

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IDB VENTURES, LLC,

Plaintiff,

v.

ACADEMY, LTD.,

Defendant.

Case No. 2:17-cv-524-JRG

JURY TRIAL DEMANDED

**DEFENDANT ACADEMY, LTD.'S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM**

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It is appropriate for this Court to address the validity of the '139 Patent's claims under § 101 now, before this case progresses any further. Whether a patent's claims are drawn to patent-eligible subject matter under § 101 is a threshold question of law that has been decided solely on the pleadings on numerous occasions prior to a formal claim construction.

The claims of the '139 Patent are invalid under § 101 for covering patent-ineligible subject matter because each claim violates the Supreme Court's bright-line prohibition against patenting abstract ideas, and there are no meaningful limitations in the claims that make it clear that the claimed subject matter is directed at anything other than the abstract idea itself.

Specifically, the claims of the '139 Patent relate to the purely abstract idea of obtaining user parameters for selecting and sorting data, then selecting and sorting data using those parameters. Such data manipulation is a well-known concept, and similar ideas have repeatedly been rejected as patent-ineligible subject matter under § 101 as abstract.¹ Moreover, the '139 Patent fails to place any meaningful limitations on the claimed abstract concept of obtaining user parameters for selecting and sorting data, then selecting and sorting data using those parameters because none of the claims either are tied to a particular machine or apparatus or transform a particular article into a different state or thing.

Concluding that the '139 Patent's claims are directed at patent-ineligible subject matter relating to the abstract concept of obtaining user parameters for selecting and sorting data, then selecting and sorting data using those parameters is entirely consistent with prior rulings from this Court and is further supported by several Federal Circuit cases.

¹ See, e.g., *Cyberfone Sys., LLC v. CNN Interactive Grp.*, 558 F. App'x 988, 992 (Fed. Cir. 2014) (“[U]sing categories to organize, store, and transmit information is well-established. Here, the well-known concept of categorical data storage, i.e., the idea of collecting information in classified form, then separating and transmitting that information according to its classification, is an abstract idea that is not patent-eligible.”).

In the event that the Court does not find the claims of the '139 Patent to be invalid, the Court should dismiss the Complaint for failure to state a claim for direct infringement for two reasons. First, IDB fails to plausibly plead how Academy's website infringes the '139 Patent, particularly with respect to the query dialog box limitations. Second, IDB fails to plausibly plead joint infringement, as it identifies no end user as required by the claims and no theory of "direction or control" or joint enterprise.

For at least these reasons, as explained more thoroughly below, IDB's Complaint fails to allege infringement of a patentable claim. Academy therefore respectfully requests that the Court address the validity of the '139 Patent now, conclude that the claims of the '139 Patent are invalid under § 101 for failing to claim patent-eligible subject matter or that IDB has failed to adequately plead direct infringement, and grant its Rule 12(b)(6) motion to dismiss.

I. STATEMENT OF THE ISSUES

1. Whether the Court should dismiss this case for failure to state a claim upon which relief can be granted because the claims of the '139 Patent are invalid as they merely purport to patent an abstract idea, and therefore, are ineligible for patentability under 35 U.S.C. § 101;
2. Whether the Court should dismiss this case for failure to state a claim upon which relief can be granted because IDB has failed to adequately identify how Academy's website infringes the '139 Patent; and
3. Whether the Court should dismiss this case for failure to state a claim upon which relief can be granted because IDB has failed to adequately plead a claim for joint infringement under the *Twombly/Iqbal* pleading standard.

II. BACKGROUND FACTS

On July 6, 2017, IDB Ventures, LLC ("IDB") filed a lawsuit accusing Academy, Ltd. ("Academy") of infringing "at least claims 1, 2 and 19 of U.S. Patent No. 6,216,139 (the "'139

Patent”).² The ’139 Patent relates to a system and method for formatting tables of data “according to the preferences of the user.”³

As acknowledged in the background section of the ’139 Patent, computer database management systems and spreadsheet programs with data-sorting capability have long been in use.⁴ According to IDB, however, these well-known systems and methods allegedly lacked the ability to select different sort parameters without having to perform several “precisely specified steps.”⁵ The alleged invention aims to solve this problem. Particularly, it addresses the supposed need for a system and method to “reformat displays of text data objects in terms of parameters chosen by the user.”⁶

A. The independent claims of the ’139 Patent cover well-known concepts.

The ’139 Patent includes three independent claims: method claim 1 and system claims 10 and 19. Each of these claims covers the well-known concept of obtaining user parameters for selecting and sorting data, then selecting and sorting data using those parameters. Claim 1 is an exemplary claim:

1. A method for using a computer system to sort and display text data objects, comprising the steps of:
 - a. imaging, on a display device controlled by the computer system, a query dialog box, wherein the query dialog box displays each of a plurality of parameters associated with each of the text data objects, forms a plurality of spaces or listing values associated with each displayed parameter, and further forms a space for selecting a sort order;
 - b. designating, for each displayed parameter, a parameter value;

² Compl. [Doc. 1] ¶ 10.

³ Compl. [Doc. 1] at Ex. A, ’139 Patent at Abstract.

⁴ Compl. [Doc. 1] at Ex. A, ’139 Patent at 2:5–7.

⁵ Compl. [Doc. 1] at Ex. A, ’139 Patent at 2:14–16.

⁶ Compl. [Doc. 1] at Ex. A, ’139 Patent at 2:49–51.

- c. constructing a sort order from the displayed parameters in the space for selecting a sort order;
- d. selecting, using the computer system, text data objects satisfying the designated values; and
- e. sorting, using the computer system, the selected text data objects according to the constructed sort order.

As can be seen above, method claim 1 involves nothing more than simple data manipulation principles (*i.e.*, prompting the user for parameters, designating those parameters, then selecting and sorting data based upon those parameters). Notably, claim 1’s preamble confirms that its steps relate only to basic data manipulation (*i.e.*, “using a computer system to sort and display data”). The functionality in each of the steps similarly is directed only toward obtaining user parameters for selecting and sorting data, then selecting and sorting data using those parameters.⁷ Specifically, the steps highlighted in **yellow** represent the abstract idea of obtaining user parameters for selecting and storing data, and the steps highlighted in **green** relate to the abstract ideas of selecting and sorting data, respectively. No other functionality is claimed.

B. The dependent claims of the ’139 Patent add only insubstantial limitations.

The remaining claims in the ’139 Patent fail to add any inventive features to the abstract idea discussed above. Independent claims 10 and 19 of the ’139 Patent merely parallel claim 1, except, instead of method claims, they are directed to “[a] computer system” (claim 10 and its dependents), and “[a] computer memory storage device” (claim 19).⁸ Nothing in any of the claims of the ’139 Patent ties the steps of the independent method claim (or the claims depending therefrom), or the “devices” of the independent system claims (or the claims depending therefrom), to anything other than a generic computer system, nor is there any transformative quality to them.

⁷ Compl. [Doc. 1] at Ex. A, ’139 Patent, at 3:10–24.

