

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES – GENERAL

CASE NO.: CV 2:18-1517 SJO (PLAx)

DATE: April 5, 2019

TITLE: MoviePass, Inc. v. Sinemia, Inc.

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PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

Victor Paul Cruz
Courtroom Clerk

Not Present
Court Reporter

COUNSEL PRESENT FOR PLAINTIFFS:

COUNSEL PRESENT FOR DEFENDANTS:

Not Present

Not Present

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PROCEEDINGS (in chambers): ORDER DENYING DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT [Docket No. 34]

This matter is before the Court on Defendant Sinemia, Inc.'s ("Sinemia" or "Defendant") Motion to Dismiss Case Pursuant to Fed. R. Civ. P. 12(b)(6) ("Motion"), filed October 29, 2018. Plaintiff MoviePass, Inc. ("MoviePass" or "Plaintiff") opposed the Motion ("Opposition") on November 5, 2018, to which Defendant replied ("Reply") on November 9, 2018. The Court found this matter suitable for disposition without oral argument. See Fed. R. Civ. P. 78(b). For the reasons stated below, the Court **DENIES** Defendant's Motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff and Defendant are competitors in the newly established market for movie subscription services. At the time of the filing of the Complaint, MoviePass offered a service that allowed its subscribers, for \$9.95 per month, to view one standard 2D movie every calendar day. (Complaint ¶ 15, ECF No. 1.) This is accomplished by providing its subscribers with a bank card which could be loaded with the precise dollar amount necessary to purchase a chosen film. (Compl. ¶ 15.) Defendant offers a similar, albeit differently priced service: for either \$10.99 per month for two tickets or \$15.99 per month for three tickets. (Compl. ¶ 23.) Sinemia, too, provides its users with a bank card that can be activated to permit the purchase of a movie ticket. (Compl. ¶ 23.) The present action concerns a pair of patents owned by MoviePass that disclose a method of verifying the identity of the subscriber by proxy and only permitting a purchase when the subscriber's phone is located at the chosen theater venue.

Plaintiff commenced the instant patent litigation on February 23, 2018, alleging that Defendant directly infringes U.S. Patent Nos. 8,484,133 (the "'133 Patent") and 8,612,325 (the "'325 Patent") (together, the "Patents-in-Suit") through the sale of its premium movie subscription product. (See *generally*, Compl.) Following multiple extensions, the parties jointly requested a stay of proceedings pending final settlement of the matter. (Joint Petition to Stay Case, ECF No. 18) The Court granted this stay, but the parties were ultimately unable to finalize their

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agreement and the stay was lifted on October 17, 2018. (Order Granting Joint Request to Lift the Stay, ECF No. 33.) The present motion followed shortly thereafter.

The Patents-in-Suit are distinct, but derive from the same provisional application and are closely related to one another. The '325 Patent is entitled "Automatic Authentication and Funding Method" and the '133 Patent is entitled "Secure Targeted Personal Buying/Selling Method and System." (See Compl., Exhs. A & B.) Both are directed to a method for identifying an authorized user's identity based on the location of her mobile device and, once the identity is verified, providing funding to the authorized user. (See Compl., Exhs. A & B.) Along with its Complaint, Plaintiff filed infringement contentions asserting Claims 1-6, 11-12, & 15-16 of the '133 Patent and Claims 1-4, 6, 9, 11-12, 15, & 17 of the '325 Patent (collectively, the "Asserted Claims"). Of these, Claims 1 and 12 of '325 Patent and Claims 1 and 4 of the '133 Patent are independent. The independent Asserted Claims read in their entirety:

1. A ticketing system comprising:

- [a] a plurality of databases coupled via a network;
- [b] a plurality of processors coupled to the plurality of databases; and
- [c] at least one user device coupled to the processors and the databases via the network, wherein the at least one user device comprises at least one of a smart phone, a handheld mobile device with communication capability, and a personal computer;
- [d] wherein the plurality of processors are configured to:
 - (i) present a user interface (UI) on the at least one user device, wherein the UI comprises a description of the plurality of events;
 - (ii) via the network and the UI, receive a user request to book a ticket for one of the plurality of events;
 - (iii) determine a venue and start time for the event;
 - (iv) receive a notification from the user via a mobile device of the at least one user devices indicating that the user is at the venue;
 - (v) in response to the notification from the user, verify that the user is at the venue, wherein verifying that the user is at the venue comprises locating the mobile device;
 - (vi) if the user is verified to be at the venue, fund a user account wherein funding the user account comprises placing an amount of funds in the user account sufficient to pay for the ticket;
 - (vii) a predetermined amount of time after funding the user account, determine whether the amount of funds is still in the account;
 - (viii) if the amount of funds is not in the account after the predetermined amount of time, add an event restriction, wherein the event restriction prohibits the user from booking another ticket for the vent; and
 - (ix) collect and store data related to the user in the databases, wherein the data comprises names of events attended by the user, venues of the events attended by the user, and the frequency of attendance by the user.

