UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Aatrix Software, Inc.,

Plaintiff,

v.

Case No. 3:15-cv-00164-HES-MCR

Green Shades Software, Inc.,

Defendant.
_____/

GREEN SHADES SOFTWARE, INC.'S DISPOSITIVE MOTION TO DISMISS AMENDED COMPLAINT UNDER 35 U.S.C. § 101 AND REQUEST FOR ORAL ARGUMENT

Defendant Green Shades Software, Inc. ("**Defendant**"), by and through its undersigned counsel and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("**FRCP**") and Local Rule 3.01, hereby submits this Motion to Dismiss the Amended Complaint brought by Plaintiff Aatrix Software, Inc. ("**Plaintiff**"). The grounds for dismissal of the Amended Complaint are as follows:

(1) The claims of the two patents asserted by Plaintiff and attached as exhibits to the Amended Complaint, U.S. Patent Nos. 7,171,615 and 8,984,393 (the "**'615 Patent**" and the "**'393 Patent**," respectively; collectively, the "**Asserted Patents**"), are invalid because they are directed to patent-ineligible subject matter under 35 U.S.C. § 101.

(2) Patentability under 35 U.S.C. § 101 is a threshold legal issue, which should be addressed at the onset of litigation.

Thus, the Court should dismiss the Amended Complaint, with prejudice, under FRCP 12(b)(6).

WHEREFORE, Defendant respectfully requests that the Court:

a. Grant this motion;

b. Enter an order declaring all of the claims of the Asserted Patents invalid and dismissing the Amended Complaint with prejudice; and,

c. Grant all such further relief as this Court deems just and appropriate.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

In accordance with Local Rule 3.01, Defendant submits this memorandum of law in support of its motion.

I. INTRODUCTION

Limiting the subject matter of patent-eligible inventions, 35 U.S.C. § 101 ("**Section 101**") states, "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." Section 101 excludes from patent protection a law of nature, a natural phenomenon, and an abstract idea. *Id.*

The United States Supreme Court recently unanimously decided that patents claiming to implement an abstract idea using generic computer functionality do not constitute patent-eligible subject matter under Section 101 as a matter of law. *Alice Corp. Pty. v. CLS Bank Int'l*, 134 S. Ct. 2347, 189 L. Ed. 2d 296 (2014). *Alice* set forth a two-step analysis required to determine a patent's validity under Section 101:

> [T]he Court must first determine whether the claims at issue are directed to . . . patent-ineligible concepts. If so, the Court then asks whether the claim's elements, considered both individually and "as an ordered

> combination," "transform the nature of the claim" into a patent-eligible application.

Id. at 2350 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 182 L. Ed. 2d 321 (2012)) (internal citations omitted). Since the *Alice* decision, district courts have routinely followed that decision's two-part analysis to invalidate patent claims under Section 101.

II. STATEMENT OF FACTS

A. The '615 Patent

The '615 Patent claims "a tool which has been developed to facilitate the rapid production of 'on screen' computer forms, which allow users to print out the forms for physical filing or electronically file the information." '615 Patent, col. 1, ll. 6-10 (Doc. 7-1). The '615 Patent contains a total of 39 claims, of which claims 1, 11, and 22 are independent.

1. Independent Claims of the '615 Patent (Claims 1, 11, and 22)

The independent claims of the '615 Patent are directed toward the abstract idea of designing, creating, calculating, and importing data into, an electronic form on a generic computer connected to a generic network that replicates a paper form and is viewable, editable, and able to be printed or electronically transmitted, by a user of that generic computer. Specifically, the independent claims of the '615 Patent read as follows:

> 1. A data processing system for designing, creating, and importing data into, a viewable form viewable by the user of the data processing system, comprising: (a) a form file that models the physical representation of an original paper form and establishes the calculations and rule conditions required to fill in the viewable form; (b) a form file creation program that imports a background image from an original

> form, allows a user to adjust and test-print the background image and compare the alignment of the original form to the background test-print, and creates the form file; (c) a data file containing data from a user application for populating the viewable form; and (d) a form viewer program operating on the form file and the data file, to perform calculations, allow the user of the data processing system to review and change the data, and create viewable forms and reports.