⁸ Compl. [Doc. 1] at Ex. A, ’139 Patent, at Claims 10 & 19.

The mere perfunctory references in the claims to a few general computer-related terms is simply insufficient as a matter of law to save otherwise patent-ineligible abstract concepts from being invalid.

The specification confirms that the claims are directed to the well-known abstract concept of obtaining user parameters for selecting and sorting data, then selecting and storing data based on those parameters. For example, the “Objects and Summary of the Invention” section described in the specification describes the alleged invention to be “a method for using a computer system to sort and display text data objects [whereby] a Query dialog box appears” which displays the selection and sort parameters.⁹ The user then selects the selection and sort parameters, after which “[t]he computer system then selects the text data objects satisfying the value assigned to the displayed parameters, sorts the selected text data objects according to the constructed order, and displays the sorted text data objects on a suitable display device.”¹⁰ Put succinctly, the invention amounts to nothing more than the abstract idea of obtaining user parameters for selecting and storing data, then selecting and storing data based on those parameters.

Figure 2 of the ’139 Patent, reproduced below with the steps highlighted with the same colors used above, “is a flow diagram showing the overall operation of the present invention”:

⁹ Compl. [Doc. 1] at Ex. A, ’139 Patent, at 3:10–24.

¹⁰ Compl. [Doc. 1] at Ex. A, ’139 Patent, at 3:24–30.

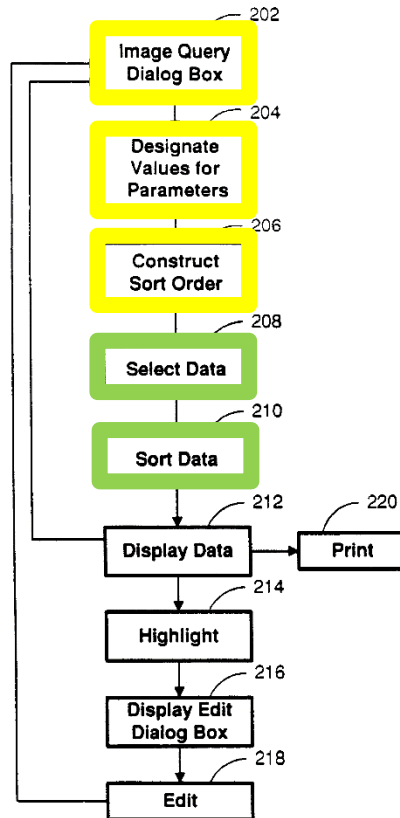


FIG. 2

The flowchart above merely describes the process of obtaining user parameters for selecting and sorting data, then selecting and sorting data using those parameters. Specifically, this flowchart shows that the operation of the invention only requires a user be prompted with selection and sort parameters (“Image Query Dialog Box”), and the selected parameters be received (“Designate Values for Parameters,” “Construct Sort Order”). Then, based on the classification, data is selected and sorted (“Select Data,” “Sort Data”). As is apparent in the claim language, no functionality other than abstract data manipulation techniques is described.¹¹

Nothing in the specification or claims of the ’139 Patent indicates that the claimed subject matter is directed to any specific transaction type. Instead, the object of the invention is to target

¹¹ The flowchart shows the additional steps of “Display,” “Highlight,” “Print,” and “Edit,” which further recite conventional data manipulation functionality.

the generic concept of obtaining user parameters for selecting and sorting data, then selecting and sorting data using those parameters—while invoking purely generic computers. Indeed, as is apparent by the multitude of companies it has filed suit against in this Court, IDB asserts the abstract '139 Patent's claims against an array of products and services.¹²

III. ARGUMENTS AND AUTHORITIES

A. The Court should dismiss this case because the '139 Patent is invalid under § 101.

1. Standard for dismissal under Rule 12(b)(6).

Under Federal Rule of Civil Procedure 12(b)(6), “the Court must dismiss a complaint that does not state a claim for relief that is ‘plausible on its face.’”¹³ A claim is “facially plausible” when “‘the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’”¹⁴

a. A Court may decide patent-eligibility in a Rule 12(b)(6) motion and claim construction is not required.

Subject-matter eligibility under 35 U.S.C. § 101 is a “threshold” legal test.¹⁵ Courts in this District routinely dismiss complaints on § 101 grounds.¹⁶ And the Federal Circuit has recognized

¹² See, e.g., *IDB Ventures, LLC v. DSW, Inc.*, No. 2:17-cv-00523 (E.D. Tex.) (filed 7/6/17); *IDB Ventures, LLC v. Academy*, No. 2:17-cv-00524 (E.D. Tex.) (filed 7/6/17); *IDB Ventures, LLC v. American Eagle Outfitters Inc.*, No. 2:17-cv-00658 (E.D. Tex.) (filed 9/21/17); *IDB Ventures, LLC v. The Buckle, Inc.*, No. 2:17-cv-00659 (E.D. Tex.) (filed 9/21/17); *IDB Ventures, LLC v. Charlotte Russe Holdings, Inc.*, No. 2:17-cv-00660 (E.D. Tex.) (filed 9/21/17).

¹³ FED. R. CIV. P. 12(b)(6); *Falkon Treasures LLC v. Adidas Am., Inc.*, No. 2:16-CV-00653, 2017 WL 1399648, at *1 (E.D. Tex. Apr. 1, 2017) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

¹⁴ See *Clear with Computers, LLC v. Altec Indus., Inc.*, No. 6:14-CV-79, 2015 WL 993392, at *1 (E.D. Tex. Mar. 3, 2015), *aff'd*, 636 F. App'x 1015 (Fed. Cir. 2016) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

¹⁵ See *Bilski v. Kappos*, 561 U.S. 593, 602 (2010).

¹⁶ See *Network Architecture Innovations LLC v. CC Network Inc.*, No. 2:16-CV-00914-JRG, 2017 WL 1398276, at *7 (E.D. Tex. Apr. 18, 2017) (granting motion to dismiss, holding that claims directed to a system and method of using a network access system to distribute targeted bulletins to users were invalid under § 101); *BSG Tech LLC v. AutoZone, Inc.*, 2:16-CV-529, 2017 WL 2609066, at *1 (E.D. Tex. Mar. 30, 2017) (granting motion to dismiss, finding that claims directed to a method of indexing in a database were invalid under § 101); *EMG Tech., LLC v. Etsy, Inc.*, No. 6:16-CV-00484RWSJDL, 2017 WL 780648,

the propriety of disposing of a case at the initial pleading stage on § 101 grounds.¹⁷ “Addressing 35 U.S.C. § 101 at the outset not only conserves scarce judicial resources and spares litigants the staggering costs associated with discovery and protracted claim construction litigation, it also works to stem the tide of vexatious suits brought by the owners of vague and overbroad business method patents.”¹⁸

Claim construction is not required to make a § 101 determination.¹⁹ When the asserted claims are substantially similar and linked to the same abstract idea, a court need not address each asserted claim but may determine patent-eligibility on the basis of a representative claim.²⁰

at *1 (E.D. Tex. Mar. 1, 2017) (granting motion to dismiss under § 101, holding that claims were directed to the abstract concept of “displaying information in a hierarchical tree format on a computer screen”); *Falkon Treasures LLC*, 2017 WL 1399648, at *3 (granting motion to dismiss, finding claims directed to “validating a customer’s identity and displaying a shopping list” invalid under § 101); *Pres. Wellness Techs. LLC v. Allscripts Healthcare Sols.*, No. 2:15-CV-1559-WCB, 2016 WL 2742379, at *13 (E.D. Tex. May 10, 2016) (Bryson, J, sitting by designation) (granting motion to dismiss, finding claims directed to “providing patients with remote access to their personal records” invalid under § 101); *Clear with Computers*, 2015 WL 993392, at *1 (finding claims directed to a “computer implemented method of generating a customized proposal for selling equipment to particular customers” invalid under § 101).