('133 Patent col. 13:52-14:24.)

4. A computer-implemented method for targeted selling, comprising:

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- [a] storing, by a service provider system comprising one or more computers, user data comprising a name, an age, a gender, a home address, an email address, a phone number, product preferences, and names of friends;
- [b] presenting a user interface (UI) to the user on a user device, wherein the UI comprises at least one list of events;
- [c] receiving, by the service provider system via the UI, a request from the user to book a ticket for one of the listed events;
- [d] determining, by the service provider system, a time for the event and a venue for the requested event;
- [e] receiving from the user, via the UI and a mobile user device, an indication that the user is at the venue, and in response detecting, by the service provider system via the mobile user device, whether the user is at the venue;
 - (i) in response to detecting the user at the venue,
 - (ii) using, by the service provider system, the received request, the time and venue, and a location of the user at the venue to transfer information, causing a user account to be electronically funded with an amount sufficient to buy a ticket for the event; and
 - (iii) notifying, by the service provider system, the user that funds are available for the ticket;
- [f] in response to detecting that the user is not at the venue, notifying the user that the user must be closer to the venue before the user account is funded;
- [g] within a predetermined time after the time of the event, detecting, by the service provider system, whether the funds were redeemed, including determining, by the service provider system, whether the amount was redeemed by the user before the event, and determining, by the service provider system, whether there is a balance remaining over the funded amount;
- [h] in response to determining the amount was redeemed by the user before the event, collecting, by the service provider system, event data, including a time of the event, a type of the event, a name of the event, a ticket price for the event, and a location of the venue;
- [i] associating, by the service provider system, the event data with the user data; and
- [j] storing, by the service provider system, the event data.

('133 Patent col. 14:30-15:5.)

1. A computer-implemented location-based transaction management method, comprising:

- [a] receiving, by an overseer service/administration facility processor, a request from a controller entity processor to manage transactions on behalf of the controller entity, wherein the controller entity comprises an entity that wishes to control purchase transactions of users with which the controller entity has a relationship, wherein the request comprises a list of merchant partners and associated locations of the merchant partners, information regarding a user with which the controller entity has a relationship, and purchase restrictions,

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- wherein receiving comprises the controller processor communicating with the overseer processor via a network;
- [b] in response to the request, the overseer processor generating a payment token for the user on behalf of the controller entity;
 - [c] the overseer processor receiving a purchase request from the user via a user electronic communication device when the user wishes to make a purchase according to terms of the relationship;
 - [d] in response to the request, the overseer processor,
 - (i) determining a location of the user comprising determining a location of a user mobile communication device; and
 - (ii) funding the purchase request if the location matches one of the associated locations of the merchant partners based on information related to the purchase request.

('325 Patent col. 6:29-56.)

12. A location-based transaction system comprising:

- [a] a controller entity comprising at least one processor and software coupled to at least one network, wherein the controller software comprises instructions executable on the at least one controller processor to perform a controller method comprising,
 - (i) defining and identifying an authorized user, wherein the controller is configurable to fund predefined purchases on behalf of the authorized user, and to fund a user account for the purchases; and
 - (ii) choosing at least one of a plurality of predefined approved providers for purchases made by the authorized user; and
- [b] an overseer entity comprising at least one overseer processor and software coupled to the at least one network, the overseer software comprising instructions executable on the at least one overseer processor to perform an overseer method comprising,
 - (i) receiving user data and provider data from the controller entity, and generating a payment device for the user; and
 - (ii) using at least one location-based mechanism to place funds on the payment device from the user account under predefined circumstances such that the user is enabled to make the predefined purchases from the approved providers, wherein the predefined circumstances comprise a user's mobile device being detected at a physical location of an approved provider.

