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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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CURB MOBILITY, LLC,  
  
v.  
  
KAPTYN, INC., *et al.*,  
  
Defendants.

Case No. 2:18-cv-02416-MMD-EJY  
  
ORDER

**I. SUMMARY**

Plaintiff Curb Mobility, LLC alleges that Defendants Kaptyn, Inc., Triad Transportation Technologies, LLC, Whittlesa Blue Cab Company, and Desert Cab, Inc. infringe U.S. Patent No. 6,347,739 (the “739 Patent”) because they have systems in their taxicabs that allow them to accept credit cards. (ECF No. 23 (“FAC”).) Before the Court is Defendants’ motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), arguing the ’739 Patent is not directed to patentable subject matter under 35 U.S.C. § 101, lacks any additional inventive concept, and is thus invalid as a matter of law (the “Motion”).<sup>1</sup> (ECF No. 47.) Because the Court is persuaded by Defendants’ argument that the ’739 Patent is directed to an abstract idea, and lacks any additional inventive concept that would make it patent eligible—and as further explained below—the Court will grant the Motion.

**II. BACKGROUND**

The following facts are adapted from the FAC.<sup>2</sup> (ECF No. 23.) Plaintiff alleges that Defendants, taxicab companies that operate in Nevada, infringe the ’739 Patent, titled

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<sup>1</sup>Plaintiff filed a response (ECF No. 49), and Defendants filed a reply (ECF No. 50).

1 “System for Credit Card Acceptance in Taxicabs,” by making, using, or selling a system  
2 for credit card acceptance in taxicabs in their taxi fleets that “includes a taxi meter, a credit-  
3 debit card reader, and a modem for wireless communications[.]” (*Id.* at 4.) Plaintiff attached  
4 pictures to its FAC showing the system Defendants use in their taxicabs (ECF No. 23-2),  
5 which “includes a taxi meter such as the Triad/Kaptyn DT5 meter, a credit-debit card  
6 reader such as the Ingenico iPP320, and a generic modem as shown in the photographs[.]”  
7 (*Id.* at 4.) Plaintiff also attached pictures to its FAC (ECF No. 23-3) showing how  
8 Defendants’ system allegedly infringes the ’739 Patent’s method claims. (ECF No. 23 at  
9 4-5.) Plaintiff put Defendants on notice of the ’739 Patent by sending them cease and desist  
10 letters. (*Id.* at 5-6.) Plaintiff alleges Defendants infringe the ’739 Patent under direct,  
11 contributory, and inducement infringement theories. (*Id.* at 6-9.)

12 Plaintiff also attached the ’739 Patent to its FAC. (ECF No. 23-1.) The ’739 Patent  
13 includes two independent claims, though independent claim 11 is basically independent  
14 claim 1—a system claim—written as a method claim. (*Id.* at 11.) Claim 1 claims a system  
15 for accepting credit cards in taxicabs consisting of three components that work together:  
16 (1) a taximeter “having application programs at least some of which mandate a sequential  
17 exchange of electronic information” between the passenger and the driver about the fare;  
18 (2) a credit-debit card reader; and (3) a wireless modem. (*Id.*) Claim 11 makes claim 1 a  
19 method claim by claiming a method for charging a fare to a taxicab passenger consisting  
20 of installing in the taxi: (1) a taxicab meter capable of running the application programs  
21 described above; (2) a credit-debit card reader; and (3) a wireless modem. (*Id.*)

22 The remainder of the ’739 Patent’s claims are dependent claims adding features to  
23 claim 1’s system or claim 11’s method. (*Id.*) Claims 2-10 depend from claim 1. (*Id.*) Claim  
24 2 specifies that the credit-card reader can accept smart cards and private-label cards in

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25  
26 <sup>2</sup>The Court briefly recites the procedural history of this case because it is not  
27 particularly relevant to the Motion. Defendants filed a motion to dismiss (ECF No. 21)  
28 Plaintiff’s original complaint (ECF No. 1), but that motion was rendered moot by Plaintiff’s  
filing of the FAC (ECF No. 23). Defendants then moved to dismiss the FAC (ECF No. 33),  
in a motion that did not raise a Section 101 argument, but the Court denied that motion  
(ECF No. 40). Defendants filed an answer (ECF No. 43), and this Motion followed.

