

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 18-2058-GW-DFMx	Date	May 14, 2019
Title	Uniloc 2017 LLC v. Hulu, LLC		

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE		
Javier Gonzalez	None Present		
Deputy Clerk	Court Reporter / Recorder		Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
None Present		None Present	

PROCEEDINGS: IN CHAMBERS - RULING ON DEFENDANT HULU'S MOTION TO DISMISS FIRST AMENDED COMPLAINT [34]

Attached hereto is the Court's Final Ruling on Defendants' Motions. The Court would GRANT with prejudice Netflix's, Hulu's, and Roku's motions only as to Claims 1 and 41 of the '005 Patent. These three Defendants' motions as to the other claims of the '005 Patent would be DENIED without prejudice. Defendants' motions as to the '229 Patent, '118 Patent, '609 Patent, and '273 Patent would be DENIED without prejudice.

A telephonic status conference is set for May 23, 2019 at 8:30 a.m. to discuss issues relating to scheduling. The parties are directed to file joint reports relating to their positions regarding scheduling by May 16, 2019.

Initials of Preparer

JG

Uniloc 2017 LLC v. Netflix, Inc., 8:18-cv-02055 GW (DFMx)

Uniloc 2017 LLC v. American Broadcasting Companies, Inc., 8:18-cv-02056 GW (DFMx)

Uniloc 2017 LLC v. Hulu, LLC, 8:18-cv-02058 GW (DFMx)

Uniloc 2017 LLC v. Netflix, Inc., 8:18-cv-02150 GW (DFMx)

Uniloc 2017 LLC v. Roku, Inc., 8:19-cv-00295 GW (DFMx)

Final Rulings on Defendants' Motions to Dismiss Operative Complaints

I. Background

Uniloc 2017 LLC ("Uniloc") has filed five cases that are currently pending before this Court. In those cases, Uniloc alleges infringement of five U.S. Patents against four Defendants: Netflix, Inc. ("Netflix"), American Broadcasting Companies, Inc. ("ABC"), Hulu, LLC ("Hulu"), and Roku, Inc. ("Roku").

In each of the five cases, the Defendant in the case has moved to dismiss some or all of the operative complaint on the basis that certain asserted patents¹ are patent-ineligible under 35 U.S.C. § 101. All five motions have been fully briefed. For reasons of judicial efficiency, all five motions to dismiss are addressed by this single Order.² Defendants' current invalidity challenges are shown in the following chart:

Patent No.	Case Nos.	Defendants
6,519,005	8:18-cv-02055-GW 8:18-cv-02058-GW 8:19-cv-00295-GW	Netflix Hulu Roku
6,584,229	8:18-cv-02055-GW	Netflix
6,895,118	8:18-cv-02058-GW 8:19-cv-00295-GW	Hulu Roku
8,407,609	8:18-cv-02055-GW 8:18-cv-02056-GW 8:19-cv-00295-GW	Netflix ABC Roku

¹ Each asserted patent will be referred to by its last three digits.

² Netflix, Hulu, and Roku are represented by the same counsel and to the extent the motions to dismiss filed in cases involving these Defendants include overlapping patents, the motions to dismiss use substantially similar language to present each Defendant's argument. For convenience, the Court will refer to docket entries in Case No. 8:18-cv-2055 when discussing the '005 and '229 Patents and docket entries in Case No. 8:19-cv-00295 when discussing the '118 and '273 Patents. ABC is represented by different counsel than the other three Defendants. Its motion to dismiss involves only the '609 Patent. For the '609 Patent, the Court will identify arguments from docket entries in Case No. 8:18-cv-2055 as only representative of docket entries in that case and Case No. 8:18-cv-2056; and will separately identify arguments in Case No. 8:19-cv-00295 (and identify all docket entries by also identifying the associated case number).

9,721,273	8:18-cv-02150-GW ³ 8:18-cv-02058-GW	Netflix Hulu
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For the reasons stated in this Order, the Court would **GRANT with prejudice** Netflix's, Hulu's, and Roku's motions only as to Claims 1 and 41 of the '005 Patent. These three Defendants' motions as to the other claims of the '005 Patent would be **DENIED without prejudice**. Defendants' motions as to the '229 Patent, '118 Patent, '609 Patent, and '273 Patent would be **DENIED without prejudice**.

A telephonic status conference is set for May 23, 2019 at 8:30 a.m. to discuss issues relating to scheduling. The parties are directed to file joint reports relating to their positions regarding scheduling by noon on May 20, 2019.

II. Legal Standard

A. Motion to Dismiss (Rule 12(b)(6))

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A complaint may be dismissed for failure to state a claim for one of two reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts under a cognizable legal theory. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008) ("Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.").

In deciding a Rule 12(b)(6) motion, a court "may generally consider only allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court must construe the complaint in the light most favorable to the plaintiff, accept all allegations of material fact as true, and draw all reasonable inferences from well-pleaded factual allegations. *Gompper v. VISX, Inc.*, 298 F.3d 893, 896 (9th Cir. 2002); *Sprowell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001), *amended on denial of reh'g*, 275 F.3d 1187 (9th Cir. 2001); *Cahill v. Liberty Mutual Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). The court is not required to accept as true legal conclusions couched as factual allegations. *Ashcroft v. Iqbal*, 556 U.S.

³ This case was previously consolidated with the other case against Netflix, Case No. 8:18-cv-2055. Uniloc also asserts the '118 Patent against Netflix in Case No. 8:18-cv-2150. However, Netflix has not moved to dismiss Uniloc's cause of action against it with respect to the '118 Patent (although Hulu and Roku have done so). *See* Case No. 8:18-cv-2150, Docket No. 23 (First Amended Complaint).

662, 678 (2009). Where a plaintiff facing a Rule 12(b)(6) motion has pleaded “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,” the motion should be denied. *Id.*; *Sylvia Landfield Trust v. City of Los Angeles*, 729 F.3d 1189, 1191 (9th Cir. 2013). But if “the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not show[n] . . . the pleader is entitled to relief.” *Iqbal*, 556 U.S. at 679 (citations omitted).

