

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Case No. 9:16-cv-80855-DMM and Case No. 9:16-cv-80744-DMM**

TRIPLE7VAPING.COM, LLC
and JASON W. CUGLE,

Plaintiffs,

vs.

SHIPPING & TRANSIT, LLC,

Defendant.

_____/

SHIPPING AND TRANSIT LLC,

Plaintiff,

vs.

CONN'S, INC.

Defendant.

_____/

**TRIPLE7VAPING.COM, LLC AND JASON W. CUGLE'S PROPOSED MOTION FOR
JUDGMENT ON THE PLEADINGS OR ALTERNATIVELY, AMICUS BRIEF IN
SUPPORT OF CONN'S, INC.'S MOTION TO DISMISS**

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I. INTRODUCTION

Patent law protects only concrete and tangible inventions: “process[es], machine[s], [articles of] manufacture, [and] compositions of matter.” 35 U.S.C. § 101. It does not protect abstract ideas or concepts, even when those concepts are implemented using conventional computers or through conventional processing steps. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l.*, 134 S. Ct. 2347 (2014) (“*Alice*”). Nor does it protect ideas broadly, such as where a patent claims an idea no matter how it may be implemented. See *Halliburton Oil Well Cementing Co. v. Walker*, 329 U.S. 1, 8 (1946); *O’Reilly v. Morse*, 56 U.S. 62, 113-14 (1853). Similarly, patents that claim functionality without corresponding structure are invalid because they are indefinite. See *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1354 (Fed. Cir. 2015) (en banc) (“*Williamson*”); 35 U.S.C. § 112(6).

S&T allegedly owns four patents—U.S. Patents 7,400,970 (the “’970 patent”), 6,904,359 (the “’359 patent”), 6,763,299 (the “’299 patent”), and 6,415,207 (the “’207 patent”)—that it has used to file over 300 lawsuits and send hundreds, if not thousands, more demand letters. In its demand letter to Triple7Vaping.com, LLC, S&T asserted claim 1 of the ’970 patent, claim 41 of the ’359 patent, claim 79 of the ’299 patent, and claims 5 and 7 of the ’207 patent, which are reproduced in Section III.(A), below.

The patents-in-suit are directed toward the idea of tracking the location of vehicles and letting customers (*e.g.*, those waiting for a delivery or waiting for a bus) know exactly where the vehicle is so that they can better plan for its arrival. See ’359 patent, at 2:20-33; ’299 patent at 2:20-33; ’970 patent at 2:32-39; ’207 patent at 1:47-49. However S&T reads its patents broadly to assert claims of infringement against online retailers who simply ship a package and provide a tracking number, even if all that number can be used for is to learn that a package has shipped.

The asserted claims of the challenged patents are directed to abstract ideas and fail both

prongs of the test set forth in *Alice*, as well as every other test the Federal Circuit and the Supreme Court have used to measure abstraction. Moreover, the asserted claims are invalid as indefinite because they claim functions without corresponding structure.

As construed by Shipping & Transit, LLC (“S&T”), the patents claim nothing more than an idea, to be implemented using any structure on a generic computer and generic communications equipment (such as a telephone or over the Internet). Furthermore, the claims are specified at a high level of generality, and require the performance of only conventional functions (such as sending an email with a hyperlink). The claims, therefore, fall outside the scope of patentable subject matter allowed under 35 U.S.C. §101 and are indefinite under 35 U.S.C. § 112(2) and (6).¹

II. LEGAL STANDARDS

A. The *Alice* Test for Patentable Subject Matter

1) Patentable Subject Matter is a Question of Law that Can Be Decided on the Pleadings

“Whether a claim is drawn to patent-eligible subject matter under § 101 is a threshold inquiry” and “an issue of law.” *In re Bilski*, 545 F.3d 943, 950-51 (Fed. Cir. 2008), *aff’d Bilski v. Kappos*, 130 S. Ct. 3218, 3225 (2010) (describing § 101 as “a threshold test.”); *SiRF Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010) (“Whether a claim is drawn to patent-eligible subject matter is an issue of law.”).

For this reason, many federal district courts have resolved disputes over patentable subject matter on motions to dismiss under Federal Rule of Civil Procedure 12(b)(6) or on motions for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). *See, e.g., FairWarning IP, LLC v. Iatric Systems, Inc.*, No. 8:14-cv-02685, 2015 WL 3883958 (M.D. Fla.

¹ Now 35 U.S.C. §§ 112 (b) and 112(f), respectively. Because the patent at issue is governed by 35 U.S.C. § 112 (pre-AIA), this brief will refer to 35 U.S.C. §§ 112(2) and (6), respectively.

