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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURE CAM, LLC,
Plaintiff,
v.
TEND INSIGHTS, INC.,
Defendant.

Case No. [5:18-cv-02750-EJD](#)

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS**

Re: Dkt. No. 17

Plaintiff Secure Cam, LLC (“Secure Cam” or “Plaintiff”) brings this action for patent infringement against Defendant Tend Insights, Inc. (“Tend Insights” or “Defendant”). Presently before the Court is Defendant’s Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) and 35 U.S.C § 101. Dkt. No. 24 (“Mot.”). Defendant asks this Court to find the asserted patents invalid for failure to claim patent-eligible subject matter. Having considered the submissions of the parties and the comments of counsel at the hearing, the Court grants Defendant’s Motion to Dismiss.

I. BACKGROUND

A. The Parties

Plaintiff Secure Cam is a Wyoming limited liability company with its principal place of business in Sheridan, Wyoming. Dkt. No. 1 (“Compl.”) ¶ 2. Plaintiff is the owner, by assignment, of U.S. Patent Nos. 8,531,555 (“the ‘555 Patent”), 8,350,928 (“the ‘928 Patent”), 8,836,819 (“the ‘819 Patent”) and 9,363,408 (“the ‘408 Patent”) (collectively, the “Patents-in-Suit”). *Id.*, Exs. A-D. Defendant Tend Insights is a California corporation with its principal place of business in Fremont, California. *Id.* ¶ 3.

B. The Patents-in-Suit

The Patents-in-Suit are all entitled “Method and Apparatus for Automatically Categorizing Images in a Digital Camera.” Compl. Exs. A-D. The application of the ‘555 Patent is a continuation of the patent application that issued as the ‘928 Patent, and thus the two patents share the same specification. *See Monsanto Co. v. Scruggs*, 459 F.3d 1328, 1337 (Fed. Cir. 2006) (“The patents are continuations or divisionals of a common parent application and therefore necessarily have almost identical specifications.”). Similarly, the application for the ‘819 Patent is a continuation of the patent application that issued as the ‘555 Patent and the ‘408 Patent is a continuation of the patent application that issued as the ‘819 Patent. For simplicity, unless referring to a specific patent, the Court’s citations to the text and figures of the Patents-in-Suit refer to the ‘928 Patent.

The Patents-in-Suit relate to “[a] system and method for the automatic analysis and categorization of images in an electronic imaging device.” ‘928 Patent at Abstract. All the asserted claims recite a system or method for automatic analysis and categorization of images that involves three components: 1) an imaging device, 2) a system bus and 3) a camera computer. *See* ‘555 Patent, 3:46-49; ‘928 Patent, 3:55-58; ‘819 Patent, 3:47-50; ‘408 Patent, 3:52-54. Figure 1 illustrates the interaction between these three components:

