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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 APPISTRY, INC.,

11 Plaintiff,

12 v.

13 AMAZON.COM INC, et al.,

14 Defendants.

CASE NO. C15-311 MJP

ORDER GRANTING  
DEFENDANTS' MOTION FOR  
JUDGMENT ON THE PLEADINGS

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16 THIS MATTER comes before the Court on Defendants' Motion for Judgment on the  
17 Pleadings. (Dkt. No. 139.) Having heard oral argument and considered the Parties' briefing and  
18 all related papers, the Court GRANTS the motion.

19 **Background**

20 Plaintiff Appistry, Inc. brings suit against Amazon.com, Inc. and Amazon Web Services,  
21 Inc., for infringement of U.S. Patent No. 8,200,746 (the "'746 patent") and U.S. Patent No.  
22 8,341,209 (the "'209 patent"). (Dkt. No. 21.) Defendants move for judgment on the pleadings,  
23 arguing that Plaintiff's patents claim abstract ideas implemented on generic computers, and as  
24 such, are invalid under 35 U.S.C. § 101 and Alice Corp. v. CLS Bank Int'l, 134 S. Ct. 2347

1 (2014). (Dkt. No. 139.) Plaintiff opposes the motion, arguing that its patents do not claim  
2 abstract ideas, and that even if they do, they include numerous limitations that transform the  
3 ideas into patent-eligible applications. (Dkt. No. 154.)

## 4 **Discussion**

### 5 I. Legal Standards

#### 6 A. Judgment on the Pleadings

7 After the pleadings are closed, a party may move for judgment on the pleadings. Fed. R.  
8 Civ. P. 12(c). A judgment on the pleadings is properly granted when, taking all the allegations in  
9 the pleadings as true, the moving party is entitled to judgment as a matter of law. Milne ex rel.  
10 Coyne v. Stephen Slesinger, Inc., 430 F.3d 1036, 1042 (9th Cir. 2005).

#### 11 B. Patent Invalidity under 35 U.S.C. § 101

12 Laws of nature, natural phenomena, and abstract ideas are not patentable. Alice Corp. v.  
13 CLS Bank Int'l, 134 S. Ct. 2347, 2354 (2014). Otherwise, monopolization of those tools through  
14 the grant of a patent might tend to impede innovation more than it would tend to promote it,  
15 thereby thwarting the primary objective of the patent laws. Id. (citing Mayo Collaborative Servs.  
16 v. Prometheus Labs., Inc., 132 S. Ct. 1289 (2012).) At the same time, courts must tread carefully  
17 in construing this exclusionary principle “lest it swallow all of patent law.” Id.

18 Accordingly, in applying the § 101 exclusionary principle, courts must distinguish  
19 between patents that claim the “building blocks” of human ingenuity and those that integrate the  
20 building blocks into something more, thereby transforming them into a patent-eligible invention.  
21 Id. To distinguish patents that claim laws of nature, natural phenomena, and abstract ideas from  
22 those that claim patent-eligible applications of those concepts, courts first “determine whether  
23 the claims at issue are directed to one of those patent-ineligible concepts.” Id. at 2355. If so,

1 courts then ask “[w]hat else is there in the claims before [them].” Id. To answer the second  
2 question, courts “consider the elements of each claim both individually and ‘as an ordered  
3 combination’ to determine whether the additional elements ‘transform the nature of the claim’  
4 into a patent-eligible application.” Id. The Supreme Court characterizes the second step as a  
5 “search for an ‘inventive concept,’” i.e. an element or combination of elements that is sufficient  
6 to ensure that the patent in practice amounts to significantly more than a patent upon the  
7 ineligible concept itself. Id.