June 24, 2015); *Eclipse v. McKinley Corp.*, No. SACV 14-154-GW(AJWx), 2014 WL 4407592 (C.D. Cal. Nov. 3, 2014) (“*Eclipse*”). The Federal Circuit has repeatedly affirmed district court rulings finding patent claims subject-matter-ineligible on the pleadings. *See, e.g., OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362 (Fed. Cir. 2015); *Content Extraction & Transmission LLC v. Wells Fargo Bank*, 776 F.3d 1343, 1349 (Fed. Cir. 2014); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 717 (Fed. Cir. 2014); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1352 (Fed. Cir. 2014).

2) A Patent May Not Claim an Abstract Idea Implemented on a Generic Computer

In *Alice*, the Supreme Court applied a two-step framework for determining patent-eligibility, previously articulated in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. --, 132 S. Ct. 1289 (2012):

First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, “what else is there in the claims before us?” To answer that question, we consider 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. We have described step two of this analysis as a 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.

Alice, 134 S. Ct. at 2355 (internal quotations and citations omitted).

The Court did not endorse a specific approach for evaluating whether a claimed invention is directed to a patent-ineligible abstract idea for the first step of the *Alice/Mayo* framework. Instead, the Court compared the claims at issue to those it had previously evaluated for claiming ineligible subject matter and found that it “follows from our prior cases, and *Bilski* in particular, that the claims at issue here are directed to an abstract idea.” *Alice*, 134 S. Ct. at 2356.

For the second step of the *Alice/Mayo* framework, the Court explained that, to survive a

patentability challenge “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].” *Id.* at 2357 (citation omitted). Thus, “appending conventional steps, specified at a high level of generality [is] not ‘enough’ to supply an ‘inventive concept.’” *Id.* (citation omitted).

In line with this principle, the second step cannot be satisfied by reciting the use of generic computers to perform conventional steps. As the Court put it, “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Id.* at 2358. Indeed, “[g]iven the ubiquity of computers . . . wholly generic computer implementation is not generally the sort of ‘additional feature’ that provides any ‘practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.’” *Id.* (citation omitted).

In *Alice*, the Court expressly rejected the petitioner’s argument that implementation with a computer was sufficient for eligibility where the claimed steps “require a substantial and meaningful role for the computer.” *Id.* at 2359. To the contrary, the Court found the claim inadequate in part because “each step does no more than require a generic computer to perform generic computer functions” and because “[v]iewed as a whole, petitioner’s method claims simply recite the concept of intermediated settlement as performed by a generic computer.” *Id.*

The Federal Circuit has consistently found that conventional implementation—including the use of generic computers—cannot transform an otherwise patent-ineligible abstract idea into a patent-eligible invention. *See, e.g., OIP Techs.*, 788 F.3d at 1363; *Digitech Image Techs., LLC v. Electronics for Imaging, Inc.*, No. 2013-1600, 2014 WL 3377201 (Fed. Cir. July 11, 2014); *Accenture Global Servs. v. Guidewire Software Inc.*, 728 F.3d 1336, 1342, 1345 (Fed. Cir. 2013); *Bancorp Servs., LLC v. Sun Life Assurance Co. of Canada*, 687 F.3d 1266 (Fed. Cir.

2012); *Dealertrack, Inc. v. Huber*, 674 F.3d 1315 (Fed. Cir. 2012); *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366 (Fed. Cir. 2011).

B. The *Williamson* Test for Indefiniteness

1) Indefiniteness Is a Question of Law that Can Be Decided on the Pleadings

Indefiniteness for failing to meet the requirements of 35 U.S.C. §§ 112 (2) and 112(6) can also be decided on the pleadings. *See, e.g., In re TLI Commc'ns. LLC Patent Litig.*, 87 F. Supp. 3d 773 (E.D. Va. 2015) *aff'd on other grounds*, -- F.3d --, 2016 WL 285693 (Fed. Cir. May 17, 2016). “A determination of claim indefiniteness is a legal conclusion that is drawn from the court’s performance of its duty as the construer of patent claims.” *Atmel Corp. v. Info. Storage Devices, Inc.*, 198 F.3d 1374, 1378 (Fed. Cir. 1999) (citation omitted). As a question of law, indefiniteness is an issue that is amenable to summary judgment. *See, e.g., Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1364, 1367 (Fed. Cir. 2008). For the same reason, indefiniteness is amenable to judgment under Rule 12.