('325 Patent col 7:33-8:23.)

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I. DISCUSSION

In its Motion, Defendant argues that the claims of the Patents-in-Suit are not eligible for patent protection under 35 U.S.C. § 101 ("Section 101") because the Asserted Claims are directed to abstract concepts. (Mot. 1, ECF No. 34-1.) More specifically, Defendant argues the patents claim "nothing more than verifying the purchaser based on (1) the request originating with the user's phone, and (2) the user's phone being geographically located where it should be," activities "performed for years by cautious fathers, prudent bank tellers, and sharp-eyed sales clerks." (Mot. 5,10). It further asserts that the patents rely on generic computer components programmed to perform "well-understood, routine, conventional activit[ies]," and that there is nothing in the claims that would provide an "inventive concept" and render them patent-eligible. (Mot. 14.) Finally, Sinemia points to the United States Patent Office's ("USPTO") post-*Alice* rejection of another claim which it contends is analogous to those at issue in this case. (Mot. 17.)

Plaintiff responds that the Asserted Claims are directed to more than mere abstract concepts because they describe novel mechanisms for implementing subscription services. (Opp'n 10.) According to MoviePass, the claims describe a technical approach to an intransigent problem with traditional movie subscription services by allowing a user to view a film without the need for the theater operator to confirm the identity of the subscriber. (Opp'n 10-15.) Plaintiff analogizes the Patents-in-Suit to those directed to automated teller machines ("ATM"), and argues that, just as the ATM was patentable as a novel and inventive computerized implementation of traditional banking functions, so too are the Patents-in-Suit inventive and protectable. (Opp'n 15-16.)

With the parties' arguments laid out, the Court now examines the applicable legal standards.

A. Section 101 Analytical Framework

"Section 101 defines the subject matter that may be patented under the Patent Act." *Bilski v. Kappos*, 561 U.S. 593, 601 (2010). Section 101 reads in its entirety: "Whoever 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." 35 U.S.C. § 101. "Section 101 thus specifies four independent categories of inventions or discoveries that are eligible for patent protection: processes, machines, manufactures, and compositions of matter." *Bilski*, 561 U.S. at 601.

Although acknowledging that "[i]n choosing such expansive terms . . . Congress plainly contemplated that the patent laws would be given wide scope," the Supreme Court long ago identified three exceptions to Section 101: "laws of nature, physical phenomena, and abstract ideas." *Diamond v. Chakrabarty*, 447 U.S. 303, 308-09 (1980). Although these exceptions are not required by the statutory text, they are consistent with the idea that certain discoveries "are part of the storehouse of knowledge of all men" and are "free to all men and reserved exclusively to none." *Funk Bros. Seed Co. v. Kalo Inoculant Co.*, 333 U.S. 127, 130 (1948). Thus, "the concern that drives this exclusionary principle [is] one of pre-emption." *Alice Corp. Pty. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014) (citation omitted). Consequently, the Supreme Court has

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required that "[i]f there is to be invention from such a discovery, it must come from the application of the law of nature to a new and useful end." *Funk Bros.*, 333 U.S. at 130. These principles have been held to apply with equal force to product and process claims. *Gottschalk v. Benson*, 409 U.S. 63, 67-68 (1972).

Alice Corp. v. CLS Bank ("*Alice*") represents the Supreme Court's latest attempt to clarify how courts should apply these difficult principles. In *Alice*, the Supreme Court expanded on the two-step approach for resolving Section 101 issues first articulated in *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 77-80 (2012). First, a court must "determine whether the claims at issue are directed to one of those patent-ineligible concepts." *Alice*, 573 U.S. at 217 (citing *Mayo*, 566 U.S. at 77-80). If so, then the court must ask "[w]hat else is there in the claims," which requires consideration of "the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." *Id.* (citing *Mayo*, 566 U.S. at 77-80). In this second step, the court must "search for an 'inventive concept'—*i.e.*, an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Id.* (citing *Mayo*, 566 U.S. at 72-73). This two-step analytical framework has been labeled the "*Alice/Mayo* test" or simply the "*Alice* test."

