No. _____

In The
Supreme Court of the United States

JERICHO SYSTEMS CORPORATION,

Petitioner,

v.

AXIOMATICS, INC. and AXIOMATICS AB,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, under this Court's precedent in *Alice Corp. Party Ltd.* v. *CLS Bank International*, 134 S. Ct. 2347 (2014), and *Mayo Collaborative Services* v. *Prometheus Laboratories, Inc.*, 132 S. Ct. 1289 (2012), a patent may be invalidated as an "abstract idea" under 35 U.S.C. § 101 when it claims a specific implementation and does not preempt other uses of the abstract idea.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

The parties to the proceedings include those listed on the cover. Jericho Systems Corporation does not have any stock-owning parent corporations. No publicly held company owns 10 percent or more of Jericho Systems Corporation's stock.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jericho Systems Corporation respectfully submits this petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Federal Circuit.

OPINIONS AND ORDERS BELOW

The panel order disposing of the case without opinion (App., *infra* 1-2) is unreported and available at 2016 WL 945275 (Fed. Cir. Mar. 13, 2016). The opinion and order of the district court (App., *infra* 3-19) is unreported and available at 2015 WL 2165931 (N.D. Tex. May 7, 2015).

STATEMENT OF JURISDICTION

The court of appeals filed its opinion on March 14, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Patent Act, 35 U.S.C. § 101, are set forth at App. 22.

STATEMENT

The Federal Circuit has struggled to apply this Court's precedent concerning the "abstract idea" exception to patentability inherent in § 101 of the Patent Act. In *Mayo* and *Alice*, this Court established a two-step test for patentability designed to filter out patents claiming merely an "abstract idea" and preempting any other uses of that abstract idea. *Alice Corp. Party Ltd.* v. *CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs.* v. *Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296-97 (2012)). The first step asks whether the patent is drawn to an abstract idea, while the second step asks whether the patent involves an "inventive concept" beyond the abstract idea. *Ibid*.

As the Court recognized in *Mayo*, however, "all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." 132 S. Ct. at 1293. Thus for the most part, the lower courts treat every software patent as based on an abstract idea in step one of the analysis. This means that the real work in applying the *Alice* test occurs in step two, which asks whether the patent includes an "inventive concept" beyond the abstract idea. That is, does the patent do more than "simply appen[d] conventional steps, specified at a high level of generality, to laws of nature, natural phenomena, and abstract ideas"? *Mayo*, 132 S. Ct. at 1300. For software, the question is whether the patent "merely require[s] generic computer implementation" of the abstract idea. *Alice*, 134 S. Ct. at 2357; see also *id.* at

2358 (noting that "the computer implementation was purely conventional").

But in the wake of *Alice*, courts have struggled with the test for "generic computer implementation." Federal Circuit precedent suggests that the entire § 101 analysis is a question of law. Lower courts thus routinely decide whether a computer implementation is "conventional" or "unconventional" without receiving evidence or expert testimony. That approach, however, cannot be reconciled with this Court's requirement of a detailed analysis of the improvements made to existing art at step two of the *Mayo* test. See *Alice*, 134 S. Ct. at 2358 (instructing courts to evaluate whether a patent's claims are an improvement on an existing technological process in order to gauge the inventive component).

Here, for example, after identifying the "gist" of the claims as "people who meet certain requirements are allowed to do certain things," App. 12, the district court failed entirely to consider either the inventive concept seen in the multiple improvements made on the existing technological process, or the increased security measures achieved by the patent. Likewise, there was no mention in the opinion of the fact that the patent alters the traditional format for storage and retrieval of security access information, or of the cost-saving measures directly achieved by implementing the invention.

The district court's approach highlights that, in their struggle to apply the *Mayo* two-step test, the

lower courts have lost sight of the underlying issue: whether the patent preempts other parties from using the same alleged "abstract idea." When a patent owner can show that other parties may use the same abstract idea—as was admitted here by the defendants in this case—there is no preemption. The Court should resolve the confusion and clarify that the ultimate inquiry—preemption—must control any application of the *Mayo* test.

The preemption issue is already pending before this Court in the petition in *Sequenom, Inc.* v. *Ariosa Diagnostics, Inc.*, which should be granted. 788 F.3d 1371 (Fed. Cir. 2015), petition for cert. filed, 84 U.S.L.W. 3548 (U.S. Mar. 21, 2016) (No. 15-1182). At a minimum, the instant petition should be held for *Sequenom*. Alternatively, because *Sequenom* presents the preemption issue in the context of the "natural phenomenon" exception to § 101 patentability, while this case presents the issue in the context of the "abstract idea" exception, the Court may wish to grant both petitions and consider preemption in the § 101 analysis for both natural phenomena and abstract ideas.

1. Founded in the wake of the 9/11 attacks to address the critical need to securely share information in increasingly complex, global environments, petitioner Jericho Systems Corporation is a pioneer in the privacy and security industry. Jericho provides security solutions for companies in many sectors—including healthcare, defense, and national intelligence. The Deputy Director of the Office of the Secretary of Defense first selected Jericho's access control model as

the blueprint for the Department of Defense Global Information grid in 2007.

Later, Jericho's software embodying the patent at issue was deployed across two Department of Defense secure network enterprises, providing access control to over six million persons and entities. Within five years, President Obama mandated the use of this model in every U.S. Government enterprise. See Homeland Security Presidential Directive (HSPD) 12. The same patent has also been used in the U.S. Army's Tactical and Intelligence Network since 2010, and is currently deployed in the Department of Homeland Security Office of Intelligence and Analysis. The software derived from the patent continues to serve as the benchmark for DHS enterprise security.

2. Traditionally, computer systems relied on user lists to control access to specific information. Patent 1:27-28, 1:38-40, 3:23-25. In these systems, when a user tries to access information, the computer checks the list for access. *Ibid.* If the user's name is on the list, access is granted. *Ibid.* If the name is not on the list, access is denied. *Ibid.*

This approach worked well enough for early computer systems, but there were obvious problems. First, when something about a particular user changed (for example, if an employee joined or left a company), every list would have to be modified to add or remove the user. *Ibid.* Second, changing a security policy (for example, making information more confidential or less

confidential) required creating a new list of users who would be given access. *Ibid.*

3. As the Internet expanded with more people accessing systems in real time, these difficulties became increasingly problematic. Because "modern Internet-based applications frequently have user populations numbering in the tens of millions," computer systems based on user lists were not "capable of performing efficiently." *Id.* at 3:36-40. To address these problems, Jericho developed an attribute-based access control system. In such systems, rather than maintaining user lists, computers control access to information using rules that determine which users should receive access. *Id.* at 1:27-28, 1:38-40, 3:23-25.