'615 Patent, col. 19, ll. 59 – col. 20, ll. 9 (Doc. 7-1).

> 11. A method for designing, creating, and importing, on a digital computer having a memory and a processor executing a stored program, data into, a viewable form viewable by the user of a data processing system, the viewable form replicating a paper form, comprising the steps of: (a) capturing an image of the paper form and saving the image into the computer's memory as a background image; (b) saving all text appearing on the paper form into a text file; (c) executing the stored program to align and adjust the background image to exactly replicate the paper form, thereby producing a representation of a viewable form in the computer's memory; (d) executing the stored program to import the text from the text file and position the text on the background image in the representation of the viewable form in the computer's memory; (e) executing the stored program to import data from another application program into the representation of the viewable form in the computer's memory thereby populating data fields on the representation of the viewable form with the imported data; (f) executing the stored program to manipulate the data in the data fields on the representation of the viewable form; and (g) printing an exact representation of the paper form with the manipulated data.

'615 Patent, col. 20, ll. 40-67 (Doc. 7-1).

> 22. A method for designing, creating, and importing, on a digital computer having a memory and a processor executing a stored program, data into, a viewable form viewable by the user of a data processing system, the viewable form replicating a paper form, comprising the

> steps of: (a) a form designer executing a forms designer program in the digital computer, the forms designer program allowing the form designer to create a form file that, when subsequently printed, will exactly match an original paper form and will permit calculations and rule conditions required to fill in the form; (b) executing a data file importing program in the digital computer, the data file importing program seamlessly importing data from an end user application program into a data file; and (c) subsequently an end user executing a forms viewer program, the forms viewer program generating a viewable form by merging data in the data file with specific fields in the form file, allowing the user of the data processing system to review and change the data, performing calculations on the data, and generating a report that exactly matches the original paper form.

'615 Patent, col. 21, ll. 30-51 (Doc. 7-1).

2. Dependent Claims of the '615 Patent (Claims 2-10, 12-21, and 23-39)

The dependent claims of the '615 Patent do not alter the abstract nature of what is claimed. They merely present insignificant variations on using a generic computer and a generic network to perform standard, well-known processes and protocols that can be implemented by any general-purpose computer connected to a network. The claims and specifications provide no more guidance than that the process and/or method requires use of a generic computer on a generic network, with no new and improved computer or network. Specifically, claims 2-10 depend from claim 1 and read as follows:

> 2. The data processing system of claim 1, further comprising a client computer and a server computer.
>
> 3. The data processing system of claim 2, wherein the form viewer program executes on the client computer and the server computer executes a database program, and wherein the form file and data file are transmitted from the client computer to the server computer for storing in a database on the server computer.

> 4. The data processing system of claim 3, wherein the form file and data file are transmitted from the client computer to the server computer over a network.
>
> 5. The data processing system of claim 1, further comprising an electronic file creation program that merges data exported from the form viewer program with a template that specifies the final format for electronic filing to create an efile form.
>
> 6. The data processing system of claim 5, further comprising a client computer executing the electronic file creation program.
>
> 7. The data processing system of claim 6, further comprising a server computer executing an electronic filing program for electronically filing the efile form.
>
> 8. The data processing system of claim 7, wherein the efile form may be filed by submitting the efile form on floppy diskette.
>
> 9. The data processing system of claim 7, wherein the efile form may be filed by submitting the efile form by the file transmission protocol (FTP).
>
> 10. The data processing system of claim 7, wherein the efile form may be filed by submitting the efile form by email.

'615 Patent, col. 20, ll. 10-39 (Doc. 7-1). Similarly, claims 12-21 depend from claim 11 and read as follows:

> 12. The method of claim 11, further comprising the step of saving the viewable form as an editable web page.
>
> 13. The method of claim 11, further comprising the step of converting the viewable form to plain text and exporting the plain text to another computer system.
>
> 14. The method of claim 13, further comprising the step of encrypting the plain text.