Identifying whether a claim is "directed to an abstract idea" under step one of the *Alice/Mayo* test is not always a simple undertaking. Although there is some disagreement among courts as to how expansively a claim should be examined at *Alice/Mayo* step one, the Federal Circuit has instructed that the "'directed to' inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether 'their character as a whole is directed to excluded subject matter.'" *Enfish*, 822 F.3d at 1335 (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)); see also *Cal. Inst. Tech. v. Hughes Commc'ns, Inc.*, 59 F. Supp. 3d 974, 991-92 (C.D. Cal. 2014) (requiring that a court "identify the purpose of the claim—in other words, what the claimed invention is trying to achieve—and ask whether that purpose is abstract," making the *Alice/Mayo* step 1 "a sort of 'quick look' test, the object of which is to identify a risk of preemption and ineligibility"); *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1258-59 (Fed. Cir. 2014) (although blurring steps one and two in analyzing internet-based patent claims, finding the claims not patent-ineligible where they "specify how interaction with the Internet are manipulated to yield a desired result—a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of the hyperlink"). It is "relevant to ask whether the claims are directed to an improvement to computer functionality versus being directed to an abstract idea, even at the first step of the *Alice* analysis," which can entail reviewing both the claim language and the specification. *Enfish*, 822 F.3d at 1335-36..

If the claim is directed to an abstract idea, the Court must then determine whether the specific claim elements, considered both individually and "as an ordered combination," "transform the nature of the claim" into a patent-eligible invention. *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78). In *Alice*, the Supreme Court considered whether "[t]he introduction of a computer into the claims" directed toward the abstract idea of intermediated settlement was sufficient to "transform the nature of the claim" by adding an "inventive concept." *Id.* at 222. The Supreme Court held that it did not, and made clear that "the mere recitation of a generic computer cannot

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transform a patent-ineligible abstract idea into a patent-eligible invention." *Id.* at 223. "Nor is limiting the use of an abstract idea 'to a particular technological environment'" sufficient to impart patent-eligibility. *Id.* (quoting *Bilski*, 561 U.S. at 610-11). In its discussion, the Supreme Court in *Alice* distinguished an earlier case, *Diamond v. Diehr*, in which the Court held that a computer-implemented process for curing rubber, which employed a "well-known" mathematical equation, was nevertheless patent-eligible because it used that equation in a process designed to solve a technological problem in "conventional industry practice."¹ *Alice*, 573 U.S. at 223 (citing *Diehr*, 450 U.S. 175, 177-78 1981). Moreover, the Federal Circuit held in *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC* that "an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces," particularly where the invention claimed is more than the implementation of an abstract idea "on generic computer components, without providing a specific technical solution beyond simply using generic computer concepts in a conventional way." 827 F.3d 1341, 1352 (Fed. Cir. 2016).

With this high-level understanding of the purpose and limits of Section 101, the Court addresses whether a motion to dismiss may properly be brought on Section 101 grounds.

B. The Propriety of Ruling on Section 101 Motions at the Pleadings Stage and the Defendant's Burden

Federal Rule of Civil Procedure 12(b)(6) permits a party to move to dismiss an action for "failure to state a claim upon which relief can be granted" if "made before pleading if a responsive pleading is allowed." Fed. R. Civ. P. 12(b)(6). "Patent eligibility under [Section] 101 is a question of law that may, in appropriate cases, be decided on the pleadings without the benefit of a claim construction hearing." *Modern Telecom Sys. LLC v. Earthlink, Inc.*, No. CV 14-0347 DOC, 2015 WL 1239992, at *6 (C.D. Cal. Mar. 17, 2015) (citing *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, 776 F.3d 1343, 1349 (Fed. Cir. 2014) (affirming district court's decision to grant motion to dismiss based on patent-ineligible subject matter under Section 101 without having a claim construction hearing). Nonetheless, "like many legal questions, there can be subsidiary fact questions which must be resolved en route to the ultimate legal determination." *Aatrix Software, Inc. v. Green Shades Software*, 2017-1452, 2018 WL 843288 at *5 (Fed. Cir. February 14, 2018). For this reason, "it will ordinarily be desirable—and often necessary—to resolve claim construction disputes prior to a [Section] 101 analysis, for the determination of patent eligibility requires a full understanding of the basic character of the claimed subject matter." *Bancorp Servs., L.L.C. v. Sun Life Assurance. Co. Can. (U.S.)*, 687 F.3d 1266, 1273-74 (Fed. Cir. 2012).

