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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CELLWITCH INC.,
Plaintiff,
v.
TILE, INC.,
Defendant.

Case No. 4:19-cv-01315-[JSW](#)

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

Now before the Court is the motion to dismiss filed by Tile, Inc. (“Defendant”). Having carefully reviewed the parties’ papers, considered their arguments, and the relevant legal authority, the Court DENIES Defendant’s motion to dismiss.

BACKGROUND

Defendant moves to dismiss on the basis that Cellwitch Inc. (“Plaintiff”)’s patent infringement claims fail as a matter of law because the asserted patent, U.S. Patent No. 8,872,655 (“’655 Patent”) entitled “System, Method and Network for Monitoring of Location of Items,” is invalid under 35 U.S.C. section 101 (“Section 101”) for lack of patent-eligible subject matter. The ’655 Patent describes a process in which a user can attach a small disc (“patch”) to his or her personal items in order to track these items. (Dkt. 32, Amended Complaint (“Am. Compl.”), ¶ 19.) Plaintiff claims its product is the physical embodiment of the claimed invention in ’655 Patent. (*Id.* ¶ 20.)

Plaintiff alleges that the patch uses Bluetooth technology and a mobile application, developed by Plaintiff, to track personal items when the items get misplaced or lost. (*Id.* ¶ 21.) When an item exceeds a certain proximity threshold from an individual’s phone, the user is alerted. (*Id.* ¶ 21.) Plaintiff originally filed this action on March 12, 2019, and alleged direct,

1 induced, and contributory infringement by Defendant of the '655 Patent. (*Id.* ¶¶ 71, 93, 113.)

2 The Court shall address additional facts as necessary in the remainder of this order.

3 **ANALYSIS**

4 **A. Legal Standard for Motion to Dismiss.**

5 A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the
6 pleadings fail to state a claim upon which relief can be granted. The complaint is construed in the
7 light most favorable to the non-moving party and all material allegations in the complaint are
8 taken to be true. *Sanders v. Kennedy*, 794 F.2d 478, 481 (9th Cir. 1986). However, even under
9 the liberal pleading standard of Federal Rule of Civil Procedure 8(a)(2), “a Plaintiff’s obligation to
10 provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a
11 formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*,
12 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

13 Pursuant to *Twombly*, a plaintiff must not merely allege conduct that is conceivable but
14 must instead allege “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570.
15 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
16 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*
17 *Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). “The plausibility standard is
18 not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant
19 has acted unlawfully . . . [w]hen a complaint pleads facts that are merely consistent with a
20 defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to
21 relief.” *Id.* (quoting *Twombly*, 550 U.S. at 557) (internal quotation marks omitted). If the
22 allegations are insufficient to state a claim, a court should grant leave to amend, unless amendment
23 would be futile. *See, e.g., Reddy v. Litton Indus., Inc.* 912 F.2d 291, 296 (9th Cir. 1990). As a
24 rule, “a district court may not consider any material beyond the pleadings in ruling on a 12(b)(6)
25 motion.” *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994), *overruled on other grounds,*
26 *Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002) (citation omitted).

27 The Federal Circuit has repeatedly held that Section 101 claims can be resolved at the Rule
28 12(b)(6) stage. *See, e.g., Aatric Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121,

1 1125 (Fed. Cir. 2019). However, the circuit clarified that courts can only resolve the subject-
2 matter eligibility inquiry at the pleading phase when “there are no factual allegations that, taken as
3 true, prevent resolving the eligibility question as a matter of law.” *Id.* At the motion to dismiss
4 stage, particularly when a court looks at a claim’s “inventiveness,” a court can only consider
5 sources “such as the complaint, the patent, and materials subject to judicial notice.” *Id.* at 1128;
6 *see Yanbin Yu v. Apple Inc.*, 392 F. Supp. 3d 1096, 1102 (N.D. Cal. 2019) (finding that the Rule
7 12(b)(6) inquiry “is confined to the contents of the complaint and plain words of the patent that is
8 incorporated by reference.”).