> 15. The method of claim 11, further comprising the step of transmitting the viewable form from a client computer to a server computer and storing the viewable form in a database on the server computer.
>
> 16. The method of claim 15, wherein the viewable form is transmitted from the client computer to the server computer over a network.
>
> 17. The method of claim 11, further comprising the step of converting the viewable form into an efile form suitable for electronic filing.
>
> 18. The method of claim 17, further comprising the step of electronically filing the efile form.
>
> 19. The method of claim 18, wherein the step of electronically filing the efile form is performed by storing the efile form on a floppy diskette.
>
> 20. The method of claim 18, wherein the step of electronically filing the efile form is performed by submitting the efile form over a network by means of the File Transfer Protocol.
>
> 21. The method of claim 18, wherein the step of electronically filing the efile form is performed by submitting the efile form by email.

'615 Patent, col. 21, ll. 1-29 (Doc. 7-1). Finally, claims 23-39 depend from claim 22 and read as follows:

> 23. The method of claim 22, further comprising the step of saving the viewable form as an editable web page.
>
> 24. The method of claim 22, further comprising the step of converting the viewable form to plain text and exporting the plain text to another computer system.
>
> 25. The method of claim 24, further comprising the step of encrypting the plain text.

26. The method of claim 22, further comprising the step of transmitting the viewable form from a client computer to a server computer and storing the viewable form in a database on the server computer.

27. The method of claim 26, wherein the viewable form is transmitted from the client computer to the server computer over a network.

28. The method of claim 22, further comprising the step of converting the viewable form into an efile form suitable for electronic filing.

29. The method of claim 28, further comprising the step of electronically filing the efile form.

30. The method of claim 29, wherein the step of electronically filing the efile form is performed by storing the efile form on a floppy diskette.

31. The method of claim 29, wherein the step of electronically filing the efile form is performed by submitting the efile form over a network by means of the File Transfer Protocol.

32. The method of claim 29, wherein the step of electronically filing the efile form is performed by submitting the efile form by email.

33. The method of claim 22, wherein the form file further comprises static text and drawn elements.

34. The method of claim 22, further comprising the step of the forms designer capturing an image of an original form and saving it as a background image.

35. The method of claim 34, further comprising the step of the forms designer using the forms designer program to place, adjust, and test print the background image and to compare the alignment of the original form to the background test print.

> 36. The method of claim 22, further comprising the step of the forms designer formatting text in specific fields in the form file.
>
> 37. The method of claim 36, wherein the step of formatting text in specific fields in the form file further comprises changing text font and text size and changing text type, wherein text type is selected from the group consisting of: bold, italics, underline, left-justified, right-justified, center-justified, and rotated.
>
> 38. The method of claim 22, further comprising the step of the forms designer adding graphics to the form file, the graphics being selected from the group consisting of: lines, boxes, circles, and triangles.
>
> 39. The method of claim 22, wherein the data file contains fields having indicia indicating the type of data, the indicia subsequently being used by the forms viewer program to perform calculations on the data.

'615 Patent, col. 21, ll. 53 – col. 22, ll. 54 (Doc. 7-1).

B. The '393 Patent

The '393 Patent also claims "a tool which has been developed to facilitate the rapid production of 'on screen' computer forms, which allow users to print out the forms for physical filing or electronically file the information." '393 Patent, col. 1, ll. 14-17 (Doc. 7-2). The '393 Patent contains a total of 17 claims, of which claims 1, 13, and 17 are independent.

1. Independent Claims of the '393 Patent (Claims 1, 13, and 17)

As with the '615 Patent, the independent claims of the '393 Patent are directed to the abstract idea of designing, creating, calculating, and importing data into, an electronic form on a generic computer connected to a generic network that replicates a paper form and is viewable, editable, and able to be printed or electronically transmitted, by a user of

that generic computer. Specifically, the independent claims of the '393 Patent read as follows:

> 1. A method, on a digital computer having a memory and a processor for executing a program, for designing, creating, and importing data into a form viewable by a user of a data processing system, comprising the steps of: (a) executing the program to convert a paper form into a form file, the form file comprising a model of the paper form, establishing calculations and rule conditions required to fill in the form, and comprising a data field for receiving data; (b) importing data exported from an end user application into a data file and populating the data field in the form file with the imported data; (c) performing the calculations on the imported data in the data field; (d) allowing the user on the digital computer to review and change the imported data; and (e) outputting the viewable form.