4. Attribute-based systems took a significant step forward when a software engineer at Jericho made the invention claimed by U.S. Patent No. 8,560,836 (the '836 patent). Briefly (and simply), the claims of the '836 patent detail a specific system and method in which a user's request to access information or perform an action is routed to a server—called the "enterprise security server"—which in turn calls up the rule associated with the request in real time rather than from a static database of rules. *Id.* at 7:13-19. The server determines what information—i.e., the "attributes"—is needed to apply the rule. *Ibid.* Each "attribute" is associated with a particular source for the information about the user (a "connector" that can retrieve the information from a "remote data source"); the attribute values are requested using the "connector" only when retrieving those attribute values is

necessary to apply the rule, and only when the attribute values are not already known. *Id.* at 7:20-38. The server then "dynamically" evaluates whether the user is authorized to perform the action and returns the decision to the user. This means that the server makes a calculation—rather than a comparison with a static list—based on rules and real-time information available about the relevant attributes. *Id.* at 7:39-44.

These specific steps in the claims of the '836 patent provide numerous advantages that do not inhere to the general idea of "using rules to determine access." For example, by funneling all requests for access through the "enterprise security server," the system provides an additional layer of security between the user and the information, making data breaches less likely. *Id.* at 3:8-12. And because the rules are stored on a central server (rather than on users' computers), the rules can be modified at will, and any changes take effect immediately. See *id.* at 3:33-36.

The '836 patent does not purport to cover every computer implementation of the idea of using rules to control information access. Rather, the invention is limited to the particular system that solved problems in prior art computer-based access control systems related to processing power, network bandwidth, and security through using the dynamic enrichment process (i.e., the real-time evaluation of rules) and specific algorithm described in detail in the claims.

5. When Jericho learned that respondents—Swedish companies Axiomatics Incorporated and Axiomatics AB (Axiomatics)—were using its patented technology to compete with Jericho for business with the U.S. Department of Veterans Benefits and elsewhere, it brought an infringement suit in the Northern District of Texas, where Jericho is headquartered. Axiomatics moved for judgment on the pleadings, which Jericho opposed. Without a hearing, the district court granted Axiomatics' motion, invalidated all claims of the '836 patent, and entered a take-nothing judgment. App. 19-20.

Applying the *Mayo* two-step analysis, the district court first held that the patent fails at step one because it "recites an abstract idea." *Id.* at 12. The court acknowledged that "the claim appears to present a complex method that uses attributes, rules, connectors, classifications, and remote data sources" but concluded that "the gist of the claim involves a user entering a request for access, looking up the rule for access, determining what information is needed to apply the rule, obtaining that information, and then applying the information to the rule to make a decision." *Ibid.*

The district court next held that the patent fails at step two of the *Mayo* test. *Id.* at 16. The district court's brief analysis focused primarily on a Federal Circuit case upon which Jericho relied—*Research Corp. Technologies* v. *Microsoft Corp.*, 627 F.3d 859, 868 (Fed. Cir. 2010)—and which held that the invention would have passed the equivalent of step two. App. 16. The district court examined the invention in *Research Corp.* and

distinguished it because it "modified the way and manner in which a computer operated to produce images." *Ibid.* In contrast, according to the district court, Jericho's invention "simpl[y] uses standard computing processes to implement an idea unrelated to computer technology." *Id.* at 17; see also *id.* at 18 (explaining that the claim is implemented by "generic computer functionality"). The district court did not explain how that conclusion was consistent with its earlier acknowledgment that the claims provide "a complex method that uses attributes, rules, connectors, classifications, and remote data sources," *id.* at 12, or cite any evidence supporting its conclusion that the patent used only "generic computer functionality." *Id.* at 18.

Concluding without any preemption analysis that all claims of the '836 patent were "directed to a purely abstract idea without any inventive concept," the district court held that the subject matter was not eligible for patent protection and granted Axiomatics' motion. *Id.* at 19.

6. Jericho appealed to the Federal Circuit. Axiomatics defended the judgment below primarily by arguing that the claims merely recited "generic computer implementation." See Brief of Appellees at 1, 3, 11, 29, 30, 44, 45, *Jericho Sys. Corp.* v. *Axiomatics, Inc.*, 2016 WL 945275 (Fed. Cir. Mar. 13, 2016) (No. 2015-1656).

At oral argument, the panel struggled to define what constitutes an "abstract idea." Oral Argument at 8:20, 20:55, *Jericho Sys. Corp.* v. *Axiomatics Inc.*, No. 2015-1656, 2016 WL 945275 (Fed. Cir. 2016), http://

oralarguments.cafc.uscourts.gov/default.aspx?fl=20156.mp3. One member of the panel pointed out that it was not readily apparent that some of the patent's claims—such as parking attributes away from the server and retrieving them through connectors as needed—were so commonplace that they should be considered logical outgrowths of the basic abstract idea (assuming it was such). *Id.* at 27:37, 28:30.

In spite of its doubts, the panel issued a one-word affirmance under Circuit Rule 36 (App. 2)—a common occurrence in the Federal Circuit, which resolves around 50 percent of its cases in that fashion. Jason Rantanen, *Data on Federal Circuit Appeals and Decisions*, PATENTLYO (June 2, 2016), http://patentlyo.com/patent/2016/06/circuit-appeals-decisions.html.

REASONS FOR GRANTING THE PETITION

In *Mayo*, this Court established a two-part framework for distinguishing patents that claim abstract *ideas* from those that claim patent-eligible *applications* of those ideas. 132 S. Ct. at 1293-98. First, a reviewing court will determine if a patent is drawn to an "abstract idea"—a term that includes such things as ideas about "hedging risk," *Bilski* v. *Kappos*, 561 U.S. 593, 599 (2010), and "intermediated settlement," *Alice*, 134 S. Ct. at 2357. The court considering the patent then proceeds to the second step and considers whether the claims "transform that abstract idea into a patent-eligible invention." *Ibid.* Step two analyzes

the extent to which an "inventive concept" makes the patent an application of the abstract idea rather than just the idea itself. *Ibid.*

Proper application of the *Mayo* test has proven elusive for lower courts. That confusion, in turn, has prevented courts from consistently and uniformly identifying patents that "'transform' the claimed abstract idea into a patent-eligible application." See *ibid.* Compounding the confusion and departing further from *Alice*, the lower courts regularly decline any discussion of preemption in favor of rote analysis of patent language at so high a level of generality that the claim language is rendered all but meaningless. This leads to the untenable result that patents—such as the one here—that do not preempt other uses of the alleged "abstract idea" at issue are nevertheless held to violate *Alice*. This Court's review is needed to resolve the confusion and ensure correct application of patent law by the circuit court charged with overseeing it.