9 **B. Patent Eligibility.**

10 **1. Subject Matter Eligibility Under Section 101.**

11 Under Section 101, the scope of patentable subject matter includes “any new and useful
12 process, machine, manufacture, or composition of matter, or any new and useful improvement
13 thereof.” 35 U.S.C. § 101. Notwithstanding the broad scope of Section 101, there are three
14 important and judicially-created exceptions to patentability: “laws of nature, physical phenomena,
15 and abstract ideas.” *Diamond v. Chakrabarty*, 447 U.S. 303, 309 (1980). Inventions which fall
16 under these exceptions are not patent-eligible because “they are the basic tools of scientific and
17 technological work,” which are “free to all men and reserved exclusively to none.” *Mayo*
18 *Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012) (citations omitted).
19 “[M]onopolization of those tools through the grant of a patent might tend to impede innovation
20 more than it would tend to promote it,’ thereby thwarting the primary object of the patent laws.”
21 *Alice Corp. Pty. Ltd. v. CLS Bank Intern.*, 573 U.S. 208, 216 (2014) (citing *Mayo*, 566 U.S. at 71).

22 However, not all inventions involving an abstract concept are barred from patentability.
23 The Supreme Court in *Alice* affirmed that the approach set out in *Mayo* is the test to determine the
24 patent eligibility of an invention involving patent-ineligible subject matter. *Id.* at 217-18. The
25 test, generally known as the *Mayo-Alice* framework, describes a two-step analysis that
26 distinguishes patents that claim laws of nature, natural phenomenon, and abstract ideas from those
27 that claim patent-eligible applications of those concepts. First, a court must determine whether the
28 claims at issue are directed to a patent-ineligible concept, such as an abstract idea. *Id.* at 217;

1 *Mayo*, 566 U.S. at 77-78. If the claims are not directed to an abstract or otherwise patent-
2 ineligible idea, the claims are considered patentable and the inquiry ends. *Id.* at 217-18. If,
3 however, the court finds the claims are in fact directed to ineligible or abstract ideas, the court
4 must then consider the elements of each claim both individually and as an ordered combination to
5 determine whether the additional elements transform the nature of the claim into a patent-eligible
6 claim. *See id.* at 217 (citing *Mayo*, 566 U.S. at 78, 79). Step two of the process involves the
7 “search for an ‘inventive concept’ – *i.e.*, an element or combination of elements that is ‘sufficient
8 to ensure that the patent in practice amounts to significantly more than a patent upon the
9 [ineligible concept] itself.’” *Id.* (citing *Mayo*, 566 U.S. at 72-73).

10 Section 101 “does not permit a court to reject subject matter categorically because it finds
11 that a claim is not worthy of a patent.” *Research Corp. Techs. v. Microsoft Corp.*, 627 F.3d 859,
12 868 (Fed. Cir. 2010). The reason for the exceptions to eligibility rest on the presumption
13 undergirding the patent system, which “represents a carefully crafted bargain that encourages both
14 the creation and the public disclosures of new and useful advances in technology, in return for an
15 exclusive monopoly for a limited period of time.” *Pfaff v. Wells Elecs., Inc.*, 525 U.S. 55, 63
16 (1998). Monopolization of the tools of abstract ideas through the grant of a patent might tend to
17 impede innovation more than it would tend to promote it, thereby thwarting the primary objective
18 of the patent laws. *Alice*, 573 U.S. at 216. At the same time, however, courts must “tread
19 carefully in construing this exclusionary principle lest it swallow all of patent law.” *Id.* at 217.

20 **2. Application of Section 101 to the Patent-in-Suit.**

21 **a. The Claim is Directed to an Abstract Idea.**

22 The first step of the two-prong *Mayo-Alice* test is to “determine whether the claims at issue
23 are directed to a patent-ineligible idea.” *Alice*, 573 U.S. at 217. To determine whether the claims
24 are directed to an abstract idea, courts look at “the focus of the claimed advance over the prior art
25 to determine if the claim’s character as a whole is directed to excluded subject matter.” *Affinity
26 Labs of Texas, LLC v. DIRECTV, LLC* (“*Affinity Labs/DIRECTV*”), 838 F.3d 1253, 1257 (Fed.
27 Cir. 2016) (internal quotations omitted).

28 While abstract ideas are not patent-eligible subject matter, neither the Supreme Court nor

1 the Federal Circuit has “established a definitive rule to determine what constitutes an ‘abstract
2 idea’ sufficient to satisfy the first step of the [*Mayo-Alice*] inquiry.” *Enfish, LLC v. Microsoft*
3 *Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016) (internal citations omitted). The Federal Circuit has
4 provided some guidance to help courts identify what constitutes an abstract idea. For example, a
5 claim that is simply directed at a human activity is a patent-ineligible “abstract idea.” *In re TLI*
6 *Comm’ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016) (“[W]e have applied the
7 ‘abstract idea’ exception to encompass inventions pertaining to methods of organizing human
8 activity.”). The application of general computing practices to an activity that humans have
9 performed for hundreds of years also does not make a claim patent-eligible. *Voter Verified, Inc. v.*
10 *Election Sys. & Software LLC*, 887 F.3d 1376, 1385 (Fed. Cir. 2018) (holding the claim was
11 invalid because it automated the human activity of voting). However, courts cannot oversimplify
12 claims because “at some level, all inventions embody, use, rest upon, or apply laws of nature,
13 natural phenomena, or abstract ideas.” *In re TLI*, 823 F.3d at 611 (internal citations and
14 quotations omitted).