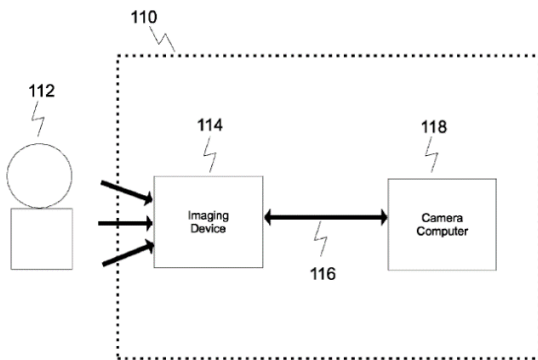


FIG. 1

1 Figure 10 illustrates the process of analyzing and categorizing the images:

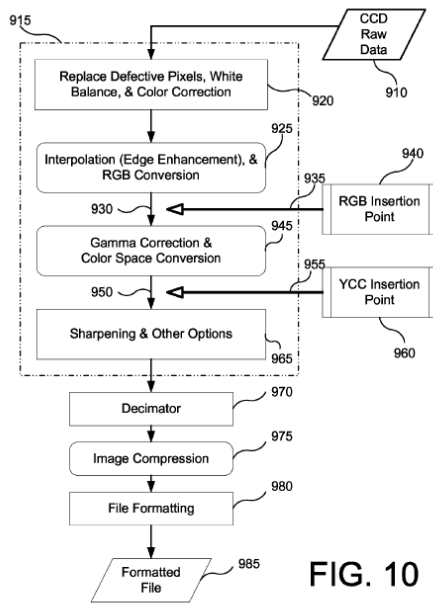


FIG. 10

13 This process begins when the camera captures an image as charged-couple device (CCD) data,
 14 stores the data into an image file, and then propagates the image file through the camera for
 15 processing and formatting of the image data. ‘928 Patent, 7:42 – 8:4. Next, image processing
 16 modules replace any defective pixels in image data, perform white balance color correction on the
 17 image data, and perform interpolation (edge enhancement) on the image data. *Id.* The processing
 18 module then converts the image data into an intermediate format, such as an RGB (Red, Green,
 19 Blue) format. *Id.* Analysis modules then analyze the image data at an RGB transition point. *Id.*,
 20 7:56-64. Once an analysis module analyzes the final line of image data, the analysis module
 21 generates any appropriate image tags and stores the generated tags into a blank category tag
 22 location in the image file. *Id.* The camera may then access these stored tags to automatically
 23 categorize and utilize the individual stored images. *Id.*

24 The asserted independent claims generally follow this process. For example, Claim 1 of
 25 the ‘928 Patent recites:

- 26 1. A digital camera for automatically categorizing captured image data, the digital camera
 27 comprising:

1 a processor within the digital camera for capturing image data;

2 an analysis module within the digital camera coupled to the processor and configured to
3 perform image data analysis on the captured image data at the time of image capture by the
4 digital camera and to automatically generate, responsive to the preformed image data
5 analysis, a category tag for the captured image data; and

6 a memory for storing the generated category tag in association with the captured image
7 data for categorizing the captured image data.

8 '928 Patent, 9:4-16.

9 **II. LEGAL STANDARDS**

10 **A. Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6)**

11 A motion to dismiss under Fed. R. Civ. P. Rule 12(b)(6) tests the legal sufficiency of
12 claims alleged in the complaint. *Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th
13 Cir. 1995). Dismissal “is proper only where there is no cognizable legal theory or an absence of
14 sufficient facts to support a cognizable legal theory.” *Navarro v. Block*, 250 F.3d 729, 732 (9th
15 Cir. 2001). For purposes of evaluating a motion to dismiss, the court “must presume all factual
16 allegations of the complaint to be true and draw all reasonable inferences in favor of the
17 nonmoving party.” *Usher v. Los Angeles*, 828 F. 2d 556, 561 (9th Cir. 1987). To survive a Rule
18 12(b)(6) motion, the plaintiff must allege facts sufficient to state a claim to relief that is “plausible
19 on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955 (2007).

20 Additionally, to state a claim for patent infringement, “a patentee need only plead facts
21 sufficient to place the alleged infringer on notice. This requirement ensures that the accused
22 infringer has sufficient knowledge of the facts alleged to enable it to answer the complaint and
23 defend itself.” *Internet Patents Corp. v. Gen. Auto. Ins. Servs.*, 29 F. Supp. 3d 1264, 1267 (N.D.
24 Cal. 2013) (quoting *Phonometrics, Inc. v. Hospitality Franchise Sys., Inc.*, 203 F.3d 790, 794
25 (Fed. Cir. 2000)). The court usually does not consider any material beyond the pleadings for a
26 Rule 12(b)(6) analysis. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555
27 n.19 (9th Cir. 1989). Exceptions to this rule include material submitted as part of the complaint or
28 relied upon in the complaint, and material subject to judicial notice. *See Lee v. City of Los
Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001).

