to be included on the mailing list and provides her name and address while checking out. The retail store receives the information from the customer and processes the information, deriving the physical mailing address of the customer. Based on the personal information received, the retail store generates content (i.e., a coupon) and sends it to the physical

<p>processing by said message application server; wherein said message application server is configured to: receive from said trigger system said trigger signal, and in response thereto: derive said mobile device address from said at least one unique identifier, generate content based on said user request data, and send said generated content to said device address of said mobile device;</p>	<p>mailing address of the customer along with the catalog.</p>
<p>an offer application component: an offer entry system in communication with said offer application component, and an offer database in communication with said offer application component for storing said generated content and said user request data, wherein said offer entry system is configured to: redeem said generated content, generate content redemption information comprising said redeemed content, and send said content redemption information to said offer application component for storage in said offer database.</p>	<p>The customer receives the catalog from the retail store in the mail. The catalog includes a coupon for 10% off the customer's first purchase (i.e., the generated content). The customer takes the coupon to the retail store and provides the coupon upon checkout. The retail store marks the coupon to reflect that the coupon was redeemed and places it in the cash register.</p>

At a high level, this claim describes the most basic steps for delivering coupons, offers, and promotions to users who have requested them, and providing the user an opportunity to receive, redeem, or validate the offer. But sending, receiving, and redeeming/validating promotional information like a coupon is a longstanding and routine activity that can be implemented in a variety of ways, including (as shown above) by a human. Such a broad concept is not patent eligible because it "recite[s] an abstraction—an idea, having no particular concrete or tangible form." *Ultramercial*, 772

F.3d at 715. That the claim purports to implement the steps with conventional components like a “mobile device” does not make it any less abstract.

Indeed, the specification of the Patents-in-Suit admits that delivery of coupons, offers, and promotions to a user’s mobile device was a routine, well-known task. ’788 Patent at 3:10-20. The purported problem the patentees wanted to resolve was to provide an alternative to MO messaging and a “faster and easier method[] . . . to instantly deliver offers, coupons and promotions to users in public places.” *Id.* at 3:21-32 and 4:45-64. But performing a task more efficiently does not confer patent eligibility. *See Bancorp*, 687 F.3d at 1278 (“Using a computer to accelerate an ineligible mental process does not make that process patent-eligible”). Moreover, the patentees failed to disclose the details of how to achieve such a “faster and easier” system and instead describe the system only at a high level of generality—that is, the claims cover only the resulting system the patentees envisioned, not how to implement it. *See Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1348 (Fed. Cir. 2015) (concluding that claim not directed to patent-eligible subject matter where “[t]he mechanism for maintaining the state is not described, although this is stated to be the essential innovation.”). For example, the specification indicates that the coupon request can be triggered by a “user either by using his mobile device 116, *or by using any other system or method.*” *Id.* at 7:23-25 (emphasis added).

Similar claims directed to the type of coupon distribution and redemption recited in the Patents-in-Suit have been found to constitute patent-ineligible subject matter. In *Motivation Innovations v. PetSmart, Inc.*, for example, the court granted a motion for judgment on the pleadings for lack of patentable subject matter after finding that the

patent claimed nothing more than the “abstract idea of using coupons to provide discounts.” 156 F. Supp. 3d 558, 568 (D. Del. 2016). The plaintiff described the patent as “disclos[ing] a particular and specific method and system for the use and redemption of ‘discount offers’ (or coupons) that reduced the need for consumers and retailers to handle and process large quantities of coupons, reduced fraud, and allowed retailers to keep track of purchases made by individual consumers.” *Id.* The court concluded that it was nevertheless abstract under *Alice*’s first step, stating “[r]egardless of the extra limitations related to how the method is used or what it improves, the patent claims are directed to the ‘use and redemption’ of coupons, i.e., the abstract idea of using coupons to provide discounts.” *Id.* And because the claims recited only “conventional or routine activity or computer technology” and “[n]o special programming [was] disclosed,” the court concluded in *Alice*’s second step that there was no inventive concept. *Id.* (stating, “the method at bar describes using ‘routine and conventional’ computer technology to redeem discounts and track customer spending habits . . . [and is thus] invalid under 35 U.S.C. § 101”).