1 addition to credit and debit cards. (*Id.*) Claim 3 adds a display screen. (*Id.*) Claim 4 adds  
2 a printer. (*Id.*) Claim 5 adds a keyboard. (*Id.*) Claim 6 specifies that the modem can work  
3 over the network of a wireless network carrier. (*Id.*) Claim 7 specifies that the modem can  
4 communicate with an optional second communications network. (*Id.*) Claim 8 specifies that  
5 the modem can communicate with a bank's network to verify credit-debit card information.  
6 Claim 9 specifies that the modem can communicate with a taxicab network's home base.  
7 (*Id.*) Claim 10 specifies that the modem can communicate with the world wide web. (*Id.*)

8 Claims 12-18 depend from claim 11. (*Id.*) Claim 12 adds a keyboard and a display  
9 screen. (*Id.*) Claim 13 further modifies claim 12 by adding an antenna and outlining a  
10 process through which the system verifies the passenger's credit-debit card information  
11 with the passenger's bank. (*Id.*) Claim 14 adds a printer to claim 11. (*Id.*) Claim 15 adds  
12 to claim 11 by outlining a process through which the passenger can get a printed receipt.  
13 (*Id.* at 11-12.) Claim 16 specifies that the method of claim 11 involves exchanging signals  
14 with the internet. (*Id.* at 12.) Claim 17 specifies that the method of claim 11 involves  
15 exchanging signals with the taxicab's home base. (*Id.*) Claim 18 specifies that the method  
16 of claim 11 involves exchanging signals with other taxicabs. (*Id.*)

### 17 **III. LEGAL STANDARDS**

#### 18 **A. Motion for Judgment on the Pleadings Under Rule 12(c)**

19 "Because a Rule 12(c) motion is functionally identical to a Rule 12(b)(6) motion, the  
20 same standard of review applies to motions brought under either rule." *Gregg v. Hawaii,*  
21 *Dep't of Pub. Safety*, 870 F.3d 883, 887 (9th Cir. 2017) (citation and internal quotation  
22 marks omitted). "A judgment on the pleadings is properly granted when, taking all the  
23 allegations in the pleadings as true, the moving party is entitled to judgment as a matter  
24 of law." *Id.* (citation and internal quotation marks omitted).

25 Under Rule 12(b)(6), a court may dismiss a plaintiff's complaint for "failure to state  
26 a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled  
27 complaint must provide "a short and plain statement of the claim showing that the pleader  
28 is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,

1 555 (2007). While Rule 8 does not require detailed factual allegations, it demands more  
2 than “labels and conclusions” or a “formulaic recitation of the elements of a cause of  
3 action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555.)  
4 “Factual allegations must be enough to rise above the speculative level.” *Twombly*, 550  
5 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient  
6 factual matter to “state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678  
7 (internal citation omitted).

8 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to  
9 apply when considering motions to dismiss. First, a district court must accept as true all  
10 well-pled factual allegations in the complaint; however, legal conclusions are not entitled  
11 to the assumption of truth. See *id.* at 678-79. Mere recitals of the elements of a cause of  
12 action, supported only by conclusory statements, do not suffice. See *id.* at 678. Second,  
13 a district court must consider whether the factual allegations in the complaint allege a  
14 plausible claim for relief. See *id.* at 679. A claim is facially plausible when the plaintiff’s  
15 complaint alleges facts that allow a court to draw a reasonable inference that the  
16 defendant is liable for the alleged misconduct. See *id.* at 678. Where the complaint does  
17 not permit the court to infer more than the mere possibility of misconduct, the complaint  
18 has “alleged—but it has not show[n]—that the pleader is entitled to relief.” *Id.* at 679  
19 (internal quotation marks omitted). That is insufficient. A complaint must contain either  
20 direct or inferential allegations concerning “all the material elements necessary to sustain  
21 recovery under some viable legal theory.” *Twombly*, 550 U.S. at 562 (quoting *Car Carriers,*  
22 *Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1989) (emphasis in original)). When  
23 the claims in a complaint have not crossed the line from conceivable to plausible, the  
24 complaint must be dismissed. See *Twombly*, 550 U.S. at 570.

## 25 **B. Patentable Subject Matter and the *Alice* Standard**

26 Under Section 101 of the Patent Act, an inventor may obtain a patent on “any new  
27 and useful process, machine, manufacture, or composition of matter, or any new and  
28 useful improvement thereof.” 35 U.S.C. § 101. Courts, however, “have long held that this

1 provision contains an important implicit exception: Laws of nature, natural phenomena,  
2 and abstract ideas are not patentable.” *Alice Corp. Pty. v. CLS Bank Int’l*, 573 U.S. 208,  
3 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct.  
4 2107, 2116 (2013)). The concern behind these excepted categories is “one of pre-  
5 emption”—if an inventor could obtain patent protection over these “building blocks of  
6 human ingenuity,” then the patent scheme would work to undermine, not promote, future  
7 innovation. *Id.* at 216. But courts are careful to balance concerns over preemption with the  
8 fact that “all inventions at some level embody, use, reflect, rest upon, or apply laws of  
9 nature, natural phenomena, or abstract ideas.” *Mayo Collaborative Servs. v. Prometheus*  
10 *Labs., Inc.*, 132 S. Ct. 1289, 1293 (2012). Thus, where an invention moves beyond an  
11 abstract idea by applying it “to a new and useful end,” the invention will meet the Section  
12 101 standard. *Alice*, 573 U.S. at 222 (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67  
13 (1972)).