¹⁷ See *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1327 (Fed. Cir. 2017) (affirming Rule 12(b)(6) dismissal on § 101 grounds); *In re TLI Commc ’ns LLC Patent Litig.*, 823 F.3d 607, 615 (Fed. Cir. 2016) (same); *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1349 (Fed. Cir. 2015) (same); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1364 (Fed. Cir. 2015) (same); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 713 (Fed. Cir. 2014) (same); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1350 (Fed. Cir. 2014) (same).

¹⁸ See *OIP Techs., Inc.*, 788 F.3d at 1364 (Mayer, J., concurring).

¹⁹ See *Network Architecture Innovations LLC v. CC Network Inc.*, No. 2:16-CV-00914-JRG, 2017 WL 1398276, at *7 (E.D. Tex. Apr. 18, 2017) (holding claims invalid under § 101 prior to claim construction); *Bancorp*, 687 F.3d at 1273 (“[W]e perceive no flaw in the notion that claim construction is not an inviolable prerequisite to a validity determination under § 101.”); *Pres. Wellness Techs. LLC*, 2016 WL 2742379, at *6 (“the Federal Circuit has made it clear that, in appropriate cases, district courts may decide the issue of patent eligibility without first conducting claim construction.”); see also *Content Extraction*, 776 F.3d at 1349.

²⁰ See *Content Extraction*, 776 F.3d at 1348 (finding that the district court “correctly determined that addressing each claim of the asserted patents was unnecessary” because “all the claims are ‘substantially similar and linked to the same abstract idea’”) (internal citations omitted).

b. A claim reciting an abstract idea is invalid unless it contains an additional inventive concept under the two-step *Alice* test.

Section 101 of the Patent Act defines what is eligible for patent protection: “Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor”²¹ The Supreme Court has held that there are three exceptions to patent eligibility under § 101: laws of nature, natural phenomena, and abstract ideas.²²

In *Alice*, the Supreme Court set forth a two-step framework for distinguishing patents that claim ineligible abstract ideas from those that claim patent-eligible improvements to technology.²³ The first step is to “determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea.²⁴ Second, if a claim contains an abstract idea, a court must determine whether there is “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.”²⁵

For an invention directed to an abstract idea to be eligible for patent protection, the patent must do “more than simply stating the abstract idea while adding the words ‘apply it.’”²⁶ Thus, “a claim directed to an abstract idea is not eligible merely by limiting the invention to a particular

²¹ See 35 U.S.C. § 101.

²² See *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013).

²³ See *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014).

²⁴ See *Alice*, 134 S. Ct. at 2355.

²⁵ See *Alice*, 134 S. Ct. at 2355 (internal quotations and citations omitted). Further, means-plus-function claims are treated no differently than method claims for the purposes of § 101. See *Landmark Tech., LLC v. Assurant, Inc.*, No. 6:15-CV-76-RWS-JDL, 2015 WL 4388311, at *3 (E.D. Tex. July 14, 2015) (“Contrary to Landmark’s position, the mere presence of means plus function terms does not require a deferred ruling on validity under § 101.”) (citing *Bancorp Servs. LLC v. Sun Life Assurance Co. of Can.*, 687 F.3d 1266, 1273 (Fed. Cir. 2012)).

²⁶ See *Alice*, 134 S. Ct. at 2357 (internal quotations and citations omitted).

field of use or technological environment,” and “conventional business practices are often found to be abstract ideas, even if performed on a computer.”²⁷ Moreover, “complex details from the specification cannot save a claim directed to an abstract idea that recites generic computer parts.”²⁸ Abstraction is overcome when a computer-implemented function is not simply the generalized use of a computer as a tool to conduct a known or obvious process, but instead represents “improvement to computer *functionality itself*.”²⁹

c. Means-plus-function claims are treated no differently than method claims for the purposes of § 101.

Independent claims 10 and 19 of the '139 Patent presumptively implicate 35 U.S.C. § 112(f) because they recite language consistent with such means-plus-function claims. Nevertheless, the means-plus-function language in claims 10 and 19 is directed at nothing further than performing the steps in method claim 1. For example, method claim 1 includes steps for “imaging,” “designating,” “constructing,” “selecting,” and “sorting.” System claim 10 recites those same steps, but includes (in front of each) the term “means for” (*i.e.*, “means for imaging,” “means for designating,” “means for constructing,” “means for selecting,” and “means for sorting”). For purposes of Section 101, however, means-plus-function claims are treated no differently than method claims, and thus claims 10 and 19 do not require special treatment or prevent this Court from resolving Defendants’ motion.³⁰

²⁷ See *Lendingtree, LLC v. Zillow, Inc.*, 2014-1435, 2016 WL 3974203, at *3 (Fed. Cir. July 25, 2016) (internal quotations omitted).

²⁸ *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016), *cert. denied*, 16-1288, 2017 WL 1539155 (U.S. Oct. 2, 2017).

²⁹ *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016) (emphasis added).

³⁰ See *In re Meyer*, 688 F.2d 789, 795 n.3 (C.C.P.A. 1982) (“Appellants’ apparatus claims differ from the method claims by reciting ‘means for’ performing the steps set forth in the method claims, and ‘means for displaying’ the results. However, for purposes of section 101, such claims are not treated differently from method claims.”); *Landmark Tech., LLC v. Assurant, Inc.*, No. 6:15-CV-76-RWS-JDL, 2015 WL 4388311, at *3 (E.D. Tex. July 14, 2015) (“Contrary to Landmark’s position, the mere presence of means plus

2. *Alice* Step 1: The claims are directed to an abstract idea.