15 In addition, the Federal Circuit has held that if a claim recites an “abstract idea for which
16 computers are invoked merely as a tool,” the claim does not satisfy the first step of the *Mayo-Alice*
17 test. *Enfish*, 822 F.3d at 1336 (internal citations omitted). However, the Federal Circuit has also
18 determined that a claim is not abstract if it is “directed to an improvement to computer
19 functionality.” *Id.* at 1335. The appellate court has distinguished patent-eligible claims “directed
20 to an improvement in the functioning of a computer” with patent ineligible claims that add
21 conventional computer components to well-known business practices, abstract mathematical
22 formulas, or general steps on a computer. *In re TLI*, 823 F.3d at 612.

23 In this matter, the Court finds that the asserted claims are directed to the abstract idea of
24 using a computer to locate a person’s lost items.

25 Claim 1 of the ’655 Patent reads as follows:

- 26 1. A system for monitoring of location of items, comprising:
27 a plurality of wireless devices, each of the plurality of wireless devices
28 being associated with a monitored item;

1 a plurality of wireless communication terminals, each of the plurality of
2 wireless communication terminals being associated with a respective user
3 and associated with at least one respective associated wireless device of
4 the plurality of wireless devices and configured to monitor the proximity
5 of the at least one respective associated wireless device and to generate
6 an alert when the proximity of at least one of the associated respective
7 wireless device from the associated wireless communication terminal
8 meets or exceeds a proximity threshold to alert the respective user to the
9 met or exceeded proximity threshold; and

10 a processing system that is in communication with the plurality of
11 wireless communication terminals, the processing system comprising a
12 database that collects and stores data related to the plurality of wireless
13 devices and the plurality of wireless communication terminals,

14 *wherein at least one buddy wireless communication terminal of the*
15 *plurality of wireless communication terminals is further configured to*
16 *monitor the proximity of at least one wireless device of the plurality of*
17 *wireless devices associated with one of the other wireless communication*
18 *terminals and to generate an alert when the proximity of at least one of*
19 *the wireless devices associated with one of the other wireless*
20 *communication terminals from the buddy wireless communication*
21 *terminal meets or exceeds a proximity threshold to alter the user of the*
22 *buddy wireless communication terminal to the met or exceeded proximity*
23 *threshold.*

24 ('655 Patent at 15:4-18:35) (emphasis added). The examiner determined that patentability resided
25 in the final clause, emphasized above. (Am. Compl. ¶¶ 37-38.) While the '655 Patent contains
26 three independent claims (one, twelve, and twenty-three), at this procedural posture, the Court will
27 treat claim one as representative because the three claims are substantially similar and are all
28 linked to the same abstract idea.¹ See *Affinity Labs of Texas, LLC v. Amazon.com Inc.* (“*Affinity*
Labs/Amazon”), 838 F.3d 1266, 1267 n.2 (Fed. Cir. 2016); see also *Content Extraction &*
Transmission LLC v. Wells Fargo Bank, Nat. Ass’n, 776 F.3d 1343, 1348 (Fed. Cir. 2014).

Defendant first argues that the claims in the '655 Patent are directed at two longstanding
human practices: having other people assist in (1) monitoring items to prevent their loss and (2)
finding items that have been lost or misplaced. The Court agrees that these practices are abstract
ideas. Simply adding a computer or another piece of machinery to a claim does not make the
claim non-abstract. See *Content Extraction*, 776 F.3d at 1347; see also *In re TLI*, 823 F.3d at 613.

¹ Plaintiff also treats claim one as “exemplary” in its complaint. (See Am. Compl. ¶ 72.)