14 In light of these competing concerns, the Supreme Court has developed a two-part  
15 test to assess whether a patent covers an abstract idea. First, courts must determine  
16 whether a patent’s claims are directed to a “patent-ineligible concept,” such as an abstract  
17 idea. *Id.* at 217. Abstract ideas may be “preexisting, fundamental truth[s]” such as  
18 mathematical equations, and also encompass “method[s] of organizing human activity” or  
19 “longstanding commercial practice[s]” like intermediated settlement or risk hedging. *Id.* at  
20 219.

21 Second, if the court “determine[s] that the patent is drawn to an abstract idea or  
22 otherwise ineligible subject matter,” then the court examines “whether the remaining  
23 elements, either in isolation or combination with the non-patent-ineligible elements, are  
24 sufficient to ‘transform the nature of the claim into a patent-eligible application.’” *Intellectual*  
25 *Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1366-67 (Fed. Cir. 2015)  
26 (quoting *Alice*, 134 S. Ct. at 2358).

27 Whether a patent is eligible under Section 101 is a question of law that may be  
28 determined before the summary judgment stage of litigation. See *Accenture Glob. Servs.*,

1 *GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1340-41 (Fed. Cir. 2013) (reviewing a  
2 Section 101 determination *de novo*, but noting that the legal issue on review “may contain  
3 underlying factual issues”); *see also Internet Patents Corp. v. Active Network, Inc.*, 790  
4 F.3d 1343, 1348-49 (Fed. Cir. 2015) (affirming a district court’s granting of a motion to  
5 dismiss on Section 101 grounds); *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*,  
6 873 F.3d 1364, 1375-76 (Fed. Cir. 2017) (affirming a district court’s grant of motion for  
7 judgment on the pleadings on Section 101 grounds).

#### 8 **IV. DISCUSSION**

9 The Court addresses both steps of the *Alice* inquiry below, and then addresses  
10 Plaintiff’s contention that factual issues make resolution of this case inappropriate at this  
11 stage. As further explained below, the Court finds at *Alice* step one that the ’739 Patent is  
12 directed to an abstract idea—the longstanding commercial practice of paying for public  
13 transit, here, paying for a taxicab with a credit card. At *Alice* step two, the Court finds that  
14 nothing else in the patent—a mere assemblage of admittedly known components—brings  
15 the ’739 Patent into the realm of patent-eligibility.

##### 16 **A. *Alice* Step One**

17 At step one, Defendants argue that all claims of the ’739 Patent are directed to the  
18 abstract idea of paying for a taxicab with a credit card, which is a version of the  
19 longstanding commercial practice of paying for public transit. (ECF No. 47 at 10-17.)  
20 Plaintiff counters that the asserted claims of the ’739 Patent are not directed to an abstract  
21 idea because they are directed to a system and method, which are generally patent-  
22 eligible, and because “they claim computerized components performing unordinary  
23 functions above and beyond the prior art for the individual components to improve the  
24 functionality of the system as a whole.” (ECF No. 49 at 14.) The Court agrees with  
25 Defendants.

26 The Court finds the claims of the ’739 Patent are all directed to the abstract idea of  
27 paying for a taxicab with a credit card. (ECF No. 23-1 at 11-12.) *See also Smart Sys.*, 873  
28 F.3d at 1371 (affirming the district court’s finding that the asserted claims of four patents

1 were directed to the abstract idea of “paying for a subway or bus ride with a credit card”).  
2 Further, Plaintiff’s arguments at *Alice* step one miss the mark. Courts have invalidated  
3 many patents claiming systems and methods under *Alice*, so the type of patent claims at  
4 issue do not show that the asserted claims of the ’739 Patent are not directed to an  
5 abstract idea. (ECF No. 49 at 14 (making the argument).) *See also Smart Sys.*, 873 F.3d  
6 at 1368 (describing the ultimately invalidated patent claims as covering systems and  
7 methods). And Plaintiff’s argument that the asserted claims are not directed to an abstract  
8 idea because they describe computerized components that go beyond the prior art to  
9 improve the functionality of the claimed system (ECF No. 49 at 14) “is misplaced here  
10 because we consider the application of an abstract idea under *Alice* step two,  
11 not *Alice* step one.” *Smart Sys.*, 873 F.3d at 1373. The Court therefore finds that the claims  
12 of the ’739 Patent are all directed to the abstract idea of paying for a taxicab with a credit  
13 card and moves on to *Alice* step two.