The '139 Patent covers subject matter that has been held to be patent-ineligible.³¹ Specifically, the '139 Patent relates to “the use of a computer system rapidly to reformat displays of text data objects in terms of parameters chosen by the user.”³²

While there is no bright line test under the first step of *Alice*, courts have “found it sufficient to compare claims at issue to those claims already found to be directed to an abstract idea in previous cases.”³³ Here, the '139 Patent purports to preempt “the use of a computer system rapidly to reformat displays of text data objects in terms of parameters chosen by the user.”³⁴ The '139 Patent does not represent any improvement in the functionality of the computer itself, but rather is directed to the abstract idea of obtaining user parameters for selecting and sorting data, then selecting and sorting data using those parameters.³⁵

The concepts of obtaining user parameters for selecting and sorting data, then selecting and sorting data using those parameters are similar to other concepts that the Federal Circuit, this Court, and other courts have held are abstract and patent-ineligible.³⁶ For example, in *Intellectual*

function terms does not require a deferred ruling on validity under § 101.”) (citing *Bancorp Servs. LLC v. Sun Life Assurance Co. of Can.*, 687 F.3d 1266, 1273 (Fed. Cir. 2012)). Moreover, where the claims of a patent are substantially similar and linked to the same abstract idea, this Court is free to dispose of the additional claims in a less detailed fashion. *See Bilski v. Kappos*, 561 U.S. 593, 602 (2010) (determining that eleven (11) claims in a patent application were invalidly abstract after only analyzing two (2) of the claims in detail); *CyberFone Sys., LLC v. Cellco P’ship*, 885 F. Supp. 2d 710, 716–19 (D. Del. 2012) (invalidating all twenty-four (24) claims of a patent for abstractness after only conducting an analysis of the first claim); *Phoenix Licensing, L.L.C. v. Consumer Cellular, Inc.*, No. 2:16-cv-152-JRG, 2017 U.S. Dist. LEXIS 47790 (E.D. Tex. Mar. 8, 2017).

³¹ *See infra* n.36.

³² Compl. [Doc. 1] at Ex. A, '139 Patent at 2:49–51.

³³ *Network Architecture Innovations LLC v. CC Network Inc.*, No. 2:16-CV-00914-JRG, 2017 WL 1398276, at *3 (E.D. Tex. Apr. 18, 2017) (internal citations and quotations omitted).

³⁴ *See* Ex. A to Compl. [Doc. 1], '139 Patent, at Col. 2:49-51.

³⁵ *See* Ex. A to Compl. [Doc. 1], '139 Patent, at Claim 1.

³⁶ *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1327 (Fed. Cir. 2017) (“we agree with the

Ventures, the Federal Circuit found that claims at issue³⁷ were drawn to the abstract idea of “creating an index and using that index to search for and retrieve data.”³⁸ In rejecting the plaintiff’s argument that the “[t]he heart of the ’434 patent is improved computer database search technology that utilizes an index constru[ct]ed of tags and metadata to facilitate searches,” the Federal Circuit reasoned that:

This type of activity, *i.e.*, organizing and accessing records through the creation of an index-searchable database, includes longstanding conduct that existed well before the advent of computers and the Internet. For example, a hardcopy-based classification system (such as library-indexing system) employs a similar concept as the one recited by the ’434 patent. There, classifiers organize and cross-reference information and resources (such as books, magazines, or the like) by certain

district court that the invention is drawn to the abstract idea of “creating an index and using that index to search for and retrieve data.”); *Evolutionary Intelligence LLC v. Sprint Nextel Corp.*, 677 F. App’x 679, 680 (Fed. Cir. 2017) (finding claims directed to “searching and processing containerized data” to be abstract); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (finding claims directed to “collecting information, analyzing it, and displaying certain results of the collection and analysis” abstract and invalid under § 101); *Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1271 (Fed. Cir. 2016) (“tailoring of content based on information about the user—such as where the user lives or what time of day the user views the content—is an abstract idea”); *BSG Tech LLC v. AutoZone, Inc.*, 2:16-CV-529, 2017 WL 2609066, at *1 (E.D. Tex. Mar. 30, 2017) (holding that claims directed to a method of indexing an item in a database were invalid under § 101, finding that “the claimed invention is similar to the inputting of cards into a library catalog.”); *Gonzalez v. Infostream Grp., Inc.*, No. 2:14-CV-906-JRG, 2016 WL 1643313, at *4 (E.D. Tex. Apr. 26, 2016) (a method and system of digitally labeling internet websites to facilitate searches claimed an abstract idea); *Blackbird Tech LLC v. Advanced Discovery Inc.*, No. CV 16-413-GMS, 2017 WL 2734725, at *4 (D. Del. June 26, 2017) (“The court finds that the claims of the asserted patent are drawn to the steps of 1) conducting a search based on a search query, 2) determining a concept associated with a search query, 3) and then ranking the search results based on which documents are most relevant to that concept.”).

³⁷ One of the exemplary claims at issue in *Intellectual Ventures* provided for: “a method for searching a database of information, comprising the steps of: receiving a request for information from a client, the request having a first term; identifying a first XML tag that is associated with the first term; determining whether a first metafile corresponds to the first XML tag; if the first metafile corresponds to the first XML tag, then transmitting the first XML tag, the first metafile and query code to the client; once the client conducts a query by executing the query code using the first XML tag and the first metafile, then receiving query results including a first set of XML tags from the client; combining the first set of XML tags into a key; using the key to search the database to locate records including the first set of XML tags; and delivering the records.” *Intellectual Ventures I LLC*, 850 F.3d at 1327.

³⁸ *Intellectual Ventures I LLC*, 850 F.3d at 1327.

identifiable tags, *e.g.*, title, author, subject. Here, tags are similarly used to identify, organize, and locate the desired resource.³⁹

In *Evolutionary Intelligence*, the Federal Circuit held that claims directed to “selecting and sorting information by user interest or subject matter” were abstract, and represented a “longstanding activity of libraries and other human enterprises.”⁴⁰ Likewise, in *Blackbird*, the court found that the system and method claims at-issue were invalid under *Alice* because they covered the “abstract concept of conducting a search and sorting the search results,” reasoning that “humans have long been capable of sorting and organizing data, and using a computer to automate this concept is abstract.”⁴¹

As with *Intellectual Ventures*, *Evolutionary Intelligence*, and *Blackbird*, because the ’139 Patent claims relate to the abstract concepts of obtaining user parameters for selecting and sorting data, then selecting and sorting data using those parameters, the claims fail the first step under *Alice*. Moreover, the claims do not offer an improvement to the functioning of the computer itself.⁴² The preamble of independent method claim 1 includes the phrase: “using a computer system to sort and display text data objects.”⁴³ Not only does the preamble fail to identify any specific computer, but the general purpose computer it does reference plays no particular role in permitting the claimed method to be performed.⁴⁴ This generic computer component does not represent any technological improvement.⁴⁵ Nothing about the claim’s reference to “text data

³⁹ *Intellectual Ventures I LLC*, 850 F.3d at 1327.

⁴⁰ *Evolutionary Intelligence LLC v. Sprint Nextel Corp.*, 677 F. App’x 679, 680 (Fed. Cir. 2017).

⁴¹ *Blackbird Tech LLC*, 2017 WL 2734725, at *4.

⁴² See Ex. A to Compl. [Doc. 1], ’139 Patent, at Claims 1, 2 & 19.

⁴³ See Ex. A to Compl. [Doc. 1], ’139 Patent, at Claim 1.

⁴⁴ See Ex. A to Compl. [Doc. 1], ’139 Patent, at Claim 1.