'393 Patent, col. 19, ll. 34-50 (Doc. 7-2).

> 13. A data processing system, on a digital computer having a memory and a processor for executing a program, for designing, creating, and importing data into a form viewable by a user, comprising: (a) a form designer program capable of executing in the memory and directing the processor to create a form file, the form file comprising a model of the form and establishing calculations and rule conditions required to fill in the form, and a data field for receiving data; (b) a data file comprising data exported from an end user application program; and (c) a viewer program capable of executing in the memory and directing the processor to import the exported data to populate the data field in the form file with the imported data, to allow the user of the data processing system to review and change the imported data, to perform the calculations on the imported data in the data field, and to generate the viewable form.

'393 Patent, col. 20, ll. 19-36 (Doc. 7-2).

> 17. A computer-readable memory comprising an application program executable by a computer having a central processing unit, the computer readable memory

> configured to: (a) allow a form designer to create a form file comprising a model of a form, establishing calculations and rule conditions required to fill in the form; (b) import data exported from an end user application program into a data file and populate a data field in the form file with the imported data; (c) allow a user of the application program to review and change the imported data; and (d) perform the calculations on the imported data in the data field and to generate form.

'393 Patent, col. 20, ll. 49-61 (Doc. 7-2).

2. Dependent Claims of the '393 Patent (Claims 2-12, and 14-16)

Also, as with the '615 Patent, the dependent claims of the '393 Patent do not alter the abstract nature of what is claimed. They merely present insignificant variations on using a generic computer and a generic network to perform standard, well-known processes and protocols that can be implemented by any general-purpose computer connected to a network. The claims and specifications provide no more guidance than that the process and/or method requires use of a generic computer on a generic network, with no new and improved computer or network. Specifically, claims 2-12 depend from claim 1 and read as follows:

> 2. The method of claim 1, further comprising the step of saving the viewable form as an editable web page.
>
> 3. The method of claim 1, further comprising the step of converting the viewable form to plain text and exporting the plain text to another computer system.
>
> 4. The method of claim 3, further comprising the step of encrypting the plain text.
>
> 5. The method of claim 1, further comprising the step of transmitting the viewable form from a client computer to a server computer and storing the viewable form in a database on the server computer.

> 6. The method of claim 5, wherein the viewable form is transmitted from the client computer to the server computer over a network.
>
> 7. The method of claim 1, further comprising the step of converting the viewable form into an efile form suitable for electronic filing.
>
> 8. The method of claim 7, further comprising the step of electronically filing the efile form.
>
> 9. The method of claim 8, wherein the step of electronically filing the efile form is performed by storing the efile form on a floppy diskette.
>
> 10. The method of claim 8, wherein the step of electronically filing the efile form is performed by submitting the efile form over a network by means of the File Transfer Protocol.
>
> 11. The method of claim 8, wherein the step of electronically filing the efile form is performed by submitting the efile form by email.
>
> 12. The method of claim 8, wherein the efile form is filed by submitting the efile form by a method selected from the group consisting of: the file transfer program (FTP), electronic mail, hypertext transfer protocol (HTTP), and fax machine.

'393 Patent, col. 19, ll. 51 – col. 20, ll. 18 (Doc. 7-2). Similarly, claims 14-16 depend from claim 13 and read as follows:

> 14. The data processing system of claim 13, further comprising a program executing in the memory and directing the processor to convert the viewable form into an efile form suitable for electronic filing and to electronically file the efile form.
>
> 15. The data processing system of claim 14, wherein the efile form is filed by submitting the efile form by a method selected from the group consisting of: the file transfer

> program (FTP), electronic mail, hypertext transfer protocol (HTTP), and fax machine.
>
> 16. The data processing system of claim 13, wherein the viewable form is printed to duplicate the original paper form.

'393 Patent, col. 20, ll. 37-48 (Doc. 7-2).