I. This Court's Review Is Needed To Resolve The Conflict Created By The Federal Circuit's Misapplication Of *Alice*.

Notwithstanding this Court's instruction in *Alice* that courts reviewing patents should proceed slowly in invalidating under § 101, 134 S. Ct. at 2354, 70 percent of these challenges have resulted in judgments of invalidity—many based on the pleadings alone. Robert R. Sachs, *Update on Patent Eligibility Decisions for First Quarter, 2016*, BILSKI BLOG (Apr. 2, 2016), http://

www.bilskiblog.com/blog/2016/04/update-on-patent-eligibility-decisions-for-first-quarter-2016.html. The post-*Alice* numbers are even bleaker for software patents on appeal. *Ibid.* This anomaly stems from the Federal Circuit's conflation of the second step of the *Mayo* test with the first so that anything labeled as an "abstract idea" is virtually preordained to invalidation. This state of affairs is untenable and the serious conflict with *Alice* warrants this Court's review.

By way of background, things such as laws of nature, natural phenomena, and abstract ideas are "the basic tools of scientific and technological work." *Ass'n for Molecular Pathology* v. *Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013). As a result, issuing patents to these types of things would "impede innovation more than it would tend to promote it" and this Court has excepted them from patent eligibility under § 101 of the Patent Act. *Mayo*, 132 S. Ct. at 1293. So "in applying the § 101 exception, [a reviewing court] must distinguish between patents that claim the 'building block[s]' of human ingenuity and those that integrate the building blocks into something more." *Alice*, 134 S. Ct. at 2354 (alteration in original) (citing *Mayo*, 132 S. Ct. at 1303).

To conduct that inquiry, this Court established a two-part test. "First we determine whether the claims at issue are directed to one of those patent-ineligible concepts." *Id.* at 2355. Second, if the claims fall into one of the "building block" categories, "we then ask '[w]hat else is there in the claims before us?'" *Id.* at 2355 (quoting *Mayo*, 132 S. Ct. at 1297). In the second

step, a court will look for an "inventive concept" to show that the patent is more than just a patent on the abstract idea itself. *Ibid.* Though *Alice* did not "delimit the precise contours of the 'abstract idea' category," *id.* at 2356-57, the Court did offer several examples capturing the "longstanding rule that '[a]n idea of itself is not patentable.'" *Gottschalk* v. *Benson*, 409 U.S. 63, 67 (1972) (quoting *Mackay Radio & Tel. Co.* v. *Radio Corp. of Am.*, 59 S. Ct. 427, 431 (1939) and *Rubber Tip Pencil Co.* v. *Howard*, 87 U.S. (20 Wall.) 498, 507 (1874)).

While the test may seem straightforward, the Federal Circuit—and, consequently, the district courts—have been unable to reach the balance struck in *Alice* between preventing the monopolization of the "building blocks" of invention and allowing the exclusionary principle to "swallow all of patent law." *Alice*, 134 S. Ct. at 2354. This Court's review is necessary to provide badly needed guidance on this critical issue of patent law.

This Court recognizes that "all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Mayo*, 132 S. Ct. at 1293. In the wake of *Alice*, the lower courts have routinely identified abstract ideas at the heart of software patents, which are inherently based on the abstract idea of an algorithm.

Thus for software patents to survive at all, they must rest on an "inventive concept" that the claims add to the underlying abstract idea. *Alice*, 134 S. Ct. at 2355. This Court has established the proper inquiry—

i.e., "whether the claims * * * do more than simply instruct the practitioner to implement the abstract idea * * * on a generic computer," *id.* at 2539—but courts have been unable to apply this test with any predictability or consistency, other than to err on the side of invalidity.

The conflict is sharp, and the confusion rampant. For example, in *DDR Holdings, LLC* v. *Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), the panel correctly focused on the specific claims at issue, asking whether they "attempt to preempt every application of the [abstract] idea" or instead "recite a specific way" to implement that idea. *Id.* at 1259. Under this test, the software patent's validity was upheld. But *DDR*'s helpful "every application" versus "specific way" test has failed to take root in the Federal Circuit's jurisprudence. *Ibid.*

Another panel conflated the "inventive concept" inquiry in the second step of *Mayo* with the affirmative defense that a patent is invalid because it was anticipated by prior art. See *Genetic Techs. Ltd.* v. *Merial L.L.C.*, No. 2015-1202, 2016 WL 1393573, at *7 (Fed. Cir. Apr. 8, 2016) (concluding that the steps did not "provide sufficient inventive concept to render claim 1 patent eligible" in light of the prior art).

Still other cases have simply announced—without analysis or explanation—that claims adding steps beyond the abstract idea are merely "conventional" steps ineligible for patent protection. See *In re Smith*, 815

F.3d 816, 819 (Fed. Cir. 2016) (determining that "shuffling and dealing a standard deck of cards are 'purely conventional' activities"); *Versata Dev. Grp., Inc.* v. *SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) ("The steps in Versata's claims * * * are conventional, routine, and well-known. They involve the normal, basic functions of a computer."); *OIP Techs., Inc.* v. *Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) ("Just as in *Alice*, all of these computer functions are well-understood, routine, conventional activities previously known to the industry." (internal quotation marks and citation omitted)); *Ultramercial, Inc.* v. *Hulu, LLC*, 772 F.3d 709, 715-16 (Fed. Cir. 2014) ("[T]he claimed sequence of steps comprises only conventional steps, specified at a high level of generality, which is insufficient to supply an inventive concept." (internal quotation marks and citation omitted)).

Patents should not be invalidated based on no more than *ipse dixit*. The Federal Circuit has held that the patent examiner and the Patent Trial and Appeal Board cannot rely on unexplained "general knowledge" to reject patents as obvious under § 103: "[W]hen they rely on what they assert to be general knowledge to negate patentability, that knowledge must be articulated and placed on the record." *In re Lee*, 277 F.3d 1338, 1345 (Fed. Cir. 2002). There is no reason that unarticulated "general knowledge" about computers should be grounds for holding a patent ineligible under § 101.

Another Federal Circuit case appears to suggest that any software relying on "generic computer

components" cannot "satisfy the inventive concept requirement." *Mort. Grader, Inc.* v. *First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1317 (Fed. Cir. 2016). This cannot be the correct test, unless software patents are to be wholly eliminated. At base, all software patents rely on generic computer components. It is how these generic components are selected, combined, programmed, and manipulated that provides the "inventive concept" that renders software eligible for patent protection.