⁴⁵ See *Bancorp Servs., L.L.C.*, 687 F.3d at 1279; *Loyalty Conversion Sys. Corp.*, 66 F. Supp. 3d at 841.

objects” indicates that anything other than generic “data” is involved—especially in light of the fact that the invention is directed to an unspecified transaction.⁴⁶ Such language cannot transform the claims into patentable subject matter.

Looking to the Federal Circuit’s recent case law where claims were found not to be drawn to abstract ideas, but rather, “improvement[s] to computer functionality” further underscores the patent-ineligibility of the ’139 Patent.⁴⁷ For example, in *Enfish*, the claims at issue were directed to a particular type of “self-referential” database.⁴⁸ The court distinguished the claims from others that “simply add[ed] conventional computer components to well-known business practices,” holding instead that “they [we]re drawn to a specific improvement to the way computers operate.”⁴⁹ The unconventional structure of the database resulted in “increased flexibility, faster search times, and smaller memory requirements.”⁵⁰ Furthermore, in the *Enfish* invention, what previously required multiple database tables could now be performed using only a single database table.⁵¹ No such claims exist here.

In *Visual Memory*, the patent at issue claimed “a memory system with programmable operational characteristics [that] permit[ted] different types of processors to be installed with the subject memory system without significantly compromising their individual performance.”⁵² The Court held that the claims were directed to a “specific asserted improvement in computer

⁴⁶ See generally Ex. A to Compl. [Doc. 1].

⁴⁷ See *TLI Commc’ns*, 823 F.3d at 612.

⁴⁸ *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1329, 1338 (Fed. Cir. 2016).

⁴⁹ *Enfish, LLC*, 822 F.3d at 1336.

⁵⁰ *Enfish, LLC*, 822 F.3d at 1337.

⁵¹ *Enfish, LLC*, 822 F.3d at 1329.

⁵² *Visual Memory LLC v. NVIDIA Corp.*, No. 2016-2254, 2017 WL 3481288, at *4 (Fed. Cir. Aug. 15, 2017) (internal quotations omitted).

capabilities—the use of programmable operational characteristics that are configurable based on the type of processor.”⁵³ The claimed invention was thus directed to a particular improvement to computer technology, not an abstract idea for which computer technology is used as a tool.

The '139 Patent, in contrast, presents no “specific asserted improvement in computer capabilities.”⁵⁴ Rather, the claims are directed to the abstract idea of obtaining user parameters for selecting and sorting data, then selecting and sorting data using those parameters, and merely invoke generic computer technology such as interfaces and devices as tools. Thus, any potential benefit that might be derived from the purported invention comes from the age-old practice of obtaining a user’s preferences, not from the functioning of any computer technology.

3. Alice Step 2: The claims do not add an “inventive concept.”

a. Generic technology cannot render the independent claims patent-eligible.

It is well settled that “automating conventional activities using generic technology does not amount to an inventive concept.”⁵⁵ That is, “simply appending conventional steps, specified at a high level of generality,” which are “well known in the art” and consist of “well-understood, routine, conventional activit[ies],” is not sufficient to supply the inventive concept.⁵⁶ Further, use of generic computer equipment to automate, speed up, or make more efficient processes that

⁵³ *Visual Memory LLC*, 2017 WL 3481288, at *4 (internal quotations omitted).

⁵⁴ See generally Ex. A to Compl. [Doc. 1]; *Visual Memory LLC*, 2017 WL 3481288, at *4 (internal quotations omitted).

⁵⁵ See *Zillow, Inc.*, 2016 WL 3974203, at *5; *Alice*, 134 S. Ct. at 2358; *Intellectual Ventures I LLC*, 792 F.3d at 1367 (“claiming the improved speed or efficiency inherent with applying the abstract idea on a computer [does not] provide a sufficient inventive concept”); *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012).

⁵⁶ *Alice*, 134 S.Ct. at 2359; see, e.g., *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016) (affirming dismissal of “claims directed to the abstract idea of classifying and storing digital images in an organized manner” and noting that “the claims’ recitation of a ‘telephone unit,’ a ‘server,’ an ‘image analysis unit,’ and a ‘control unit’ fail to add an inventive concept sufficient to bring the abstract idea into the realm of patentability.”).

existed in the pre-computer world is insufficient to confer patent eligibility.⁵⁷ Thus, “for the role of a computer in a computer-implemented invention to be deemed meaningful in the context of this analysis, it must involve more than performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’”⁵⁸

Independent method claim 1 also recites a “display device” and a “query dialog box.”⁵⁹ The function of these generic computer components, if any, is merely a mechanism to permit the steps covering abstract data handling concepts to be performed more quickly, which is insufficient to confer patentability.⁶⁰ Independent claims 10 and 19 parallel claim 1 except, instead of method claims, they are directed toward “[a] computer system” (claim 10) and a “[a] computer memory storage device” (claim 19).⁶¹ Because computer systems and memory storage devices consist of nothing more than basic components of computer systems, these limitations cannot supply an inventive concept under the second step of *Alice*.⁶²

⁵⁷ See e.g., *Bancorp Serv., L.L.C. v. Sun Life Assur. Co. of Can. (U.S.)*, 687 F.3d 1266, 1279 (Fed. Cir. 2012) (distinguishing “improvements to computer technologies” (potentially patent eligible) from the use of computers to merely improve speed or efficiency (not patent eligible)); *Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1271 (Fed. Cir. 2016) (clarifying that computer-related features described and claimed generically rather than with specificity do not convert an abstract idea into a concrete solution to the problem addressed in a patent.).

⁵⁸ See *Content Extraction*, 776 F.3d at 1347-48 (quoting *Alice*, 134 S. Ct. at 2359).

⁵⁹ See Ex. A to Compl. [Doc. 1], ’139 Patent, at Claim 1.

⁶⁰ See Ex. A to Compl. [Doc. 1], ’139 Patent, at Claim 1. See *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada (U.S.)*, 687 F.3d 1266, 1279 (Fed. Cir. 2012) (“No such technological advance is evident in the present invention. Rather, the claims merely employ computers to track, reconcile, and administer a life insurance policy with a stable value component—*i.e.*, the computer simply performs more efficiently what could otherwise be accomplished manually.”); *Intellectual Ventures I LLC*, 792 F.3d at 1367 (“claiming the improved speed or efficiency inherent with applying the abstract idea on a computer [does not] provide a sufficient inventive concept”); *Loyalty Conversion Sys. Corp. v. Am. Airlines, Inc.*, 66 F. Supp. 3d 829, 841 (E.D. Tex. 2014) (“[T]he computer components of the claims add nothing that is not already present in the steps of the claimed methods, other than the speed and convenience of basic computer functions such as calculation, communication, and the display of information.”).

⁶¹ See Ex. A to Compl. [Doc. 1], ’139 Patent, at Claims 1, 10, 19.

⁶² See *Ultramercial*, 772 F.3d at 716, 717 (“Adding routine additional steps such as . . . restrictions on public access, and use of the Internet does not transform an otherwise abstract idea into patent-eligible

b. The claims of the '139 Patent are not tied to a particular machine.