1 **B. Patent Eligibility under 35 U.S.C. § 101**

2 Section 101 of the Patent Act provides that a patent may be obtained for “any new and
3 useful process, machine, manufacture, or composition of matter, or any new and useful
4 improvement thereof.” 35 U.S.C. § 101. However, the Supreme Court has recognized that these
5 broad categories contain an implicit exception: “[L]aws of nature, natural phenomena, and abstract
6 ideas are not patentable.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576,
7 133 S. Ct. 2107, 2116 (2013) (internal quotation marks and citation omitted). In applying this
8 exception, courts “must distinguish between patents that claim the building blocks of human
9 ingenuity and those that integrate the building blocks into something more.” *Alice Corp. Pty. Ltd.*
10 *v. CLS Bank Int’l*, 573 U.S. 208, 134 S. Ct. 2347, 2354 (2014).

11 To determine whether a claim falls within the “abstract idea” exception, the Supreme Court
12 has established a two-step framework. First, the court must “determine whether the claims at issue
13 are directed to a patent-ineligible concept.” *Id.* at 2355. Second, if the claims are directed to
14 patent-ineligible subject matter, the Court must “consider the elements of each claim both
15 individually and ‘as an ordered combination’ to determine whether the additional elements
16 ‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*
17 *Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 132 S. Ct. 1289 (2012)). The
18 Supreme Court has described this as a “search for an ‘inventive concept’—i.e., an element or
19 combination of elements that is ‘sufficient to ensure that the patent in practice amounts to
20 significantly more than a patent upon the [ineligible concept] itself.’” *Id.*

21 **III. DISCUSSION**

22 Defendant contends that for purposes of a Section 101 analysis, the Patents-in-Suit contain
23 only minimal differences and the method claims are representative of at least the other
24 independent claims in their respective patents. Mot. 2. Plaintiff disagrees, contending that
25 although the claims share similarities, it is improper to assume they are representative of each
26 other. The Court agrees that with minor differences, the claims of all the Patents-in-Suit are
27 similar. As a result, none of the asserted claims warrants a materially different Section 101

1 analysis or result. Accordingly, the Court will consider them collectively using Claim 1 of the
2 ‘928 Patent as the representative claim.

3 A. *Step One*

4 At step one of the *Alice* analysis, the Court looks to the ‘character as a whole’ of the claims
5 to determine whether it is directed to an abstract idea. *Alice*, 134 S.Ct. at 2355; *Enfish, LLC v.*
6 *Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). “The ‘directed to’ inquiry applies a stage-
7 one filter to claims, considered in light of the specification, based on whether ‘their character as a
8 whole is directed to excluded subject matter.’” *Enfish*, 822 F.3d at 1335 (quoting *Internet Patents*
9 *Corp.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). At some level, “all inventions . . . embody, use,
10 reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S.
11 at 71. Thus, Courts must tread carefully when assessing a claim’s “character as a whole” and
12 avoid “describing the claims at such a high level of abstraction and untethered from the language
13 of the claims [because that] all but ensures that the exceptions to § 101 swallow the rule.” *Enfish*,
14 822 F.3d at 1337.

15 Here, the focus of the claims is on collecting digital images, analyzing them and
16 categorizing them. An analysis module within the digital camera performs image data analysis on
17 the image at the time of image capture, automatically generating a category tag for the captured
18 image. ‘928 Patent, 9:8-13. The analysis module includes text category lists, combination logic,
19 analysis algorithms and parametric control. *Id.*, Fig. 7, 9:16-24. The specification describes a text
20 category list as a listing of various possible categories available for a given module. ‘928 Patent,
21 6:25-26. Combination logic determines how to resolve the results of the image analysis when
22 multiple analysis algorithms are utilized. *Id.*, 6:27-29. The analysis module runs a series of
23 analysis algorithms designed to allow the module to access and analyze images to detect at least
24 one image category tag. *Id.*, 6:34-41. Claim 4 of the ‘555 Patent recites that the category tag
25 associated with an image can comprise a “person, group of people, nature scene, cityscape,
26 waterscape or indoor image.” ‘555 Patent, 9:8-10. The analysis module can generate capture
27 information tags, which may indicate focus setting, aperture setting and other relevant information

1 that may be helpful in processing image data. ‘928 Patent, 7:12-32.