B. Patent Eligibility under 35 U.S.C. § 101

An invention or a discovery is patentable if it is a “new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” 35 U.S.C. § 101. “In choosing such expansive terms . . . Congress plainly contemplated that the patent laws would be given wide scope.” *Diamond v. Chakrabarty*, 447 U.S. 303, 308 (1980). Still, the Supreme Court has identified exceptions to this wide scope to “distinguish between patents that claim the building blocks of human ingenuity and those that integrate the building blocks into something more.” *Alice Corp. Pty. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 89 (2012)) (internal quotations omitted). Generally, these exceptions to patent protection are “laws of nature, natural phenomena, and abstract ideas.” *Diamond v. Diehr*, 450 U.S. 175, 185 (1981). While the boundaries of the judicial exceptions remain subject to further development, the Supreme Court has clearly delineated the policy underlying those exceptions: avoiding patents that “too broadly preempt the use of a natural law [or abstract idea].” *Mayo*, 566 U.S. at 72. Thus, patent law should “not inhibit further discovery by improperly tying up the future use of laws of nature [or abstract ideas].” *Id.* at 85.

In *Mayo*, the Supreme Court “set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 573 U.S. at 217. The first step is to ask “whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* at 218. If not, the claims fall within the scope of § 101 and are patent-eligible. If the claims are directed to one of the exceptions, the second step is to search for an “inventive concept” that is “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the natural law [or abstract idea] itself.” *Mayo*, 566 U.S. at 72-73. In doing so, a court must “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the

additional elements provide for an “inventive concept” that ‘transform[s] the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78-79). If, in considering the claim elements individually and as an ordered combination, they merely recite well-understood, routine, and conventional steps, they will not constitute an inventive concept for patent eligibility purposes. *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1128 (Fed. Cir. 2018).

“Like indefiniteness, enablement, or obviousness, whether a claim recites patent eligible subject matter is a question of law which may contain underlying facts.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368-69 (Fed. Cir. 2018). The Federal Circuit has held, for example, that fact questions may arise in the context of step two of the patent eligibility inquiry. *Aatrix*, 882 F.3d at 1128 (“[w]hether the claim elements or the claimed combination are well-understood, routine, conventional is a question of fact.”). To the extent patent eligibility questions do turn on a factual issue, an accused infringer must prove invalidity by clear and convincing evidence. *Microsoft Corp. v. i4i Ltd. P’ship*, 564 U.S. 91, 112-14 (2011).

III. Discussion

The asserted patents, which Uniloc acquired from various sources, are not members of the same patent family. However, all of them generally relate to presenting audio and visual content on a computer or computer network. Two of them – the ’609 and ’273 Patents – share the same inventor.⁴ Two others – the ’005 and ’118 Patents – were both originally assigned to Koninklijke Philips Electronics N.V. before their eventual acquisition by Uniloc. Each of the asserted patents are introduced and described in the context of Defendants’ particular § 101 challenges.

A. The ’005 Patent

1. Background of the Patent and the Asserted Claims

Netflix, Hulu, and Roku (for purposes of analysis relating to the ’005 Patent, collectively “Defendants”) argue that the ’005 Patent is invalid under 35 U.S.C. § 101. The ’005 Patent issued on February 11, 2003, and is titled “Method of Concurrent Multiple-Mode Motion Estimation for Digital Video.”

Uniloc alleges that Defendants each infringe at least Claim 1 of the ’005 Patent. Claim 1

⁴ As of April 2019, the U.S. Patent Office’s online Patent Assignment Search did not list the ’273 Patent as assigned to Uniloc 2017 LLC.

of the '005 Patent recites:

1. A method for motion coding an uncompressed digital video data stream, including the steps of:
 - comparing pixels of a first pixel array in a picture currently being coded with pixels of a plurality of second pixel arrays in at least one reference picture and concurrently performing motion estimation for each of a plurality of different prediction modes in order to determine which of the prediction modes is an optimum prediction mode;
 - determining which of the second pixel arrays constitutes a best match with respect to the first pixel array for the optimum prediction mode; and,
 - generating a motion vector for the first pixel array in response to the determining step.

The '005 Patent includes six other independent claims and forty-two claims total. Defendants argue that independent Claim 41 is representative of “[o]ther claims” in the '005 Patent, including Claim 1. *See* Docket No. 32 at 23-24. Claim 41 recites:

41. A method, including the steps of:
 - concurrently performing motion estimation using each of a plurality of different motion estimation prediction modes;
 - comparing the results produced using each different prediction mode;
 - and,
 - selecting the prediction mode that produced an optimum result; and,
 - generating one or more motion vectors using the selected prediction mode.

2. Mayo/Alice

In the FAC, Uniloc largely concedes that the individual components claimed in the '005 Patent were known in the art (*see id.* ¶¶ 19-24), but argues that the claims provide a technological improvement supporting patent eligibility at *Alice* step one because of how the claimed components are combined. Specifically, Uniloc argues that being able to “concurrently determin[e] the optimal prediction mode while performing motion estimation along with generating the motion vector” represents the technological improvement. *See* Docket No. 22 ¶ 25. This concept is captured in Claim 1 of the '005 Patent where it states that while comparing pixels between two pictures, “concurrently performing motion estimation for each of a plurality of different prediction modes in order to determine which of the prediction modes is an optimum prediction mode.” To state it more plainly, Uniloc is arguing that Claim 1 of the '005 Patent represents a technological improvement because it refers to certain programs being run at the

same time instead of in a serial fashion.

At *Alice* Step Two, Uniloc refers back to its step one analysis and generally cites its allegations in its First Amended Complaint (“FAC”). Docket No. 39 at 12-13; *see id.* at 12 (“the inventive concept is a part of the claim and a technological improvement over prior motion estimation techniques in video compression.”). The FAC states, in part:

23. At the time of the invention, there were various “prediction modes” that could be used for each macroblock that was to be encoded. ’005 patent at 3:7-11 at that time, motion coding allowed for the use of different prediction modes within the same frame, but required one prediction mode to be specified for a macroblock in advance of performing the motion estimation that results in a motion vector. ’005 patent at 3:12-15. Given that there are multiple prediction modes, the optimum prediction mode could not be known prior to encoding unless multiple motion estimations were performed on each macroblock sequentially. ’005 patent at 3:15-20. Then, after determining the optimum prediction mode based on multiple and sequential motion estimations, the optimal prediction mode would be selected and only then would the motion estimation that results in the generation of a motion vector occur.

* * *

25. As demonstrated below, the claimed invention of claim 1 of the ’005 patent provides a technological solution to the problem faced by the inventors, namely concurrently determining the optimal prediction mode while performing motion estimation along with generating the motion vector more simply, faster and in a less expensive way.

See Docket No. 22 ¶¶ 23, 25.

Uniloc’s patent eligibility arguments at *Alice* step one are not persuasive. As stated, Claims 1 and 41 are directed to performing certain known analyses concurrently rather than serially. This is an abstract concept.