But there is an almost unbroken trend of lower courts failing to heed this Court's warnings about the necessity of careful and detailed analysis of the improvements made to existing art at step two of the *Mayo* test. Given the inherently abstract nature of software patents generally, this inquiry is vital. Otherwise, the § 101 exceptions for patentability will swallow the rule that would otherwise allow them. As things stand, since *Alice* was decided the Federal Circuit has held only two software patents valid.[1] If property rights in software patents are to be protected with any predictability and rationality, this Court's guidance is needed to clarify step two, resolve the conflict, and eliminate widespread confusion.

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[1] The recent case of *Enfish, LLC* v. *Microsoft Corp.*, No. 2015-1244, 2016 WL 2756255 (Fed. Cir. May 12, 2016), is one of them—but the Court only reached that result by modifying the step one inquiry—it did not clarify the step two inquiry. As a result, *Enfish* only exacerbates the confusion in the Federal Circuit's jurisprudence.

II. The Proper Application Of *Alice* Is A Frequently Recurring And Substantially Important Issue Of Federal Patent Law.

The questions presented recur frequently and warrant this Court's attention. The software industry is one of the primary growth drivers in today's economy. See, e.g., Daniel Taylor, Comment, *Down the Rabbit Hole: Who Will Stand Up for Software Patents After* Alice*?*, 68 ME. L. REV. 217, 218 (2016) ("In 2014, U.S. companies invested $313 billion in developing software to support their businesses, and, to protect that investment, the U.S. Patent & Trademark Office issued 68,374 software-related patents * * * * *"); Lidiya Mishchenko, Alice*: Through the Formalist Looking-Glass*, 97 J. PAT. & TRADEMARK OFF. Soc'y 214, 215 (2015) ("The software industry is an important part of our economy. It has grown from $149 to $425 billion between 1997 and 2012. This industry contributed $526 billion to the U.S. GDP in 2012 alone."); Ronald J. Mann, *Do Patents Facilitate Financing in the Software Industry?*, 83 TEX. L. REV. 961, 963 (2005) ("The U.S. software industry is characterized by astonishing levels of growth, innovative activity, and competition.").

Yet as Judge Newman recognized in the Federal Circuit's en banc decision in *Alice*, confusion in the lower courts threatens innovation because "the uncertainty of administrative and judicial outcome and the high cost of resolution are a disincentive to both innovators and competitors." *CLS Bank Int'l* v. *Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1321 (Fed. Cir. 2013) (en banc), *aff'd*, 134 S. Ct. 2347 (2014) (Newman, J., concurring

in part, dissenting in part); see also Mishchenko, *supra*, at 216 ("The uncertainty of patent protection rendered by the *Alice* decision is especially dangerous for this developing technology sector, where intellectual property is sometimes the most valuable asset a company owns.").

The foundation of the patent system is predictability. "Reliable application of legal principles underlies the economic incentive purpose of patent law, in turn implementing the benefits to the public of technology-based advances, and the benefits to the nation of industrial activity, employment, and economic growth." *Alice*, 717 F.3d at 1321 (Newman, J., concurring in part, dissenting in part). "In the area of patents, it is especially important that the law remain stable and clear." *Bilski*, 561 U.S. at 613 (Stevens, J., concurring).

Since this Court decided *Alice*, time has demonstrated that courts and litigants need this Court's guidance to ensure the stability and predictability upon which patent law depends (and innovation thrives). While purporting to apply this Court's decision in *Alice*, different panels of the Federal Circuit have performed different legal analyses. See *supra* pp. 14-16. This Court's review is badly needed to restore certainty and predictability essential to this important area of the law.

III. Despite The Federal Circuit's Cursory Treatment, This Case Is An Appropriate Vehicle To Resolve The Important Questions Presented.

This case is an appropriate vehicle for addressing the important, recurring question concerning the proper application of *Alice*. It involves a single issue—whether the '836 patent is eligible for patent protection under § 101—that was resolved below on a motion for judgment on the pleadings. As a result, no additional legal or factual issues would complicate this Court's analysis. The issues were fully briefed (and orally argued) in the Federal Circuit and are properly before this Court.

The absence of a reasoned opinion from the Federal Circuit should not present an obstacle to certiorari for two primary reasons.

First, the Federal Circuit is hopelessly conflicted and confused on application of the *Alice* test. See *supra* pp. 11-16; see also *Internet Patents Corp.* v. *Active Network, Inc.*, 790 F.3d 1343, 1345 (Fed. Cir. 2015) ("[P]recision has been elusive in defining an all-purpose boundary between the abstract and the concrete, leaving innovators and competitors uncertain as to their legal rights."); *DDR Holdings*, 773 F.3d at 1255 ("Distinguishing between claims that recite a patent-eligible invention and claims that add too little to a patent-ineligible abstract concept can be difficult, as the line separating the two is not always clear."). Only this Court can resolve the systemic misapplication of *Alice*

and this Court's § 101 precedent. Nothing would be gained from waiting to hear further from the Federal Circuit at this point.

Second, a grant of certiorari in this case would serve as a salutary reminder to the Federal Circuit about the appropriate use of one-word affirmances—which currently resolve over 50 percent of that court's cases. Rantanen, *supra* (showing that the percentage of Rule 36 opinions in appeals from district courts has increased from 21 percent to 43 percent in less than a decade). If the Federal Circuit is content to allow district court opinions to effectively substitute for its own opinions at such a high rate, that practice should not be permitted to "cert proof" issues that are otherwise cleanly presented and worthy of this Court's review. Cf. Philip P. Mann, *When the going gets tough . . . Rule 36!*, IP Litigation Blog (Jan. 14, 2016), http://www.iplitigationblog.com/2016/01/articles/uncategorized/when-the-going-gets-tough-rule-36/ (arguing that the Federal Circuit relies on summary affirmance under Rule 36 to "sidestep difficult issues on appeal and simply affirm").[2]

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[2] The recent denials of certiorari in *Retirement Capital Access Management Co.* v. *U.S. Bancorp*, 136 S. Ct. 1513 (2015); *Joao Bock Transaction Systems, LLC* v. *Jack Henry & Assocs., Inc.*, 136 S. Ct. 1468 (2016); *Cloud Satchel, LLC* v. *Barnes & Noble, Inc.*, 136 S. Ct. 1723 (2016)—all in cases that, like this one, were resolved by summary affirmance—do not militate against review. First, those petitions were filed before the Federal Circuit confirmed the confusion in its own jurisprudence and its inability to resolve it. See *supra* pp. 11-16. Second, this case more cleanly presents the