2) A Patent That Claims a ‘Means’ for Performing a Function Is Indefinite Where the Specification Contains No Supporting Structure

“[T]he use of the word ‘means’ in a claim element creates a rebuttable presumption that § 112(6) applies.” *Williamson*, 792 F.3d at 1348.

Construing a means-plus-function claim term is a two-step process. The court must first identify the claimed function. Then, the court must determine what structure, if any, disclosed in the specification corresponds to the claimed function. Where there are multiple claimed functions, as we have here, the patentee must disclose adequate corresponding structure to perform all of the claimed functions. If the patentee fails to disclose adequate corresponding structure, the claim is indefinite.

Id. at 1351-52 (internal citations and quotations omitted). Furthermore, extrinsic evidence, *e.g.* in the form of “testimony of one of ordinary skill in the art[,] cannot supplant the total absence of structure from the specification” so as to make a claim definite. *Id.* at 1354.

C. Claim Construction Is Not Necessary to Resolve the Issues and It Is S&T's Burden to Prove Otherwise Once a *Prima Facie* Case of Invalidity Has Been Made

In the present case, the §§ 101 and 112 issues are ripe for decision because the validity of the asserted claims can be determined from the specifications and the breadth S&T is apparently giving its claims, which Plaintiffs are willing to accept for purposes of this motion only. *Cf. Bancorp Servs.*, 687 F.3d at 1273 (finding “no flaw in the notion that claim construction is not an inviolable prerequisite to a validity determination under § 101,” although the court went on to construe some of the terms); *cf. also CLS Bank Int'l. v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1275 (Fed. Cir. 2013) (noting without disagreement that the parties could assume a construction presented by the patent owner in resolving patentability), *aff'd sub nom Alice*, 134 S. Ct. 2347.

To the extent S&T believes this Court should construe claims differently than what S&T relies on in order to make hundreds of infringement allegations, and such a construction would make a difference to the eligibility or validity analysis, S&T has the burden of coming forward with that construction, providing the supporting intrinsic evidence, and explaining how its construction would change the result. *See, e.g., Cyberfone Sys., LLC v. CNN Interactive Grp.*, 588 Fed. App'x 968, 991 n.1 (Fed. Cir. 2014) (patent owner's failure to explain which terms required construction or how the 35 U.S.C. § 101 analysis would therefore differ doomed argument that claim construction was necessary before finding of invalidity).

III. ARGUMENT

A. The Asserted Claims Are Drawn to an Abstract Idea

The first step of the *Alice/Mayo* framework is to determine whether the claims at issue are drawn to an abstract idea. They are. As discussed below, the asserted claims of each of the challenged patents are abstract for similar reasons why the claims at issue in *Alice* and in many other recent cases were found abstract.

The asserted claims are very similar to invalidated claim 41 of U.S. Patent No. 7,119,716 (the “Eclipse Patent”). The Eclipse Patent is highly relevant because it is owned by a related entity whose inventor and prosecuting attorney is the same attorney who drafted the patents-in-suit. Furthermore, the Eclipse Patent claims very similar ideas as the patents-in-suit. Specifically, it claims “monitoring travel data” and “initiating a [] notification... based upon the relationship of the mobile thing to a location.” See *Eclipse*, 2014 WL 4407592, at *9-11. The Eclipse Patent was invalidated in 2014. *Id.* Comparing the apparent scope of the asserted claims with invalid claim 41 of the ‘716 patent shows the striking similarity between the Eclipse Patent claim and those asserted by S&T here. The claims here, like those in *Eclipse*, should be invalidated under *Alice* for the same reasons.

1) The Asserted Claim of the ’970 Patent Is Drawn to an Abstract Idea

Claim 1 of the ’970 patent, which S&T has asserted is being infringed by Plaintiffs, is directed to the abstract idea of tracking the location of a package. Claim 1 recites:

Claim1 of the ’970 patent (annotations in bold)

A computer based notification system, comprising:

- [a]** means for enabling communication with a user that is designated to receive delivery of a package;
- [b]** means for presenting one or more selectable options to the user, the selectable options including at least an activation option for instigating monitoring of travel data associated with a vehicle that is delivering the package to the user;
- [c]** means for requesting entry by the user of a package identification number or package delivery number, each pertaining to delivery of the package; means for identifying the vehicle based upon the entry;
- [d]** means for requesting entry by the user of contact information indicating one or more communication media to be used in connection with a notification communication to the user;
- [e]** means for monitoring the travel data; and
- [f]** means for initiating the notification communication pertaining to the package via the one or more communication media, based upon the travel data.