Claim 1 is also analogous to the claims that were found patent-ineligible in *buySAFE, Inc. v. Google, Inc.* There, as here, the claims were directed to a conventional client-server arrangement in a computer network, where the “computer application program” “receives a request for a guarantee” from “a first party,” “process[es] . . . the request,” and then “transmits an offer of guarantee in return.” 765 F.3d 1350, 1351-52 (Fed. Cir. 2014). But none of the claim elements “require[d] specific programming” to perform the recited process, and none were “tied to any particular machine.” *Id.* at 1352.

The claimed computer was “only used for processing – a basic function of any general purpose computer.” *Id.* The court thus concluded that the claims were directed to the abstract idea of “transaction performance guaranty . . . that is beyond question of ancient lineage,” and the generic computer functionality was “not even arguably inventive.” *Id.*

Here, Claim 1 of the ‘788 Patent, which requires for example, “receiv[ing] said trigger signal, [] send[ing] to said message application server said trigger signal for processing . . . ,” and then “send[ing] generated content” to a mobile device user, is no more patent-eligible than the claims in *Motivation Innovations* or *buySAFE*. Like those cases, no special programming is disclosed. The claimed components, like the trigger system, the message application server, and the mobile device, are each described in generic terms, covering “any system,” “any computing server,” and “any device.” See, e.g., ‘788 Patent at 7:10-13 (“The trigger system 102 is *any system* capable of capturing a unique identifier capable of being transformed into the user mobile device 116 messaging address, and optionally other data.”); *id.* at 9:26-27 (“The message application server 106 is *any computing server* designed to process messages.”); *id.* at 10:21-24 (“The mobile device 116 is *any device* a user can carry along with him that is capable of receiving data messages . . . ”). The specification also concedes that the claimed processing was “well-known.” See, e.g., *id.* at 5:21-23 (“The details on how the mobile device address is retrieved using the account number is *well known to those skilled in the art.*”) (emphasis added); *id.* at 11:55-62 (“Internal details of the offer application and the coupon, offer and promotion codes is not discussed in further details as *they are known to those skilled in the art.*”) (emphasis added).

By only claiming the desired result—delivering coupons, offers, and promotions to users who have requested them, and providing the user an opportunity to receive, redeem, or validate the offer—without describing any specific roadmap for doing so, Claim 1 of the '788 Patent falls short of claiming eligible subject matter under § 101. See *Internet Patents*, 790 F.3d at 1348. And because the claimed system can be implemented using “any system or method,” “any computing server,” “any database,” and “any software,” the Patents-in-Suit risk preempting *all* automated methods or systems for coupon distribution and redemption. *See, e.g., Loyalty Conversion Sys. Corp. v. Am. Airlines, Inc.*, 66 F. Supp. 3d 829, 843 (E.D. Tex. 2014) (finding “preemptive effect . . . broad” where “the claims [were] largely functional in nature, they [did] not provide any significant description of the particular means by which the various recited functions are performed,” and “[a]ll that [was] disclosed [was] the ultimate objective”).

Other courts have found similar claims—*i.e.*, claims that are virtually unlimited in scope—to be directed to eligible subject matter. *See, e.g., Virginia Innovation Sciences Inc. v. Amazon.com, Inc.*, No. 1:16-cv-00861, 2017 WL 64147, *10 (E.D. Va. Jan 5, 2017) (finding claims directed to receiving data, processing data, and providing or displaying data using “every mobile telephone, every video signal received by that phone, and every HD display terminal sold on the market” to be directed to patent-ineligible subject matter); *Intellectual Ventures I LLC v. J. Crew Group, Inc.*, No. 6:16-CV-196, 2016 WL 4591794, at *4 (E.D. Tex., Aug. 24, 2016) (claims “directed to the abstract idea of combining data from two sources for delivery to a user” were abstract because they “merely disclose[d] the use of generic computer network technology to achieve an online variation of a well-