2 The Federal Circuit has found that claims directed at collecting information, analyzing it,
3 and displaying results of the collection are focused on an abstract idea. *See Elec. Power Grp.,*
4 *LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (citing cases). The Federal Circuit
5 explained that information is intangible, and hence abstract. *Id.* Accordingly, “collecting
6 information, including when limited to particular content,” is “within the realm of abstract ideas.”
7 *Id.* Further, the Federal Circuit has treated “analyzing information by steps people go through in
8 their minds, or by mathematical algorithms, without more, as essentially mental processes within
9 the abstract-idea category.” *Id.* at 1354. And merely presenting the results of abstract processes
10 of collecting and analyzing information, without more, is also abstract “as an ancillary part of such
11 collection and analysis.” *Id.*

12 Consistent with these principles, in *In re TLI Communications LLC Patent Litigation*, 823
13 F.3d 607, 613 (Fed. Cir. 2016), the Federal Circuit found claims directed to “classifying and
14 storing digital images in an organized manner” were abstract. In *TLI*, the claims sought “to
15 provide for recording, administration, and archiving digital images simply, fast and in such [a]
16 way that the information [] may be easily tracked.” *Id.* at 612. More specifically, the invention
17 involved “manually or automatically assigning ‘classification data,’ such as a date or a timestamp,
18 to digital images and sending those images to a server.” *Id.* at 610. The server then extracted the
19 classification data and stored the digital information. *Id.* The Federal Circuit found that “the
20 specification did not describe a new telephone, a new server, or a new physical combination of the
21 two.” *Id.* at 612. Nor did the invention provide a solution to any problem, such as how to append
22 classification information to the data. *Id.* Rather, the claims were directed to the use of
23 conventional or generic technology in a well-known environment. *Id.* For these reasons, the
24 Federal Circuit also held that the claims in *TLI* were not directed to a solution to a “technological”
25 problem, and instead were simply directed to the abstract idea of classifying and storing digital
26 images in an organized manner. *Id.* at 613.

27 The holding in *TLI* compels the conclusion in the present case that the claims at issue are

1 similarly directed to the abstract idea of analyzing and automatically categorizing digital images.
2 Like the representative patent in *TLI*, the Patents-in-Suit describe physical components such as a
3 digital camera, but the physical components “merely provide a generic environment in which to
4 carry out the abstract idea.” *Id.* at 611.

5 In response, Plaintiff asserts that the claims are directed to “a particular improvement in
6 computing specifically in regard to digital analysis and categorization.” Dkt. No. 25 at 1. Plaintiff
7 asserts that the Patents-in-Suit describe a new digital camera with analysis modules capable of
8 implementing software routines for analyzing and automatically categorizing images, representing
9 an improvement over what existing digital cameras can do. Plaintiff asserts that specialized
10 software built into the camera enables the camera to tag an image based on different algorithms
11 and categorization factors.

12 Plaintiff’s argument is unpersuasive. Contrary to Plaintiff’s assertions, the claims at issue
13 do not describe a specific improvement to digital camera functionality. Rather the claims at issue
14 describe “conventional or generic technology in a nascent but well-known environment.” *Id.* at
15 612. The digital camera, processor and memory identified in the Patents-in-Suit are described in
16 conventional and generic terms. The remaining element—the analysis module—is described in
17 purely functional terms as a component configured to perform image data analysis and to
18 automatically generate a category tag. This description of the analysis module is no different from
19 the vague description of the server in *TLI* that the Federal Circuit found patent-ineligible. *Id.* at
20 613 (“The server A includes ... [a] receiving unit EE for receiving the data sent from the telephone
21 unit TE ... and an analysis unit AE ... which extracts the classification information from data
22 received by the server S.”).