14 **B. *Alice* Step Two**

15 At step two, Defendants argue that the claims of the ’739 Patent lack an inventive  
16 concept because “the claims and specification of the ’739 Patent recite computer  
17 components that perform well-understood, routine and conventional functions.” (ECF No.  
18 47 at 19, 19-23.) Plaintiff counters that the asserted claims of the ’739 contain an inventive  
19 concept—application programs described in several claims that “mandate a sequential  
20 exchange of electronic information.” (ECF No. 49 at 20.) Defendants reply that this  
21 element does not save the the ’739 Patent because “*Alice* stands for the very principle  
22 that reciting preexisting computerized components to transmit electronic information  
23 between one another is not inventive.” (ECF No. 50 at 5.) The Court again agrees with  
24 Defendants.

25 This is not a close call. The asserted claims of the ’739 Patent lack an inventive  
26 concept that could have saved them from invalidation under *Alice*. At the heart of all of the  
27 asserted claims is a system consisting of a taxicab meter, a credit-debit card reader, and  
28 a modem. (ECF No. 23-1 at 11-12.) The specification of the the ’739 Patent makes it clear

1 that these elements are conventional or otherwise known in the art. (*Id.* at 8-9 (describing  
2 the taxicab meter as one “known in the art” that “provides traditional taxicab functions,”  
3 the modem as one that communicates with networks “known in the art” to access routers  
4 and proxy servers over the world wide web in a manner “known in the art,” and the credit-  
5 debit card reader as “conventional”).) And as described above, claim 11 is merely a  
6 method claim version of the system claim 1. Thus, as described in the specification of the  
7 ’739 Patent itself, the core system/method of the patent is simply a combination of three  
8 known elements.

9 The Court does not find that the addition of known technological elements like  
10 printers, displays, and the ability to connect to the internet or other taxis described in the  
11 dependant claims bring the ’739 Patent within the realm of patent-eligibility. (ECF No. 23-  
12 1 at 11-12.) The phrase “known in the art” is used ten times in the specification to describe  
13 most if not all elements of each of the asserted claims, including the dependant claims.  
14 (*Id.* at 8-10.) Adding known technological elements from the dependant claims to the  
15 known technological elements from the independent claims does not make the claims  
16 patent-eligible. See, e.g., *Content Extraction & Transmission LLC v. Wells Fargo Bank,*  
17 *Nat. Ass’n*, 776 F.3d 1343, 1348-49 (Fed. Cir. 2014) (finding as such, noting that “all of  
18 the additional limitations” “recite well-known, routine, and conventional functions of  
19 scanners and computers”).

20 In addition, while the Court does not disagree with Plaintiff’s argument that  
21 conventional components combined in an unconventional manner may be patent eligible  
22 (ECF No. 49 at 16),<sup>3</sup> Plaintiff fails to show how any of the conventional components

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24 <sup>3</sup>For some reason, Plaintiff makes this argument at *Alice* step one, citing cases  
25 discussing claims that are not abstract because they are directed to improvements in  
26 computer functionality itself, such as *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253,  
27 1259 (Fed. Cir. 2017) (“the claims here are directed to a technological improvement: an  
28 enhanced computer memory system.”). (ECF No. 49 at 16-18.) But that line of cases  
simply does not apply here, because the ’739 Patent is not directed to a technological  
improvement in computer functionality. The ’739 Patent claims a system and method for  
accepting credit cards in taxicabs. (ECF No. 23-1.)



1 described in the '739 Patent's specification were combined in an unconventional manner.  
2 Plaintiff simply states the claims cover a "process previously unknown and unapplied in  
3 the context of taxi cab fare payment" in a conclusory manner, without explaining how.  
4 (ECF No. 49 at 17.) And as Defendants point out in their reply (ECF No. 50 at 6-9), while  
5 Defendants' Motion contains detailed, claim-by-claim analysis of the '739 Patent with  
6 many references to the specification itself (ECF No. 47), Plaintiff's responsive brief lacks  
7 any citations to the '739 Patent's specification (ECF No. 49). The Court will not simply take  
8 Plaintiff's word for it. Plaintiff has failed to explain how the conventional elements  
9 described in the '739 Patent are combined in an unconventional way.