This is apparent from considering long-standing human activities. *See Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1344 (Fed. Cir. 2018) (“Standing alone, the act of providing someone an additional set of information without disrupting the ongoing provision of an initial set of information is an abstract idea. As the district court aptly observed, this ‘basic and longstanding practice can be found in, for example, a television station’s use of a breaking news ticker across the bottom of the screen.’”); *but see Data Engine Techs. LLC v. Google LLC*, 906 F.3d 999, 1011 (Fed. Cir. 2018) (“It is not enough, however, to merely trace the invention to some real-world analogy The question of abstraction is whether the claim is ‘directed to’ the abstract idea itself.”). A chef can choose to follow a recipe’s instructions step-by-step, or to

work on multiple steps of the recipe at the same time. A person can multi-task or perform projects one at a time. Although Uniloc would put a more technical gloss on the particular steps required by the claim, the underlying concept of performing known steps concurrently rather than serially is no less abstract.

The result-oriented nature of the claims also supports the conclusion that they are drawn to an abstract concept. Although certain claims of the '005 Patent are purportedly limited to the field of pixel array comparisons, Claim 1 of the '005 Patent, for instance, does not provide limitations explaining how motion estimation is concurrently performed in that particular field. Instead, what Uniloc identifies as the technological improvement simply provides a result-oriented approach – so long as motion estimation can be concurrently performed, rather than serially performed, in some undisclosed fashion, the claim is satisfied. This is another indicator that claims are drawn to an abstract concept. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1356 (Fed. Cir. 2016) (“the essentially result-focused, functional character of claim language has been a frequent feature of claims held ineligible under § 101.”).

The fact that the claims are limited to the field of pixel array comparisons does not save the claims from abstraction, either. As the Federal Circuit observed in *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017):

[a]lthough IV correctly observes that the '081 patent applies to XML documents in particular (rather than any other type of document), at best, this limits the invention to a technological environment for which to apply the underlying abstract concept As the specification recognizes, companies have frequently employed XML documents in routine business transactions Thus, the patent's recitation of XML documents specifically, does little more than restrict the invention's field of use. Such limitations do not render an otherwise abstract concept any less abstract.

Id.

Ultimately, neither the allegations in the FAC nor Uniloc's arguments can establish that the claims are drawn to a technological improvement. In *BSG*, the Federal Circuit explained that any purported benefits of practicing the claimed method in that case were not improvements in computer functionality, but “benefits that flow from performing an abstract idea in conjunction with a well-known database structure.” *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1288 (Fed. Cir. 2018). The same shortcomings are present with the claims in this case. Uniloc argues that the claims are drawn to a technological improvement because they allow an optimum

prediction mode to be identified more quickly and efficiently. Like *BSG*, these are simply benefits that flow from the abstract concept of performing steps concurrently rather than serially.

As mentioned, Uniloc does not identify anything new at *Alice* step two that might support the conclusion that the claims include an inventive concept. The abstract idea is concurrently performing known motion estimation methods rather than performing them serially. The abstract idea cannot be used to supply the inventive concept. *See id.* at 1290 (“It has been clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.”).

Uniloc suggests that it is not appropriate to make a determination regarding the claims at the motion to dismiss stage because of the allegations it has provided in its operative pleading. To the extent Uniloc bases its position on statements like “a person of ordinary skill in the art would understand that claim 1 of the ’005 patent contains that corresponding inventive concept,” (Docket No. 22 ¶ 30) such statements are conclusory assertions that the Court is not obligated to accept as true. As to Uniloc’s other allegations, while Uniloc argues, consistent with the statements in the patent specification, that the ’005 Patent claims result in a “motion estimation method and search engine for a digital video encoder that is simpler, faster, and less expensive than prior art technology,” (*id.*) as the Federal Circuit has previously explained, “Patent law does not protect claims to an asserted advance in the realm of abstract ideas no matter how groundbreaking the advance.” *Aatrix*, 890 F.3d at 1359 (internal quotations omitted). Neither the patent specification nor Uniloc’s allegations characterizing the patent specification support the conclusion that the claims include an inventive concept.

Regarding whether Claim 1 (or Claim 41) is representative of the other claims of the ’005 Patent, Uniloc observes that the forty-two claims of the ’005 Patent include many different limitations. Defendants opt not to discuss any of them. Claim 3, for instance, recites: “[t]he method as set forth in claim 1, wherein the method is implemented using a motion estimation search engine of a digital video encoder.” Claims 17, 25, 33, and 36 include many particularized comparison and summing steps that appear different from the limitations of Claims 1 and 41. Based on the record before the Court, it declines to treat Claims 1 or 41 as representative of the other claims of the ’005 Patent for purposes of Defendants’ motion to dismiss.

The Court would thus **GRANT** Defendants’ motions only as to Claims 1 and 41 of the

'005 Patent. Defendants' motions as to the other claims of the '005 Patent would be **DENIED**.

Uniloc has not requested, and the Court sees no basis to grant, permission to further amend its operative pleading with respect to Claims 1 and 41 of the '005 Patent. Uniloc has not shown what additional factual allegations it could add that would change the determination as to the patent-eligibility of these patent claims.

B. The '229 Patent

1. Background of the Patent and the Asserted Claims

Uniloc asserts the '229 Patent against Netflix only. The '229 Patent issued on June 24, 2003, and is titled "Macroblock-Based Object-Oriented Coding Method of Image Sequence Having a Stationary Background."

Uniloc's First Amended Complaint against Netflix alleges that Netflix infringes at least Claim 1 of the '229 Patent. See Docket No. 22 ¶ 62. Claim 1 is the only independent claim of the '229 Patent. It recites:

1. A method, for use in an macroblock-based object oriented coding of a image signal, wherein the image signal has a stationary background region and an object region and contains a current frame and a previous frame, each frame including a plurality of macroblocks, comprising the steps of:
 - a) dividing the stationary background region and the object region from an inputted video in a macroblock-by-macroblock basis by using a difference between the previous frame and the current frame;
 - b) coding shape information of the object region by using a known coding technique to generate coded shape information;
 - c) coding pixel information of each macroblock contained in the object region by using a selected known coding technique to generate coded object pixel information;
 - d) generating coded pixel information of a previous frame macroblock corresponding to each current frame macroblock contained in the stationary background region as coded stationary pixel information; and
 - e) storing or transmitting coded data coded shape information, coded object pixel information and coded stationary pixel information as coded image signal, and
 wherein the step d) includes the step of reusing corresponding coded pixel information macroblock contained in the previous frame without coding the pixel information of each macroblock contained in the current frame when a difference between a pixel value of the macroblock of the current frame and that of the macroblock of the previous frame in the same position is identical to or smaller than a predetermined threshold value.