III. ARGUMENT

A. The Court Should Determine the Patent Eligibility of the Asserted Patents at the Pleading Stage

1. District Courts Now Routinely Determine Patent Eligibility Under FRCP 12(b)(6)

The issue of patentable subject matter is purely an issue of law and it is proper for the Court to make a determination as to the patent eligibility of the Asserted Patents under Section 101 at the pleading stage without first construing the claims or allowing the parties to conduct fact discovery and submit opinions from experts supporting their claim construction positions. *See In re Bilski*, 545 F.3d 943, 951 (Fed. Cir. 2008) (*en banc*), *aff'd sub nom. Bilski v. Kappos*, 561 U.S. 593 (2010); s*ee also Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, 776 F.3d 1343, 1349 (Fed. Cir. 2014). "Although the determination of patent eligibility requires a full understanding of the basic character of the claimed subject matter, claim construction is not an inviolable prerequisite to a validity determination under [Section] 101." *Content Extraction*, 776 F.3d at 1349 (citing *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 714-715 (Fed. Cir. 2014) *cert. denied sub nom. Ultramercial, LLC v. WildTangent, Inc.*, No. 14-1392, 2015 WL 2457913 (U.S. June 29, 2015); and *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada (U.S.)*, 687 F.3d 1266, 1273-74 (Fed. Cir. 2012)).

In *Ultramercial*, the Federal Circuit twice reversed the district court's holding that granted the defendant's motion to dismiss the plaintiff's patent infringement complaint under FRCP 12(b)(6). The Supreme Court twice vacated and remanded the judgment of the Federal Circuit with instructions to reconsider, first in light of *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 182 L. Ed. 2d 321 (2012), and then in light of the *Alice* decision. *See Ultramercial*, 772 F.3d at 711. On the second remand, the Federal Circuit affirmed the decision of the district court granting the defendant's motion to dismiss. Since *Ultramercial*, the Federal Circuit has routinely approved the determination as to the patent eligibility of the patents at issue under Section 101 on a motion to dismiss under FRCP 12(b)(6). *See generally Content Extraction*, 776 F.3d 1343; *see also Internet Patents Corp. v. Active Network, Inc.*, No. 2014-1048, 2015 WL 3852975 (Fed. Cir. June 23, 2015).

District courts around the country, including the Middle District of Florida, have followed suit by routinely making determinations as to the patent eligibility of asserted patents under Section 101, and thereafter dismissing complaints, at the pleading stage pursuant to motions to dismiss under FRCP 12(b)(6). *See FairWarning IP, LLC v. Iatric Sys., Inc.*, No. 8:14-CV-2685-T-23MAP, 2015 WL 3883958 (M.D. Fla. June 24, 2015) (motion to dismiss granted where patent used a method for detecting fraud in a computer environment; "analyzing records or human activity to detect suspicious behavior" is an abstract idea improper for a patent); *BASCOM Global Internet Servs., Inc. v. AT & T Mobility LLC*, No. 3:14-CV-3942-M, 2015 WL 2341074 (N.D. Tex. May 15, 2015) (motion to dismiss granted where patent was method of filtering Internet content; filtering

content is an abstract idea as "a long-standing, well-known method of organizing human activity"); *Wireless Media Innovations, LLC v. Maher Terminals, LLC*, No. 14-7004; 14-7006(JLL), 2015 WL 1810378 (D.N.J. Apr. 20, 2015) (motions to dismiss granted where patents were monitoring shipping containers; monitoring information—load status, location, and movement of containers—and storing, reporting, and communicating this information through generic computer functions); *OpenTV, Inc. v. Apple, Inc.*, No. 14-CV-01622-HSG, 2015 WL 1535328 (N.D. Cal. Apr. 6, 2015) (granting motion to dismiss using the "pen and paper test", where a human is capable of replicating the process with a pen and paper); *Clear with Computers, LLC v. Altec Industries, Inc.*, No. 6:14–cv–89, 2015 WL 993392 (E.D.Tex. Mar. 3, 2015); *In re TLI Communications LLC Patent Litigation*, No. 1:14md2534, 2015 WL 627858 (E.D.Va. Feb. 6, 2015) (motion to dismiss granted as to patent which involved taking, organizing, classifying, and storing photographs, because data storage is an abstract concept); *Money Suite Co. v. 21st Century Ins. & Fin. Servs., Inc.*, No. CV 13-1747-GMS, 2015 WL 436160 (D. Del. Jan. 27, 2015); *Morales v. Square, Inc.*, No. 5:13-CV-1092-DAE, 2014 WL 7396568 (W.D. Tex. Dec. 30, 2014); *Intellectual Ventures I LLC v. Manufacturers & Traders Trust Co.*, No. CV 13-1274-SLR, 2014 WL 7215193 (D. Del. Dec. 18, 2014); *Genetic Techs. Ltd. v. Bristol–Myers Squibb Co.*, No. 12-394-LPS, 2014 WL 5507637 (D. Del. Oct. 30, 2014); *Cogent Med., Inc. v. Elsevier Inc.*, No. C-13-4479-RMW, 2014 WL 4966326 (N.D. Cal. Sept. 30, 2014); *Open Text S.A. v. Alfresco Software Ltd.*, No. 13-cv-04843, 2014 WL 4684429 (N.D. Cal. Sept. 19, 2014); *Eclipse IP LLC v. McKinley Equip. Corp.*, No. CV