established, real-world practice"); *Eclipse IP LLC v. McKinley Equip. Corp.*, No. SACV 14-154, 2014 WL 4407592, at *7 (C. D. Cal. Sept. 4, 2014) (finding claim for communicating with a mobile device "in connection with a computer system" to be directed to abstract idea because "[t]here are likely a myriad number of ways to do so, and the [patent] preempts them all"); *see also OpenTV Inc. v. Apple Inc.*, No. 14-cv-01622, 2015 WL 1535328, at *4-5 (N.D. Cal. Apr. 6, 2015) (finding abstract claims directed to a method of routing and verifying information sent from a user to a supplier using an "application identifier" because they merely purported to solve an "age-old" problem that had "existed for centuries").

The remaining claims of the Patents-in-Suit recite the same abstract idea: coupon distribution and redemption. The only differences relate to (i) the scope or type of generic computer components employed by the trigger system, (ii) the offer or content sent to the user, or (iii) the network that employs the trigger system. None of these limitations are sufficient to raise the claims above the abstract idea to which they are directed. Regardless of their form, therefore, all of the claims of the Patents-in-Suit fail *Alice's* first prong because they are directed to an abstract idea. *Alice*, 134 S. Ct. at 2355.

2. Alice Step 2: The claims contain no inventive concept to transform the abstract idea into patent-eligible subject matter.

Because the claims in the Patents-in-Suit are directed to an abstract idea, the Court must next determine whether the claims contain an "inventive concept sufficient to transform the claimed abstract idea into a patent eligible application." *Alice*, 134 S. Ct. at 2357 (internal quotations omitted). To pass this test, the claims "must include additional

features" which "must be more than well-understood, routine, conventional activity."

Ultramercial, 772 F.3d at 715 (quotations and citations omitted). Here, the claims are broadly generic and do not contain meaningful limitations that would restrict them to a non-routine, specific application of the abstract idea.

(a) Representative Claim 1 of the '788 Patent contains no "inventive concept."

Although the stated goal of the Patents-in-Suit is to "[p]rovide[] for faster and easier methods" to deliver offers, coupons, and promotions to users (*id.* at 4:45-64), not a single technical improvement is discussed, much less claimed. Instead, each of the five components recited in Claim 1 of the '788 Patent is described only at a high level of generality as "any computing server," "any system or method," "any device," "any database," and "any processing" that was "well known" to those of skill in the art:

- **Message application server:** "the message application server 106 is *any computing server* designed to process messages" that can be implemented in "multiple" ways including "as a cluster of Java 2 Enterprise Edition ("J2EE™") components running on *commonly available computer hardware running commonly available operating systems.*" *Id.* at 9:26-27, 36-40. The '788 Patent clarifies that "*embodiments of the message application server are . . . known to those of skill in the art.*" *Id.* at 9:47-48.
- **Trigger system:** the claimed "trigger system" adds nothing to improve any technical aspect of a network or communication system. According to the specification, the so-called trigger system identifies the unique identifier and uses the mobile device's address to send the address to the message application server. *See id.* at 7:10-22. "The trigger system 102 can be triggered by the user either by using his mobile device 116, *or by using any other system or method.*" *Id.* at 7:23-25. The "unique identifier is the mobile device address itself" or an account number. *Id.* at 5:15-30. "The details on how the mobile device address is retrieved using the account number is *well known to those skilled in the art.*" *Id.*
- **Offer application component:** The "offer application component," which presumably corresponds to offer application 122 in the specification, relates to

known and conventional computing features that implement standard software for selecting coupons. *Id.* at 10:62-65. The '788 Patent readily confesses that “details of the offer application and the coupon, offer and promotion codes is not discussed in further details *as they are known to those skilled in the art.*” *Id.* at 11:55-57. “Coupling and all the issues around generating coupons, matching coupons to users based on multiple parameters including past interaction and demographic data is *a well-established industry.*” *Id.* at 11:57-60.