Some of the dependent claims, specifically Claims 2 through 4, include additional limitations describing how certain steps of Claim 1 are performed. For instance, Claim 2 recites:

2. The method as recited in claim 1, wherein the step a) includes the step of dividing all macro-blocks as the stationary background region and the moving object region, or foreground object regions and background regions by comparing test statistics which is a difference between the pixel value of the macroblock of the current frame and that of the macroblock of the previous frame in the same position, with the predetermined threshold value.

2. Mayo/Alice

In comparison to its allegations and arguments regarding the '005 Patent, Uniloc identifies two specific aspects of the '229 Patent claims to support its position that the claims are patent-eligible. Specifically, Uniloc argues that the '229 Patent claims relate to both a technological improvement and an inventive concept because they provide for encoding at a lower bit rate by: “(1) coding the shape information on a macroblock-unit basis (rather than a pixel-unit basis) and (2) reusing the coded macroblock information from a previous frame when the difference between a pixel value of the macroblock in a current frame and a previous frame is equal to or below a threshold value.” See, *e.g.*, Docket No. 39 at 17.

In its reply brief, Netflix presents evidence from various sources to rebut Uniloc's argument that either of these features can supply a technological improvement or inventive concept. To rebut Uniloc's position that coding on a macroblock-unit basis supports patent-eligibility, Netflix cites a portion of the '229 Patent specification that states:

the video signal is divided into a macroblock-based stationary back ground region and a macroblock-based moving object region by using the difference between a previous frame of the input video signal and a current frame of the input video at step 10. ***An appropriate selection among the well-known techniques for such a region division technique is utilized, i.e. macroblock-based region division technique and a background mosaicking technique is utilized for the present invention.***

'229 Patent at 2:45-53 (emphasis added). This disclosure in the patent specification appears to support Netflix's position that “region division techniques” were well-known at the time the '229 Patent was filed. However, it does not necessarily support the conclusion that “region division techniques” had been applied in the particular context disclosed in the '229 Patent claims.

To rebut Uniloc's argument that reusing coded macroblock information from a previous frame supports the patent-eligibility of the '229 Patent, Netflix cites disclosure in the '005

Patent. Netflix characterizes the '005 Patent as “earlier-filed” compared to the '229 Patent. The two patents have priority dates in 1999 that are mere months apart. Moreover, Netflix’s argument that the '005 Patent supports the conclusion that this was a well-known concept is not persuasive. “Whether a particular technology is well-understood, routine, and conventional goes beyond what was simply known in the prior art. The mere fact that something is disclosed in a piece of prior art, for example, does not mean it was well-understood, routine, and conventional.” *Berkheimer*, 881 F.3d at 1369.

Netflix alternatively cites to “[t]he 1993 MPEG-1 standard” to support its argument that the claimed reusing technique is well-known. The standard appears as part of a lengthy, sealed attachment submitted in support of Netflix’s motion. *See* Docket No. 37. Netflix has not sought judicial notice of this attachment, or otherwise provided a basis for why this material can and should be considered at the motion to dismiss stage.⁵

Considering the patent intrinsic record and the FAC in the light most favorable to Uniloc, Netflix has not shown as a matter of law that the asserted claims of the '229 Patent are abstract at *Alice* step one. The '229 Patent specification supports Uniloc’s allegations that, at the time of the invention, applying macroblock-based division to frame-by-frame image signals in a video *and* reusing macroblock information from a previous frame when the difference between a pixel value of the macroblock in a current frame and a previous frame is equal to or below a threshold value created a technological improvement over prior art techniques. The '229 Patent, for instance, states that dividing a video by pixel unit as previously done was difficult to do in real time and required consumption of many bits. The '229 Patent explains that its disclosed methods allow for “coding at a low coding bit rate” so that processes can occur in real-time. '229 Patent, 1:66-2:8; *see also* Docket No. 22 ¶¶ 54-59.

At least based on these allegations, it appears that the aspects of the claims identified by the '229 Patent are not result-oriented (like Claims 1 and 42 of the '005 Patent), but instead

⁵ As Netflix observes when addressing another patent (*see* Docket No. 32 at 22), Uniloc refers to the MPEG-1 and MPEG-2 standards in the FAC. *See* Docket No. 22 ¶¶ 20-21. Despite this, Netflix does not make the argument that the MPEG-1 standard is subject to judicial notice, is incorporated into Uniloc’s pleading by reference, or is otherwise properly considered at the motion to dismiss stage. *See also Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018) (in SEC fraud case, remarking, “[t]he overuse and improper application of judicial notice and the incorporation-by-reference doctrine, however, can lead to unintended and harmful results. Defendants face an alluring temptation to pile on numerous documents to their motions to dismiss to undermine the complaint, and hopefully dismiss the case at an early stage. Yet the unscrupulous use of extrinsic documents to resolve competing theories against the complaint risks premature dismissals of plausible claims that may turn out to be valid after discovery.”).

provide a specific solution to a technical problem, including describing the steps that are taken to achieve that solution (macroblock-level division with macroblock information reused in certain circumstances). The record supports the conclusion that the claims are not directed to an abstract idea, but to improving coding of an image signal using macroblock-level division and a scheme for reusing macroblock information.

Netflix's arguments that the claims are directed to the abstract idea of "chunking an image" (see Docket No. 32 at 14) ignores the aspect of the claim requiring the reuse of macroblock information in combination with the macroblock-level division. Even accepting Netflix's characterization of the claims as directed to the abstract idea of "chunking an image" and proceeding to *Alice* step two, fact questions regarding whether the reuse of macroblock information, including in combination with a macroblock-level division system, would preclude an invalidity determination at this time. As explained *supra*, the evidence that can be considered at this stage is insufficient to support the conclusion that the limitations of the claims, whether considered alone or in combination, are solely drawn to well-understood, routine, and conventional components.

Even if Netflix were permitted to submit evidence regarding the MPEG-1 standard, Netflix's arguments at step two "look[] similar to an obviousness analysis under 35 U.S.C. § 103, except lacking an explanation of a reason to combine the limitations as claimed [or evidence that cited evidence even qualifies as prior art]. The inventive concept inquiry requires more than recognizing that each claim element, by itself, was known in the art." *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016).

Netflix's motion to dismiss would be **DENIED**. For these reasons, it is unnecessary for the Court to consider Netflix's argument that Claim 1 of the '229 Patent is representative of the other '229 Patent claims.

C. The '118 Patent

1. Background of the Patent and the Asserted Claims

Hulu and Roku argue that the '118 Patent is invalid under 35 U.S.C. 101. As previously noted, Uniloc also asserts the '118 Patent against Netflix, but Netflix has not filed a motion to dismiss with respect to it. See Case No. 8:18-cv-2150, Docket No. 23 (First Amended Complaint). The '118 Patent issued May 18, 2005 and is titled "Method of Coding Digital Image Based on Error Concealment."