IV. On The Merits, A Patent That Does Not Preempt Other Uses Of An Abstract Idea Cannot Fail *Alice* As A Matter Of Law.

The petition should also be granted because the Federal Circuit erred by failing to perform the preemption analysis this Court has described as "the concern that drives [the] exclusionary principle" in § 101. *Alice*, 134 S. Ct. at 2354. As this Court has explained, upholding a patent on an abstract idea alone "would preempt use of [that] approach in all fields, and would effectively grant a monopoly over an abstract idea." *Bilski*, 561 U.S. at 612. In turn, "'monopolization of those tools through the grant of a patent might tend to impede innovation more than it would tend to promote it,' thereby thwarting the primary object of the patent laws." *Alice*, 134 S. Ct. at 2354 (alteration omitted) (quoting *Mayo*, 132 S. Ct. at 1932). That preemption analysis, however, is conspicuously absent from lower court opinions considering § 101 eligibility after *Alice* and *Mayo*—and the Federal Circuit has even suggested (albeit in an unreported per curiam opinion) that preemption is *not* the test for eligibility under § 101:

> [W]hile assessing the preemptive effect of a claim helps to inform the *Mayo/Alice* two-step analysis, the mere existence of a non-preempted use of an abstract idea does not

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question presented because the district court did not even consider the claims language, much less perform a sufficient preemption analysis.

> prove that a claim is drawn to patent-eligible subject matter.

Vehicle Intelligence & Safety LLC v. *Mercedes-Benz USA, LLC*, No. 2015-1411, 2015 WL 9461707, at *3 (Fed. Cir. Dec. 28, 2015) (per curiam).

But the *Mayo* two-part test was not designed to replace the preemption analysis—far from it. Preemption is an overarching concern that animates the entire test. *Alice*, 134 S. Ct. at 2358 ("This conclusion accords with the pre-emption concern that undergirds our § 101 jurisprudence."). But in sharp conflict with *Alice*, patents are routinely invalidated under § 101 that do not preempt other uses of the abstract idea. See, e.g., *Ultramercial*, 772 F.3d at 715-16; see also *McRO Inc.* v. *Activision Publ'g Inc.*, No. CV 14-336-GW(FFMx), 2014 U.S. Dist. LEXIS 135152, at *23 (C.D. Cal. Sept. 22, 2014) (holding claims ineligible even after defendants admitted the claims did not cover methods they used and stating that "[i]t is hard to show that an abstract idea has been preempted if there are noninfringing ways to use it in the same field"). This misapplication of this Court's precedent is untenable and, as explained above, has serious real-world consequences—stifling innovation in a key sector of the economy.

This case exemplifies the problem. Once preemption is properly considered, it becomes obvious that the patent in issue survives § 101. As this Court explained, software patents preempt the use of an abstract idea only when the claims merely recite "an abstract idea while adding the words 'apply it with a

computer.'" *Alice*, 134 S. Ct. at 2358 (quoting *Mayo*, 132 S. Ct. at 1301). A patent survives scrutiny if its claims' recitation of a computer is more than "a mere instruction to implement an abstract idea on a computer." *Ibid.* (internal quotation marks and alterations omitted).

The claims of the patent at issue here easily clear this bar, as the patent makes clear on its face that it covers only one specific implementation of the abstract idea identified by the district court. For example, one could create an attribute-based access system that is integrated directly with the server containing all of the security information that users could wish to access (lacking the "remote data sources" limitation of the patent). Or one could request attribute values using "connectors" without first "determining whether an attribute value for the attribute is present at the server." App. 10.

Thus the patent's claims do not come close to monopolizing the abstract idea of—in the district court's words—"people who meet certain requirements are allowed to do certain things." *Id.* at 12. And as the district court recognized, the claim "presents a complex method that uses attributes, rules, connectors, classifications, and remote data sources." *Ibid.* Only an implementation of the abstract idea using *this* "complex method" is covered by the patent. Others remain perfectly free to implement the abstract idea in noninfringing ways.

The '836 patent does not simply "limi[t] the use of an abstract idea 'to a particular technological environment.'" *Alice*, 134 S. Ct. at 2358 (quoting *Bilski*, 561 U.S. at 610-11). Any number of non-infringing products and services involve computers and the abstract idea that "people who meet certain requirements are allowed to do certain things." For example, electronic hotel room keys require computers to apply the rule that any person in possession of the key should be allowed entry. The same is true of systems that scan tickets for entry to events. But it would be absurd to suggest that these systems infringe the '836 patent. These uses of the abstract idea are not preempted by the patent.

Indeed, Axiomatics has acknowledged that Jericho's patent does not preempt other uses of the abstract idea. That is, Axiomatics recognized that an attribute-based access control system could be constructed without infringing Jericho's patent. Dkt. No. 29 at 7. In fact, in a counterclaim, Axiomatics sought a declaration that *its* attribute-based access control system did not infringe Jericho's patent. *Ibid.* The preemption analysis is thus dispositive in this case as Axiomatics itself identified at least one way in which a party could use the attribute-based access control without infringing the '836 patent.[3]

[3] To the extent a challenger argues that an invention lacks sufficient innovation to receive patent protection, those arguments can be raised as challenges to patent validity under doctrines such as obviousness and anticipation.

In sum, this Court made clear in *Alice* that preemption is "the concern that drives this exclusionary principle." *Alice*, 134 S. Ct. at 2354. In irreconcilable conflict with that instruction, district courts regularly (as in the instant case) apply *Alice* without so much as mentioning preemption—and the Federal Circuit has at best ignored the error and at worst excused it. This Court's review is needed to resolve the conflict, dispel the confusion, and bring the Federal Circuit's case law in line with this Court's § 101 precedent.

V. Alternatively, The Petition Should Be Held Pending The Disposition Of *Sequenom*.

The pending petition in *Sequenom* presents the same preemption issue as the instant petition, but in the context of the "natural phenomenon" exception to § 101 patentability, as opposed to the "abstract idea" exception at issue in this case. Jericho agrees with Sequenom that its petition should be granted and therefore respectfully requests that at the least, Jericho's petition be held pending the disposition of that case, as any direction from this Court on the question presented in *Sequenom* would likely affect the outcome of this case. Alternatively, the Court may wish to consider granting both petitions and consolidating the cases to provide much-needed guidance on *Alice*'s application to patents involving abstract ideas as well as natural phenomena.