Like claim 41 of the Eclipse Patent, claim 1 of the ’970 patent is of sweeping scope that

covers a specific task management work process: updating someone on where their package is. In *Eclipse*, Judge Wu invalidated a similar claim that encompassed the idea of “asking someone to do a task, getting an affirmative response, and then waiting until the task is done, ‘while adding the words ‘apply it with a computer’.” *Eclipse*, 2014 WL 4407592 at *9 (quoting *Alice*, 134 S. Ct. at 2358). Specifically, Judge Wu invalidated claim 41 of the Eclipse Patent that took that same idea and then added, “‘monitoring travel data associated with a mobile thing’ and ‘initiating a second notification . . . based on upon the upon [sic] the relationship of the mobile thing or another mobile thing to the location or another location.’” *Id.* In other words, a “hotel calling the room to let a guest know that the bags have not yet arrived, and then calling again once they have.” *Id.* at *10.

The abstract idea of the Eclipse Patent is very similar to the abstract idea embodied by claim 1 of the '970 patent. Claim 1 embodies the abstract idea of, for example, a concierge telling a guest whether her bags have arrived. All of the activities accomplished by the claim could have been (and likely are) accomplished by a hotel concierge. The concierge could [a] speak with someone who calls the front desk regarding bags shipped to the guest; [b] ask the guest if they want to be called when the bags arrive at the front desk; [c] note down the name of the guest the bags were sent to and whether they were coming by bike messenger or standard courier; [d] ask the guest where they'd like to receive a telephone call once the bags arrived; and [f] call the sender when the concierge learns that the bags have arrived at the front desk.

2) The Asserted Claim of the '299 Patent Is Drawn to an Abstract Idea

The '299 patent is also directed to the abstract idea of tracking the location of a vehicle. Asserted claim 79 of the '299 patent recites:

Claim 79 of the '299 patent (annotations in bold)

79. A system, comprising:
- [a]** means for maintaining delivery information identifying a plurality of stop locations;
 - [b]** means for monitoring travel data associated with a vehicle in relation to the delivery information;
 - [c]** means for, when the vehicle approaches, is at, or leaves a stop location:
 - [c1]** determining a subsequent stop location in the delivery information;
 - [c2]** determining user defined preferences data associated with the stop location, the user defined preferences data including a distance between the vehicle and the subsequent stop that corresponds to when the party wishes to receive the communication; and
 - [c3]** sending a communication to a party associated with the subsequent stop location in accordance with the user defined preferences data to notify the party of impending arrival at the subsequent stop location.

Again this claim covers an abstract idea of sweeping scope—one that would preempt the activities of everyone from taxi dispatchers to warehouse delivery coordinators to bike messengers to hotel bellboys. Using the hotel analogy from *Eclipse*, a hotel bellboy could **[a]** write down the list of rooms he needs to deliver luggage to; **[b]** travel on his route, crossing off the rooms as he reaches them; **[c1]** as he leaves a room, look at the next room on the list and **[c2]** see if the next room wants a warning call before he arrives to let them know he's almost there; and **[c3]** giving the next room a call to say he's almost arrived.

Again, this claim is very similar in scope to the invalidated Eclipse Patent, which similarly claimed the abstract idea of “the hotel calling the room to let a guest know that the bags have not yet arrived, and calling again once they have.” *Eclipse*, 2014 WL 4407592, at *10; *see also Pragmatus Telecom, LLC v. Genesys Telecommc'ns Labs., Inc.*, 114 F. Supp. 3d 192, 203 (D. Del. 2015) (claim reciting elements of automated call center system was directed to ineligible abstract idea).

3) The Asserted Claim of the '359 Patent Is Drawn to an Abstract Idea

The '359 patent also impermissibly claims an abstract idea. The '359 patent is directed to

the abstract idea of notifying someone of the location of a vehicle. Asserted claim 41 of the '359 patent recites:

Claim 41 of the '359 Patent

41. A notification system, comprising:

- (a) means for permitting a user to predefine one or more events that will cause creation and communication of a notification relating to the status of a mobile vehicle in relation to a location, comprising:
 - (1) means for permitting the user to electronically communicate during a first communication link with the notification system from a user communications device that is remote from the notification system and the vehicle whose travel is being monitored, the notification system being located remotely from the vehicle; and
 - (2) means for receiving during the first communication link an identification of the one or more events relating to the status of the vehicle, wherein the one or more events comprises at least one of the following: distance information specified by the user that is indicative of a distance between the vehicle and the location, location information specified by the user that is indicative of a location or region that the vehicle achieves during travel, time information specified by the user that is indicative of a time for travel of the vehicle to the location, or a number of one or more stops that the vehicle accomplishes prior to arriving at the location; and
- (b) means for establishing a second communication link between the system and the user upon occurrence of the one or more events achieved by the mobile vehicle during the travel.