Uniloc alleges that Hulu and Roku each infringe Claim 1 of the '118 Patent. Claim 1 recites:

1. A method of coding a digital image comprising macroblocks in a binary data stream, the method comprising:
 - an estimation step, for macroblocks, of a capacity to be reconstructed via an error concealment method,
 - a decision step for macroblocks to be excluded from the coding, a decision to exclude a macroblock from coding being made on the basis of the capacity of such macroblock to be reconstructed, characterized in that it also includes a step of inserting a resynchronization marker into the binary data stream after the exclusion of one or more macroblocks.

The '118 Patent has ten claims, including four other independent claims besides Claim 1. Independent Claim 7 is also a method claim, while independent Claims 4, 6, and 8 are apparatus claims. Hulu and Roku argue that Claim 1 is representative of all claims of the '118 Patent. Docket No. 34 at 14.

2. Mayo/Alice

Uniloc argues that the claims of the '118 Patent are patent-eligible because instead of prior art techniques that “used replacement blocks or bits to communicate the address of the excluded blocks,” the claims “use[] resynchronization markers after excluded blocks which led to a reduction in the size of the data stream.” Docket No. 41 at 15. Uniloc relies on this aspect of the claims to argue that they satisfy both *Alice* steps one and two.

Hulu and Roku rely on two Federal Circuit cases - *Recognicorp* and *Digitech* - for the proposition that the claims of the '118 Patent are directed to “encoding and decoding image data” and thus abstract. See, e.g., Docket No. 44 at 8-9; see also *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322 (Fed. Cir. 2017), *cert. denied*, 138 S. Ct. 672 (2018); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344 (Fed. Cir. 2014). The Court has had reason to recently consider these two cases at length. In doing so, it rejected arguments very similar to the ones Hulu and Roku make now. See *The California Institute of Technology v. Broadcom Limited, et al.*, Case No. LACV16-03714 GW (AGRx), Docket No. 849, *24-29 (C.D. Cal. Jan. 18, 2019). Suffice to say, Hulu’s and Roku’s suggestion that *Recognicorp* and *Digitech* support the conclusion that claims relating to encoding and decoding techniques are categorically abstract is not persuasive. See *id.* at 23. As Judge Bryson has put it,

a compression protocol is not fundamentally different from other computer-

driven programs that improve the accuracy, speed, and security of communications such as error correction programs, encryption protocols, and methods for synchronizing data, all of which have been held to survive section 101 challenges without serious doubts as to their patentability While it is true that the invention in this case involves the manipulation of data, the point of the invention is not simply the transmission of data in coded form, but the conversion of the data into a form that makes the communication of the data more efficient. The specific function of the recited encoding scheme is to add efficiency to the process in a particular manner. As such, the recited protocol, even though expressed (as are all computer operations) as an algorithm, is a concrete technical contribution and not simply the embodiment of an abstract idea.

Sycamore IP Holdings LLC v. AT & T Corp., 294 F. Supp. 3d 620, 652-53 (E.D. Tex. 2018). Hulu’s and Roku’s position that claims directed to data encoding and decoding are categorically abstract is rejected, as Hulu and Roku improperly categorize the claims at too high of a level of abstraction.

Where Hulu and Roku engage with Uniloc’s patent-eligibility allegations, they argue that Uniloc’s interpretation and characterization of the patent intrinsic record is incorrect. *See, e.g.*, Docket No. 44 at 9-10. Uniloc’s operative pleadings heavily cite to passages of the ’118 Patent specification to explain why the asserted claims of the ’118 Patent improve on the prior art methods disclosed in the ’118 Patent itself. Hulu’s and Roku’s criticisms of Uniloc’s well-pled interpretation of the patent intrinsic record are better saved for a later challenge, where the allegations of the operative pleading need not be accepted and considered in the light most favorable to Uniloc.

Importantly, even assuming Hulu’s and Roku’s interpretation of the intrinsic record and moreover assuming the claims are directed to an abstract idea, based on the evidence that can be considered at this stage, Hulu and Roku have not shown, among other things, that the claimed “resynchronization marker[s]” are incompatible with MPEG-4 syntax and that their use in the context of the claims was routine, conventional, and/or well-understood. Hulu’s and Roku’s arguments regarding the ’118 Patent are rejected at this stage and their motions would be **DENIED** as to the claims of the ’118 Patent. For these reasons, it is unnecessary for the Court to consider Hulu’s and Roku’s argument that Claim 1 of the ’118 Patent is representative of the other claims of the ’118 Patent.

D. The ’609 Patent

1. Background of the Patent and the Asserted Claims

Netflix, ABC, and Roku (for purposes of analysis relating to the '609 Patent, collectively "Defendants") argue that the '609 Patent is invalid under 35 U.S.C. § 101. The '609 Patent issued March 26, 2013 and is titled "System and Method for Providing and Tracking the Provision of Audio and Visual Presentations Via a Computer Network."

Uniloc alleges that Defendants each infringe at least Claim 1 of the '609 Patent. Claim 1 of the '609 Patent recites:

1. A method for tracking digital media presentations delivered from a first computer system to a user's computer via a network comprising:
 - providing a corresponding web page to the user's computer for each digital media presentation to be delivered using the first computer system;
 - providing identifier data to the user's computer using the first computer system;
 - providing an applet to the user's computer for each digital media presentation to be delivered using the first computer system, wherein the applet is operative by the user's computer as a timer;
 - receiving at least a portion of the identifier data from the user's computer responsively to the timer applet each time a predetermined temporal period elapses using the first computer system; and
 - storing data indicative of the received at least portion of the identifier data using the first computer system;
 - wherein each provided webpage causes corresponding digital media presentation data to be streamed from a second computer system distinct from the first computer system directly to the user's computer independent of the first computer system;
 - wherein the stored data is indicative of an amount of time the digital media presentation data is streamed from the second computer system to the user's computer; and
 - wherein each stored data is together indicative of a cumulative time the corresponding web page was displayed by the user's computer.

The '609 Patent has three claims, with Claim 1 being its only independent claim. Claims 2 and 3 depend from Claim 1 and add:

2. The method of claim 1, wherein the storing comprises incrementing a stored value dependently upon the receiving.
3. The method of claim 2, wherein the received data is indicative of a temporal cycle passing.