## 8 II. Step One: Patent-Ineligible Concept

9 The Court must first determine whether the claims at issue are directed to a patent-  
10 ineligible concept.

11 Amazon argues that Appistry’s patents are directed at the abstract idea of project  
12 management and distributed processing akin to the command and control system used by the  
13 military, among other organizations: use of a network of multiple actors to efficiently and  
14 reliably process information and/or complete a task by breaking down the job into small pieces,  
15 each handled by a different actor organized within an internal hierarchy. (Dkt. No. 139 at 14.)  
16 In support of this argument, Amazon points to the prosecution history of U.S. Patent No.  
17 7,379,959—identified by Appistry as the parent patent of the patents-in-suit and incorporated by  
18 reference into them—which was originally rejected by the U.S. Patent Office because the claims  
19 were deemed unpatentable under 35 U.S.C. § 101, and which was later approved by the Patent  
20 Office when Appistry added the phrase “one or more computers including” to the claims. (Dkt.  
21 No. 139 at 11-12.)

22 Appistry argues that the claims are directed to “novel, specific, and inventive applications  
23 of multi-computer, distributed job processing that overcome the problems of previously existing  
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1 mission-critical computing platforms.” (Dkt. No. 154 at 11.) In other words, Appistry argues  
2 that the claims cover a system of networked computers that communicate with each other and  
3 coordinate tasks through a hierarchical structure, and that these computing-oriented and  
4 computer-specific limitations take the claims out of the realm of the abstract. (Id.)

5         The Court finds that the asserted claims are directed to an abstract idea. The patents-in-  
6 suit recite the abstract idea of distributed processing akin to the military’s command and control  
7 system, a longstanding and intuitive practice used by many large hierarchical organizations that  
8 value speed, efficiency, reliability, and accountability. The patents describe systems and  
9 methods of using a network of multiple actors to efficiently and reliably process information  
10 and/or complete a task by breaking down the job into small pieces, each handled by a different  
11 actor organized within an internal hierarchy. That the inventions describe this idea as  
12 implemented by computers or as existing solely in the computing realm, and thus that the  
13 inventions have no pre-computing analogues, does not “take[] the claims outside the realm of the  
14 abstract,” as Appistry contends. (Dkt. No. 154 at 11.) Rather, it highlights the fact that the  
15 patents claim an abstract idea implemented in a particular technological environment: a “fabric”  
16 of inexpensive networked computers.

17         Appistry argues that the patent claims are not directed towards an abstract idea because  
18 they are not directed to a mathematical algorithm, a fundamental economic practice, or a  
19 longstanding commercial practice, and instead address challenges particular to distributed  
20 computer networks. (Dkt. No. 154 at 12.) Appistry’s attempt to attach talismanic significance to  
21 the mathematical algorithm, fundamental economic practice, and longstanding commercial  
22 practice categories, however, has already been rejected by the Supreme Court, which explained  
23 in Alice that the operative question is whether or not the patent claims are directed toward an  
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1 abstract idea, and not whether or not the invention could be classified into one of Plaintiff’s three  
2 categories. Alice, 134 S. Ct. at 2356-57. Appistry’s arguments about the challenges of mission-  
3 critical computing and distributed computing, and the benefits that distributed processing using  
4 networked computers provides over previously available computing systems, are also  
5 unavailing—that an abstract idea is a good idea does not make it any less abstract.

6 The Court finds that the elements of all of the claims at issue (claims 1-5 and 23-27 of  
7 the ‘746 patent and claims 1, 9-11, 13-15, 23, 26, 34, 37-39, 47, and 50-52 of the ‘209 patent) are  
8 directed towards the same abstract idea, as discussed above, whether analyzed individually or as  
9 an ordered combination. Claim 1 of the ‘746 patent and claims 1 and 50 of the ‘209 patent are  
10 representative.

### 11 III. Step Two: Inventive Concept

12 Having determined that the claims are directed to an abstract idea, the Court next  
13 examines the elements of the claims to determine whether they contain an “inventive concept”  
14 sufficient to transform the claimed abstract idea into a patent-eligible application. Amazon  
15 argues that the claims do nothing more than take the abstract idea and apply it with computers,  
16 using only generic computers connected through generic networks. (Dkt. No. 139 at 16.)  
17 Appistry argues that the claims contain numerous limitations which transform the abstract idea  
18 into patent-eligible applications by addressing computing problems and thereby improving how  
19 computers function. (Dkt. No. 154 at 15.)