- **Mobile device:** “The mobile device 116 is *any device* a user can carry along with him that is capable of receiving data messages” *Id.* at 10:21-24.
- **Offer entry system and offer database:** The '788 Patent additionally claims an “offer entry system” and an “offer database,” both of which are configured to communicate with the offer application component. As the patent states, “the offer entry system validates the coupon” and may be a point-of-sale terminal such as the checkout counter at the store. *Id.* at 12:13-31. The coupons can be printed and redeemed “like regular paper coupons.” *Id.* at 12:36-37. Simply put, the offer entry system is a conventional scanner or input mechanism that redeems coupons that work in the same manner as any other coupon. The offer database, meanwhile, is a conventional database implemented on a generic computer that stores offers, including the offers a user has available to it. *Id.* at 11:43-49. “*The usage of a database to implement sophisticated server applications is well known to those of skill in the art.*” *Id.*

The patentees’ own characterizations demonstrate that the claimed components do not “improve the functioning of the computer itself,” *Alice*, 134 S. Ct. at 2359, for example by disclosing an “improved, particularized method of digital data compression,” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1259 (Fed. Cir. 2014), or improve “the way a computer stores and retrieves data in memory,” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016). For example, in *Enfish*, the Federal Circuit distinguished the claims from others that “simply add[ed] conventional computer components to well-known business practices,” holding instead that “they [we]re drawn to a specific improvement to the way computers operate.” *Id.* at 1336. In particular, the unconventional structure of the database resulted in “increased flexibility, faster search

times, and smaller memory requirements.” *Id.* at 1337. Unlike *Enfish*, nothing in the claims of the Patents-in-Suit shows any unconventional methodology that would amount to a “specific improvement in the way computers operate.” Therefore, the focus of the Patents-in-Suit is not “on [a] specific asserted improvement in computer capabilities” but instead “on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Id.* at 1336.

There is simply nothing “inventive” about off-the-shelf components communicating with each other or passing information back and forth. Such abstract functional descriptions are devoid of any technical explanation as to how to implement the invention and thus provide no inventive concept. *See In re TLI Communications LLC Patent Litigation*, 823 F.3d 607, 615 (Fed. Cir. 206) (claims failed *Alice*’s step 2 where specification limited its discussion of “additional functionality” of conventional components “to abstract functional descriptions devoid of technical explanation as to how to implement the invention”). And the patents’ use of sophisticated-sounding terms such as “unique identifiers” and “trigger systems” to describe computer components and processing that was “well-known in the art” is simply not enough to confer patentability. Indeed, the Supreme Court has long “warn[ed] . . . against interpreting § 101 ‘in ways that make patent eligibility depend simply on the draftsman’s art.’” *Alice*, 134 S. Ct. at 2360 (quoting *Mayo*, 132 S. Ct., at 1294).

Courts have repeatedly held that the presence of generic hardware and software like the kind recited in Claim 1 of the ’788 Patent does not make an otherwise abstract idea patent-eligible. *See, e.g., buySAFE*, 765 F.3d at 1355 (“That a computer receives and

sends the information over a network—with no further specification—is not even arguably inventive."); *Content Extraction*, 776 F.3d at 1348 (“At most, [the] claims attempt to limit the abstract idea of recognizing and storing information from hard copy documents using a scanner and a computer to a particular technological environment. Such a limitation has been held insufficient to save a claim in this context.”); *Bancorp*, 687 F.3d at 1276-77. In addition, an “abstract idea does not become nonabstract by limiting the invention to a particular field of use or technological environment, such as [direct marketing].” *Intellectual Ventures ILL v. Capital One Bank U.S.A.*, 792 F.3d 1363, 1366 (Fed. Cir. 2015).