Netflix and Roku refer to Claim 1 of the '609 Patent as representative. See Case No. 8:18-cv-02055-GW, Docket No. 32 at 6. ABC separately considers each of Claims 1 through 3 in its patent ineligibility arguments. See generally 8:18-cv-02056-GW, Docket No. 30.

2. Mayo/Alice

Defendants urge that the claims are simply directed to the abstract idea of measuring elapsed time. See, e.g., 8:18-cv-02056, Docket No. 32 at 1; 8:18-cv-02055, Docket No. 42 at 1. Uniloc disputes this, arguing that the claims are directed to “a method for providing and tracking digital media presentations using a webpage, identifier data and a timer applet originating at a first computer to track and responsively stream a digital media presentation from a second computer that can be viewed by a user at the user’s computer.” 8:18-cv-02056, Docket No. 31 at 7 (heading III.A.); see also 8:18-cv-2056, Docket No. 25 ¶ 17 (FAC in ABC case, alleging the same).

In its tentative ruling, the Court stated that “the terms ‘applet’ and ‘timer applet’ and the requirement that the ‘applet is operative by the user’s computer as a timer’ require further review.” At the hearing, Defendants stated that the applet is simply described in the specification as a “software component” that, in the context of the claims, acts as a timer. '609 Patent at 12:67-13:4. Uniloc did not dispute that the applet is a “software component,” but instead reiterated its argument that the particular arrangement of the claim elements supports patent eligibility. Consistent with its briefing, Uniloc argued that the applet’s “ability to determine the amount of time the media presentation has been streamed to the user’s computer by the second computer system” so the amount of time could be tracked by the first computer system supported patent eligibility. See 8:18-cv-02056-GW, Docket No. 31 at 1. In other words, Uniloc appeared to concede that the parties’ § 101 dispute for this claim does not hinge on a claim construction dispute.

However, it is still unclear from the parties’ briefing whether the specific arrangement of claimed components (and particularly where timer information is sent compared to where digital media presentation data is streamed from) supports patent-eligibility. At the hearing, Defendants emphasized the Federal Circuit’s decision in *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 712, 716-717 (Fed. Cir. 2014) for the proposition that a three-computer system cannot provide the “hook” for patent eligibility. This interpretation of *Ultramercial* is not immediately apparent from a review of the *Ultramercial* representative claim or the Federal Circuit’s decision.

Ultramercial does make the comment that “the transfer of content between computers is merely what computers do,” *id.* at 717, but that statement says nothing about the impact a particular arrangement of computer components or systems may have on patent eligibility. *See, e.g., Bascom*, 827 F.3d at 1350 (“an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.”).

Ultimately, although the parties do not appear to have a claim construction dispute, the Court finds that more information about the nature of the claims is necessary before a patentability determination can be made. For instance, it may be useful to know whether it was routine and conventional to use two distinct computer systems – one providing a webpage and the other providing digital media presentation data – interacting with a user’s computer to allow the user to digitally stream content. (Uniloc does not seem to argue that this arrangement of components itself provides an inventive concept, and Defendants cite to portions of the patent specification to argue that it was known. *See, e.g., 8:18-cv-02056*, Docket No. 30 (citing ’609 Patent at 5:20-25).) Similarly, questions regarding whether it was routine and conventional for a first computer system to collect information regarding a user computer’s streaming activities based on content streamed from a second computer system may be relevant. (Uniloc at least suggests that “tracking viewing history across independent computer systems” is not routine or conventional. *See 8:18-cv-02056*, Docket No. 31 at 23.) Although Defendants are correct that the claims ultimately address tracking time, *how* the claims purport to do so is a relevant inquiry in this case, and one that may separate these claims from others that the Court has found invalid under § 101. Once these questions and others about the specific arrangement of claimed components can be answered, the Court will be able to consider the parties’ § 101 dispute. For these reasons, the Court declines to make a determination at this time about either *Alice* step one or step two. *See, e.g., Aatrix*, 882 F.3d at 1128.

The Court notes that beyond stating the applet is “operative . . . as a timer” and that “identifier data” is “receiv[ed] . . . **responsively to the timer applet** each time a predetermined temporal period elapses,” there is not much information about the nature of the applet in the claims themselves, including, for instance, (1) where it originated from, (2) *how* it is “operative . . . as a timer,” and (3) *how* it results in “identifier data” being “responsively” “receiv[ed]” at an unspecified location. The generalized disclosure relating to the applet and how it is employed across the two claimed computer systems may ultimately influence questions of patent

eligibility.

The Court would accordingly **DENY** Defendants' motions as to the claims of the '609 Patent. For this reason, it is unnecessary for the Court to consider Defendants' arguments that Claim 1 of the '609 Patent is representative of the other claims of the '609 Patent.

E. The '273 Patent

1. Background of the Patent and the Asserted Claims

Uniloc alleges that Netflix and Hulu each infringe at least Claim 1 of the '273 Patent. The '273 Patent issued August 1, 2018 and is titled "System and Method for Aggregating and Providing Audio and Visual Presentations Via a Computer Network." Claim 1 recites:

1. A method for providing content via a computer network and computing system, the method comprising:
 - storing presentation data that represents content of a first collection of one or more presentations using the computer system;
 - storing data indicative of the first collection of presentations so as to be associated with the presentation data;
 - storing feed data that represents a collection of one or more feeds using the computer system, wherein each of the feeds identifies a corresponding second collection of one or more presentations being accessible via the computer network and includes no data representing content of the second collection of presentations;
 - automatically and periodically accessing each of the feeds to identify each of the corresponding second collection of presentations, using the computer system;
 - storing data associated with a third collection of one or more presentations; and
 - aggregating each of the first, identified second, and third collections of presentations for delivery via the computer network using a common web page.

The '273 Patent has just three claims. Claim 2 is also an independent claim. It includes substantially the same limitations as Claim 1, but the preamble styles the claim as relating to "[a] non-transitory computer readable medium" that includes "computer instructions" configured to cause the computer to execute the claimed steps. Claim 3 is a dependent claim that depends from Claim 2. See '273 Patent, Claim 3 ("The computer readable medium of claim 2, wherein the computer comprises at least one web server, at least one database server and at least one file server."). Netflix and Hulu argue that Claim 1 of the '273 Patent is representative of independent Claims 1 and 2. Docket No. 34 at 6 ("The two independent claims are substantively identical: [C]laim 1 is a method claim, whereas [C]laim 2 simply restates the same limitations in

computer-readable medium form. Claim 1 is thus representative.”).

2. Mayo/Alice

Uniloc argues,

Claim 1 of the '273 Patent improves the functionality of a webpage, search engine and technology specific to the Internet by creating a common webpage by aggregating collections of presentations and collecting and analyzing feed data from multiple feeds in at least one of the collections of presentations in order to provide more relevant content to each user.