This claim is directed to an abstract idea: the idea of updating someone regarding the current whereabouts of a vehicle. Again, all of the claimed activities could have been (and likely are) accomplished by a hotel concierge. Using a telephone, a concierge could [(a), (1), and (2)] ask a guest whether they want a courtesy call 10 minutes before the airport shuttle pulls up to the hotel, and [(b)] thereafter place a courtesy call to the guest 10 minutes before the airport shuttle pulls up to the hotel. Once again there is little difference between the abstract idea embodied in this claim and that found invalid in *Eclipse*. 2014 WL 4407592, at *9-11.

4) The Asserted Claims of the '207 Patent Are Drawn to Abstract Ideas

The asserted claims of the '207 patent are directed to the abstract idea of using information about one thing to look up information about another, albeit limited to the fields of people and vehicles. Below are asserted claims 5 and 7 of the '207 patent:

Claim 5 of the '207 patent (annotations in bold)

5. A system for monitoring and reporting status of vehicles, comprising:

- [a]** means for maintaining status information associated with a vehicle, said status information indicative of a current proximity of said identified vehicle;
- [b]** means for communicating with a remote communication device, said means for communicating including a means for receiving caller identification information automatically transmitted to said communicating means;
- [c]** means for utilizing said caller identification information to automatically search for and locate a set of said status information; and
- [d]** means for automatically retrieving and transmitting said set of said status information.

Claim 7 of the '207 patent

7. The system of claim 5, wherein said caller identification information is an e-mail address.

Claim 5 is directed to an abstract idea. For example, the same hotel concierge above could: **[a]** keep a list of all the cars that were valet parked; **[b]** see a call coming from “Room 410” to the valet; **[c]** use the “Room 410” identifier to check on the valet status of Room 410’s car; and **[d]** let the guest know the car has been ordered and is on its way. Other than the limitation that this task is carried out “automatically,” there is little more to claim 5 than what a hotel concierge does daily. Indeed, the '207 patent doesn’t pretend to have invented anything other than being able to do it “automatically.” It states that “having to provide either the operator or the computer with information identifying which vehicle is of interest to the user is time consuming and burdensome.” '207 patent at 1:47-49. The solution given by the patent is little

more than to say, “do it automatically!” This is no different than the invalid Eclipse Patent, which similarly claimed the idea to let someone know “the car is now at the valet stand,” but automatically. *Eclipse*, 2014 WL 4407592 at *10.

B. The Asserted Claims Do Not Contain Any Additional Elements that Would Transform Them Into Patentable Subject Matter

The second step of the *Alice/Mayo* framework requires examining the claims to determine whether they contain an inventive concept sufficient to transform the recited abstract idea into a patent-eligible invention. The Supreme Court warned that “[g]iven the ubiquity of computers . . . [a] wholly generic computer implementation is not generally the sort of ‘additional feature’ that provides any practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.” *Alice*, 134 S. Ct. at 2358 (quotation and citation omitted). Indeed, “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Id.*

Yet as S&T reads its claims, such a “wholly generic computer implementation” is the only possible thing—beside the abstract idea itself—recited by the asserted claims. As discussed below, the patents are not directed to a “specific technical solution beyond simply using generic computer concepts in a conventional way.” See *Bascom Global Internet v. AT&T Mobility, LLC*, -- F.3d --, 2016 WL 3514158, at *8 (Fed. Cir. June 27, 2016). As the patents themselves make clear, the claims merely “recite the abstract idea . . . along with the requirement to perform it . . . on a set of generic computer components. Such claims [do] not contain an inventive concept.” *Id.* at *7.

1) The Asserted Claim of the ’970 Patent Does Not Contain Any Transformative Elements

As S&T construes its claim, claim 1 does nothing more than say “update someone with new information,” albeit that new information is specifically regarding packages and shipments.

But it makes no difference that the information is about packages and shipments. The act of updating such information is not patentable. *See In re Ngai*, 367 F.3d 1336, 1338-39 (Fed. Cir. 2004) (holding that printed matter cannot confer patentability where “[a]ll that the printed matter does is teach a new use for an existing product”); *see also Alice*, 134 S. Ct. at 2359 (a patent applicant may not “claim any principle of the physical or social sciences by reciting a computer system configured to implement the relevant concept.”).