CONCLUSION

The petition for a writ of certiorari should be granted or, in the alternative, the case should be held pending further guidance from this Court.

Respectfully submitted,

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United States Court of Appeals,
Federal Circuit.

JERICHO SYSTEMS CORPORATION,
Plaintiff-Appellant

v.

AXIOMATICS INC., AXIOMATICS AB,
Defendants-Appellees.

No. 2015-1656. | March 14, 2016.

Appeal from the United States District Court for the Northern District of Texas in No. 3:14-cv-02281-K, Judge Ed Kinkeade.

Attorneys and Law Firms

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Gabriel Bell, Latham & Watkins LLP, Washington, DC, argued for defendants-appellees. Also represented by Lawrence J. Gotts.

LOURIE, BRYSON, and REYNA, Circuit Judges.

JUDGMENT

PER CURIAM.

THIS CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

AFFIRMED. ***See*** **Fed. Cir. R. 36.**

2015 WL 2165931
Only the Westlaw citation is currently available.
United States District Court,
N.D. Texas,
Dallas Division.

JERICHO SYSTEMS CORPORATION,
Plaintiff,
v.
AXIOMATICS, INC. and Axiomatics AB,
Defendants.

Civil Action No. 3:14-CV-2281-K.
|
Signed May 7, 2015.

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MEMORANDUM OPINION AND ORDER

ED KINKEADE, District Judge.

Before the Court is the *Defendants' Motion for Judgment on the Pleadings of Invalidity Under 35 U.S.C. § 101 and Brief in Support of Same* (the "Motion").

After review of the Motion, the Plaintiff's response to the Motion, the Defendants' reply the Court is of the opinion that the Motion should be GRANTED.

I. Background

A. Procedural

Plaintiff, Jericho Systems Corporation ("Jericho") alleges, in *Plaintiff's Amended Complaint*, that Defendants, Axiomatics, Inc. and Axiomatics AB (collectively "Axiomatics") have infringed upon a patent owned by Jericho. In *Defendants Axiomatics, Inc. and Axiomatics AB's Answer, Affirmative Defenses, and Counterclaims to Plaintiff's Amended Complaint* Axiomatics asserts invalidity of the patent in suit as a defense and counter claims for a declaratory judgment on the invalidity of the patent in suit. Axiomatics subsequently filed the current Motion before the Court, in which Axiomatics asserts that the patent in suit is invalid because it attempts to patent subject matter that is not patentable under 35 U.S.C. § 101.

B. The Patent in Suit: The '836 Patent

The '836 patent, entitled "Method and System for Dynamically Implementing An Enterprise Resource Policy" was issued by the USPTO on October 15, 2013. It was assigned to Jericho, who is the sole owner of the entire right, title, and interest in the '836 Patent.

The '836 Patent discloses an invention used to make a decision regarding a particular person's authority to access certain information. The invention does this by determining what type of information is needed to make an access decision, obtaining that information, and the [sic] applying that information to a rule regarding access to the information. If the information satisfies the rule, then the person is allowed access. If not then the person is denied access.

The patent asserts that this is a significant improvement over the prior art, which used access lists to determine authorization. Under the prior art, a system would check that the person requesting access was on the list to determine if the person was authorized to obtain the information. The patent asserts that the invention significantly improves upon the prior art because under the invention one is no longer required to maintain and update a list, the process is faster because it does not have to search a list that could contain thousands of names, and the system allows for real time modification of authorizations that the prior art did not provide for.

II. Applicable Law

A. Subject Matter Eligibility Under 35 U.S.C. § 101

A motion for judgment on the pleadings under Rule 12(c) should be granted if the complaint lacks a cognizable legal theory. *Doe* v. *My Space, Inc.*, 528

F.3d 413, 418 (5th Cir. 2008). Patent subject matter eligibility under 35 U.S.C. 101 is a question of law suitable for resolution at the pleading stage of patent litigation matter. *Content Extraction and Transmission LLC* v. *Wells Fargo Bank, NA*, ___ F.3d ___, 2014 WL 7272219 (Fed.Cir. Dec.23, 2014).

35 U.S.C. § 101 provides that "whoever invents of [sic] discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." 35 U.S.C. § 101. This section defines the subject matter of inventions that an inventor may obtain a patent for. But, claims that attempt to purely cover laws of nature, natural phenomenon, and abstract ideas are not eligible for patent protection because these are implicitly excepted from 35 U.S.C § 101. *Alice Corp. Pty. Ltd.* v. *CLS Bank Int'l*, ___ U.S. ___, ___, 134 S.Ct. 2347, 2354, 189 L.Ed.2d 296 (2014); *Gottschalk* v. *Benson*, 409 U.S. 63, 67, 93 S.Ct. 253, 34 L.Ed.2d 273 (1972); *Ultramercial, Inc.,* v. *Hulu, LLC*, 772 F.3d 709, 711-715 (Fed.Cir. 2014). These judicial exceptions are not patent eligible subject matter because they are the basic tools of invention and innovation that are free for all to use. *Bilski* v. *Kappos*, 561 U.S. 593, 602, 130 S.Ct. 3218, 177 L.Ed.2d 792 (2010).

In order to determine if a claim recites patent eligible subject matter, the claim must be analyzed under a two part test. *Alice*, 134 S.Ct. at 2354. Under the first part of this test, one must make a

determination if the claim is directed to or recites a judicial exception. *Id.* If no judicial exception is presented in a claim, then the subject matter of the claim is not barred from patent protection and the second part of the test does not apply. *Id.* But, if a judicial exception is presented in the claim, then the claim must be further analyzed under the second part of the test. *Id.* Under the second part of the test the claim is analyzed to determine if the claim recites something more than the judicial exception. *Id.* This part of the test looks for an inventive concept in the claim beyond the judicial exception. *Id.* If there is an inventive concept present in the claim, then the claim recites patentable subject matter. *Id.* If there is not something more or an inventive concept then the claim does not recite patentable subject matter because it is an attempt to patent the judicial exception itself. *Id.* In addition, implementing a judicial exception using well known components or function, limiting the idea to a particular field of use, or adding extra solution activity to the claim are not inventive concepts that add something more to a judicial exception. *Id.* The principles apply equally to method, system, and other claims. *Id.*

III. Analysis Of The '836 Patent

A. Defendants' Argument

Defendants assert that the claims of the patent in suit are invalid because they are directed to a pure abstract idea without any inventive concept. Under

Defendants' analysis of the claims, the claims involve 1) receiving a request for access to a resource, 2) consulting a rule that indicates the conditions for granting access, 3) determining what information about the user is necessary to evaluate the rule, 4) retrieving the information about the user, 5) evaluating the rule using that information, and 6) making an authorization decision.