Docket No. 41 at 19. Uniloc also emphasizes that the “feed data” stored, accessed, and aggregated in the claimed methods “includes no data representing content of the second collection of presentations.” *Id.* Uniloc provides an example:

The convention was to type in words into a search engine to generate a webpage that listed webpages using those words. The problem with this method is that if the user wanted to find, for example, “romantic comedies” a search using those keywords would look for those specific words as opposed to movies that fell within that genre. Using those two words to search might not find the hit romantic comedy out in theatres if it did not use the words “romantic” or “comedy” in the title. But by using the invention of the '273 patent, one could find the relevant romantic comedy titles using a different approach, *i.e.*, using one or more feeds to identify romantic comedy titles curated or otherwise selected by one or more feed authors or creators. If desired, the romantic comedy titles identified by the feed could be aggregated with other titles identified using traditional search engine queries or other techniques.

Id. at 19-20; *see also id.* at 20-21 (“the inventive common webpage provides a relevant collection about a group of presentations based on feed data where the collection is a group based on information intrinsic to the presentation but not necessarily based on words used in the presentation. This is powerful technology for companies like Hulu to allow them to provide recommendations via a common webpage or Internet interface that is not based on keywords but actual relevance of the movies and TV shows to the user.”).

Uniloc acknowledges, however, that other technology, “Really Simple Syndication (RSS)” was known at the time the '273 Patent was filed and “was also used to provide feeds.” *Id.* at 20. Uniloc argues that the '273 Patent provides a technological improvement because the claims refer to feeds available on a “common webpage.” *Id.* at 20-21; *see also id.* at 20 (“The

conventional use of RSS feeds did not support aggregation with non-RSS content, whereas the '273 patent provides superior content syndication compared to standard RSS feeds.”).

Netflix and Hulu argue that the '273 Patent claims are directed to “collecting data about presentations,” noting that “[c]ollecting ‘categories’ of content . . . is no less abstract.” Docket No. 34 at 7. Netflix and Hulu argue, as examples, that “[v]ideo stores have similarly displayed titles in categories such as ‘horror,’ ‘drama,’ or ‘comedy’ Similar collections exist at other vendors, such as bookstores. And displaying collected information is a similarly abstract process.” *Id.*

Netflix and Hulu argue that the claims of the '273 Patent are analogous to claims found patent-ineligible in *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016). In *Electric Power*, the representative claim specifically recited:

12. A method of detecting events on an interconnected electric power grid in real time over a wide area and automatically analyzing the events on the interconnected electric power grid, the method comprising:

receiving a plurality of data streams, each of the data streams comprising sub-second, time stamped synchronized phasor measurements wherein the measurements in each stream are collected in real time at geographically distinct points over the wide area of the interconnected electric power grid, the wide area comprising at least two elements from among control areas, transmission companies, utilities, regional reliability coordinators, and reliability jurisdictions;

receiving data from other power system data sources, the other power system data sources comprising at least one of transmission maps, power plant locations, EMS/SCADA systems;

receiving data from a plurality of non-grid data sources;

detecting and analyzing events in real-time from the plurality of data streams from the wide area based on at least one of limits, sensitivities and rates of change for one or more measurements from the data streams and dynamic stability metrics derived from analysis of the measurements from the data streams including at least one of frequency instability, voltages, power flows, phase angles, damping, and oscillation modes, derived from the phasor measurements and the other power system data sources in which the metrics are indicative of events, grid stress, and/or grid instability, over the wide area;

displaying the event analysis results and diagnoses of events and associated ones of the metrics from different categories of data and the derived metrics in visuals, tables, charts, or combinations thereof, the data comprising at least one of

- monitoring data, tracking data, historical data, prediction data, and summary data;
- displaying concurrent visualization of measurements from the data streams and the dynamic stability metrics directed to the wide area of the interconnected electric power grid;
- accumulating and updating the measurements from the data streams and the dynamic stability metrics, grid data, and non-grid data in real time as to wide area and local area portions of the interconnected electric power grid; and
- deriving a composite indicator of reliability that is an indicator of power grid vulnerability and is derived from a combination of one or more real time measurements or computations of measurements from the data streams and the dynamic stability metrics covering the wide area as well as non-power grid data received from the non-grid data source.

Id. at 1351-52. In other words, the representative claim in *Electric Power* involved compiling information from disparate sources (“receiving a plurality of data streams . . . , receiving data from other power system data sources”), analyzing the data in real time (“detecting and analyzing events in real-time from the plurality of data streams”), displaying results of the analysis (“displaying the event analysis results and diagnoses of events . . . , displaying concurrent visualization of measurements”), and “deriving a composite indicator of reliability” based on the compiled and analyzed information. The requirements of the claims in *Electric Power* are thus very similar to, and arguably more detailed than, the requirements of the claims of the ’273 Patent. Specifically, the ’273 Patent claims require storing data (including “presentation data” and “feed data”) from multiple sources, “automatically and periodically accessing” feeds to identify certain relevant data, and “aggregating” presentation data “for delivery via the computer network using a common web page.”

Similar to the Federal Circuit’s determination in *Electric Power*, the claims are thus directed to storing, updating, and aggregating information. *See id.* (“The focus of the asserted claims, as illustrated by claim 12 quoted above, is on collecting information, analyzing it, and displaying certain results of the collection and analysis.”). *Electric Power* went on to state:

we have treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas. *See, e.g., [Internet Patents Corp. v. Active Network, Inc., 790 F.3d 1343, 1349 (Fed. Cir. 2015)]; OIP Techs., Inc. v. Amazon.com, Inc., 788 F.3d 1359, 1363 (Fed. Cir. 2015); Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n, 776 F.3d*

1343, 1347 (Fed. Cir. 2014); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014); *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011). In a similar vein, we have treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category. *See, e.g.*, [*TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016)]; *Digitech*, 758 F.3d at 1351; *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 Fed.Appx. 950, 955 (Fed. Cir. 2014); *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Canada (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012); *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372 (Fed. Cir. 2011); *SiRF Tech., Inc. v. Int'l Trade Comm'n*, 601 F.3d 1319, 1333 (Fed. Cir. 2010); *see also Mayo*, [566 U.S. at 84-85]; *Parker v. Flook*, 437 U.S. 584, 589-90, 98 S.Ct. 2522, 57 L.Ed.2d 451 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 67, 93 S.Ct. 253, 34 L.Ed.2d 273 (1972). And we have recognized that merely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis. *See, e.g.*, *Content Extraction*, 776 F.3d at 1347; *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014).