"Although the clear and convincing evidence standard is not applicable" to a Section 101 motion brought pursuant to Federal Rule of Civil Procedure 12(b)(6), the movant "still bear[s] the burden of establishing that the claims are patent-ineligible under [Section] 101." *Modern Telecom*, 2015

¹ In particular, the Supreme Court in *Diehr* explained that the claimed contribution to the art was the step of "constantly measuring the actual temperature inside a rubber molding press" used to create synthetic rubber products. *Diehr*, 450 U.S. at 206.

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WL 1239992 at *8. "Additionally, in applying [Section] 101 jurisprudence at the pleading stage, the Court construes the patent claims in a manner most favorable to Plaintiff." *Id.* (citing *Content Extraction*, 776 F.3d at 1349).

C. Analysis

Having determined that the Court can rule on Defendant's Motion at the pleadings stage, the Court now applies the *Alice/Mayo* test to determine whether the claims of the '133 and '325 Patents are patent-eligible.

1. Step 1: The Claims Are Directed to a Patent-Ineligible Abstract Idea

The first step in determining whether a claim satisfies Section 101 is asking whether the claim at issue is directed to a "patent-ineligible concept" such as an abstract idea. *Alice*, 573 U.S. at 218. Under the first step of the *Alice/Mayo* test, "the court must identify the purpose of the claim—in other words, what the claimed invention is trying to achieve—and ask whether that purpose is abstract." *Cal. Inst. Tech.*, 59 F. Supp. 3d at 991. To accomplish this task, the Court must "appl[y] a stage-one filter to claims, considered in light of the specification, based on whether 'their character as a whole is directed to excluded subject matter.'" *Enfish*, 822 F.3d at 1335 (quoting *Internet Patents Corp.*, 790 F.3d at 1346). Moreover, because "all improvements in computer-related technology are inherently abstract," it is "relevant to ask whether the claims are directed to an improvement to computer functionality versus being directed to an abstract idea, even at the first step of the *Alice* analysis." *Id.*

As an initial matter, the Court finds that there is nothing novel or inventive regarding the hardware used to implement the Asserted Claims. Claim 1 of the '133 Patent, for instance, requires only generic computer components such as "a plurality of databases coupled via a network," "a plurality of processors coupled to the plurality of databases," and "at least one user device . . . [such as] a smartphone, a handheld mobile device with communication capability, [or] a personal computer." ('133 Patent col. 13:52-60.) The same is true of the '325 Patent, which requires "at least one processor and software coupled to at least one network." ('325 Patent col. 7:34-38.) Any concrete invention must therefore come from the manner in which these components are organized.

In its Motion, Defendant argues that the Asserted Claims "amount[] to nothing more than automated process to perform the same steps performed for years by cautious fathers, prudent bank tellers, and sharp-eyed sales clerks, i.e., confirming []—before payment is made—that payment is being made to the right person and is being used for the proper purpose." (Mot. 10.) In furtherance of its analogies, it provides an imagined conversation in which a child asks her parents for money to see a movie only to be confronted with inquiries such as "What movie and what theater? What time? When will you be home? Who else is going and who is driving?" (Mot. 10.) Only when satisfied with the answers will these watchful parents relinquish funds.

Plaintiff disputes this characterization as an over-simplification, pointing out that the Patents-in-Suit do not in actuality confirm the identity of the user, but rather the location of the user's mobile

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device. It argues that “[t]here is nothing to prevent a user from giving their phone to someone else, who could then use that phone to follow the claimed process and get a movie ticket” and that none of the authority figures identified in Defendant’s Motion “would ever accept the location of a phone as proof of identity.” (Opp’n 12.) The Court, however, finds this argument unconvincing.

Expanding the parental analogy provided by Defendant, it is readily apparent that the process claimed in the Patents-in-Suit has long been performed by humans without the use of modern computers. It is certainly not new for parents, when asked by their children for money, to first determine what the money is for and when and where the chosen activity will take place. Nor is it uncommon for parents to seek confirmation that their child is indeed engaged in the stated activity. A parent could confirm this by, for instance, placing a phone call to the specified location at the specified time and asking to speak to their child. Alternatively, a parent, having been informed that their son is planning to see a movie at a specific time, may drive through the movie theater parking lot looking for their son’s car, assuming that the vehicle’s presence is a reasonable proxy for his own.