Defendants assert that this process is nothing more than an abstract idea and equate the process to activities like verifying the age of a person to ensure that a person is old enough to purchase a ticket to an R rated movie.

Defendants also assert that the claims do not include any inventive concept that makes the abstract idea patentable because the recitation of generic computing components in the claims and the limitations of the dependent claims do not add any inventive concept to the claims. Defendants also assert that the claims fail to pass the machine or transformation test.

B. Plaintiff's Argument

Plaintiff argues that the claims are not invalid because they are not directed to an abstract idea and even if they were the claims are still not invalid because they include inventive concepts beyond any abstract idea present in the claims. Plaintiff argues that the claims are not abstract ideas because the claims are rooted in modern computer and internet

technology. That is that modern computer and internet technology has uniquely created a problem that is solved by the invention of the claims. Plaintiff further asserts that even if the claims recite an abstract idea, the claims still pass the second part of the *Mayo* test because they include inventive concepts beyond the mere abstract idea. Plaintiff assets [sic] that the invention resulted in a dramatic improvement in computer access control systems including eliminating inefficiency, allowing remote data retrieval, and allowing real time determinations to be made. Plaintiff asserts that these improvements show that the claims involve an inventive concept beyond an abstract idea. And, Plaintiff asserts that the claims easily pass the machine or transformation test.

C. The Court's Analysis

The Court agrees with Axiomatics that the claims of the '836 Patent are invalid because they are directed to an abstract idea without any additional inventive concept, which is subject matter that is not eligible for patent protection.

The Court initially notes that a court may select a representative claim for analysis and apply that analysis to other claims that are sufficiently similar to the representative claim. *See e.g. Alice*, 134 S.Ct. at 2359-60. In this case, the Court finds that this is the correct approach to this analysis because all of the claims of the '836 Patent are sufficiently similar. The '836 Patent contains three independent claims

and twenty-one dependent claims. Independent Claim 1 reads as follows:

> "1. A method to process authenticated user requests to access resources, the method comprising:
>
> receiving from a user a request to perform an action on a resource;
>
> receiving, by a server, a rule associated with the action, wherein the server comprises a processor and operatively associated memory, and wherein the rule indicates conditions under which a request to perform the action on the resource should be granted;
>
> determining a plurality of attributes required to evaluate the rule;
>
> classifying at least a portion of the plurality of attributes by connector, wherein each connector is in communication with an associated remote data source comprising values for attributes classified with the connector;
>
> for a first portion of the plurality of attributes classified with a first connector:
>
> for each of the first portion of the plurality of attributes, determining whether an attribute value for the attribute is present at the server;

> generating a first connector request, wherein the first connector request comprises each of the first portion of the plurality of attributes that lacks an attribute value at the server, and
>
> requesting attribute values for each attribute included in the first connector request, wherein the requesting takes place via the first connector and is directed to the remote data source associated with the first connector;
>
> evaluating, by the server, the user request to determine whether the user is authorized to perform the action on the resource, wherein the evaluation comprises applying the rule considering the values for the plurality of attributes; and
>
> returning an authorization decision."

Claim 1's dependent claims recite features such as repeating the attributes retrieval steps a second time in Claim 2; tracking or logging user requests in Claims 3 and 9; specifying characteristics of the rule evaluation and attributes in Claims 4, 6, 7, and 8; authenticating a user's identity in Claim 5; triggering an alarm in Claim 10; and specifying that the resources used are physical, information, or online resources in Claim 11. Independent Claim 12 and its dependent claims are computer system claims that parallel Claim 1 and some of its dependent claims. Independent Claim 1 is a method claim and is essentially the same as Claim 21, except Claim 21 omits

classifying user attributes found in a database and retrieving the attributes from that data base using a data retrieval connector. And, Claim 21's dependent claims add the same connector language as Claims 1 and 2. These claims are sufficiently similar to allow the Court to analyze a representative claim, in this case Claim 1, and applying that analysis to all of the claims considering any additional limitations recited in the other claims.

i. Claim 1 Does Not Pass The First Part of the *Mayo* Test.

Claim 1 does not pass the first part of the *Mayo* two part test because it recites an abstract idea. The wording of the claim appears to present a complex method that uses attributes, rules, connectors, classifications, and remote data sources. But, upon closer examination, the gist of the claim involves a user entering a request for access, looking up the rule for access, determining what information is needed to apply the rule, obtaining that information, and then applying the information to the rule to make a decision.

This is an abstract idea. The abstract idea being that people who meet certain requirements are allowed to do certain things. This is like the Axiomatic's example of making a determination if somebody is old enough to buy an R rated movie ticket. In order to make this determination, one would have 1) to determine the rule, which would be a person must be

17 to purchase an R rated movie ticket; 2) determine what information is needed to make a decision under the rule. which is the age of the person trying to buy a ticket; 3) retrieving the specific information about the person needed to make a determination, which is requesting proof of age; 3) [sic] applying that information to the rule, which may be yes the person is allowed to purchase the ticket because his age is 20.

The example of buying an R rated movie ticket is just one example of how this abstract idea currently is and has been applied in society for as long as civilization has existed.

The possibilities run from the simple examples, such as the movie ticket example to very complex authorization procedures. For example, the '836 Patent states that the prior art used access lists to determine authorizations in which if a person is on the list that person is authorized to access the information. But, what the patent does not address is how the decision is made to put a person on the list in the first place. The process to do so, must be the same process described by the '836 Patent claims and the related question is: Is this person authorized have his name on the list? The list administrator must determine particular attributes about the person requesting to be placed on the list and apply those attributes to the established requirements to be on the list. If the requirements are met, then the person's name is added to the list.

Other examples include being able to legally drive requires a valid driver's license and obtaining access to top secret information requires the appropriate security clearance. These and many other possibilities all involve the abstract process described by Claim 1 of the '836 Patent.

Jericho's attempt to rely on the assertion that this claims [sic] solves a problem that is rooted in modern computing and internet technology does not change this analysis. In support of this assertion, Jericho provides a theoretical example that involves the use of the invention in a military defense scenario, in which the system could be used to make quick and efficient decisions regarding a person's authority to access information based on a changing terrorist threat level. Jericho asserts that this example shows that this is not an abstract idea because of the speed and efficiency with which these decisions could be made using the invention.