For a claim to be tied to a particular machine, the machine “must impose meaningful limits on the claim’s scope,” and “not merely be insignificant extra-solution activity.”⁶³ Specifically, “[i]n order for the addition of a machine to impose a meaningful limit on the scope of a claim, it must play a significant part in permitting the claimed method to be performed, rather than function solely as an obvious mechanism for permitting a solution to be achieved more quickly, *i.e.*, through the utilization of a computer for performing calculations.”⁶⁴

In *SiRF Technology*, for example, the Federal Circuit upheld the patentability of claims drawn to an improved GPS process wherein the claims required calculating an “absolute position” and using “[p]seudoranges, which are distances or estimated distances between satellites and a GPS receiver[.]”⁶⁵ As the *SiRF Technology* court explained, “[i]t is clear that the methods at issue could not be performed without the use of a specific technical device: a GPS receiver.”⁶⁶ The specific technical features of the GPS receiver thus imposed a meaningful limitation on the

subject matter”) (emphasis added); *Intellectual Ventures I LLC*, 792 F.3d at 1368 (finding that “a profile keyed to a user identity” was generic); *NexusCard, Inc. v. Kroger Co.*, 173 F. Supp. 3d 462 (E.D. Tex. 2016), *aff’d*, 688 F. App’x 916 (Fed. Cir. 2017) (claim requiring “identification codes [for] accessing said databases” did not recite patent-eligible subject matter). By contrast, in *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1345 (Fed. Cir. 2016), the Federal Circuit found that the plaintiff adequately alleged an inventive concept under the second step of the *Alice* Test, reasoning that: “by taking a prior art filter solution (one-size-fits-all filter at the ISP server) and making it more dynamic and efficient (providing individualized filtering at the ISP server), the claimed invention represents a ‘software-based invention[] that improve[s] the performance of the computer system itself.’” *Id.* at 1351 (emphasis added). *Bascom* is thus factually distinguishable because the invention claimed in the '139 Patent does not improve the performance of the computer itself.

⁶³ *In re Bilski*, 545 F.3d 943, 961–62 (Fed. Cir. 2008) (en banc).

⁶⁴ *SiRF Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319, 1333 (Fed. Cir. 2010).

⁶⁵ *SiRF Tech., Inc.*, 601 F.3d at 1332–33.

⁶⁶ *SiRF Tech., Inc.*, 601 F.3d at 1332.

otherwise abstract idea of calculating and estimating distances because the GPS receiver played a significant part in permitting the claimed method to be performed.⁶⁷

Where, as here, a claim merely recites generic references to computer technology in order to lend speed or efficiency to the performance of an otherwise abstract concept, it does not meaningfully limit its scope for purposes of Section 101.⁶⁸ Numerous decisions from both this Court and the Federal Circuit have invalidated claims under § 101 despite the fact that they, like the ones at issue here, included general computer-related terms.⁶⁹

In this case, several terms referenced in the claims of the '139 Patent could be perceived as computer-related. In each instance, however, the involvement of any machine to perform the claimed step amounts to nothing more than an insignificant extra-solution activity of the type identified as patent-ineligible. Perhaps the clearest example of such an insignificant extra-solution activity appears in the preamble of method claim 1, which includes the phrase: “using a computer system to sort and display text data objects.” Not only does the preamble fail to identify any

⁶⁷ *SiRF Tech., Inc.*, 601 F.3d at 1333.

⁶⁸ *See Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can.*, 687 F.3d 1266, 1278 (Fed. Cir. 2012); *see also Every Penny Counts, Inc. v. Bank of Am. Corp.*, 2009 WL 6853402, at *3 (M.D. Fla. May 27, 2009) (concluding that the claims were not tied to a particular machine even though they recited general computer terminology such as “network,” “entry means” and “computing means” because the involvement of the machine was an insignificant extra-solution activity).

⁶⁹ *See Accenture Global Servs. GmbH v. Guidewire Software Inc.*, 691 F.Supp.2d 577, 597-98 (D. Del. 2010) (“*Accenture I*”) (concluding that the claims failed to implicate a particular machine despite presence of “databases, client components, server components, specialized event processors, task engines, and task assistants,” because “none of these terms imply a specific computer having any particular programming.”); *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012) (affirming summary judgment of invalidity, holding that “[s]imply adding a ‘computer aided’ limitation to a claim covering an abstract concept, without more, is insufficient to render the claim patent eligible.”); *Fort Props., Inc. v. Am. Master Lease LLC*, 671 F.3d 1317, 1323 (Fed. Cir. 2012) (affirming summary judgment of invalidity despite limitations “requiring a ‘computer’ to generate” certain items because the computer limitation “does not ‘play a significant part in permitting the claimed method to be performed’”) (quotation omitted); *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371 (Fed. Cir. 2011) (affirming summary judgment of invalidity of claims to a process for collecting and organizing data regarding credit card transactions “over the Internet”).

specific computer, but the general purpose computer it does reference plays absolutely no particular role in permitting the claimed method to be performed. The same holds true with respect to the '139 Patent's references to a "computer system," a "display device," "databases," and a "computer memory storage device." Indeed, the function of these computer components, if any, is merely an obvious mechanism to permit the steps covering abstract data handling concepts to be performed more quickly.

The claims of the '139 patent also reference terms like "query dialog box," "parameter dialog box," and "edit dialog box." Such "dialog boxes," as seen in Figures 3–11, are merely screens used on a general purpose computer component to facilitate data entry—a task that can be (and oftentimes is) done by manually filling out a paper form. To the extent these references provide any functionality within the context of the claims, they do no more than permit such data entry tasks to be performed more quickly. Similarly, nothing about the '139 Patent's references to "text data objects" indicates that anything other than generic "data" is involved—especially in light of the fact that the invention is directed to an unspecified transaction. The addition of the words "text" and "objects" does not change this result.

Unlike the GPS receiver in *SiRF Technology*, none of the makeshift generic computer terms referenced in the '139 Patent's claims plays any significant part in permitting the claimed methodology. Instead, as discussed above, the references to generic computer components function solely as a mechanism for permitting the purported solution of obtaining user parameters for selecting and sorting data, or for the selecting or sorting of data using those parameters to be achieved more quickly. Such functionality amounts to no more than an insignificant extra-solution

activity that fails as a matter of law to transform an otherwise patent-ineligible claim into one that satisfies § 101.⁷⁰

c. The claims do not effect a patentable transformation.

In this case, the execution of the steps of the '139 Patent's claims results only in the mere manipulation and reorganization of non-tangible information, which is insufficient as a matter of law to effect a patentable transformation.⁷¹ Indeed, the '139 Patent acknowledges in several places that its objective and main features are drawn strictly to the abstract idea of reorganization of data.⁷²

Such obtaining of user parameters, then selecting and sorting data according to those parameters, without more, does not meet the transformation test.⁷³ In *Benson*, the Supreme Court held invalid claims drawn to a process of converting data in binary-coded decimal ("BCD") format to pure binary format via an algorithm programmed onto a digital computer:

It is conceded that one may not patent an idea. But in practical effect that would be the result if the formula for converting BCD numerals to pure binary numerals were patented in this case. The mathematical formula involved here has no substantial practical application except in connection with a digital computer, which means

⁷⁰ See *SiRF Tech.*, 601 F.3d at 1333; *Ultramercial*, 722 F.3d at 1349.