It also makes no difference that S&T alleges that a “shipment confirmation *email*” (as opposed to a telephone call, carrier pigeon, or smoke signals) infringes the claims. S&T cannot claim to have invented email or links, nor are emails or links an integral part of the invention claimed by the ’970 patent. The ’970 patent makes clear that it does not claim novelty in any particular software, hardware, or physical machine, and rather is nothing more than an abstract idea with the command to “apply it.” *See Alice*, 134 S. Ct. at 2358 (“Stating an abstract idea while adding the words ‘apply it’ is not enough for patent eligibility”) (internal quotation omitted). For example, with respect to the “means for establishing communication” with the user, the ’970 patent states that “the user can establish communication via a telephone, an e-mail message, the Internet, *or any other suitable communication medium.*” ’970 patent at 15:11-13. With respect to looking up package information, it explains that a “*human operator* can prompt the user for certain information through a telephone call *or other suitable medium of communication.*” *Id.* at 16:66-17:7; *see also id.* at 10:35-41 (human operator can request contact information via telephone, and manually enter it into system).

Even the task of monitoring travel data need not be done with computerized systems: the patent states that “it is possible to implement the system [] such that interference and interruption from a human operator is required.” *Id.* at 12:53-61. Claim 1 of the ’970 patent as construed by

S&T, like the claims invalidated in *Alice*, “does no more than require a generic computer to perform generic computer functions.” *Alice*, 134 S. Ct. at 2359. Put differently, the claim is not directed to a specific and inventive implementation but to a *concept* that may be implemented with a wide variety of entirely *conventional* equipment.

2) The Asserted Claims of the '299 Patent and the '359 Patent Do Not Contain Any Transformative Elements

The lack of an inventive concept is even more apparent in the '299 patent and '359 patents because their claims are not limited to *any* specific implementation. The '299 patent's specification is identical to the '359 patent's specification. The shared specification states that “all ‘means’ and ‘logic’ elements *are intended to include any structure, material, or design for accomplishing the functionality* recited in connection with the corresponding element.” '299 patent at 35:16-19; '359 patent at 35:16-19. The patents claim nothing more than an idea, and then attempt to claim *all possible ways of achieving it*, without claiming any specific and inventive means to implement the abstract idea. This is explicitly disallowed by *Alice*. 134 S. Ct. at 2355 (“The ‘abstract ideas’ category embodies the longstanding rule that an idea of itself is not patentable.”) (internal quotations omitted); *see also id.* at 2360 (system claims that recite hardware cannot be saved where the hardware is “purely functional and generic”). The claims, and indeed the entirety of these two patents, do nothing more than “simply instruct the practitioner to implement the abstract idea” through any possible means. *Alice*, 134 S. Ct. at 2359.

3) The Asserted Claims of the '207 Patent Do Not Contain Any Transformative Elements

Claims 5 and 7, beyond the abstract ideas they embody, contain nothing more than completely generic and conventional technology that, if it could transform the claims into patentable subject matter, would impermissibly make patent eligibility “depend simply on the

draftsman's art." *Alice*, 134 S. Ct. at 2360.

The technology used to accomplish the abstract idea of the patent is described in the '207 patent in the broadest terms. For example, the "means for maintaining status information" is apparently disclosed in Figure 2, and consists of nothing more than generic interfaces, displays, input devices, and system managers such as are found in a generic computer. As another example, the specification states that "[a]ny device capable of establishing communication with the interface [] and of automatically transmitting caller I.D. information to the interface [] should be suitable for implementing the user interface [] of the present invention." *Id.* at 7:34-38.

The '207 patent explicitly claims any and all possible methods and means of accomplishing the abstract idea:

It should be emphasized that the above-described embodiments of the present invention, particularly, any "preferred" embodiments, are merely possible examples of implementations, merely set forth for a clear understanding of the principles of the invention. Many variations and modifications may be made to the above-described embodiment(s) of the invention without departing substantially from the spirit and principles of the invention. All such modifications and variations are intended to be included herein within the scope of the present invention and protected by the claims.

'207 patent at 7:51-61.

Claim 7 merely adds that the "caller identification" is an email address. But email addresses add "nothing of substance" to the invention. *See Alice*, 134 S. Ct. at 2360. As discussed above, the patent itself recognizes that how caller I.D. is obtained is *immaterial* to the inventive concept of the patent. Even Claim 7's limitation of using an email address as I.D. instead of a phone number or customer name is not an inventive concept that lifts this patent-ineligible subject matter into the realm of patent eligibility.