20 A claim that recites an abstract idea must include “additional features” to ensure that the  
21 claim is more than a drafting effort designed to monopolize the abstract idea. Alice, 134 S. Ct. at  
22 2357. Mere recitation of a generic computer cannot transform a patent-ineligible abstract idea  
23 into a patent-eligible invention, meaning that if a patent’s recitation of a computer amounts to  
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1 | mere instructions to implement an abstract idea on a computer, the claims fail to be patent  
2 | eligible. Id. at 2358. Given the ubiquity of computers, wholly generic computer implementation  
3 | is not generally the sort of “additional feature” that provides any practical assurance that the  
4 | process is more than a drafting effort designed to monopolize the abstract idea itself. Id.

5 |         The fact that a computer necessarily exists in the physical, rather than purely conceptual,  
6 | realm, is beside the point. Id. Otherwise, computer implementation would allow applicants to  
7 | claim any principle of the physical or social sciences by reciting a computer system configured  
8 | to implement the relevant concept. Id. at 2359.

9 |         In Alice, the Supreme Court framed the relevant question at step two as “whether the  
10 | claims here do more than simply instruct the practitioner to implement the abstract idea of  
11 | intermediated settlement on a generic computer.” Alice, 134 S. Ct. at 2359. The Supreme Court  
12 | held that the Alice patents did not do more because “[t]aking the claim elements separately, the  
13 | function performed by the computer at each step of the process is purely conventional.” Id.  
14 | (internal quotation marks omitted). The Supreme Court found that using a computer for  
15 | electronic recordkeeping was “one of the most basic functions of a computer” and that use of a  
16 | computer to obtain data, adjust account balances, and issue automated instructions are uses that  
17 | are “well-understood, routine, conventional activities previously known to the industry.” Id.  
18 | The Supreme Court then considered the claims as an ordered combination and found that the  
19 | claims “simply recite the concept of intermediated settlement as performed by a generic  
20 | computer.” Id. In making that finding, the Court noted that the claims did not purport to  
21 | improve the functioning of the computer itself, and did not “effect an improvement in any other  
22 | technology or technical field.” Id. The Court rejected the petitioner’s arguments that its system  
23 | claims recited “specific hardware” configured to perform “specific computerized functions”  
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1 | because the claims described only “purely functional and generic” hardware—in other words,  
2 | because nearly every computer will include a “communications controller” and a “data storage  
3 | unit” capable of performing basic calculation, storage, and transmission functions, “none of the  
4 | hardware recited by the systems claims offers a meaningful limitation beyond generally linking  
5 | the use of the method to a particular technological environment, that is, implementation via  
6 | computers.” Id. at 2360.

7 |         The Court finds that the claims at issue do no more than simply instruct the practitioner to  
8 | implement the abstract idea of distributed processing akin to command and control on generic  
9 | computers, connected through generic networks. The claims’ invocation of computers adds no  
10 | inventive concept because the functions performed by the computers at each step of the process  
11 | are well-understood, routine, and purely conventional.