1 In *Content Extraction*, for example, the Federal Circuit held that an asserted claim of a method
2 that recognized information written on a scanned check and stored that information in an external
3 memory drive was an abstract idea. *Id.* The Federal Circuit noted that the concept of data
4 collection was “undisputedly well-known” and people have always saved important information.
5 *Id.* Determining that the claim was only drawn to the basic idea of data recognition and storage,
6 the Federal Circuit held that the patent did not claim patent-eligible subject matter. *Id.*

7 Here, Plaintiff alleges that the claims utilize a new system of “personal wireless
8 communication terminals to monitor and notify a particular user to when an item was no longer
9 within a set range of the user.” (Dkt. 38, Opposition (“Opp.”) at 8:7-9.) However, Plaintiff
10 concedes that the claims in the ’655 Patent “are directed to a specific new and useful system for
11 *tracking items . . .*” (*Id.* at 7:25-26) (emphasis added).) Plaintiff also alleges that it “claims a
12 novel system *for monitoring of location of items and altering of potential loss.*” (Am. Compl. ¶ 27
13 (emphasis added).) Humans have always created processes to alert themselves to find a missing
14 item. For example, humans have trained dogs to search for other animals, like foxes, sheep, or
15 cattle, and bark when they have located the other animals. While the use of mobile phones to
16 track an item eliminates the need for a dog in this example, the phone creates a digital tie between
17 the searching party and the item that is lost. The Court views Plaintiff’s claims as no more than a
18 digital hound.² The Federal Circuit has reiterated that adding the use of a computer to a human
19 activity does not make that idea any less abstract. While Plaintiff is correct in noting that at a high
20 level of generalization all inventions involve some kind of human activity, the Court does not need
21 to broadly generalize the claims to determine they are directed at a human activity.

22 Defendant next contends that the claims in the ’655 Patent fail the first prong of the *Mayo-*
23 *Alice* test because the claims are not “directed to an improvement in computer functionality.” *See*
24 *Enfish*, 822 F.3d at 1335. Plaintiff, on the other hand, maintains its claims are “directed to
25 integrating various structural components to form a novel monitoring system . . .” (Opp. at 1:12-

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27 ² It is proper for the Court to engage in “the practice of taking note of fundamental economic
28 concepts and technological developments in this context . . . [because it] is well supported by [the
Federal Circuit’s] precedents.” *Affinity Labs/Amazon*, 838 F.3d at 1270 (internal citations
omitted).

1 13.) Plaintiff claimed a method for monitoring the proximity of items with one or more wireless
2 devices. (*See* '655 Patent at 15:4-35.) Claim one recites a system in which mobile phones are
3 connected to a patch and are “configured to monitor the proximity” to that patch. (*Id.* at 15:6-12.)
4 A processing system in the patch “that is in communication” with a person’s mobile phone sends
5 an alert to the mobile phone when the patch exceeds a set distance threshold. (*Id.* at 15:19, 15:24-
6 35.)

7 Here, the claims in the '655 Patent “do not readily lend themselves to a step-one finding
8 that they are directed to a nonabstract idea.” *See BASCOM Glob. Internet Servs. Inc. v. AT&T*
9 *Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016). It appears that the '655 Patent uses a
10 computer as a tool to help individuals locate lost personal items. However, cases in which courts
11 have determined that a claim is patent-eligible at the first step of the *Mayo-Alice* test have been
12 based on more clear demonstration that the asserted claims were directed at the improvement of
13 some underlying computer functionality.

14 In *Enfish*, for example, the Federal Circuit held that the claimed self-referential table was
15 patent-eligible because its focus was on improving computer functionality. 822 F.3d at 1336.
16 Similarly, in *McRO, Inc. v. Bandai Namci Games America, Inc.*, the Federal Circuit held that
17 because the claim focused on “a specific asserted improvement in computer animation,” the
18 invention was not an abstract idea. 837 F.3d 1299, 1314 (Fed. Cir. 2016). The appellate court
19 noted that the claims were patent-eligible because they recited specific rules and lines of code that
20 improved existing 3-D animation processes. *Id.* In *Thales Visionix, Inc. v. United States*, the
21 Federal Circuit held that the claimed invention used ““mathematical equations [to determine] the
22 relative position of a moving object to a moving reference frame,”” and was therefore not an
23 abstract idea. *See* 850 F.3d 1343, 1348 (Fed. Cir. 2017) (internal citation omitted). The court
24 determined that the claims were directed to a new and useful technique to use sensors more
25 efficiently and effectively to track objects on a moving platform. *Id.* at 1349.