14-154- GW, 2014 WL 4407592 (C.D. Cal. Sept. 4, 2014); *Tuxis Technologies, LLC v. Amazon.com, Inc.*, No. CV 13-1771-RGA, 2014 WL 4382446 (D. Del. Sept. 3, 2014).

Furthermore, since patentability under Section 101 is a threshold legal issue, its proper resolution at the onset of litigation will conserve judicial and party resources. Judge Mayer of the Federal Circuit explained this position as follows:

> [T]he [S]ection 101 determination bears some of the hallmarks of a jurisdictional inquiry in that a court must . . . first assess whether claimed subject matter is even eligible for patent protection before addressing questions of invalidity or infringement . . . . Failure to recite statutory subject matter is the sort of basic deficiency that can, and should, be exposed at the point of minimum expenditure of time and money by the parties and the court . . . . [R]esolving subject matter eligibility at the outset provides a bulwark against vexatious infringement suits. The scourge of meritless infringement claims has continued unabated for decades due, in no small measure, to the ease of asserting such claims and the enormous sums required to defend against them.

Ultramercial, 772 F.3d at 718-19 (Mayer, J., concurring) (internal quotes omitted). Similarly:

> From a practical perspective, there are clear advantages to addressing Section 101's requirements at the outset of litigation. Patent eligibility issues often can be resolved without lengthy claim construction, and an early determination that the subject matter of asserted claims is patent ineligible can spare both litigants and courts years of needless litigation.

I/P Engine, Inc. v. AOL Inc., 576 F. App'x 982, 995-96 (Fed. Cir. 2014) (Mayer, J., concurring).

Thus, it is proper for this Court to undertake a determination as to the patent eligibility of the Asserted Patents under Section 101 based on the plain language of the

Asserted Patents as attached to the Amended Complaint, and to thereafter dismiss the Amended Complaint with prejudice.

2. No Presuption of Eligibility

No presumption of eligibility should attach to an inquiry as to patent eligibility under Section 101. *Ultramercial*, 772 F.3d at 717 (Mayer, J., concurring).

> Although the Supreme Court has taken up several section 101 cases in recent years, it has never mentioned—much less applied—any presumption of eligibility. The reasonable inference, therefore, is that while a presumption of validity attaches in many contexts . . . no equivalent presumption of eligibility applies in the section 101 calculus.

Ultramercial, 772 F.3d at 720-721 (Mayer, J., concurring) (internal citations omitted). Therefore, the Court's analysis of the patent eligibility of the Asserted Patents should be *de novo* based on Amended Complaint and the plain language of the Asserted Patents attached thereto, and without any presumption of eligibility.