As discussed above, the purported point of novelty is directed to the *result* of providing a “faster and easier method[] . . . to instantly deliver offers, coupons and promotions to users in public places,” but Claim 1 of the ’788 Patent does not describe any particular *mechanism* for achieving the result. The recited limitations—whether considered individually or as an ordered combination—are insufficient to add “significantly more” to the abstract idea. Because it is altogether devoid of any “inventive concept,” Claim 1 of the ’788 Patent is thus patent-ineligible under § 101. See *Alice*, 134 S. Ct. at 2359-60.

(b) The remaining claims contain no “inventive concept.”

The remaining claims of the Patents-in-Suit are patent-ineligible for the same reasons. They merely recite additional generic components such as a “database for storing transaction information,” a “keyboard” for “inputting” information, a “network”

to send and receive information, a “web browser” user interface, and a “computer program product” to send information:

- Dependent claim 2 of the '788, '262, '784, '732, '215, and '803 Patents: claim a database for storing transaction information;
- Dependent claims 3, 6, 7, and 12 of the '788, '262, '784, '732, '215, and '803 Patents: claim various features of a mobile device, or an “input” device (e.g., a keyboard);
- Dependent claim 5 of the '788, '262, '784, '732, '215, and '803 Patents: claim various server or server components (e.g., a web browser);
- Dependent claim 34 of the '788 Patent, claim 11 of the '784, '732, '215, and '803 Patents, and claim 12 of the '788 and '262 Patents: provide for a network and/or network-enabled device; and
- Dependent claim 18 of the '215 and '803 Patents³: claim a “computer program product” for performing the claimed invention.

The '518 Patent describes variations of the unique identifier used to obtain the user's mobile address,⁴ the '262, '784, '732, and the '215 Patents claim different versions of the offer or content sent to the user,⁵ and the '803 Patent claims that the trigger server

³ During prosecution of the '803 Patent, the examiner rejected claims 160-163 (currently claims 18-21) under § 101. To overcome the rejection, the examiner himself amended the claims to add the limitation “non-transitory,” and then allowed the claims following this amendment. Merely amending the claims to add in the word “non-transitory” (found nowhere in the specification) does not overcome the fact that these claims convey nothing more than generic computing components and provide no inventive concept. *See Alice*, 134 S. Ct. at 2360 (quoting *Mayo*, 132 S. Ct., at 1294) (“warn[ing] . . . against interpreting § 101 ‘in ways that make patent eligibility depend simply on the draftsman’s art’”)

⁴ *See, e.g.*, '518 Patent, claim 1 (“wherein the unique ID is at least one of: a number, data encoded on a magnetic stripe of a card, a bar code a Radio Frequency Identification (RFID) tag including data, a client application including unique data, and a biometric identifier unique across a plurality of users”).

⁵ *See, e.g.*, '262 Patent, claim 1 (“wherein said generated content comprises one or more graphical images representing a promotional offer”).

is a web server.⁶ These differences amongst the patents are wholly immaterial from a patent-eligibility standpoint, and fail to supply an inventive concept to salvage the fundamentally abstract nature of the claims.

Like Claim 1 of the '788 Patent, these additional limitations are described in the specifications in purely functional terms as generic processing and generic computing, database, and networking components that were “well known” to those of skill in the art⁷:

- **Generic/known servers:** '788 Patent at 9:26-27 (“The message application server 106 is any computing server designed to process messages”);
 - **Generic/known databases:** *Id.* at 9:56-59 (“The usage of a database to implement sophisticated server applications is well known to those of skill in the art and many possible usage of the database is possible and within the scope of this invention”);
 - **Generic/known techniques for retrieving mobile device addresses/unique identifiers:** *Id.* at 5:21-23 and 8:4-5 (“The details on how the mobile device address is retrieved using the account number is well known to those skilled in the art”; “Various techniques known to those of skill in the art can be used to capture said unique identifier”);
-

⁶ See, e.g., “803 Patent, claim 1 (“wherein the trigger server component is a webserver”).