26 Here, Plaintiff does not explicitly explain how its claims improve the functionality of a
27 computer program or process. Plaintiff alleges that claim one of the “'655 Patent captures a
28 specific technical solution to notify a user of a potential loss of an item” by employing a “system

1 and method in which a plurality of tracking devices are associated with one or more users’ mobile
2 stations, each of which monitors the proximity of a tracking device and is configured to generate
3 an alter when the tracking device meets or exceeds a proximity threshold.” (Am. Compl. ¶¶ 25-
4 26.) Neither of these allegations provide specific detail about how the patent will specifically
5 accomplish any of the functions outlined in the patent’s claims. *See Affinity Labs/DIRECTV*, 838
6 F.3d at 1260.

7 In the holdings for *Enfish*, *McRO*, and *Thales Visionix*, on the other hand, the courts
8 explicitly emphasized that the order of claims and the claims’ specific processes make them,
9 respectively, unique improvements on computing functionality. *See McRO*, 837 F.3d at 1316
10 (“[C]laim 1 is limited to a specific process for automatically animating characters using particular
11 information and techniques”); *see also Thales Visionix*, 850 F.3d at 1349 (“[T]he claims seek
12 to protect only the application of physics to the unconventional configuration of sensors as
13 disclosed.”). While Plaintiff here confirms it “may use” traditional cell phones, Bluetooth
14 technology, and a “processing system” in the ’655 Patent, the patent does not specifically address
15 how the claims are directed at technical improvements of some underlying computing
16 functionality. This case presents a “close call about how to characterize [what] the claims are
17 directed to,” so the Court will defer its determination of the “specific claim limitations’ narrowing
18 effect for step two.” *See BASCOM*, 827 F.3d at 1349.

19 Although the Court finds that Plaintiff’s claims involve a longstanding human activity, the
20 Court also concludes that the specific claims “do not readily lend themselves to a step one
21 finding” that they are directed at the improvement to computer functionality. *See id.*
22 Accordingly, the Court proceeds to the next step of the two-part *Mayo-Alice* test.

23 **b. The Abstract Claims Contain Limiting Inventive Concepts.**

24 To apply the second step of the *Mayo-Alice* test, the Court must “determine whether the
25 claims do significantly more than simply describe the abstract method [in order to] transform the
26 abstract idea into patentable subject matter.” *Affinity Labs/DIRECTV*, 838 F.3d at 1262 (quoting
27 *Ultramerical, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014)). The Court must examine if
28 the claims include “additional features [that] constitute an inventive concept” *Id.* (citing

1 *Alice*, 573 U.S. at 221) (internal citations omitted). A claim cannot merely recite “concrete,
2 tangible components . . . to confer patent eligibility to an otherwise abstract idea.” *In re TLI*, 823
3 F.3d at 613. The components included in a claim must “involve more than [the] performance of
4 well-known, routine, conventional activities previously known to the industry.” *Id.* (internal
5 citations and quotations omitted). Whether a claim is “well-known, routine, and conventional” is
6 a factual determination. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018.) A patentee
7 survives a Rule 12(b)(6) motion attacking a claim’s Section 101 eligibility when he or she
8 adequately alleges the claims contain an inventive concept. *Aatrix Software*, 882 F.3d at 1126-27.

9 In a recent case, *Cellspin Soft, Inc. v. Fitbit, Inc.*, the Federal Circuit held that a patentee
10 can defeat a Rule 12(b)(6) motion by identifying specific, plausible factual allegations in the
11 claims that make them inventive. 927 F.3d 1306, 1317-18 (Fed. Cir. 2019). A court can only
12 resolve the question of patent eligibility, particularly at the “inventive step” prong of the *Mayo-*
13 *Alice* analysis, when there are no factual allegations in dispute that preclude the resolution of the
14 issue as a matter of law. *See id.* at 1317. While the court stated that it relied on allegations in the
15 complaint to find a claim inventive, the Federal Circuit stressed that any allegation about
16 inventiveness, completely separate from the claims or specification, would not defeat a motion to
17 dismiss. *Id.*; *see Aatrix Software*, 882 F.3d at 1128 (holding that courts must consider the
18 allegations in the complaint, patent language, and other materials subject to judicial notice in
19 adjudicating motion to dismiss pursuant to Rule 12(b)(6)). In essence, the Federal Circuit held
20 that a non-moving party will defeat a Rule 12(b)(6) motion when it can cite to factual allegations
21 in the complaint that are supported by the recited claims. *Id.*