C. The Asserted Claims Are Indefinite

1) Claims That Rely on a Computer as the “Means” To Perform the Function Must Provide a Specific Algorithm for Performing the Function

The Federal Circuit has long held that claiming only a general purpose computer as the means to perform a function renders a claim indefinite. *See, e.g., WMS Gaming, Inc. v. Int’l Game Tech.*, 184 F.3d 1339, 1349 (Fed. Cir. 1999). As the Federal Circuit subsequently explained:

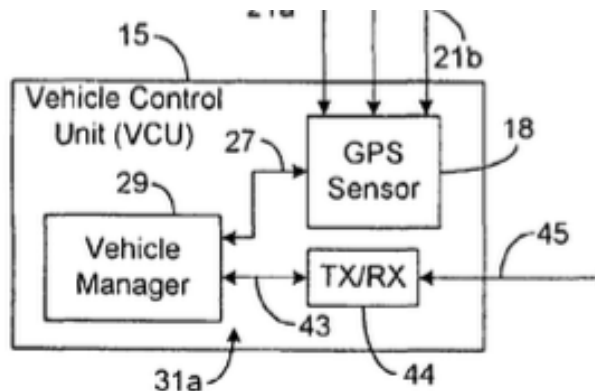
To avoid purely functional claiming in cases involving computer-implemented inventions, we have consistently required that the structure disclosed in the specification be more than simply a general purpose computer or microprocessor. Because general purpose computers can be programmed to perform very different tasks in very different ways, simply disclosing a computer as the structure designated to perform a particular function does not limit the scope of the claim to the corresponding structure, material, or acts that perform the function, as required by section 112 paragraph 6. Thus, in a means-plus-function claim in which the disclosed structure is a computer, or microprocessor, programmed to carry out an algorithm, the disclosed structure is not the general purpose computer, but rather the special purpose computer programmed to perform the disclosed algorithm. Consequently, a mean-plus-function claim element for which the only disclosed structure is a general purpose computer is invalid if the specification fails to disclose an algorithm for performing the claimed function.

Net MoneyIN, Inc. v. VeriSign, Inc., 545 F.3d 1359, 1367 (Fed. Cir. 2008) (citations omitted).

2) The Asserted Claim of the ’970 Patent Is Indefinite

Claim 1 of the ’970 contains six separate “means” claim terms. At the very least, the claim term “means for monitoring the travel data” is indefinite. This term is presumptively a “means-plus-function” term, and claims the function of “monitoring the travel data.”

The specification makes it clear that the “monitoring the travel data” function is not tied in any way to any particular structure for carrying out the claimed function. The specification appears to indicate that this function is accomplished by a “vehicle control unit (VCU)” shown in

Figure 1. *See* '970 patent at 4:54-5:19 and Figure 1.

The patent states that “in the preferred embodiment, sensor 18 is a global positioning system (GPS)” but then states that “other types of positioning systems and/or sensors are also possible.” ’970 patent at 4:65-5:1. The specification further states that the “vehicle manager” that forms part of the VCU is “configured to receive signal 27 and to monitor the location of the VCU 15 over time by processing multiple signals 27.” *Id.* at 5:28-5:30. What structure is provided to accomplish this? The patent states it is “implemented in software, hardware, or a combination thereof.” *Id.* at 5:30-5:31.

Nowhere does the patent actually explain *how* to implement the “software, hardware, or a combination thereof” to receive signals that could come from a GPS system or any other type of positioning system. The closest the specification comes is to provide a generic computer containing a “processing element.” *See* ’970 patent at Fig. 2. This is insufficient. *See Aristocrat Techs. Australia Pty. Ltd. v. Int’l Game Tech.*, 521 F.3d 1328, 1333 (Fed. Cir. 2008) (“In cases involving a computer-implemented invention in which the inventor has invoked means-plus-function claiming, this court has consistently required that the structure disclosed in the specification be more than simply a general purpose computer or microprocessor.”).

There can be no doubt that this claim is invalid. As early as 1853, the Supreme Court

rejected a similar attempt to claim a function, however accomplished:

[W]hile he shuts the door against inventions of other persons, the patentee would be able to avail himself of new discoveries in the properties and powers of electro-magnetism which scientific men might bring to light. For he says he does not confine his claim to the machinery or parts of machinery, which he specifies; but claims for himself a monopoly in its use, however developed, for the purpose of printing at a distance.

.....

In fine he claims an exclusive right to use a manner and process which he has not described and indeed had not invented, and therefore could not describe when he obtained his patent. The court is of opinion that the claim is too broad, and not warranted by law.

O'Reilly, 56 U.S. at 113; *see also Williamson*, 792 F.3d at 1352-53 (disclosure of functions of claim element without corresponding algorithms to perform those functions fails to meet 35 U.S.C. § 112(b)).