⁷ Section 101 jurisprudence and the intrinsic evidence make clear that the recitation of routine pairing steps with the instruction that they be carried out with a generic server do not constitute an inventive concept. *Accord Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344 (Fed. Cir. 2013) (finding a “combination of computer components” including a client component, a server component, and multiple databases, generic); *Open Text S.A. v. Box, Inc.*, 78 F. Supp. 3d 1043, 1045 (N.D. Cal. 2015) (addition of “standard technology like browsers, servers, and networks, has nothing inventive whatsoever about it”); *GT Nexus, Inc. v. Inttra, Inc.*, No. C 11-02145-SBA, 2015 WL 6747142, at *5 (N.D. Cal. Nov. 5, 2015) (“That the patents recite computer components solely by their function (e.g., a server configured to transmit a booking request) underscores that the patents are not directed to a unique network architecture, but rather, to an underlying function that happens to be performed on a computer.”).

- **Generic/known techniques to analyze numbers:** *Id.* at 14:36-40 (“The calling number supplied by the PPSTN, or entered by the user is analyzed in step 320 to see if it corresponds to a cell phone number. There are multiple ways to perform this operation which are known (sic) to those skilled in the art.”)
- **Generic/known infrastructure:** *Id.* at 10:9-12 (“The actual details of the mobile server provider infrastructure are not relevant to this present invention and in practice take many forms”);
- **Generic/known mobile network:** *Id.* at 10:16-20 (“Using methods known to those skilled in the art, messages can be exchanged between mobile devices, such as mobile device 116 and the mobile service provider gateway 112 by means of a mobile network 114.”);
- **Generic/known data network:** *Id.* at 12:57-61 (“The data network 132 is any data network or any means using any messaging protocol or data representation not necessarily always connected allowing for the transfer of data, in real-time or in batch mode, from the offer entry device 130 to the offer application 122.”);
- **Generic/known mobile device:** *Id.* at 10:21-24 (“The mobile device 116 is any device a user can carry along with him that is capable of receiving data messages from at least the message application server 106 by means of the service provider system 110.”); and
- **Generic/known coupon system:** *Id.* at 11:55-62 (“Internal details of the offer application and the coupon, offer and promotion codes is not discussed in further details as they are known to those skilled in the art. Coupling and all the issues around generating coupons, matching coupons to users based on multiple parameters including past interaction and demographic data is a well-established industry. All these coupling techniques apply to the coupon generation and fall into the scope of this invention.”).

Like Claim 1 of the '788 Patent, the limitations in the remaining claims are altogether devoid of any “inventive concept” and are thus patent-ineligible under § 101.

See Alice, 134 S. Ct. at 2359-60.

V. CONCLUSION

For the foregoing reasons, Culver's respectfully requests that the Court dismiss this case for failure to state a claim upon which relief can be granted. Because leave to amend would be futile, Culver's requests dismissal with prejudice.

Dated: June 12, 2017

Respectfully submitted,

By: /s/ David B. Conrad
Neil J. McNabnay
njm@fr.com
Texas Bar No. 24002583
David B. Conrad
conrad@fr.com
Texas Bar No. 24049042
Ricardo J. Bonilla
rbonilla@fr.com
Texas Bar No. 24082704
Theresa M. Dawson
tdawson@fr.com
Texas Bar No. 24065128

FISH & RICHARDSON P.C.
1717 Main Street, Suite 5000
Dallas, TX 75201
(214) 747-5070 (Telephone)
(214) 747-2091 (Facsimile)

**ATTORNEYS FOR DEFENDANT
CULVER FRANCHISING SYSTEM, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on June 12, 2017, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Ricardo J. Bonilla _____
Ricardo J. Bonilla