23 The cases relied upon by Plaintiff are distinguishable because the claims at issue in those
24 cases were directed to specific technological improvements rather than mere abstract ideas. In
25 *Enfish*, the Federal Circuit held that the self-referential table recited in the claims was a specific
26 type of data structure designed to improve the way a computer stores and retrieves data in
27 memory. *Enfish*, 822 F.3d at 1339. In *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880

1 F.3d 1356, 1363 (Fed. Cir. 2018), the Federal Circuit held that the claims recited a specific
2 improvement to a user interface for computing devices and were not directed to an abstract idea.
3 In *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1259-60 (Fed. Cir. 2017), the Federal
4 Circuit found claims relating to an improved computer memory system with programmable
5 operational characteristics defined by the processor were not directed to the abstract idea of
6 categorical data storage. In *Finjan, Inc. v. Blue Coat Systems, Inc.*, 879 F.3d 1299, 1304-05 (Fed.
7 Cir. 2018), the Federal Circuit held that claims directed to a “behavior based” approach to virus
8 scanning pioneered by Finjan were not abstract. Unlike traditional “code-matching” systems,
9 which simply look for the presence of known viruses, “behavior-based” scans analyzed the
10 downloadable code and determined whether it performed potentially dangerous operations. *Id.*
11 By contrast and unlike the cases relied upon by Plaintiff, the claims at issue in the instant action
12 are not directed to a specific technological improvement.

13 The Court concludes at step one of the *Alice* framework that the claims of the Patents-in-
14 Suit are directed to an abstract idea.

15 *B. Step Two*

16 In evaluating step two, courts must “consider the elements of each claim both individually
17 and ‘as an ordered combination’” and assess whether there are additional features in the claim that
18 constitute an “inventive concept.” *Alice*, 134 S.Ct. at 2357. “It is well-settled that mere recitation
19 of concrete, tangible components is insufficient to confer patent eligibility to an otherwise abstract
20 idea.” *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d at 613.

21 Here, the claims at issue recite only generic, conventional computer components such as a
22 processor and memory. Nothing in the claims calls for any specific kind of computer architecture,
23 component or data structure. In fact, the ‘928 Patent makes clear that the invention could be
24 implemented on a wide range of hardware. *See* ‘928 Patent, 1:32-47. “[T]he mere recitation of a
25 generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible
26 invention.” *Alice*, 134 S.Ct. at 2358.

27 The analysis module also fails to provide an inventive concept because it is simply a

1 generic component that analyzes and categorizes digital images. To be patent eligible, the
2 components must involve more than the performance of “well-understood, routine, [and]
3 conventional activities previously known to the industry.” *In re TLI Commc ’ns LLC Patent Litig.*,
4 823 F.3d at 613 (quoting *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l*
5 *Ass’n*, 776 F.3d 1343, 1347-48 (Fed. Cir. 2014)). The claimed analysis module in the patents-in-
6 Suit is simply a substitute for the human effort it would take to analyze and categorize images.

7 That the claims at issue identify a digital camera does not save the claims. Like the
8 telephone unit in *TLI*, the digital camera “simply provides the environment in which the abstract
9 idea” of collecting, analyzing and categorizing digital images is carried out. *Id.* at 614; *see also*
10 *Elec. Power Grp.*, 830 F.3d at 1354 (“[L]imiting the claims to the particular technological
11 environment of power-grid monitoring is, without more, insufficient to transform them into
12 patent-eligible applications of the abstract idea at their core.”).

13 In sum, the physical components described in the claims do not add an inventive concept.
14 The Federal Circuit has observed that “there is an important common-sense distinction between
15 ends sought and particular means of achieving them, between desired results (functions) and
16 particular ways of achieving (performing) them.” *Id.*, 830 F.3d at 1356. The Patents-in-Suit
17 describe the ends sought—analyzing and automatically categorizing digital images—without
18 offering a particular inventive means of achieving this result.

19 **C. CONCLUSION**

20 Because the Patents-in-Suit are directed to patentable ineligible subject matter under
21 Section 101, Defendant’s Motion to Dismiss is GRANTED. The Complaint is DISMISSED
22 WITHOUT LEAVE TO AMEND. Judgment will be entered in favor of Defendant and the Clerk
23 shall close this file.

24 **IT IS SO ORDERED.**

25 Dated: November 14, 2018



EDWARD J. DAVILA
United States District Judge