⁷¹ See *Cybersource*, 654 F.3d at 1375 ("The mere collection and organization of data . . . is insufficient to meet the transformation prong of the eligibility test...."); see also *Bancorp*, 687 F.3d at 1273 (affirming invalidity of a patent that failed the transformation test because it did "not transform the raw data into anything other than more data"); *In re Bilski*, 545 F.3d at 963 ("Purported transformations or manipulations simply of public or private legal obligations or relationships, business risks, or other such abstractions cannot meet the test because they are not physical objects or substances, and they are not representative of physical objects or substances."); *Accenture I*, 691 F.Supp.2d at 596 (manipulation of insurance claims involved "non-tangible information," not a valid transformation of an article).

⁷² See Ex. A to Compl. [Doc. 1], '139 Patent, at 2:54–61 ("One object of the present invention is to permit a user . . . to switch from viewing a table of text data objects (e.g., action or project) sorted according to one or more parameters (e.g., date due) to viewing a table of the same text data objects sorted according to a different set of parameters (e.g., personnel assigned)."); *id.* at Abstract (noting that "[t]he features of the present invention allow a user, without need for specialized training or a user manual, rapidly to view the same or different sets of text data objects from differing perspectives, without cumbersome steps that could interrupt the user's line of thought").)

⁷³ See *Cybersource*, 654 F.3d at 1375.

that if the judgment below is affirmed, the patent would wholly preempt the mathematical formula and in practical effect would be a patent on the algorithm itself.⁷⁴

Like the algorithm at issue in *Benson*, to permit IDB to assert the claims of the '139 Patent would in effect grant IDB a patent on the abstract idea of selecting and sorting data according to user parameters itself.

d. The dependent claims of the '139 Patent also lack an inventive concept.

The dependent claims of the '139 Patent (claims 2–9; 11–18) do not change the patent eligibility analysis because they do not limit the '139 Patent in any meaningful way.⁷⁵ For example, each of the eight claims (claims 2-9) that depend from claim 1 add only insubstantial limitations.⁷⁶ Claim 2 involves displaying the sorted list of text data objects that results from the query recited in claim 1.⁷⁷ Claim 3 adds “*revising* data relating to the highlighted text data object.”⁷⁸ The remainder of the claims that depend from claim 1 (claims 4-9) involve the addition of minor limitations, for example: adding column headings to the sorted list (claim 4); adding new text data objects (claim 5); using multiple databases (claim 6); selecting one of multiple databases (claim 7); using a dialog box for associating parameters with names and text data objects (claim 8); and printing the sorted text data objects (claim 9). Dependent claims 11-18 generally mirror dependent claims 2-9 with the exception that they recite system versus method claims.⁷⁹ The dependent claims’ recitation of such generic computer functionality does not create patent

⁷⁴ See *Benson*, 409 U.S. 63, 71–72 (1972) (emphasis added).

⁷⁵ See *Bilski v. Kappos*, 561 U.S. 593, 610 (2010).

⁷⁶ See Ex. A to Compl. [Doc. 1], '139 Patent, at Claims 2-19.

⁷⁷ See Ex. A to Compl. [Doc. 1], '139 Patent, at Claim 2.

⁷⁸ See Ex. A to Compl. [Doc. 1], '139 Patent, at Claim 3 (emphasis added).

⁷⁹ See Ex. A to Compl. [Doc. 1], '139 Patent, at Claims 11-18.

eligibility.⁸⁰ Because the claims of the '139 Patent fail both prongs of the *Alice* test, the Complaint should be dismissed.

4. Claim construction is not necessary to determine the claims of the '139 Patent to be patent-ineligible.

As shown above, claim construction is not required to conduct a § 101 analysis. Claim construction is also not warranted here, where the claim language of the '139 Patent is relatively straightforward. This Court has decided § 101 issues in cases similar to this one.⁸¹

B. If the '139 Patent Is Not Abstract, the Court should dismiss this case because the IDB fails to state a claim for direct infringement under *Twombly/Iqbal*.

1. IDB has failed to identify how Academy's website infringes the '139 Patent.

As argued above, the claims of the '139 Patent are invalid for being directed to the abstract idea of obtaining user parameters for selecting and sorting data, then selecting and sorting data using those parameters. However, in the event that the Court finds that the claims of the '139 Patent are not directed to this abstract idea, Academy cannot be found to infringe those claims because it lacks an element required by every single claim—namely, the “query dialog box.”

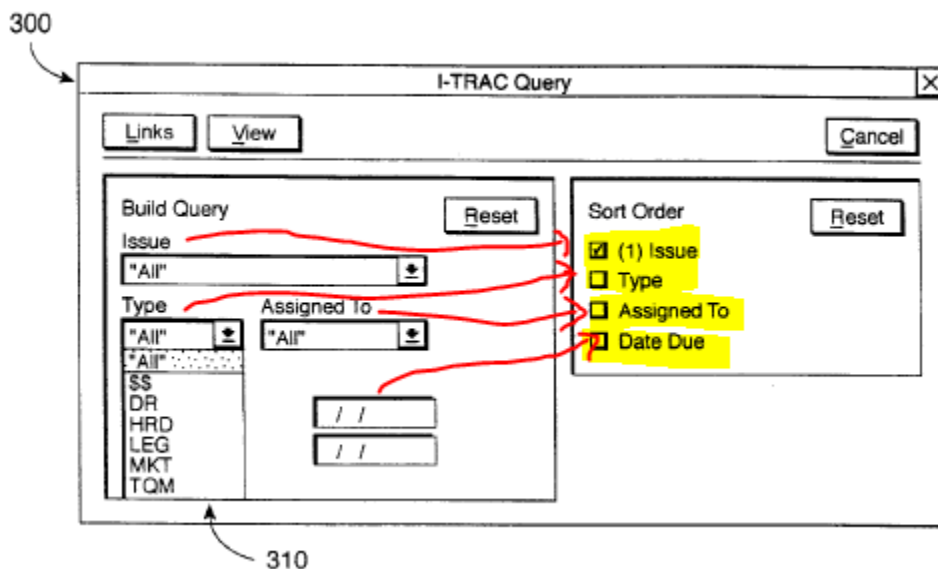
Claim 1 contains the following requirements for a query dialog box. The query dialog box must (1) “display[] each of a plurality of parameters associated with each of the text data objects” (show the user the parameters available to be selected), (2) “form[] a plurality of spaces for listing

⁸⁰ See *Alice*, 134 S. Ct. at 2358 (“mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention”); *Intellectual Ventures I LLC*, 850 F.3d at 1329 (“the remaining limitations recite routine computer functions, such as the sending and receiving information to execute the database search, e.g., receiving a request for information and delivering records. These are no more than the ‘performance of well-understood, routine, [and] conventional activities previously known to the industry.’ Thus, while the claims necessarily cabin the idea of categorical data search and retrieval to a computer environment, the claimed computer functionality can only be described as generic or conventional.”) (quoting *Content Extraction*, 776 F.3d at 1347–48)).