In much the same way, Plaintiff’s invention relies on the use of cell phone location data as proxy evidence that the person receiving funds is the correct customer. As Plaintiff itself recognizes, its inventors relied on existing studies showing that mobile phone users were unwilling to part with their devices for hours at a time. '325 Patent 2:45-49 (“It has been demonstrated that individuals very rarely go anywhere without their mobile phones or a mobile device with similar capabilities. In addition, users almost never lend their mobile devices to other people, even for short periods of time.”); '133 Patent 3:25-28 (“The identity of the member is verified to a high degree of certainty based on study results that show the likelihood of a mobile phone owner to loan the phone to another for several hours is extremely low.”) As an established tenant of human behavior, this knowledge is neither novel nor concrete. In essence, then, MoviePass identifies a known abstract idea—that mobile phone users are unlikely to be separated from their devices for hours at a time—combines it with yet another known abstract idea—verifying a user’s identity before providing them with funds—and claims that this combination somehow renders the claim as a whole non-abstract.

In its Opposition, MoviePass attempts to analogize its claims to those upheld as patentable in a series of appellate decisions holding that claims must be analyzed in their entirety rather than in a piecemeal fashion. In the first of these, *Diamond v. Diehr*, the Supreme Court considered the use of a well-known mathematical formula, the Arrhenius equation, as one step of a longer process claim. 450 U.S. at 187. The Court ultimately held that the claim was not directed to abstract subject matter, finding that:

the [patentees] here do not seek to patent a mathematical formula. Instead, they seek patent protection for a process of curing synthetic rubber. Their process admittedly employs a well-known mathematical equation, but they do not seek to pre-empt the use of that equation. Rather, they seek only to foreclose from others the use of that equation in conjunction with all of the other steps of their claimed process.

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Id. Plaintiff contends that, as in *Diehr*, its claims “do not seek to preempt all use of [the insight that people are unlikely to loan their mobile phones to another for several hours]” but rather “seek only to foreclose the use of this insight in conjunction with all of their other claimed steps.” (Opp’n 13.) However, *Diehr* concerned the use of an abstract concept within the context of a larger, concrete invention—a chemical process for curing rubber. The MoviePass patents do no such thing, instead simply combining multiple abstract concepts. Plaintiff’s reliance on *Diehr* is therefore misplaced.

In *Enfish*, the Federal Circuit held that not all improvements to computer-related technology are inherently abstract and that the first step in the *Alice* inquiry in such cases “asks whether the focus of the claims is on the specific asserted improvement in computer capabilities (i.e., the self-referential table for a computer database) or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish*, 822 F.3d at 1335. Applying this standard, the Court concluded that the claims at issue in that case were not abstract because “they are directed to a specific improvement to the way computers operate.” *Id.* at 1336.

In the present case, however, the claims at issue cannot be said to be directed to “a specific improvement in the way computers operate” but rather the use of computers to improve the way an abstract process operates. The Court agrees with Defendant that Plaintiff’s claimed invention is directed to a process for confirming the identity of a user before providing them with money for a specific purpose. As MoviePass itself recognizes, the use of cell-phone location data is merely a proxy for this real-world information and the use of real time location tracking merely a tool, not the end goal of the claimed invention. (Opp’n 12.)

Finally, in *McRo, Inc. v. Bandai Namco Games America, Inc.*, the Federal Circuit found that a claim directed to “a method for automatically animating lip synchronization and facial expression of three-dimensional characters” was patent eligible because it “focused on a specific asserted improvement in computer animation.” 837 F.3d 1299, 1314 (Fed. Cir. 2016). In so doing, the Court determined that “it is the incorporation of the claimed rules, not the use of the computer, that ‘improved [the] existing technological process.’” *Id.* at 1313 (quoting *Alice*, 573 U.S. at 223). Importantly, in *McRo*, the Court found that the previous process performed by humans “was driven by subjective determinations rather than specific, limited mathematical rules.” *McRo*, 837 F.3d at 1314. As the Federal Circuit later explained, “although the processes were previously performed by humans, ‘the traditional process and newly claimed method . . . produced . . . results in fundamentally different ways.’” *Intellectual Ventures I LLC v. Erie Indemnity Co.*, 711 Fed. Appx. 1012, 1016 (Fed. Cir. 2017) (quoting *FairWarning IP, LLC v. Iatrix Systems, Inc.*, 839 F.3d 1089, 1094 (Fed. Cir. 2016)).