B. The Asserted Patents Fail the *Alice* Test for Patent Eligibility

The Supreme Court's two-step framework, described in *Alice,* guides the analysis of the Asserted Patents. *Alice*, 134 S.Ct. at 2355. First, the Court must determine whether a claim is directed to a patent-ineligible abstract idea. If a claim is directed to patent-ineligible abstract idea, then the Court must consider the elements of the claim (both individually and as an ordered combination) "to assess whether the additional elements transform the nature of the claim into a patent-eligible application of the abstract idea." *Id.* This second prong of the analysis "is the search for an 'inventive concept'—

something sufficient to ensure that the claim amounts to 'significantly more' than the abstract idea itself." *Id.*

1. Both Asserted Patents Are Directed to an Unpatentable Abstract Idea

The claims of both Asserted Patents are directed to the same abstract idea of designing, creating, calculating, and importing data into, an electronic form on a generic computer connected to a generic network that replicates a paper form and is viewable, editable, and able to be printed or electronically transmitted, by a user of that generic computer. In other words, data processing which could also be done by a human using pen and paper. *See OpenTV*, 2015 WL 1535328.

In *Alice*, the claimed scheme for mitigating "settlement risk" involved using a computer system as a third-party intermediary to create "shadow" credit and debit records (i.e., account ledgers) to mirror balances in the parties' real-world accounts at banks. The intermediary updated the shadow records as transactions are entered, allowing "only those transactions for which the parties' updated shadow records indicate sufficient resources to satisfy their mutual obligations." *Alice*, 134 S.Ct. at 2352. Distilling these details of the claims, the Court found that the patent claims were directed to the basic and abstract idea of "intermediated settlement." *Id*. at 2355.

The Supreme Court has not "delimit[ed] the precise contours of the 'abstract ideas' category." *Content Extraction*, 776 F.3d at 1347 (citing *Alice*, 134 S.Ct. at 2357). However, it is clear that claims of the nature involved in the case at hand are directed toward an abstract idea. For instance, in *Content Extraction*, the claims of the asserted patents were drawn to collecting data, recognizing certain data within the collected data

set, and storing that recognized data in a memory. *Content Extraction*, 776 F.3d at 1347. In reciting that these claims were drawn to abstract ideas, the Court noted that

> [t]he concept of data collection, recognition, and storage is undisputedly well-known. Indeed, humans have always performed these functions. And banks have, for some time, reviewed checks, recognized relevant data such as the amount, account number, and identity of account holder, and stored that information in their records.

Id. The plaintiff attempted to establish that its claims were not abstract by showing that its claims required not only a computer but also a scanner. *Id.* The plaintiff's argument was that its claims were not drawn to an abstract idea "because human minds are unable to process and recognize the stream of bits output by a scanner." *Id.* The court pointed out, however, that "the claims in *Alice* also required a computer that processed streams of bits, but nonetheless were found to be abstract[,]" concluding that the plaintiff's claims were drawn to the basic concept of data recognition and storage. *Id.* As in *Content Extraction*, the claims of the Asserted Patents are drawn to the basic concept of data recognition and storage.

Even before *Alice*, the Federal Circuit had little difficulty identifying abstract ideas. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011) (credit card fraud detection was an abstract idea); *Accenture Global Servs. v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344 (Fed. Cir. 2013), *cert. denied*, 134 S. Ct. 2871 (2014) (generating tasks in an insurance organization based on rules to be completed upon the occurrence of an event was an abstract idea); *Cyberfone Sys., LLC v. CNN Interactive Grp., Inc.*, 558 F. App'x 988, 992 (Fed. Cir. 2014) (categorical data storage was an abstract idea); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed.

Cir. 2014) (creating a transaction performance guaranty for a commercial transaction on computer networks such as the Internet); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1338 (Fed. Cir. 2013) (generating rule-based tasks for processing an insurance claim); *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (managing a stable value protected life insurance policy); *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012) (processing loan information through a clearinghouse).

Since the *Alice* decision clarifying the standard for patent-eligible subject matter, district courts around the country, including the Middle District of Florida, have followed suit by finding patents directed to generic computer implementation of abstract business methods invalid. *See, e.g., Fairwarning*, 2015 WL 3883958 (invalidating patent claims directed to using a computer to detect fraud in connection with protected health information); *see also Every Penny Counts,* 2014 WL 4540319, at *4 (invalidating patent claims directed to "routinely modifying transaction amounts and depositing the designated, incremental differences into a recipient account"). In fact, this Court has observed correctly that the judicial tide has turned decisively against the patent eligibility of software patents. *See Every Penny Counts*, 2014 WL 4540319, at *4 n.4 (Merryday, J.) ("Conspicuously, the Supreme Court vacated the only Federal Circuit opinion, *Ultramercial*, upholding a software patent and declined certiorari over the two actions, *Bancorp* and *Accenture*, that invalidate software patents").