⁸¹ See, e.g., *BSG Tech LLC v. AutoZone, Inc.*, 2:16-CV-529, 2017 WL 2609066, at *1 (E.D. Tex. Mar. 30, 2017) (holding that claims directed to a method of indexing an item in a database were invalid under § 101 without conducting formal claim construction).

values associated with each displayed parameter” (show the user the options for each parameter), and (3) “further form[] a space for selecting a sort order” (show the user the options for sorting).

Claim 1 also requires that each of the parameters by which the user can selectively filter the data be available for constructing the sort order, as the method requires “constructing a sort order from the displayed parameters in the space for selecting a sort order.”⁸² Figure 3 of the patent confirms this:



In its Complaint, IDB has failed to identify any functionality that would satisfy the above requirements for a query dialog box as presented by the '139 Patent. Moreover, Academy's website instrumentalities lack any functionality that would satisfy the query dialog box limitations of the claims of the '139 Patent. In particular, the filtering and sorting functionalities on Academy's website that IDB accuses of infringement in its Complaint offer distinct parameters for filtering and sorting⁸³:

⁸² See Ex. A to Compl. [Doc. 1], '139 Patent, at claim 1 (emphasis added)

⁸³ See, e.g., <http://www.academy.com/shop/browse/footwear/womens-footwear/womens-running-shoes>.

FILTER (1) —	Sort By: Best Selling ▾
✕ Women's Running Shoes	Best Selling
	Most Relevant
	Brand (A- Z)
BRAND	Price: Low - High
	Price: High - Low
PRICE	Top Rated
	Most Viewed
AD FEATURE	New Arrivals
RATING	+
SHOE SIZE	+
SHOE WIDTH	+
SPECIAL FEATURE	+
FOOTWEAR - SURFACE TYPE	+
FOOTWEAR - FOOT MECHANICS	+
APPLY	

Indeed, IDB admits in its Complaint that Academy does not infringe the query dialog box limitations of the claims of the '139 Patent. It states that “the Accused Instrumentality provides a query dialog box, *e.g.*, a menu, which displays each of a plurality of parameters associated with each of the text data objects, *e.g.*, **brand, type, etc.**, . . . and further forms a space for selecting a sort order, *e.g.*, **sort by: best selling.**”⁸⁴ Thus, it admits that the set of parameters that Academy offers for selecting the text data objects are distinct from those it offers for sorting them, thus obviating a finding of infringement.

Thus, IDB has not and cannot show that Academy infringes at least the query dialog box limitations of all of the claims of the '139 Patent, and thus the Complaint should be dismissed.

⁸⁴ See Compl. [Doc. 1] ¶ 12 (emphasis added).

2. IDB has not adequately pled joint infringement.

In the event that the Court finds that the claims of the '139 Patent are not directed to this abstract idea, IDB's Complaint should be dismissed because it has failed to adequately plead a claim of joint infringement.

The specification of the '391 Patent makes clear that the "designating" and "constructing" steps (steps b and c) of claims 1 and 19 are performed by the end user of the computer system:

The space under each parameter displayed in the Query dialog box permits the user to view the possible values for that parameter held by text data objects, and to assign to that parameter a value. The Query dialog box also displays a list of parameters and prompts *the user to construct a sort order* from that list of parameters. According to the present invention, *the user selects values for each parameter in the spaces provided and constructs a sort order*.⁸⁵

In contrast, the remaining "displaying," "selecting," and "sorting" steps are performed by the computer system:

As further shown in FIG. 2, after the Designate Values for Parameters step (204) and the Construct Sort Order step (206) are completed, the computer system selects the text data objects that satisfy the values of the parameters specified in the query. . . . In the Sort Data step (210) depicted in FIG. 2, the text data objects selected in the Select Data step (208) are sorted by the computer system according to the sort order constructed in the Construct Sort Order step (206).⁸⁶

Because the '361 Patent requires certain steps of the claims to be performed by the end user and others by the computer system, IDB's Complaint must correspondingly show the same in order to adequately state a claim for direct infringement. The Federal Circuit has held that in cases of joint infringement, such as the one presented by the '361 Patent, "where multiple actors are involved in practicing the claim steps, the patent owner must show that the acts of one party are attributable to the other such that a single entity is responsible for the infringement."⁸⁷ An entity

⁸⁵ See Ex. A to Compl. [Doc. 1], '139 Patent, at 3:18–31.

⁸⁶ See Ex. A to Compl. [Doc. 1], '139 Patent, at 7:33–49.

⁸⁷ *Lyda v. CBS Corp.*, 838 F.3d 1331, 1338 (Fed. Cir. 2016) (dismissing complaint for failure to adequately

is responsible “for others’ performance of method steps in two circumstances: (1) where that entity directs or controls others’ performance, and (2) where the actors form a joint enterprise.”⁸⁸ Because IDB has failed to plead either “direction or control” or a joint enterprise, its Complaint should be dismissed because it has not plausibly pled a claim of joint infringement in satisfaction of the *Twombly/Iqbal* pleading standard.⁸⁹

IV. CONCLUSION

For the foregoing reasons, and pursuant to Rule 12(b)(6), Academy respectfully requests that the Court grant this motion to dismiss, finding that the claims of the ’139 Patent are invalid under 35 U.S.C. § 101, or in the alternative, finding that IDB has failed to state a claim for direct infringement, and enter judgment in favor of Academy.

plead joint infringement).

⁸⁸ *Lyda*, 838 F.3d at 1338–39 (citing *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 797 F.3d 1020, 1022 (Fed. Cir. 2015) (en banc)) (internal quotations omitted).

⁸⁹ *Lyda*, 838 F.3d at 1340 (“To survive a motion brought under Rule 12(b)(6), the . . . Complaint must plausibly allege that Defendant[] exercise[s] the requisite “direction or control” over the performance of the claim steps, such that performance of every step is attributable to Defendant[.]”).

Dated: October 10, 2017

Respectfully submitted,

FISH & RICHARDSON P.C.

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**CERTIFICATE OF COMPLIANCE WITH THE
COURT'S 35 U.S.C. § 101 MOTION PRACTICE ORDER**

The undersigned hereby certifies that counsel for Movant, Matthew Colvin, conferred with counsel for Plaintiff on October 10, 2017, and that the parties disagree on whether prior claim construction is not needed to inform the Court's analysis as to patentability.

/s/ Matthew Colvin

Matthew Colvin

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel for Movant, Matthew Colvin, conferred with counsel for Plaintiff on October 10, 2017, and counsel for plaintiff is opposed to the relief sought in this Motion.

/s/ Matthew Colvin

Matthew Colvin

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on October 10, 2017.

/s/ Matthew Colvin

Matthew Colvin