Even if the system is faster and more efficient than what was done in the past, that fact does not make this not an abstract idea. The idea behind the process remains that [sic] same. Also, it is not the invention that makes the system fast and efficient, it is the use of computers systems to implement the abstract idea that make the system fast and efficient. The process describe [sic] by Jericho, in its military defense theoretical, could also be carried out without computers and in the end it is no different than determining certain information about a person to determine if that person is authorized to do something.

Jericho's reliance on *DDR Holdings, LLC* v. *Hotels.com, L.P.* is also misguided. In *DDR Holdings*, the Federal Circuit held that certain claims directed to the operation of web pages were patentable because the claims [sic] were necessarily rooted in computer technology. *DDR Holdings, LLC* v. *Hotels.com, L.P.*, No.2013-1505, 2014 U.S. App. LEXIS 22902, 2014 WL 6845152 (Fed.Cir. 2014). Jericho asserts that the claims of the '836 Patent are likewise valid because they are rooted in computer technology. This is not the case. The claims in *DDR Holdings* were rooted in computer technology because they modified the way that the internet functioned to address a problem that was created by the invention of the internet; because this was a unique situation in which the problem did not exist absent the internet; and because the invention did not merely use routine and conventional internet operations and procedures. *Id.*

This is not the case for the '836 Patent. The problem existed before modern computing and the internet existed and the claimed invention simply uses standard computing and communication equipment and procedures to implement the abstract idea. This situation is much more like those presented in *Alice* and *Ultramercial*, in which computer technology was used to implement an idea, unrelated to the functioning of the computer or the internet, in a faster and more efficient manner. In those cases and in the case at hand, the mere fact that the process was faster and more efficient because it used

computers is insufficient to convert an abstract idea into a non abstract idea or to root the invention in modern computer technology.

ii. Claim 1 Does Not Pass The Second Part of the *Mayo* Test.

Claim 1 of the '836 Patent also fails the second part of the *Mayo* two part test. Under the second step of this test, the claim must be analyzed for something more than the abstract idea, i.e. it must display an inventive concept beyond the application of the abstract idea. In support of its assertion that the claim presents and [sic] inventive concept, Jericho analogizes the claim to those claims presented in *Research Corp. Techs.* v. *Microsoft Corp.*, 627 F.3d 859 (Fed.Cir.), in which the Federal Circuit held that the claims were valid because they presented functional and palpable applications in the field of computer technology. The claims in *Research Corp*, were directed to the improved output quality of halftone images. *Research Corp. Techs.* v. *Microsoft Corp.*, 627 F.3d 859, 868 (Fed.Cir. 2010). The invention used a mathematical algorithm and a blue noise mask to do this. *Id.* The process resulted in creating better images in less time. *Id.* Jericho asserts that the '836 claims are likewise patentable because they involve an inventive concept that has many practical applications and represents a large functional improvement over prior methods.

The Court is not persuaded by this argument because there is a significant difference between the

claims of the '836 Patent and the invention claimed in *Research Corp.* The invention in *Research Corp* actually modified the way and manner in which a computer operated to produce images. This is an improvement in the functioning of the computer itself that results in a faster process with a better output. Claim 1 of the '836 Patent does not do this. As already stated, it simple [sic] uses standard computing processes to implement an idea unrelated to computer technology. It does not change [sic] way a computer functions or the way that the internet operates.

iii. Passing The Machine or Transformation Test Does Not Save Claim 1.

The Court agrees with Jericho that Claim 1 of the '836 Patent passes the machine or transformation test, but this does not save the claim. While the machine or transformation test is no longer dispositive on the decision of subject matter eligibility, analysis of a claim under the test can assists [sic] in guiding a court in a 35 U.S.C. § 101 determination. Under the machine or transformation test, a showing that a claim is tied to particular machine or that the claim transforms a particular article into a different state or thing supports a finding that the claim recites subject matter the [sic] is eligible for patent protection. *Bilski*, 561 U.S. at 603.

In the case at hand Jericho asserts that Claim 1 passes this test and Axiomatics asserts that is does

not. In support of its argument that the claim passes the machine or transformation test, Jericho argues that the claim is tied to particular machine or apparatus because the claims require computers to operate. Axiomatics, argues that the claim is not tied to a particular machine because it only recites general computing functionality and the process can be performed without a computer.

Even if the claim only recites general computer functionality, these are still limitations of the claim that must be implemented by an accused infringer. The fact that the process could be done without a computer does not negate the fact that these limitations are contained in the claim language. So, the claim is tied to a particular machine.

But, this does not save the claim. As, pointed out by the court in *DDR Holdings*, after the decision in *Alice*, it is clear that the recitation of generic computer limitations does not make an otherwise ineligible claim patent eligible. *DDR Holdings*, No.2013-1505, 2014 U.S. App. LEXIS 22902, 2014 WL 6845152 (Fed.Cir. 2014). Claim 1 of the patent in suit is no different than the claims presented in *Alice*, both recite abstract ideas that were carried out by generic computer functionality; and Claim 1 of the patent in suit is just as invalid as those in *Alice*.

iv. Claim 1 Is Representative Of All Of The '836 Patent Claims.

The above analysis of Claim 1 of the '836 Patent is applicable to all of the claims of the '836 Patent. The Court has reviewed all of the independent and dependent claims of the '836 Patent and has found no meaningful difference between those claims and Claim 1 of the patent. The other independent claims present the same idea in different formats and the dependent claims do not add any limitations that change this analysis. So, the Court is of the opinion that an individual analysis of each claim of the '836 Patent is not necessary because the outcome of the analysis of the individual claims would be the same as the analysis of Claim 1.

D. The Claims Of The '836 Patent Are Invalid.

In conclusion, all of the claims of the '836 Patent are held invalid because they are directed to a purely abstract idea without any inventive concept, which is not subject matter that is eligible for patent protection.

SO ORDERED.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JERICHO SYSTEMS CORPORATION, Plaintiff, v. AXIOMATICS, INC. and AXIOMATICS AB, Defendants.	§ § § § § § § § § §	Civil Action No. 3:14-CV-2281-K

JUDGMENT

(Filed May 7, 2015)

This Judgment is entered pursuant to the Court's Memorandum Opinion and Order of this same date, in which the Court granted Defendants' Motion for Judgment on the Pleadings of Invalidity Under 35 U.S.C. § 101.

It is therefore, ORDERED, ADJUDGED and DECREED that Plaintiff takes nothing by its suit against Defendants, and that Plaintiff 's claims are DISMISSED with prejudice, with all costs taxed against Plaintiff.

SO ORDERED.

Signed May 7th, 2015.

/s/ Ed Kinkeade
ED KINKEADE
UNITED STATES
DISTRICT JUDGE

35 U.S.C. § 101

§ 101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.