12 |         Appistry first argues that the inventions improve the way that computers function by  
13 | specifically addressing previously existing computing problems, thereby “improv[ing] the  
14 | utilization of computing resources and increas[ing] reliability and efficiency of computing  
15 | systems.” (Dkt. No. 154 at 15-18.) Essentially, Appistry argues that the inventions are  
16 | technological improvements to computing because they can accomplish a processing task more  
17 | quickly, more cheaply, and more reliably than previously available computing systems, such as  
18 | mainframes or distributed super computers. But the actual systems and methods claimed—  
19 | through which efficiency and reliability are achieved—are well understood, routine, and purely  
20 | conventional, and do not supply an inventive concept separate from the underlying abstract idea.  
21 | That computers send and receive information over a network “is not even arguably inventive.”  
22 | buySAFE, Inc. v. Google, Inc., 765 F.3d 1350, 1355 (Fed. Cir. 2014). That computers are  
23 | capable of dividing a task between two or more linked computers in order to complete the task  
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1 | more quickly and more efficiently is similarly basic. That building internal checks and  
2 | safeguards into the process to ensure a previous task is adequately completed before moving on  
3 | to a subsequent task will improve reliability and efficiency is not an inventive concept; rather, it  
4 | is both conventional and obvious. Claiming those safeguards as being hierarchically  
5 | implemented by various actors—here, networked computers operating as task directors, mid-  
6 | level managers, and lower-level workers—is not inventive, and neither is combining or  
7 | separating the actors’ geographic locations to achieve a certain result. Given the ubiquity of  
8 | computers, this type of wholly generic computer implementation does not supply the “additional  
9 | feature” required at step two.

10 |         Appistry also argues that networked computers which provide multi-computer distributed  
11 | job processing are not generic computers. (Dkt. Nos. 154 at 18, 196.) But the patents  
12 | themselves contradict this assertion. Although using the technology claimed by the patents-in-  
13 | suit may require some configuration of common commercially-available prefabricated  
14 | computers, the patents themselves specify that they claim implementation on “generic  
15 | computers” which are connected over “generic networks.” The patents define the term  
16 | “computer” as “used generically herein to describe any number of computers, including, but not  
17 | limited to personal computers, embedded processing elements and systems, control logic, ASICs,  
18 | chips, workstations, mainframes, etc.” (‘746 patent at 7:49-53; ‘209 patent at 8:22-26.) The  
19 | patents define “hive engine” even more broadly as including not only “computers” but also  
20 | “other computing devices;” the terms “network” and “communications mechanism” are used  
21 | “generically herein to describe one or more networks, communications mediums or  
22 | communications systems, including, but not limited to the Internet, private or public telephone,  
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1 cellular, wireless, satellite, cable, local area, ... etc.” ( ‘746 patent at 14:38 and 8:14-22, ‘209  
2 patent at 15:11 and 8:55-63.)

3 In effect, the patents’ “numerous limitations” function only to limit the abstract idea of  
4 distributed processing akin to command and control to a particular technological environment,  
5 namely, networked computers. As the Supreme Court explained in Alice, Parker v. Flook, 437  
6 U.S. 584 (1978), stands for the proposition that the prohibition on patenting abstract ideas cannot  
7 be circumvented by attempting to limit the use of the idea to a particular technological  
8 environment. Alice, 134 S. Ct. at 2358; see also buySAFE, 765 F.3d at 1355 (claims’ narrowing  
9 to cover only online transactions was “an attempt to limit the use of the abstract guarantee idea to  
10 a particular technological environment, which has long been held insufficient to save a claim in  
11 this context”). Analyzing the claim elements individually or as an ordered combination yields  
12 the same result: the patents do not contain an inventive concept sufficient to transform the  
13 abstract idea into a patent-eligible application.

14 The Court finds that the claims of the patents-in-suit amount to the recitation of an  
15 abstract idea with instructions to apply the idea with ordinary computers connected through  
16 ordinary networks. As such, the patents claim patent-ineligible subject matter and are invalid  
17 under 35 U.S.C. § 101 and Alice Corp. v. CLS Bank Int’l, 134 S. Ct. 2347 (2014).

### 18 Conclusion

19 The Court finds that the patents-in-suit are invalid under 35 U.S.C. § 101. Defendants’  
20 Motion for Judgment on the Pleadings is GRANTED.

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The clerk is ordered to provide copies of this order to all counsel.

Dated this 9th day of July, 2015.



Marsha J. Pechman  
Chief United States District Judge