The Asserted Claims in the present case do not improve on an existing technological process, nor do they perform an existing process in a meaningfully different manner. They merely replace the traditional method of confirming a user’s identity with the use of a computer—namely cell phone location information. That the claim depends on a unique logical assumption (users are rarely separated from their mobile devices) is insufficient to render the invention anything more

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than the implementation of a well-established abstract process through the use of generic computer equipment. The claims of the '133 and '325 Patents are therefore more akin to the those at issue in *Alice* than those in *McRo*.

In its final argument, MoviePass points to the existence of patents directed to ATM machines and argues that, by Sinemia's logic, such patents would be directed to abstract ideas. There are two primary flaws in this argument. The first is that a patent granted as patentable in 1975 may not have been granted were it to be filed today. The law concerning what is and what is not patentable subject matter has evolved significantly over this period of time with numerous landmark patentability decisions such as *Bilski*, *Diehr* and *Alice Corp*. This issue is exacerbated by the identified ATM patent's heavy reliance on functional claiming—a tactic that has been sharply curbed by the Federal Circuit in a series of decisions in recent years. The second flaw in MoviePass' argument is that the ATM patent identified, U.S. Patent No. 3,905,461, was directed—not merely to software run on a generic computer system—but rather to a specific hardware system. The patent included schematics and circuit diagrams detailing its unique hardware configuration designed specifically to implement the process described in the patent. Thus, both the ATM patent and the legal standard applied differ substantially from the present case.

As Plaintiff has not identified any other concrete concepts contained in the Patents-in-Suit, the Court concludes that the Asserted Claims are directed to the abstract concept of “confirming a recipient's identity prior to providing money to that recipient.”

2. Step 2: Whether the Patents-in-Suit Include an “Inventive Concept” Sufficient to “Transform the Nature of the Claim[s]” into Patentable Inventions

Having determined that the Asserted Claims are directed to the abstract idea of confirming a recipient's identity prior to providing money to that recipient, the Court now “examine[s] the limitations of the claims to determine whether the claims contain an 'inventive concept' to 'transform' the claimed abstract idea into patent-eligible subject matter.” *Ultramercial II*, 772 F.3d at 715 (quoting *Alice*, 573 U.S. at 221). “A claim that recites an abstract idea must include 'additional features' to ensure 'that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Alice*, 573 U.S. at 221 (quoting *Mayo*, 566 U.S. at 77) (alterations in original). “Those 'additional features' must be more than 'well-understood, routine, conventional activity.’” *Ultramercial II*, 772 F.3d at 715 (quoting *Mayo*, 566 U.S. at 79-80). The “mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 573 U.S. at 223.

The “inventive concept” MoviePass claims is the creation of a novel solution to an intractable problem with the movie-pass business model. Namely, the fact that conventional movie-pass services—which Plaintiff acknowledges have existed for some time—rely on theater workers to check the identification of the person presenting the pass, thereby requiring the cooperation of the theater and effectively limiting such services to a single theater chain. (Opp'n 3-4.) MoviePass contends that the central insight of the '133 and '325 Patents is based on “study

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results that show the likelihood of a mobile phone owner to loan the phone to another for several hours is extremely low.” (Opp'n 4.) The inventors, relying on this central tenant, determined that the presence of a user's mobile phone could be used as a proxy for the user's identity, thereby obviating the need for a theater operator's cooperation.

While the Court is somewhat skeptical that this "inventive concept" is anything more than well-understood, routine, or conventional to a skilled artisan, it nevertheless finds that disposing of this issue at the motion to dismiss stage is inappropriate in light of a pair of recent decisions by the Federal Circuit. In those cases, the Federal Circuit determined that “[t]he question of whether a claim element or combination of elements is well-understood, routine, and conventional to a skilled artisan in the relevant field is a question of fact.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018); *see also, Aatrix*, 882 F.3d 1121, 1128 (Fed. Cir. 2018). It is true that “not every § 101 determination contains genuine disputes over the underlying facts material to the § 101 inquiry,” however the Court finds that in the present matter, further fact finding is necessary to determine how a POSITA would have viewed the concept at the time of the invention. *Id.* For this reason, the Court cannot conclude as a matter of law that it is not novel or inventive and must accordingly **DENY** Defendant's Motion to Dismiss.

II. RULING

For the foregoing reasons, the Court **DENIES** Defendants' Motion to Dismiss.

IT IS SO ORDERED.