3) The Asserted Claims of the '299 and '359 Patents Are Indefinite

Like the asserted claim of the '970 patent, the asserted claims of the '299 and '359 patents each also include terms that are presumptively “means-plus-function” claims. For example, asserted claim 79 of the '299 patent includes the term “means for monitoring travel data associated with a vehicle in relation to the delivery information.” Asserted claim 41 of the '359 patent includes a “means” for “permitting a user to predefine one or more events that will cause creation and communication of a notification relating to the status of a mobile vehicle in relation to a location” that itself must perform to additional functions.

Once again, the specification provides no limiting supporting structure for these terms. The '299 and '359 patents are even more explicit than the '970 patent in the attempts to claim all possible structures (whether disclosed or not) that can perform the claimed functions. As discussed above, the shared specification states that “all ‘means’ and ‘logic’ elements *are*

intended to include any structure, material, or design for accomplishing the functionality recited in connection with the corresponding element.” ’299 patent at 35:16-19; ’359 patent at 35:16-19.

Claiming all possible ways of accomplishing a function is impermissible and the claims are indefinite. *See O’Reilly*, 56 U.S. at 113.

4) The Asserted Claims of the ’207 Patent Are Indefinite

As discussed above, the ’270 patent makes clear that it, like the other patents, by no means intends to limit the scope of its claims to any particular structure. For example, the “means for maintaining status information” is apparently disclosed in Figure 2. But as already mentioned, Figure 2 contains nothing more than generic devices commonly found on a generic computer.

As another example, claim 5 includes the “means-plus-function” element of “means for receiving caller identification information automatically transmitted to said communicating means.” Yet the “means” disclosed is nothing more than a generic “interface 69.”²

A generic “interface” does not provide sufficient structure to perform the claimed functions, and thus claim 5 and its dependent claim 7 are invalid as indefinite. *See Williamson*, 792 F.3d at 1352 (“the structure disclosed in the specification [must] be more than simply a general purpose computer or microprocessor” in order to meet the requirements of 35 U.S.C. §§

² Although at one point, in an “example” the “interface” is disclosed to be a “telephone device,” the patent attempts to be not so limited. *See* ’270 patent at 6:21-6:22. Moreover, dependent claim 7 would be inoperable if it were so limited, indicating that the patentee did not intend to so limit it. *See* ’270 patent at claim 7 (claiming that the caller I.D. information comes in the form of an email). Indeed, when making its allegations of infringement, S&T construes this “interface” to be a specifically programmed website. *See Triple7*, Complaint Ex. F at 8 (S&T’s demand letter alleging an website cookie is used by the means to “identif[y] the customer to the Triple7 website). Regardless of whether the specification contains structure to support this element in the form of a “telephone device,” no reading of the specification discloses the structure that S&T alleges infringes its claims.

112 (2) and (6)).

IV. CONCLUSION

S&T’s patent claims are exactly the type of claims—those using generic computer components—that the Supreme Court stated could not make an abstract idea patentable or provide appropriate structure to save a functional claim from indefiniteness. *See Alice*, 134 S. Ct. at 2360; *O’Reilly*, 56 U.S. at 113; *Williamson*, 792 F.3d at 1352-53. “As a result, none of the hardware recited by the claims offers a meaningful limitation beyond generally linking the use of the method to a particular technological environment, that is, implementation via computers.” *Alice*, 134 S. Ct. at 2360. These patents claim nothing more than an abstract idea with the general command to “apply it” or “accomplish it” using a computer, leaving the hard work of actually building it to others. Consequently, the claims at issue here are invalid.

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Respectfully submitted,

 /s/ Matthew Sarelson
Matthew Sarelson
Florida Bar No. 888281
Derek Young
Florida Bar No. 45227
KAPLAN YOUNG & MOLL PARRÓN
Brickell World Plaza
600 Brickell Avenue, Suite 1715
Miami, FL 33131
Telephone: (305) 531-2424
Fax: (305) 531-2405
msarelson@kymplaw.com

Vera Ranieri
(admitted *pro hac vice*)
ELECTRONIC FRONTIER FOUNDATION
815 Eddy Street
San Francisco, CA 94114
Telephone: (415) 436-9333
Fax: (415) 436-9993
vera@eff.org

Julie Turner
(admitted *pro hac vice*)
TURNER BOYD
702 Marshall Street, Suite 640
Redwood City, CA 94063
Telephone: (650) 521-5930
Fax: (650) 521-5931
turner@turnerboyd.com

**Counsel for Triple7Vaping.com, LLC and
Jason W. Cugle**