22 At this stage of litigation, Plaintiff must assert non-conclusory allegations that relate back
23 to recitations in the claims. *See Yanbin Yu*, 392 F. Supp. 3d at 1106. In *Yanbin Yu*, the district
24 court found that the claim, a “unique and unconventional combination and arrangement of digital
25 camera components,” did not recite an “inventive step.” *Id.* at 1107. The plaintiff did not relate
26 its broad allegations that the patent recited an “inventive step” or an “improved operation” back to
27 the recited claims, so the district court found the allegations were conclusory and “merely
28 described multiple sensors and lenses.” *Id.* The allegations did not contain any question of fact,

1 so the district court determined it could resolve the Rule 12(b)(6) motion as a matter of law. *Id.* at
2 1106. The court found the claims did not satisfy the second *Mayo-Alice* prong because the claims
3 described an abstract idea of using several pictures to enhance the quality of one image and
4 nothing else. *Id.* at 1107.

5 In contrast, in *BASCOM*, the Federal Circuit held a claim that recited an Internet content
6 filtering tool was organized in a non-conventional way, so its ordered combination of limitations
7 constituted an “inventive step.” 827 F.3d at 1349-50. Specifically noting that all facts alleged in
8 the complaint must be construed in favor of the plaintiff at the Rule 12(b)(6) stage, the Federal
9 Circuit held that the claims indicated an inventive step because “the claims may be read to
10 improve an existing technological process.” *Id.* at 1351 (internal citation and punctuation
11 omitted). The court found that the claimed invention satisfied the second prong of the *Mayo-Alice*
12 test because the complaint sufficiently alleged that the claims ordered the individual components
13 of the invention in an unconventional way that improved the performance of the underlying
14 computer system itself. *Id.*

15 Here, the allegations in the complaint are different from the conclusory allegations in
16 *Yanbin Yu* because Plaintiff grounds his allegations in what the claims actually recite. *See* 392 F.
17 Supp. 3d at 1106 (finding that every element in the claim describe conventional technology used
18 in conventional ways). In contrast with *Yanbin Yu*, here, Plaintiff alleges, “[u]pon information and
19 belief, at the time of the ’655 Patent, there existed no solution that used a network of personal
20 wireless communication terminals to monitor and notify a particular user to when an item was no
21 longer within a set range of the user.” (Am. Compl. ¶ 30.) To support this allegation, Plaintiff
22 also alleges that the examiner found that patentability resided in the fourth clause of claim one.
23 (*Id.* ¶ 38.) Plaintiff later recites that claim in its complaint. (*Id.* ¶ 26, citing ’655 Patent at 15:4-
24 35.)

25 The Court finds these allegations create enough of a factual dispute to defeat a Rule
26 12(b)(6) motion. Plaintiff has adequately alleged that it ordered the components recited in claim
27 one in a non-conventional manner. *See BASCOM*, 827 F.3d at 1351. For example, Plaintiff
28 alleges that claimed invention represents an improvement over the prior art because it offered a


1 solution “that used a network of personal wireless communication terminals to monitor and notify
2 a particular user to when an item was no longer within a set range of the user.” (Am. Compl. ¶
3 30.) The allegations in the complaint indicate that Plaintiff’s patent claimed a process that
4 “address[ed] the moment of loss itself,” and this process was not well-known, routine,
5 conventional at the time of issuance of the ’655 Patent. (*See id.* at ¶ 32.) At this procedural
6 posture, the Court must accept these allegations as true and construe the facts alleged in favor of
7 the non-moving party. *See Cellspin*, 927 F.3d at 1317-18. The Court finds that Plaintiff has
8 sufficiently alleged what makes the claims inventive, the order of the components that inform a
9 user when an item is lost at the moment of loss, and that allegation is recited by the claim. *See id.*
10 at 1317. Accordingly, the Court finds that Plaintiff has demonstrated that the ’655 Patent contains
11 an “inventive step” needed to overcome a Rule 12(b)(6) challenge.

12 **CONCLUSION**

13 The Court finds that the claims in the ’655 Patent “do not readily lend themselves to a step
14 one finding that they are directed to a nonabstract idea.” *See BASCOM*, 827 F.3d at 1349.
15 However, the Court also finds that Plaintiff has made sufficient allegations that the claims contain
16 an inventive step which transforms the abstract idea of using computers to locate missing items
17 into patentable subject matter. Thus, at the pleading stage of litigation, the claimed system is
18 patent-eligible under Section 101. Accordingly, the Court HEREBY DENIES Defendant’s motion
19 to dismiss.

20 **IT IS SO ORDERED.**

21 Dated: November 21, 2019

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23 _____
24 JEFFREY S. WHITE
25 United States District Judge
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