Id. at 1353-54.

Uniloc's attempts to distinguish the '273 Patent claims from the claims found abstract in *Electric Power* are not persuasive. *See* Docket No. 41 at 23. Uniloc vaguely states that the claims in *Electric Power* were "aimed at monitoring a power grid based on information coming from the grid and not an advancement of the art." *Id.* Uniloc argues that "the '273 patent advanced ordinary webpages and search engines by presenting a collection of presentations via a common webpage based on feed data that did not contain the content of the presentations." *Id.*; *see also id.* ("[a]dvancements in webpage, search engine and Internet technology are patent eligible."). By its own argument, Uniloc effectively concedes that the '273 Patent claims are directed to compiling information for presentation. The fact that the stored and aggregated information in the '273 Patent claims includes feed data that does not contain the content of presentations relates to an argument about a specific component of the patent claims that is better considered at *Alice* step two.

In turning to the *Alice* step two analysis, the Court is presented with a close call. Similar to its concerns for some of the other asserted claims at issue in this motion, the Court is particularly concerned with the results-oriented nature of the '273 Patent claims. In particular, although Uniloc places its emphasis on the requirement that the claims "stor[e] feed data . . .

wherein each of the feeds identifies a corresponding second collection of one or more presentations . . . and includes no data representing content of the second collection of presentations,” the claims do not describe on their face: (1) how feed data is collected, stored, and automatically accessed (or capable of collection and storage) and (2) how it is aggregated with other data “for delivery via the computer network using a common web page” (or capable of aggregation).⁶

Netflix and Hulu do not really address the particular question of whether the ’273 Patent’s collection and storage of feed data in particular for aggregation with other types of data presents an inventive concept. At most, they state, “even if the ’273 patent were to claim improvements in webpage *content* - it does not – that is not an improvement to webpage technology.” Docket No. 44 at 4.

At the hearing, Netflix and Hulu argued that the Court should look to *Electric Power* to also inform the *Alice* step two determination. At *Alice* step two, however, the Federal Circuit in *Electric Power* specifically stated:

a large portion of the lengthy claims is devoted to enumerating types of information and information sources available within the power-grid environment. But merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas.

The claims in this case do not even require a new source or type of information, or new techniques for analyzing it. See, e.g., ’710 patent, col. 8, lines 51-62 (referring to existing phasor data sources); J.A. 6969-71 (describing workings and history of phasor data use); *Electric Power* Group Br. at 21-22; Reply Br. at 5 (new algorithms not claimed). As a result, they do not require an arguably inventive set of components or methods, such as measurement devices or techniques, that would generate new data. They do not invoke any assertedly inventive programming.

Elec. Power, 830 F.3d at 1355 (emphasis added). As stated, Uniloc argued in its briefing and at the hearing that an inventive concept can be found in the storage and aggregation of *feed data* with the other presentation data for delivery to a common webpage because feed data was

⁶ A review of Uniloc’s operative pleading itself is also unhelpful. See, e.g., Docket No. 24 ¶¶ 81-87. It generally suggests that the simple fact that the ’273 Patent claims refer to collecting data from disparate sources supports patent eligibility. It does not provide information specifically relating to feed data commensurate with the arguments Uniloc makes in its opposition, let alone information beyond Uniloc’s opposition arguments. However, as stated *infra*, statements in the patent itself support Uniloc’s arguments in its opposition.

previously only accessible via separate “RSS feed” websites. Uniloc’s argument is reflected in a portion of the ’273 Patent specification, which states:

It should further be understood such a content acquisition provides additional advantages. For example, each user wishing to identify and view content available via an RSS feed may conventionally need to obtain and operate an RSS reader application. Further, each such RSS reader application would need to access each identified RSS feed. This leads to substantial bandwidth usage, for example. In contrast, certain embodiments of the present invention permit a user to access RSS content without the need for his own RSS reader. Further, embodiments of the present invention only require that system **30** access each RSS feed, as opposed to each system **30** user computer **20** wishing to access the RSS feeds, leading to substantial savings in network resources. Further, certain embodiments of the present invention allow user to access and compare content available via RSS feeds they are not even aware of, e.g., by their interaction with webpage **200** as discussed above, where webpage **200** includes content added using the methodology of process **800**, for example. Accordingly, certain embodiments of the present invention provide for enhanced content syndication and aggregation, as compared to even RSS feeds themselves, for example. And, certain embodiments of the present invention provide for automatic aggregation of RSS fed content in combination with non-RSS fed content in a single application independent of any user RSS reader application.

’273 Patent at 12:4-29.⁷

At the motion to dismiss stage, the record appears to support Uniloc’s argument that a question of fact exists as to whether an inventive concept may be found in the claims’ aggregation of feed data with the other presentation data for delivery to a common webpage. At the least, more information is necessary about the “automatically and periodically accessing . . .” and “aggregating . . .” steps of Claim 1 of the ’273 Patent before questions regarding the patent eligibility of the claims can be resolved. *Aatrix*, 882 F.3d at 1128. The Court would **DENY** Netflix’s and Hulu’s motions as to the claims of the ’273 Patent. For this reason, it is

⁷ At the hearing, on more than one occasion, Uniloc attempted to draw a comparison between the claims of the ’273 Patent and the claims at issue in *Core Wireless*. The Court finds this analogy inapt because beyond stating that the aggregated information is “for delivery . . . using a common webpage,” the claims of the ’273 Patent include no information about the particular manner of presenting information on the common webpage. See *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1362-63 (Fed. Cir. 2018) (“these claims are directed to a particular manner of summarizing and presenting information in electronic devices. These limitations disclose a specific manner of displaying a limited set of information to the user, rather than using conventional user interface methods to display a generic index on a computer.”). Despite the Court’s disagreement with this aspect of Uniloc’s argument, the Court still finds questions of fact on the current record preclude a finding of invalidity.

unnecessary for the Court to consider Netflix's and Hulu's argument that Claim 1 of the '273 Patent is representative of the other claims of the '273 Patent.

IV. Conclusion

For the reasons stated in this Order, the Court would **GRANT with prejudice** Netflix's, Hulu's, and Roku's motions only as to Claims 1 and 41 of the '005 Patent. These three Defendants' motions as to the other claims of the '005 Patent would be **DENIED without prejudice**. Defendants' motions as to the '229 Patent, '118 Patent, '609 Patent, and '273 Patent would be **DENIED without prejudice**.

A telephonic status conference is set for May 23, 2019 at 8:30 a.m. to discuss issues relating to scheduling. The parties are directed to file joint reports relating to their positions regarding scheduling by May 16, 2019.