The claims of the Asserted Patents are really just the application of a generic computer and a generic network to a fundamental human activity: filling out tax forms by hand with information from a ledger using a pen and paper and then filing those forms with the appropriate agency. This subject matter falls squarely within the category of abstract ideas.

2. The Claims in the Asserted Patents do not Contain Additional Elements that Transform the Nature of the Claims into a Patent-Eligible Application of the Abstract Idea

Step two in the analysis laid out by the Supreme Court asks whether the claims contain "additional features," specifically, an "inventive concept sufficient to transform the claimed abstract idea into a patent-eligible application." *Alice*, 134 S.Ct. at 2357 (quoting *Mayo*) (internal quotes omitted). The claims at hand in the Asserted Patents do nothing more that require the addition of a generic computer and a generic network. Therefore, the Asserted Patents do not contain an "inventive concept" and the Asserted Patents remain patent-ineligible.

The *Content Extraction* Court explained that "[f]or the role of a computer in a computer-implemented invention to be deemed meaningful in the context of this analysis, it must involve more than performance of 'well-understood, routine, [and] conventional activities previously known to the industry.'" *Content Extraction*, 776 F.3d at 1347-1348 (quoting *Alice*, 134 S.Ct. at 2357). The *Content Extraction* Court also noted, as in *Alice*, "the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention." *Id.*

In *Content Extraction*, the plaintiff attempted to rely on the use of a scanner or digitizing device to transform the claimed abstract idea into a patent-eligible application. However, the court noted that

> use of a scanner or other digitizing device to extract data from a document was well-known at the time of filing, as was the ability of computers to translate the shapes on a physical page into typeface characters . . . [and the claims] merely recite the use of this existing scanning and processing technology to recognize and store data from specific data fields such as amounts, addresses, and dates.

Id., 776 F.3d at 1348. The court found that there was "no 'inventive concept' in [the plaintiff's] use of a generic scanner and computer to perform well-understood, routine, and conventional activities commonly used in industry." *Id.* The use of a scanner or digitizing device by the plaintiff in *Content Extraction* is analogous to the use of the same in the Asserted Patents and does not transform the claimed abstract idea into a patent-eligible application.

None of the claims of the Asserted Patents describe a technological solution that causes a computer to operate outside its normal, expected manner. Instead, the claims describe nothing more than a modern spin on the historic method for filing out and filing tax forms by hand. Whether using a computer would increase speed or efficiency in undertaking that task is irrelevant. *See Walker Digital, LLC v. Google, Inc*., No. 11- 318-LPS, 2014 WL 4365245, at *6 (D. Del. Sept. 3, 2014) ("Even accepting that the use of a computer increases speed and efficiency of performing the steps in the claims . . . these characteristics do not save the claims").

IV. CONCLUSION

Even when construed in a manner most favorable to the Plaintiff, the claims of the Asserted Patents are really just the application of a generic computer and a generic network to a fundamental human activity: filling out tax forms by hand with information from a ledger using a pen and paper, and then filing those tax forms with the appropriate agency. This subject matter falls squarely within the category of abstract ideas, implemented using generic computer functionality, that *Alice* instructs is not patent-eligible, and that numerous other courts now have found unpatentable with regard to similar patents. The Asserted Patents are therefore invalid under Section 101, and this Court should dismiss Plaintiff's Amended Complaint with prejudice.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 3.01(j), Defendant respectfully requests that the Court schedule oral argument on this motion, and estimates that approximately 30 minutes per side is needed for argument.

Respectfully submitted: July 15, 2015

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 15, 2015, I electronically filed the foregoing with the Clerk of Court pursuant to the Administrative Procedures for Electronic Filing in Civil and Criminal Cases of this Court by using the CM/ECF System which will send a notice of electronic filing to the following:

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