10 Moreover, the Court is unpersuaded the application programs that "mandate a  
11 sequential exchange of electronic information" make the '739 Patent patent-eligible. (ECF  
12 No. 49 at 20.) The specification of the '739 Patent describes them as consisting of generic  
13 computer storage mechanisms known at the time. (ECF No. 23-1 at 9, specifically at 3:22-  
14 39.) In addition, "[t]hat a computer receives and sends the information over a network—  
15 with no further specification—is not even arguably inventive." *buySAFE, Inc. v. Google,*  
16 *Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014). Indeed, the "computers in *Alice* were receiving  
17 and sending information over networks connecting the intermediary to the other  
18 institutions involved, and the Court found the claimed role of the computers insufficient."  
19 *Id.* This Court is therefore unpersuaded by Plaintiff's primary argument at *Alice* step two.<sup>4</sup>

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21 <sup>4</sup>Plaintiff also cautions the Court against hindsight bias. (ECF No. 49 at 20.) But  
22 computer programs that mandate a sequential exchange of electronic information reflect  
23 the type of basic computer functionality also invalidated in *Alice* itself. *See Alice*, 573 U.S.  
24 at 225 ("The same is true with respect to the use of a computer to obtain data, adjust  
25 account balances, and issue automated instructions; all of these computer functions are  
26 well-understood, routine, conventional activities previously known to the industry.")  
27 (citation, internal quotation marks, and punctuation omitted). Moreover, as part of its effort  
28 to situate the Court around the time of the purported invention embodied in the the '739  
Patent—which would be more relevant to anticipation or obviousness anyway—Plaintiff  
provided the Court with a *New York Times* article from July 14, 2000, which describes a  
system and method that appears similar to the claimed system and method, but then  
concludes, "[s]everal cities, including San Diego and Los Angeles, have used similar credit  
card systems in many cabs for years[.]" (ECF No. 49-1 at 3.) Even if the content of the  
article was relevant to the Court's *Alice* inquiry, the article tends to show the patent was  
either obvious or not novel. Thus, the Court finds Plaintiff's warnings against hindsight bias  
unpersuasive.

1 In sum, the '739 Patent is invalid under *Alice* and its progeny. See *Smart Sys.*, 873  
2 F.3d at 1375-76 (affirming the district court's invalidation of a very similar set of patents  
3 under *Alice* on a motion for judgment on the pleadings).

4 **C. Factual Issues**

5 The parties also dispute whether any factual issues remain precluding the entry of  
6 judgment at this time. (ECF Nos. 47 at 23-24, 49 at 21-23, 50 at 12-13.) The Court finds  
7 that no factual issues exist to preclude disposition of this case, nor does it find claim  
8 construction necessary. "Although the determination of patent eligibility requires a full  
9 understanding of the basic character of the claimed subject matter, claim construction is  
10 not an inviolable prerequisite to a validity determination under § 101." *Content Extraction*,  
11 776 F.3d at 1349 (citation omitted). This is one of those cases. The basic character of the  
12 claimed subject matter is not complicated. The Court finds it has a sufficient grasp on the  
13 subject matter to rule now. See, e.g., *Glob. Cash Access, Inc. v. NRT Tech. Corp.*, Case  
14 No. 2:15-cv-00822-MMD-GWF, 2016 WL 1181669, at \*4 (D. Nev. Mar. 25, 2016) (finding  
15 no factual issues prevented the Court from granting a motion to dismiss based on *Alice*).  
16 And as Defendants point out, they relied in pertinent part on Plaintiff's proposed claim  
17 construction in their Motion anyway. (ECF No. 50 at 13.)

18 As Defendants argue (ECF No. 47 at 24), all of Plaintiff's claims, regardless of  
19 infringement theory, must fail because—as explained above—Plaintiff has asserted an  
20 invalid patent. The Court will therefore direct entry of judgment in Defendants' favor and  
21 close this case.

22 **V. CONCLUSION**

23 The Court notes that the parties made several arguments and cited to several cases  
24 not discussed above. The Court has reviewed these arguments and cases and determines  
25 that they do not warrant discussion as they do not affect the outcome of Defendants'  
26 Motion.

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It is therefore ordered that Defendants' motion for judgment on the pleadings (ECF No. 47) is granted. U.S. Patent No. 6,347,739 is invalid under *Alice* and its progeny.

The Clerk of Court is directed to enter judgment in Defendants' favor, and in accordance with this order, and close this case.

DATED THIS 21<sup>st</sup> day of January 2020.

  
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MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE