

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

LIBERTY ACCESS TECHNOLOGIES
LICENSING LLC,

Plaintiff,

v.

MARRIOTT INTERNATIONAL, INC.,

Defendant.

CASE NO.: 2:22-CV-00318-JRG

**MARRIOTT'S FIRST SUPPLEMENTAL INVALIDITY AND SUBJECT
MATTER ELIGIBILITY CONTENTIONS**

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Defendant Marriott International Inc. (“Marriott”) hereby serves its First Supplemental Invalidity Contentions and Subject-Matter Eligibility Contentions (collectively, “First Supplemental Invalidity Contentions”) to Plaintiff Liberty Access Technologies Licensing LLC (“Plaintiff” or “Liberty Access”) regarding those claims asserted against Marriott by Liberty Access in its November 3, 2022 Local Patent Rule 3-1 and 3-2 Disclosures for Defendant Marriott International, Inc. alleging infringement of certain claims of U.S. Patent Nos. 9,373,205 (“the ’205 Patent”), 10,657,747 (“the ’747 Patent”), and 11,373,474 (“the ’474 Patent”), and its June 5, 2023 amended disclosure for the ’205 Patent.

I. RESERVATIONS

A. General Reservations

Marriott relies on and incorporates by reference, as if originally set forth herein, all invalidity or unenforceability positions, and all associated prior art and arguments, raised during the prosecution of the Asserted Patents, as well as to rely on statements made by applicants and others acting on their behalf. Marriott also incorporates by reference any *inter partes* review or other post grant review of the validity of the Asserted Patents filed now or in the future in the United States Patent and Trademark Office, including but not limited to: Reexamination No. 96/000,367 (’205 patent); Reexamination No. 90/015,231 (’474 patent) (*see* Ex. K); *ASSA ABLOY Global Solutions, Inc., et al. v. Urban Intel Inc.*, IPR2023-00815 (PTAB May 23, 2023) (’205 patent) (*see* Ex. H); *ASSA ABLOY Global Solutions, Inc., et al. v. Urban Intel Inc.*, IPR2023-00816 (PTAB May 24, 2023) (’747 patent) (*see* Ex. I); *ASSA ABLOY Global Solutions, Inc., et al. v. Urban Intel Inc.*, IPR2023-00817 (PTAB May 25, 2023) (’474 patent) (*see* Ex. J). Specifically, Marriott reserves the right to rely on any references and/or combinations of references disclosed in any of the foregoing documents, as well as any invalidity or ineligibility challenges under Sections 101 and/or 112, as if the content of the foregoing post-grant challenges and reports are set fully forth herein.

Moreover, Marriott reserves the right, as permitted by the Court and the applicable statutes and rules, to supplement these First Supplemental Invalidity Contentions based on prior art currently known to Liberty Access, including documents responsive to disclosures and prior art identified or provided to Liberty Access by any third party or otherwise known to Liberty Access, including Liberty Access's own activities before the critical date of the Asserted Patents. Marriott also reserves the right to rely on evidence of the state of the art at the pertinent time to inform certain interpretations of the prior art and/or to inform how a person of ordinary skill in the relevant art would understand certain prior art disclosures. Marriott further reserves the right to rely on patents owned by or assigned to Liberty Access, including any of the Asserted Patents that may be statutory bars to patentability of any of the other Asserted Patents.

Marriott reserves the right to amend these First Supplemental Invalidity Contentions as permitted by the Court. Marriott also reserves the right to amend or supplement these First Supplemental Invalidity Contentions and the corresponding document production should Liberty Access: (1) provide any information that it failed to provide in its disclosures; (2) amend its disclosures in any way; or (3) attempt to rely on any information at trial, in a hearing or during a deposition which it failed to provide in its disclosures.

The information provided below, in the attached claim charts, and in Marriott's First Supplemental Invalidity Contentions shall not be deemed an admission regarding the scope of any claims or the proper construction of those claims or any terms contained therein. Nothing contained in these First Supplemental Invalidity Contentions should be understood or deemed to be an express or implied admission or contention regarding the proper construction of any terms in the Asserted Claims, or regarding the alleged infringement of the Asserted Claims.

B. Ongoing Discovery

Limited discovery has occurred to date and Marriott continues its searches for, and analyses of, relevant prior art. Marriott reserves the right to revise, amend, and/or supplement the information provided herein, including identifying, charting, and relying on additional references should Marriott's further searches and analyses yield additional information or references, consistent with the Local Patent Rules and the Federal Rules of Civil Procedure.

Marriott's First Supplemental Invalidity Contentions are based on information reasonably available as of the date of these First Supplemental Invalidity Contentions. Because discovery is ongoing, Marriott expressly reserves the right to clarify, alter, amend, modify, or supplement these First Supplemental Invalidity Contentions, to identify additional prior art, and to rely on additional information, documents, tangible things, and testimony obtained during discovery, including discovery obtained from third parties. For example, prior art not included in these First Supplemental Invalidity Contentions, whether or not known to Marriott at this time, may become relevant depending on the positions Liberty Access asserts and the claim constructions the Court adopts.

As discovery is ongoing, and Marriott's prior art investigation and third-party discovery are not yet complete. Marriott reserves the right to present additional items of prior art under 35 U.S.C. §§ 102(a), (b), (e),¹ and/or (g), and/or 103 located during the course of discovery or further investigation and the right to provide additional charts specifying further theories of invalidity. For example, Marriott may issue subpoenas to third parties believed to have knowledge, documentation, and/or corroborating evidence concerning some of the prior art listed herein and/or additional prior art. These third parties include without limitation the authors, inventors, or assignees of the

¹ Where applicable for a given Asserted Patent, based on that patent's earliest possible effective priority date.

references listed in these First Supplemental Invalidity Contentions. For another example, for any given company's commercial products, Marriott anticipates that additional documentation relating to these products will be discovered, and Marriott reserves the right to rely on such documentation to further support these First Supplemental Invalidity Contentions. In addition, Marriott reserves the right to assert invalidity under 35 U.S.C. § 102(c), (d), or (f), or on other bases, to the extent that discovery or further investigation yield information forming the basis for such invalidity. Marriott also incorporates by reference into these First Supplemental Invalidity Contentions any information included in contentions, filings, or other disclosures made by parties in other matters involving the Asserted Patents, including the following concurrent federal litigation matters: *ASSA ABLOY Global Solutions, Inc. v. Liberty Access Techs. Licensing, LLC*, 1:23-cv-00756 (N.D. Ill.) and *Liberty Access Techs. Licensing LLC v. ASSA ABLOY AB et al.*, 2:22-cv-00507 (E.D. Tex.). Moreover, as the Court's Discovery Order requires Liberty Access to provide all relevant documents in its possession, custody, or control, Marriott anticipates that Liberty Access will produce all relevant contentions, filings, or other information provided by any parties in those or other matters related to the Asserted Patents. Accordingly, Marriott reserves the right to supplement these First Supplemental Invalidity Contentions to include all such information upon its production in this case.

Similarly, Marriott has not had the opportunity to take any depositions of the inventors named on the face of the Asserted Patents or other persons having relevant information. Marriott reserves the right to revise, amend or supplement these First Supplemental Invalidity Contentions under Federal Rule of Civil Procedure 26(e) and the Local Rules as appropriate in light of further investigation and discovery regarding the defenses, the review and analysis of expert witnesses, or supplemental disclosures or contentions by Liberty Access.

Marriott accordingly reserves the right to modify these First Supplemental Invalidity Contentions by adding or withdrawing prior art and/or modifying any of the referenced claim charts, including in light of the Court's claim construction ruling, any amended or supplemental infringement contentions by Liberty Access, any party admissions or admissions by any named inventor concerning the scope of the claims or teachings of the prior art, or any positions taken by Liberty Access in this or related litigation, covered-business method review, *inter partes* review, reexamination, or other proceeding, or to avoid unfair prejudice from Liberty Access's failure to timely comply with its disclosure obligations. Furthermore, additional obviousness combinations of the references identified in these First Supplemental Invalidity Contentions are possible, and Marriott reserves the right to use any such combination(s) in this case. In particular, Marriott is currently unaware of the extent, if any, to which Liberty Access will contend that limitations of the claims at issue are not disclosed in the art identified by Marriott as anticipatory or rendering the claims obvious, and the extent to which Liberty Access will contend that elements not disclosed in the specifications of the Asserted Patents and related applications would have been known to persons of ordinary skill in the art at the relevant time. If an issue arises with any such limitations, Marriott reserves the right to identify other references that would have made such limitations obvious in view of the relevant disclosures.

Additionally, Marriott reserves the right to rely on patents owned by, assigned to, or licensed by Liberty Access or Urban Intel, Inc., the current registered Assignee of the Asserted Patents, for additional theories of invalidity and/or obviousness, including to the extent Liberty Access's assertions of infringement expand the Asserted Patents beyond their permissible claim scope. The Asserted Patents and several patents related to the Asserted Patents (including patents not asserted in the instant action) are subject to terminal disclaimers. Marriott reserve the right to challenge

any of the Asserted Patents as invalid due to obviousness-type double patenting in view of Liberty Access's or any assignees of the Asserted Patents patent filings, or as unenforceable to the extent 100% common ownership was not maintained. Marriott also expressly incorporates the disclosure of any patent or applications related to the Asserted Patents which contain subject matter added after the earliest effective date of any of the Asserted Claims as applicant admitted prior art to the Asserted Claims, either as part of a combination (such as identified below) or to provide evidence as to the state of the art as of the earliest effective filing date of any of the Asserted Claims.

Marriott also reserves the right to revise their ultimate contentions concerning the invalidity of the Asserted Claims of the Asserted Patents, which may change depending on any findings as to the priority date of those claims and/or positions that Marriott or expert witness(es) may take concerning infringement and/or invalidity issues.

Marriott, moreover, intends to rely on the opinions of expert witnesses, who may expand upon or supplement the evidence relied upon in these First Supplemental Invalidity Contentions, as appropriate.

C. Claim Construction

Marriott does not waive the right to contest any claim constructions or to take positions that Liberty Access may contend are inconsistent with the First Supplemental Invalidity Contentions herein. Consequently, Marriott also reserves the right to amend or supplement these First Supplemental Invalidity Contentions in the event that the claims are construed or interpreted differently than Marriott understands the claims at some point in the future.

Marriott does not necessarily adopt Liberty Access's positions on the scope or construction of the claims. In certain instances, Marriott has applied the claims to the prior art in view of Liberty Access's allegations, admissions, or positions for purposes of these First Supplemental Invalidity

Contentions only. As such, Marriott's First Supplemental Invalidity Contentions are not adoptions or admissions by Marriott as to the accuracy of Liberty Access's allegations, admissions, or positions. Accordingly, these First Supplemental Invalidity Contentions are made in the alternative, are not necessarily intended to be consistent with each other or other contentions, and should not be otherwise construed.

Marriott expressly reserves the right to take positions with respect to future claim construction or non-infringement issues that Liberty Access may contend are inconsistent with, or even contradictory to, the claim construction or invalidity positions expressed or implied in the First Supplemental Invalidity Contentions set forth herein.

D. Liberty Access's Infringement Contentions

Liberty Access's disclosures are incomplete or deficient in numerous respects. For example, Liberty Access has not yet specifically identified where each hardware element of each claim is found within the Accused Instrumentality, but instead simply makes conclusory statements. The lack of detail in Liberty Access's Infringement Contentions has impaired Marriott's ability to prepare these First Supplemental Invalidity Contentions by forcing Marriott to speculate as to Liberty Access's actual position on Marriott's alleged infringement (and the attendant claim scope ascribable to the Asserted Claims). Indeed, Liberty Access has failed to identify specific hardware products actually used by Marriott, and/or has not mapped infringement for any specific product/s or service/s, relying on "information and belief" for a majority of the claim elements. Therefore, these First Supplemental Invalidity Contentions are based, in whole or in part, on the present understanding of the Asserted Claims and Liberty Access's apparent positions as to the scope of the Asserted Claims as applied in its Disclosures. Marriott further reserves the right to modify or add additional contentions in light of any amendment made by

Liberty Access. Furthermore, any such amendment may lead to further grounds for invalidity, and Marriott specifically reserves the right to modify, amend, or supplement its First Supplemental Invalidity Contentions as Liberty Access modifies, amends, or supplements its disclosures, produces documents in discovery, or amends its contentions.

Additionally, Liberty Access has failed to provide detailed contentions that identify how Marriott allegedly induced direct infringement of the Asserted Patents by a third party, or how Marriott allegedly contributed to the infringement of the Asserted Patents by a third party. And Liberty Access has failed to provide detailed contentions regarding any alleged infringement by multiple parties under 35 U.S.C. § 271(a) (*i.e.*, joint infringement).

Also Liberty Access has failed to provide detailed contentions of any alleged infringement under the doctrine of equivalents. For example, Liberty Access has failed to articulate any element it contends is not literally met, identified any function-way-result analysis, or put forth any hypothetical claim that it contends does not ensnare the prior art herein, the prior art at issue during prosecution of the Asserted Claims, or any prior art that is expected to be uncovered as a result of third-party discovery.

If Liberty Access is permitted to provide these detailed contentions and other information relating to alleged indirect or joint infringement or infringement under the doctrine of equivalents, Marriott will amend and supplement these First Supplemental Invalidity Contentions as appropriate, including but not limited to contentions showing that the scope of any alleged equivalents improperly ensnares the prior art.

E. The Intrinsic Record

Marriott reserves the right to rely on applicable industry standards and prior art cited in the specifications and file histories of the Asserted Patents, and any related U.S. and foreign patent

applications as invalidating references or to show the state of the art. Marriott further reserves the right to rely on the patent applicants' or assignee(s)' admissions (and admissions of others acting on applicants' or assignee(s)' behalf) concerning topics including the state of the art, knowledge of one of ordinary skill in the relevant art/s, known prior art, the scope of the prior art, Asserted Claims, or other matters relevant to the Asserted Patents found in, *inter alia*: the specifications; the patent prosecution history for the Asserted Patents and any related patents and/or patent applications or reexaminations; materials cited in such specifications and file histories, any deposition testimony of the named patent applicants on the Asserted Patents; and the papers filed and any evidence submitted by Liberty Access, including in connection with this or other litigation, and/or IPRs. Marriott specifically reserves the right to rely on other patents related to the Asserted Patents, even if not asserted in this litigation, including for statements about the state of the art or the knowledge a person of skill in the art would have possessed at the relevant time(s) of the Asserted Patents.

F. Contextual Evidence

Marriott's claim charts cite particular teachings and disclosures of the prior art as applied to the limitation of each of the Asserted Claims. Persons having ordinary skill in the art, however, may generally view an item of prior art in the context of his or her experience and training, other publications, literature, products, and understanding. As such, the cited portions are only examples, and Marriott reserves the right to rely on uncited portions of the prior art references (and publications and art cited in the references) and on other publications and expert testimony as aids in understanding and interpreting the cited portions, as providing context thereto, and as additional evidence that the prior art discloses a claim limitation or the claimed subject matter as a whole. Marriott further reserves the right to rely on uncited portions of the prior art references, other

publications, and testimony, including expert testimony, to establish bases for combinations of certain cited references that render the Asserted Claims obvious. The references discussed in the claim charts may disclose the elements of the Asserted Claims explicitly and/or inherently, and/or they may be relied on to show the state of the art during the relevant time frame. The suggested obviousness combinations are provided in the alternative to the anticipation contentions and are not to be construed to suggest that any reference included in the combinations is not by itself anticipatory.

G. Priority and Effective Filing Date

Marriott reserves the right to use related patents in the alleged chain of priority of the Asserted Patents, its own Accused Products, and additional references identified in related cases, as prior art following the Court's determination of the priority date(s) of the Asserted Claims.

H. No Patentable Weight

Marriott reserves the right to argue that various portions of the Asserted Claims, such as an intended use or result, non-functional descriptive material, and certain preamble language, are entitled to no patentable weight. Mapping of a portion of an Asserted Claim to a prior art reference does not represent that such portion of the claim is entitled to patentable weight when comparing the claimed subject matter to the prior art.

I. Inequitable Conduct/Unenforceability

As discovery has only recently begun in this matter, Marriott's investigation into any factual circumstances relating to inequitable conduct or other unenforceability of the Asserted Patents is ongoing. For example, Marriott intends to explore facts relating to whether, during the relevant time periods, the relevant parties made any material representations to the U.S. Patent and Trademark Office ("USPTO"), withheld information pertinent to the patentability of the Asserted

Patents, whether any material misstatements were made to the USPTO, whether inventorship of the Asserted Patents is correct and properly documented, etc. Marriott reserves the right to amend its First Supplemental Invalidity Contentions as additional facts become known throughout its investigation and further seek leave to assert counterclaims to address such inequitable conduct.

II. IDENTIFICATION OF PRIOR ART

At least the prior art listed below, individually or in combination, invalidates the Asserted Claims. The attached exhibits A1–C12 (collectively, “Exhibits”) provide detailed claim charts showing where each claim element may be found in the particular reference being charted.

Marriott identifies the following items of prior art that anticipate or render obvious the Asserted Claims. The identification of prior art below is not exhaustive, and Marriott’s production may contain additional references that render the Asserted Claims invalid and support the state of the art and knowledge of one of ordinary skill in the art during the relevant times. Marriott reserves the right to rely on both the listed and unlisted references produced by Marriott, as well as other art that may become known and/or relevant during the course of this or related litigation.

For those references for which detailed claim charts are not provided in the Exhibits, those additional prior art references are otherwise pertinent to the invalidity of the Asserted Patents, either alone or in combination with other references, or as evidence of state of the art and the knowledge of one of ordinary skill in the art during the relevant times. At this time, Marriott is not providing claim charts for each of these additional references, for reasons including, but not limited to, because (a) further discovery is needed, (b) they are cited in conjunction with primary references for which charts have already been provided and are cited therein, and/or (c) these references have similar disclosure to the prior art references for which invalidity charts have been provided and/or may be used to show the state of the art. Absence of a chart for a specific reference should not be

taken as an interpretation that Marriott contends the reference is not pertinent to a specific claim element.

Marriott also incorporates as if fully set forth herein the complete file histories for the Asserted Patents, and any patents related thereto, including any prior art or supporting documents cited therein.

Marriott relies not only on the prior art disclosed herein, but also rely on any commercial embodiments and accompanying literature of the various assignees that correspond to the respective disclosures found within the prior art disclosed herein. The assignees' various and respective commercial embodiments and/or corresponding literature anticipate and/or render obvious the claims of the Asserted Patents for at least the reasons disclosed in these First Supplemental Invalidity Contentions and claim charts, as well as for other independent reasons found within the commercial embodiments and corresponding literature. Marriott also reserves the right to rely on related patents, published applications, foreign patents or publications, and other patent documents as necessary to establish prior art status or clarify the disclosures cited.

Marriott reserves the right to revise its claim charts to rely on any of these references to prove the invalidity of the claims of the Asserted Patents in a manner consistent with the Federal Rules of Civil Procedure, the Court's Local Rules, and this Court's Orders.

A. Prior Art Patents and Published Applications

Marriott has endeavored to identify patents and published applications by Asserted Patent. However, certain disclosures of the various references may also be pertinent to others of the Asserted Patents. Therefore, the patent references found in Exhibit E encompass references that may be pertinent to one or more of the Asserted Patents.

B. Prior Art Non-Patent Literature References

Marriott has endeavored to identify non-patent literature by Asserted Patent. However, certain disclosures of the various references may also be pertinent to others of the Asserted Patents. Therefore, the non-patent literature references found in Exhibit F encompass references that may be pertinent to one or more of the Asserted Patents.

C. Prior Art Offered For Sale and/or Publicly Used or Known

Discovery into these systems is ongoing. As necessary, Marriott plans to serve subpoenas and/or otherwise request further information pertaining to any products and/or software programs (and/or obtain the actual products and/or software programs themselves). Also as necessary, Marriott will amend and/or supplement these First Supplemental Invalidity Contentions based on information received in response.

D. Admitted Prior Art

Liberty Access (or applicants or other relevant individuals) has/have expressly or implicitly admitted that certain subject-matter recited in the Asserted Claims of the Asserted Patents were known in the prior art and thus part of the state of the art. These admissions include, but are not limited to, the admissions regarding prior art concepts identified in the table below and evidence presented in any post grant challenge(s) regarding applicant admissions regarding the prior art, state of the art, and alleged contributions of the claimed subject matter. Additionally, in its Infringement Contentions, Liberty Access contends that each of the Asserted Claims have a priority date of March 2, 2010, and references dated from before that priority date are implicitly admitted to be prior art.

Each Asserted Patent and their file histories cite other known prior art references, which constitute admissions regarding the prior art and state of the art. Party admissions may be relied

on for any purpose. Marriott reserves the right to identify additional examples of admitted prior art and to further support the admissions identified below by relying on additional portions of the patent specifications, statements made during the prosecution history of the Asserted Patents and the prosecution history of any related applications, and any statements by Liberty Access, the patent applicants, or other relevant individuals.

Patent	Admissions
'205	The '205 Patent admits in its Introduction section that “electronic access devices such as hotel room locks and the like are also gaining in popularity.” Dkt. No. 1-1, Ex. A at 1:25-26. The '205 Patent also admits that “[u]se of the Internet for almost everything has also become very common to many people today.” <i>Id.</i> at 1:35-36. Additionally, in its introductory section and elsewhere in the specification, the '205 Patent admits the teaching of several other patent documents as prior art, such as U.S. Publication No. 2010/0031043 to Burger that “teaches a portable electronic authorization method for enabling a user interface on a computer operated by a user to cause the memory content of an electronic device distinct from the computer to be modified. Burger teaches using RFID tags to replace each typical document found in a person's wallet or purse.” <i>Id.</i> at 1:48-54. The '205 Patent also admits the teaching of U.S. Publication No. 2007/0008181 to Rollert, which teaches “‘System and Method For Optimizing the Utilization Of Space,’ primarily parking spaces, by allowing a reservation to be made through the Internet.” <i>Id.</i> at 6:36-39. The '205 Patent also identifies then-existing hardware that had the capacity of performing the claimed functionality such that the claimed implementations would have been nothing more than routine optimization of the then-existing hardware using known software development skills in view of the prior art identified herein. For example, the '205 Patent identifies that the purported “improvements” over Rollert are enabled by a “smart phone application that could, for example, run on an iPhone by Apple, Inc. of Cupertino, Calif. or other smart phone.” <i>Id.</i> at 6:40-43. Further, the '205 patent identifies then-existing “wireless technology such as BLUETOOTH, Wi-Fi, Zigbee, infrared, or other wireless technique can be used to communicate with the charger or access device.” <i>Id.</i> at 4:39-42.
'747	The '747 Patent admits in its Introduction section that “electronic access devices such as hotel room locks and the like are also gaining in popularity.” Dkt. No. 1-2, Ex. B at 1:32-34. The '747 Patent also admits that “[u]se of the Internet for almost everything has also become very common to many people today.” <i>Id.</i> at 1:44-45. Additionally, in its introductory section and elsewhere in the specification, the '747 Patent admits the teaching of several other patent documents as prior art, such as U.S.

Patent	Admissions
	Publication No. 2010/0031043 to Burger that “teaches a portable electronic authorization method for enabling a user interface on a computer operated by a user to cause the memory content of an electronic device distinct from the computer to be modified. Burger teaches using RFID tags to replace each typical document found in a person's wallet or purse.” <i>Id.</i> at 1:58-65. The ’747 Patent also admits the teaching of U.S. Publication No. 2007/0008181 to Rollert, which teaches “‘System and Method For Optimizing the Utilization Of Space,’ primarily parking spaces, by allowing a reservation to be made through the Internet.” <i>Id.</i> at 6:60-63. The ’747 Patent also identifies then-existing hardware that had the capacity of performing the claimed functionality such that the claimed implementations would have been nothing more than routine optimization of the then-existing hardware using known software development skills in view of the prior art identified herein. For example, the ’747 Patent identifies that the purported “improvements” over Rollert are enabled by a “smart phone application that could, for example, run on an iPhone by Apple, Inc. of Cupertino, Calif. or other smart phone.” <i>Id.</i> at 6:64-67. Further, the ’747 patent identifies then-existing “wireless technology such as BLUETOOTH, Wi-Fi, Zigbee, infrared, or other wireless technique can be used to communicate with the charger or access device.” <i>Id.</i> at 4:56-59.
'474	The ’474 Patent admits in its Introduction section that “electronic access devices such as hotel room locks and the like are also gaining in popularity.” Dkt. No. 1-3, Ex. C at 1:36-38. The ’474 Patent also admits that “[u]se of the Internet for almost everything has also become very common to many people today.” <i>Id.</i> at 1:47-48. Additionally, in its introductory section and elsewhere in the specification, the ’474 Patent admits the teaching of several other patent documents as prior art, such as U.S. Publication No. 2010/0031043 to Burger that “teaches a portable electronic authorization method for enabling a user interface on a computer operated by a user to cause the memory content of an electronic device distinct from the computer to be modified. Burger teaches using RFID tags to replace each typical document found in a person's wallet or purse.” <i>Id.</i> at 1:60-67. The ’474 Patent also admits the teaching of U.S. Publication No. 2007/0008181 to Rollert, which teaches “‘System and Method For Optimizing the Utilization Of Space,’ primarily parking spaces, by allowing a reservation to be made through the Internet.” <i>Id.</i> at 6:60-63. The ’474 Patent also identifies then-existing hardware that had the capacity of performing the claimed functionality such that the claimed implementations would have been nothing more than routine optimization of the then-existing hardware using known software development skills in view of the prior art identified herein. For example, the ’474 Patent identifies that the purported “improvements” over Rollert are enabled by a “smart phone application that could, for example, run on an iPhone by Apple, Inc. of Cupertino, Calif. or other smart phone.” <i>Id.</i> at 6:65-67. Further, the ’474 patent identifies then-existing “wireless technology such as BLUETOOTH, Wi-

Patent	Admissions
	Fi, Zigbee, infrared, or other wireless technique can be used to communicate with the charger or access device.” <i>Id.</i> at 4:56-59.

III. PRIOR ART CLAIM CHARTS

The claim charts attached as Exhibits identify specifically where each limitation of each claim is found in each prior art reference. Marriott expressly reserves the right to supplement or amend these First Supplemental Invalidity Contentions after the Court’s *Markman* ruling, any subsequent claim construction determination, or if Liberty Access is permitted to amend or alter its infringement contentions or its position on claim construction in any way. Further, if Marriott applies Liberty Access’s constructions (and to the extent these constructions can be discerned), Marriott does not concede in any way that those constructions are correct, and instead expressly reserves the right to oppose those constructions at the appropriate time specified in the Court’s Scheduling Order.

In the charts attached as Exhibits, Marriott has referred to relevant, representative portions of the cited prior art. The absence of any specific or express reference to any claim term or claim element in these charts should not be construed as an admission that any corresponding limitation is lacking either expressly or inherently in the prior art reference. There may be additional support or other grounds for Marriott’s First Supplemental Invalidity Contentions that such prior art satisfies a particular claim element, and Marriott reserves the right to supplement these First Supplemental Invalidity Contentions with such information or rely on such additional disclosure in expert reports, in motions for summary judgment, and/or during trial. For example, persons of ordinary skill in the art at the time of the filing of the Asserted Patents knew: (a) to read prior art references as a whole, (b) to read prior art references in the context of other publications and literature and, (c) to read prior art references in the context of general knowledge in the field.

Marriott may rely on all such information, including uncited portions of the prior art references listed herein, and on other publications and expert testimony, to provide context and as aids to understanding and interpreting the listed references, or to establish that a person of ordinary skill in the art would have been motivated to modify or combine any of the cited references so as to render the claims obvious. Additionally, citations to a particular figure in a prior art reference encompass all text relating to the figure, and citations to text encompass all figures relating to or referred to by that text.

Moreover, many of the prior art systems and apparatuses were sold prior to the earliest asserted priority dates and documentation regarding these prior art systems is not in the possession, custody, or control of Marriott. Instead, these documents are currently or will be the subject of third-party discovery. Marriott expressly reserves the right to supplement their First Supplemental Invalidity Contentions to include further information obtained in discovery.

IV. PRIOR ART UNDER 35 U.S.C. §§ 102 AND/OR 103 THAT ANTICIPATES AND/OR RENDERS OBVIOUS THE ASSERTED CLAIMS OF THE ASSERTED PATENTS

The prior art listed in Exhibits E and F and in Section II either (1) anticipates the Asserted Claims of the Asserted Patents either expressly or inherently as understood by a person having ordinary skill in the art, or (2) renders the Asserted Claims of the Asserted Patents obvious, either alone, in view of the knowledge of a person of ordinary skill in the art, or in combination with other prior art.

A. Prior Art Under § 102

Certain non-limiting articulations of Marriott's anticipation assertions with respect to each claim are set forth in the accompanying claim charts, which are attached as the Exhibits.

U.S. Patent No. 9,373,205

Exhibit No.	Chart
A1	Libin '962

U.S. Patent No. 10,657,747

Exhibit No.	Chart
B1	Brondrup '386

U.S. Patent No. 11,373,474

Exhibit No.	Chart
C1	Brondrup '386

Marriott has endeavored to identify the most relevant portions of the identified references. The references may contain additional support, however, for a particular claim element. Marriott may rely on uncited portions of the prior art references and/or other publications and fact or expert testimony to provide context and as aids to understanding and interpreting the portions that are cited. In instances of cumulative disclosure within a particular prior art reference, Marriott may have cited a subset of those instances as opposed to citing each instance, and Marriott reserves the right to rely on uncited instances of cumulative disclosure. Where Marriott cites to a particular figure in a reference, the citation should be understood to encompass the caption and description of the figure and any text relating to or discussing the figure. Conversely, where Marriott cites to particular text referring to a figure, the citation should be understood to include the figure as well.

The references discussed in the claim charts may disclose the elements of the Asserted Claims explicitly and/or inherently, and/or they may be relied on to show the state of the art in the relevant time frame.

B. Prior Art Under § 103

If the Asserted Claims are not rendered invalid purely on anticipatory grounds, as evidenced by the Exhibits or in view of the references identified herein, the Asserted Claims are obvious in view of the same, either alone or in combination with one or more additional prior art references. While Exhibits A1-C12 include charts for some exemplary combinations, additional exemplary combinations may be identified in Exhibit D.

These combinations are not exclusive, and Marriott reserves the right to supplement the obviousness arguments herein and in the corresponding Exhibits, using any references listed in Exhibits E-F, any references listed in Section II, and any references that may become known to Marriott during the course of discovery. Further, the suggested obviousness combinations are in addition to Marriott's anticipation contentions and are not to be construed to suggest that any reference included in the combinations is not anticipatory on its own.

C. Motivation for Combining Identified Prior Art

Marriott has included this section discussing the motivation to combine the prior identified herein. Additional discussion of motivation to combine is included in each respective supplemental chart included in Exhibits A1-C12. The Supreme Court, however, has rejected the idea that a "teaching, suggestion, or motivation to combine" is a prerequisite for proving obviousness. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1739–40 (2007) (rejecting the Federal Circuit's "rigid" application of the teaching, suggestion, or motivation to combine test, and instead espousing an "expansive and flexible" approach). Indeed, the Supreme Court held that a person of ordinary skill in the art is "a person of ordinary creativity, not an automaton" and "in many cases a person of ordinary skill in the art will be able to fit the teachings of multiple patents together like pieces of a puzzle." *Id.* at 1742.

Subject to the reservation of rights based on Marriott's present understanding of the Asserted Claims of the Asserted Patents, and the apparent constructions Liberty Access is asserting based on its Infringement Contentions, certain prior art references identified in Exhibits E and F, which are charted in the Exhibits, as well as those listed in Section II, anticipate and/or individually render obvious the Asserted Claims of the Asserted Patents.

Should any individual prior art reference be deemed not to disclose, explicitly or inherently, any limitation of a claim, Marriott contends in the alternative that such individual prior art references can be combined with other references identified herein. These combinations are not exclusive, and Marriott reserves the right to supplement the obviousness arguments herein and in the corresponding Exhibits, using any references listed in Exhibits E and F, any references listed in Section II, and any references that may become known to Marriott during the course of discovery.

The United States Supreme Court clarified the standard for what types of inventions are patentable. *KSR Int'l*, 127 S. Ct. 1727. In particular, the Supreme Court emphasized that inventions arising from ordinary innovation, ordinary skill, or common sense should not be patentable. *Id.* at 1732, 1738, 1742–43, 1746. In that regard, a patent claim may be obvious if the combination of elements was obvious to try or there existed at the time of the invention a known problem for which there was an obvious solution encompassed by the patent's claims. In addition, when a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, 35 U.S.C. § 103 bars its patentability. To that end, for the purposes of these First Supplemental Invalidity Contentions, the knowledge of a person of ordinary

skill in the art is demonstrated by the full list of references in Section II (including prior art listed in Exhibits E and F) and all prior art produced by Marriott.

“[T]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 1731. Because the Asserted Patents simply arrange old elements (as set forth in the references identified herein) with each performing the same function it had been known to perform (as also set forth in the references identified herein) and yields no more than what one would expect from such an arrangement, the combination is obvious. *Id.* at 1742. The Asserted Claims are therefore invalid under 35 U.S.C. § 103 because they do nothing more than combine known techniques and apparatuses according to their known and ordinary uses to yield predictable results.

The Supreme Court further held that, “[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, 35 U.S.C. § 103 bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill” *Id.* at 1740.

Accordingly, a person of ordinary skill in the art at the time of the alleged invention would have been motivated to combine or adapt known or familiar methods in the art, especially where market forces prompt such variations. Here, market forces demanded that access devices and systems include all the features and functionalities of conventional electronic devices well before March 2010. The adoption of such features and functionalities in a hotel room lock or car lock context constitutes nothing more than applying known solutions to a known problem with an

expectation of success. Thus, one of skill in the art would have thought to combine or modify references that described known methods that one of skill in the art would have recognized as offering improvements to solutions of that time. The charts found in the Exhibits and the combinations of charted references found in Exhibit D further describe methods that were known to offer such improvements and, accordingly, one of skill in the art would have been motivated to combine or modify the references as indicated in Exhibit D.

Moreover, since there was a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. *Id.* The combinations of references in Exhibit D use familiar elements for their primary or well-known purposes in a manner well within the ordinary level of skill in the art. Accordingly, the prior art references identified in Exhibits E and F, as well as those listed in Section II, in combination with the ordinary skill and the knowledge of the prior art render the claims invalid under either 35 U.S.C. § 102 or § 103. For example, ordinary skill and knowledge of the prior art would suggest to a person of ordinary skill in the art that access control system of Brondrup '386, disclosing a "room key token" transferred to a wireless device for door entry, would have been improved by also incorporating aspects of the digital certificates used in the system for controlling physical access disclosed in Micali '675. Ordinary skill and knowledge of the prior art would have further suggested to a person of ordinary skill in the art that the Brondrup '386 access control system would have been improved by being combined with the system for accessing a structure of Robertson '536, which provided hotel guests to access their assigned rooms using their Internet-enabled cell phones or provide activity logs for access requests, or by being combined with the electronic door opener device of Raghunath '555, which provided secure methods of proving access rights to unlock a door. In a further example, ordinary skill and knowledge of the prior art would have further suggested to a person of ordinary skill in the art that the Brondrup '386

access control system would have been improved by being combined with the system for controlling access of Kansala '089, which provided methods of communicating digital signatures and certificates to control access by unlocking locks.

In another example, ordinary skill and knowledge of the prior art would have further suggested to a person of ordinary skill in the art that the Robertson '536 method for accessing structures using a mobile device would have been improved by being combined by also incorporating aspects of the digital certificates used in the system for controlling physical access disclosed in Micali '675. Ordinary skill and knowledge of the prior art would have further suggested to a person of ordinary skill in the art that the Robertson '536 access control system would have been improved by being combined with the electronic door opener device of Raghunath '555, which provided secure methods of proving access rights to unlock a door, or by being combined with the system for controlling access of Kansala '089, which provided methods of communicating digital signatures and certificates to control access by unlocking locks. A person skilled in the art would also have been motivated to improve the method for accessing structures using a mobile device disclosed in Robertson '536 by combining it with the system for physical door access using processor actuated locks disclosed in Libin '962.

In another example, ordinary skill and knowledge of the prior art would have suggested to a person of ordinary skill in the art that the Libin '962 system for physical door access using processor actuated locks would have been improved by being combined with the electronic door opener device of Raghunath '555, which provided secure methods of proving access rights to unlock a door. Ordinary skill and knowledge of the prior art would have suggested to a person of ordinary skill in the art that the Libin '962 system for physical door access using processor actuated locks would have been improved by being combined with the system for controlling access of Kansala '089, which

provided methods of communicating digital signatures and certificates to control access by unlocking locks, or by being combined with the digital certificates used in the system for controlling physical access disclosed in Micali '675. In a further example, ordinary skill and knowledge of the prior art would have suggested to a person of ordinary skill in the art that the Libin '962 system for physical door access using processor actuated locks would have been improved by being combined with the access control system Brondrup '386.

Thus ordinary skill and the known landscape of the industry would have motivated a person of ordinary skill in the art to combine existing access control systems and devices, including patents and publications describing such access systems, in the manner allegedly taught by the Asserted Patents.

A person of ordinary skill would have been motivated to combine the prior art found in Exhibits E–F and in Section II based on his/her knowledge, the nature of the problem to be solved, and the teachings of the prior art. The references in Exhibit D address the same or similar technical issues and suggest the same or similar solutions to those issues. Moreover, some of the prior art refers to or discusses other prior art, illustrating the close technical relationship among the prior art.

By way of further example, the references in Exhibit D are directed to the same or similar technology—namely, electronic access control. Thus, for example, one of ordinary skill in the art would have been motivated to combine known prior art solutions described in these references relating to electronic access control. The many prior art hardware, software, systems, and services disclose off-the-shelf hardware, software, and services that are designed to be modular and work with compatible hardware and software. Also, many of the claim elements were already known as admitted by Liberty Access in the specifications of the Asserted Patents (*see* Section II.D above). These elements represented design choices available to a person of ordinary skill. When there is a

design need or market pressure to solve a problem such as identified previously and/or described in the Asserted Patents, and there are a finite number of identified, predictable solutions, a person of ordinary skill would be motivated to combine the known options that are within his or her technical grasp. Here, one of ordinary skill in the art would have been motivated to combine known prior art solutions, including those in the combination references and those admitted by Liberty Access to be known.

For each of the “systems” or “products” that were charted under Section II, to the extent that the collective references referenced in Section II are not considered to be the same reference for purposes of invalidity under 35 U.S.C. § 102, it would have been obvious to combine the references cited. For each such product/system, all of the listed references relate to the same technology and variations thereof. One of skill in the art would have been motivated to look at all of the available documentation for a particular product/system to understand the operation. One of skill in the art would have combined that knowledge from the various related references because it would be clear that the references were related. For at least this reason, one of skill in the art could consider it obvious to combine the references that collectively teach a particular technology. The references were identified in the charts for each such system/product, and Marriott intends to rely on the combination of references in each of the system/product charts.

One of skill in the art would have been motivated to combine the different systems/products, publications, and patents that were created by the same company, authored by employees of the same company, or assigned to the same assignee and related to the same subject matter, particularly when that assignee was well-known to have experience and knowledge in the design and development of access devices or systems and the references are directed to improvements in the company’s products. So, for example, for such companies one of skill in the art would have been motivated

to look at the various patents assigned to the companies, as well as articles written about their products, and to combine the approaches taken in those patents and articles for such products.

One of skill in the art would have been motivated to combine different references that were authored, developed, or invented by the same individual(s) related to the same subject matter. Any common inventor/author/architect references themselves demonstrate that they relate to continued work in a common field of effort and continued related developments in that field. One of skill in the art would, therefore, combine the references related to each individual.

Each of the references can be combined with the known prior art based on the statements made in the specification and during prosecution of the Asserted Patents. For example, the applicants acknowledged that many of the claimed features were well known in the art. *See* Section II.D, above. Thus, it would have been obvious for one of skill in the art to combine this knowledge in the art (as the applicants did) with any of the charted references because the applicants acknowledged that the basic arrangement of elements was known in the art.

Additionally, beyond the elements acknowledged in the patent and prosecution history to be known in the art, to the extent that Liberty Access alleges that certain elements are missing from any of the charted references, those elements are known in the art or would be inherent in the relevant context. One of skill in the art would have understood that different approaches could be taken depending on the design needs and would have combined those approaches to meet the various design needs.

It would have been obvious to combine any references that expressly refer to each other or incorporate each other by reference. For example, one of skill in the art would have been motivated to combine different references from articles or papers that were known to be related and/or referenced within another related article or paper. So, for example, it would have been obvious to

combine a paper referenced in an article with the paper that references the article. In addition, it would have been obvious to combine a patent (or patent application) incorporated by reference into another patent (or patent application). It likewise would have been obvious to combine patents and patent applications from the same patent family.

Exemplary combinations are identified in Exhibit D for purposes of explaining and exemplifying which references would be combined. In many instances, multiple different motivations would apply to a particular combination (for example, if multiple references were both authored by the same person and referred to the same product/system, then both of those motivations would apply).

In addition to the motivations set forth above, one or more combinations of the prior art references identified in Exhibits E and F, in Section II, and below would have been obvious because these references would have been combined using: known methods to yield predictable results; known techniques in the same way; a simple substitution of one known, equivalent element for another to obtain predictable results; and/or a teaching, suggestion, or motivation in the prior art generally. In addition, it would have been obvious to try combining the prior art references identified in Exhibits E–F and in Section II, because there were only a finite number of predictable solutions and/or because known work in one field of endeavor prompted variations based on predictable design incentives and/or market forces either in the same field or a different one. In addition, the combinations of the prior art references identified in Exhibits E–F and in Section II would have been obvious because the combinations represent the known potential options with a reasonable expectation of success.

Notwithstanding the factors and motivations identified above, including the exemplary combinations identified in Exhibit D, and notwithstanding the early stage of discovery, and subject

to the reservation of rights stated above, Marriott contends that an analysis of secondary considerations further supports the view that each of the Asserted Claims is obvious. Secondary considerations that courts evaluate as objective indicia of obviousness or nonobviousness of an alleged invention include: (1) commercial success of the claimed subject matter; (2) long felt but unresolved needs; (3) failure of others; (4) teaching away from the claimed subject matter by the prior art; (5) copying or acclamation by others; and (6) skepticism of experts. *See, e.g., Ruiz v. A.B. Chance Co.*, 357 F.3d 1270, 1274 (Fed. Cir. 2004); *Ecolochem, Inc. v. Southern Cal. Edison Co.*, 227 F.3d 1361, 1379 (Fed. Cir. 2000).

The Asserted Patents addressed problems that had been handled successfully in the prior art in view of numerous access systems.

Additionally, and as outlined herein and in the Exhibits, multiple prior art references anticipate the claims of the Asserted Patents, so failure by others cannot be cited as a secondary consideration in favor of nonobviousness. Numerous prior art references, including those identified in Exhibits E–F, are directed to the same approach as the Asserted Patents regarding electronic access devices and systems.

Liberty Access has not presented any evidence to suggest that others in the industry copied or praised the alleged invention of the Asserted Patents. To the extent that others may have subsequently adopted a similar technique, Marriott asserts that they were in fact copying well-known systems that predate the Asserted Patents. At the time of the alleged invention of the Asserted Patents, experts would not have been skeptical of the general approach or idea disclosed therein. The general ideas had already been in widespread use for a long time and were not patentable by the time the applicants filed their patent applications. Experts would have regarded the disclosures and matter claimed in the Asserted Patents as obvious.

Any reference or combination of references that anticipates or makes obvious an independent claim also makes obvious any claim dependent on that independent claim because every element of each dependent claim was known by a person of ordinary skill at the time of the alleged invention, and it would have been obvious to combine those known elements with the independent claim at least as a matter of ordinary skill, common sense, and/or routine innovation. Accordingly, Marriott contends that each Asserted Claim would have been obvious not only by the combinations explicitly defined in these First Supplemental Invalidity Contentions, but also by any combination of references that renders obvious that claim.

To the extent Liberty Access contends that any reference contains multiple distinct embodiments, it would be obvious to combine elements of the distinct embodiments. A person would be motivated to make such a combination because the elements are found in the same reference and the reference as a whole is directed to the same topic or topics.

V. INVALIDITY UNDER 35 U.S.C. § 112 (¶1/a)

Marriott hereby identifies grounds of invalidity based on lack of written description and enablement under 35 U.S.C. § 112 (¶1/a) (requiring “a written description of the [claimed] invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same.”). Marriott reserves the right to supplement or amend these First Supplemental Invalidity Contentions based on Liberty Access’s representations during the course of the litigation (including during claim construction) and following any claim construction rulings of the Court.

Liberty Access has asserted in its disclosures, for each Asserted Patent, that each Asserted Claim of the Asserted Patents is entitled to the filing date of the patent’s earliest ancestor

application (hereinafter, “the Asserted Priority Application”) as its priority date — March 2, 2010. Marriott denies that asserted entitlement but in view of Liberty Access’s position in its disclosures, Liberty Access must support written description and enablement based on that Asserted Priority Application, and therefore these First Supplemental Invalidity Contentions focus on the lack of support in the Asserted Priority Application for each claim.

Throughout these First Supplemental Invalidity Contentions, an assertion that an application did not “support” a claim or claim element means—unless otherwise noted—that the application did not provide as of the filing date sought:

- (a) the required written description for the claim element and the claimed subject matter;
- (b) the required written description for the full-scope of the claim element and the claim;
- (c) the required enabling disclosure for the claim element and the claimed subject matter;
- (d) the required enabling disclosure for the full-scope of the claim element and the claim;
- (e) a description of the claimed “invention” understandable to a skilled artisan and showing that the applicant actually possessed such “invention”;
- (f) a description of the claimed “invention” that was express or necessarily present (inherent), complete, unambiguous, specific, and as broad as the claim; or
- (g) a disclosure teaching a skilled artisan how, by following the steps set forth in the application, to make or carry out (use) the claimed “invention” without undue experimentation.

Throughout these First Supplemental Invalidity Contentions, an assertion that an application does not “support” an independent claim or language in an independent claim means—unless otherwise noted—that the application also does not support that claim’s asserted dependent claims.

For each Asserted Claim, the Asserted Priority Application failed to support the claim and individual elements of the claim, as listed below.

As noted, Liberty Access's selection of the March 2, 2010 application as its "priority" application for each of the Asserted Patents makes that application the governing application for the written description and enablement invalidity analysis for the Asserted Claims. *Los Angeles Biomedical Research Inst. v. Eli Lilly and Co.*, 849 F.3d 1049, 1057 ("To satisfy the written description requirement, the disclosure in each application must 'reasonably convey[]' to those skilled in the art that as of the claimed priority date the inventor was in possession of the later claimed subject matter." (citing *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563 (Fed. Cir. 1991))). Nevertheless, Marriott also alleges that the subsequently filed applications also fail to provide the requisite support for the Asserted Claims. For at least the below-listed claims in the Asserted Patents, no application leading to the issuance of the Asserted Patents adequately supports the claim and individual elements of the claim, as listed below:

'474 Claims 16 and 27

- wherein the first communication protocol comprises a cellular protocol.

'474 Claims 17 and 28

- wherein the first communication protocol comprises a wireless LAN protocol.

'474 Claims 18, 22, 29, and 33

- wherein the wireless LAN protocol comprises Wi-Fi.

'474 Claims 21 and 32

- wherein the second communication protocol comprises a wireless LAN protocol.

VI. PATENT INELIGIBILITY UNDER 35 U.S.C. § 101

Each of the Asserted Patents fails to meet the requirements of 35 U.S.C. § 101—namely the Asserted Patents are nothing more than an abstract idea and are, therefore, not patentable

subject matter. *See generally, Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1338 (Fed. Circ. 2017) (“To determine whether the exception applies, the Supreme Court has set forth a two-step inquiry. Specifically, a court must determine: (1) whether the claim is directed to a patent-ineligible concept, i.e., a law of nature, a natural phenomenon, or an abstract idea; and if so, (2) whether the elements of the claim, considered both individually and as an ordered combination, add enough to transform the nature of the claim into a patent eligible application.”). At least the disclosures of the Asserted Patents have informed Marriott what constitutes well-understood, routine, and conventional activity within the fields of the Asserted Patents.² Addressing the Asserted Patents in turn below, it becomes clear that each asserted claim of each Asserted Patent is not directed to patent eligible subject matter. Additionally, per the Court’s Standing Order Regarding Subject-Matter Eligibility Contentions, the charts in Exhibits G1-G3 identify each exception to eligibility for each of the Asserted Claims.

A. The '205 Patent

This patent—entitled, *Access Control System and Method for Use By An Access Device*—did not invent electronic door locks, computer processors, or wireless data communication, nor does it even purport to improve their functionality. Instead, the purported invention is merely directed to the abstract idea of allowing access based on receiving reservation information—a well-established business practice and method of organizing human activity—using generic computer components. *See Repifi Vendor Logistics, Inc. v. IntelliCentrics, Inc.*, No. 4:20-CV-448-SDJ, 2021 WL 1196271, at *2 (E.D. Tex. Mar. 30, 2021) (credentialing and checking in visitors “has been practiced ever since access-controlled facilities have existed” and “is also a well-established

² As further discovery occurs, Marriott’s patent eligibility theories may develop further. Marriott reserves the right to amend these theories before trial.

business practice and a common method for organizing human activity.”). In relevant part, the specification states:

The present invention allows reservation and activation of an electric vehicle charger or an access device like a hotel room lock from a website via a digital token or certificate sent to a cellular telephone or smart phone.

Dkt. No. 1-1, Ex. A at 3:43-46. In this regard, the patent itself confirms that the alleged access device is merely a replacement for traditional access control systems (*e.g.*, car and hotel locks) using well-established technologies such as websites, digital tokens, and cellular telephones or smart phones. The specification further states:

[A] room reservation can be made using an Internet-enabled cellular telephone 4, laptop 2, computer or other Internet device. The room can be paid for in the **usually e-commerce way by credit card or by any other payment method**. The digital token or certificate is sent to the smart phone 4, and the user is told the external room number. As the guest approaches the hotel room door, **the smart phone 4 sends the certificate 5 to the lock device by way of short-range wireless like BLUETOOTH**. The user can then unlock the door at any time during the stay period by pressing a particular button on the phone or by other technique.

Dkt. No. 1-1, Ex. A at 5:59-67. Accordingly, the mechanisms of the claimed access device are well-known and conventional, such as smart phones using routine wireless communication (*e.g.*, BLUETOOTH) after reserving and paying for the room in “the usually [*sic*] e-commerce way.”

Even more broadly, the claimed components of the access device in the '205 Patent are directed to the age-old abstract idea of a providing hotel guests access to hotel rooms based on reservation information. Indeed, even prior to computers, human-operated hotels routinely maintained a list of guest reservations, which may include information such as the name the guest and the reservation length. When a guest arrived at a hotel to check in, a hotel employee checked the reservation list to determine whether the guest had a valid reservation. If so, the employee would give the guest a key to access their hotel room, providing access to the room until their

reservation ends. Although the specification may conceivably yield benefits in the form of human efficiencies, such potential benefits are unworthy of patent protection under 35 U.S.C. § 101 because they merely implement existing technology (*e.g.*, processors and communication modules) to make a conventional process more efficient.³ Further, the concept of an “electronic access device” is also described as well-understood in the patent, stating in its Background section that “[o]ther electronic access devices such as hotel room locks and the like are also gaining in popularity.” Dkt. No. 1-1, Ex. A at 1:25-26.

At its core, the purported “invention” provides automation of a fundamental business practice of receiving reservation information (*i.e.*, reservation certificate with an interval), comparing the information to a current time/date, and providing access. The ’205 Patent provides no improvement to the processor or communication module themselves. The ’205 Patent does not provide new technology or mechanisms by which this occurs. Indeed much of the specification recites general purpose computer hardware. *See e.g.*, Dkt. No. 1-1, Ex. A at 1:25-26 (electronic door locks were gaining popularity and thus previously known), 1:48-55 (mobile authorization based on transferring data was taught by the prior art), 2:5-8 and 3:48-49 (“A server or server computer not hosting a website can also interface directly with a telephone application. The server, or another server, can then transfer a digital token or certificate” and “communicates with the Internet.”), 4:37-42 (communication module could be Bluetooth, Wi-Fi, or other known wireless technology), 6:39-43 (portable terminal is just a conventional smartphone).

³ *See Repifi Vendor*, 2021 WL 1196271, at *13-14 (“[I]mplement[ing] existing technology such as smart phones and electronic badges to make the process more efficient does not save claim 1 from targeting an abstract concept” but instead “merely applies existing technology to automate a human process.”); *Smart Sys. Innovations, LLC v. Chi. Transit Auth.*, 873 F.3d 1364, 1372-73 (Fed. Cir. 2017) (finding claims directed to a method for validating entry into a transit network abstract that merely “invoke computers in the collection and arrangement of data.”).

Merely improving time, speed or efficiency inherent in applying the abstract idea over a using computers is insufficient to meet the legislative bar of 35 U.S.C. § 101. See *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359, 1364 (Fed. Cir. 2020) (“[C]laiming the improved speed or efficiency inherent with applying the abstract idea on a computer [is] insufficient to render the claims patent eligible.”); see also *Elec. Power*, 830 F.3d at 1355 (“We have repeatedly held that such invocations of computers and networks that are not even arguably inventive are “insufficient to pass the test of an inventive concept in the application” of an abstract idea.”); *Intell. Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1367, 70 (Fed. Cir. 2015)). Further, claims are abstract if directed to “use of conventional or generic technology in a nascent but well-known environment.” *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016) (holding that, while the claim on its face recited “concrete, tangible components such as ‘a telephone unit’ and a ‘server,’ the specification ma[de] clear that the recited physical components merely provide[d] a generic environment in which to carry out the abstract idea of classifying and storing digital images in an organized manner.”). An abstract idea is still abstract even if it is limited to a particular technological environment. *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1259 (Fed. Cir. 2016). Specific to claims involving computers, “claims must be directed to an improvement to the functionality of the computer or network platform itself” and the “inquiry often turns on whether the claims focus on the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an abstract idea for which computers are invoked merely as a tool.” *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359, 1365 (Fed. Cir. 2020) (internal citations omitted). Accordingly, while the ’205 Patent’s claims on their faces recite tangible components (e.g., an interface, a server, and “devices” or a portable terminal), these components are mere tools providing a generic

environment to carry out the abstract idea of allowing access based on reservation information, which is a longstanding method of organizing human activity. *See In re TLI Commc'ns*, 823 F.3d at 612 (claims are abstract if directed to “use of conventional or generic technology in a nascent but well-known environment.”); *Customedia Techs.*, 951 F.3d at 1365 (claims abstract when directed to “an abstract idea for which computers are invoked merely as a tool.”); *Repifi Vendor*, 2021 U.S. Dist. LEXIS 60434, at *13-14 (finding a claim abstract when it “merely applies existing technology to automate a human process.”).

Any improvement presented in the '205 Patent is thus described at the abstract level of computerization, simply using a computer processor to confirm reservation information in order to provide access, without the need for a human hotel clerk. This renders the purported invention nothing more than an abstract idea at step one of *Mayo/Alice* framework.

The purported “invention” fares no better at step two of the *Mayo/Alice* framework. Nothing in the claimed components, either taken individually or as a collective, provide significantly more so to supply the abstract idea with inventive concept. For example, Claim 1 recites components being conventional to the skilled artisan at the priority date—including a processor, a communication module, and, indirectly, a door lock and a portable terminal. Critically, in view of the specification alone, these components would have been well understood as conventional before the priority dates of the Asserted Patents. *See, e.g.*, Dkt. No. 1-1, Ex. A at 1:25-26 (electronic door locks were gaining popularity and thus previously known), 1:48-55 (mobile authorization based on transferring data was taught by the prior art), 6:39-43 (portable terminal is just a conventional smartphone), 4:37-42 (communication module could be Bluetooth, Wi-Fi, or other known wireless technique). Moreover, even if the purported invention could preclude the need for a human hotel clerk, for example, this does not improve the functioning of

the processor, communication module, or door lock themselves compared to what was routine, conventional and well-understood at the priority date. The only purported improvement explicitly recited in the '205 Patent itself pertains to “a smart phone application that could, for example, run on an iPhone by Apple, Inc. of Cupertino, Calif. or other smart phone. Such an application would have various screen views for performing such functions as making a new reservation, examining current reservations, and maintaining the patron’s account.” *Id.* at 6:39-46. But even if this “application” could be deemed an “improvement” for the purposes of § 101, the claims of the '205 Patent do not recite these features. *See Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018) (finding several claims invalid that “do[] not recite any of the purportedly unconventional activities disclosed in the specification.”).

In sum, any improvements in the '205 Patent are to the abstract idea itself using conventional components or are simply not recited by the claims. Accordingly, the claims of the '205 Patent are not directed to patentable subject matter under 35 U.S.C. § 101.

B. The '747 Patent

This patent—also entitled, *Access Control System and Method for Use By An Access Device*—shares a substantially identical specification to the '205 Patent. Much like the '205 Patent addressed above, the purported “invention” of the '747 Patent is directed to the abstract idea of allowing access based on receiving reservation information—a well-established business practice and method of organizing human activity—using generic computer components. *See Repifi Vendor Logistics, Inc. v. IntelliCentrics, Inc.*, No. 4:20-CV-448-SDJ, 2021 WL 1196271, at *2 (E.D. Tex. Mar. 30, 2021) (credentialing and checking in visitors “has been practiced ever since access-controlled facilities have existed” and “is also a well-established business practice and a common method for organizing human activity.”). Like the '205 Patent,

the '747 Patent makes no improvement to the functionality of a computer processors, servers, mobile devices, or communication module. The components of the claimed access control system lack any technical description that improves the relevant technology, but instead are “directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *Repifi Vendor*, 2021 U.S. Dist. LEXIS 60434, at *7 (quoting *McRO*, 837 F.3d at 1314) (internal quotation marks omitted). The generic functions of the access control system in the '747 Patent are directed to the age-old abstract idea of a providing hotel guests access to hotel rooms based on reservation information.

For example, in addition to the “access device” recited in claim 1 of the '205 Patent, claim 1 of the '747 Patent recites “a secure reservation interface” with one or more screens, “a reservation server,” and “an application” on a second device. Dkt. No. 1-2, Ex. B at 9:2-33. But the claims include no more technical description of these components, instead only describing what they do: the reservation interface “receive[s] a reservation request;” the reservation server is “in communication with the reservation interface and a network;” and the application “receive[s] the reservation certificate and the communication setting” and “wirelessly transmits the reservation certificate.” *Id.* And collecting, storing, and transferring information are merely abstract ideas. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d at 1353–54 (“[W]e have treated collecting information . . . as within the realm of abstract ideas.”).

In other words, on their faces, while the claims of the '747 Patent recite some tangible components (*e.g.*, “access device,” “communication module,” “reservation server,” “devices”), these components are mere tools providing a generic environment (*e.g.*, “reservation interface” and “application”) to carry out the abstract idea of allowing access based on reservation information, which is a longstanding method of organizing human activity. *See In re TLI*

Commc'ns, 823 F.3d at 612 (claims are abstract if directed to “use of conventional or generic technology in a nascent but well-known environment.”); *Customedia Techs.*, 951 F.3d at 1365 (claims abstract when directed to “an abstract idea for which computers are invoked merely as a tool.”); *Repifi Vendor*, 2021 U.S. Dist. LEXIS 60434, at *13-14 (finding a claim abstract when it “merely applies existing technology to automate a human process.”).

Similar to the '205 Patent, any improvement presented in the '747 Patent is thus described at the abstract level of computerization, simply using a generic interface to receive reservation information, a generic “reservation server” to process a reservation request and transmit information to a generic “device,” a generic “processor” to confirm reservation information in order to provide access, without the need for a human hotel clerk. This renders the purported invention nothing more than an abstract idea at step one of *Mayo/Alice* framework.

At step two of the *Mayo/Alice* framework, the fact that conventional computer components (*e.g.*, smart phones, servers, wireless technology) is referenced in the specification (to implement the abstract idea), makes the claimed idea no less abstract. *See, e.g.*, '747 Patent at 2:15-18; 6:65-67). The claims of the '747 Patent recite no novel hardware in addition to that recited in the '205 patent. Instead, claim 1 of the '747 Patent recites “a secure reservation interface” for the routine function of “receiving a reservation request,” “a reservation server” performing the routine functions of receiving a request transmitting a reservation certificate to a second device, and “an application installed on a second device” performing the routine function of “receiv[ing]” and “transmit[ting] the reservation certificate.” Dkt. No. 1-2, Ex. B at 9:2-33.

Accordingly, nothing in the claimed components, either taken individually or as a collective, provide significantly more so to supply the abstract idea with inventive concept. For example, claim 1 recites components being conventional to the skilled artisan at the priority date—

including a processor, a communication module, a server, an interface, and, indirectly, a door lock and “devices.” Critically, in view of the specification alone, these components would have been well understood as conventional before the priority dates of the Asserted Patents. *See, e.g.*, Dkt. No. 1-2, Ex. B at 1:33-35 (electronic door locks were gaining popularity and thus previously known), 1:58-65 (mobile authorization based on transferring data was taught by the prior art), 6:65-67 (portable terminal is just a conventional smartphone), 4:56-59 (communication module could be Bluetooth, Wi-Fi, or other known wireless technique). Specifically, the “server” in the claims is not specialized hardware but may be any generic server that “can then transfer a digital token or certificate” and “communicates with the Internet.” *Id.* at 2:15-17; 3:62-63. The first and second “devices” or “portable terminal” recited in the claims are simply conventional smartphones. *Id.* at 6:65-67. The specification does not assert inventing electronic door locks, as it admits those were “gaining in popularity.” *Id.* at 1:33-35. Further, the specification does not describe a “secure reservation interface” at all, but instead only describes a generic “website” that is “hosted on a server” and “can contain information about different services available,” with no novel technical features. *Id.* at 4:4-6. Finally, communication between these components may occur via known communication security protocols, “such as https or IPSec,” which “may be used in any part of the system of the present invention.” *Id.* at 4:1-3. Moreover, even if the purported invention could preclude the need for a human hotel clerk, for example, this does not improve the functioning of the processor, communication module, server, devices, or door lock themselves compared to what was routine, conventional and well-understood at the priority date.

The only purported improvement explicitly recited in the '747 Patent itself pertains to “a smart phone application that could, for example, run on an iPhone by Apple, Inc. of Cupertino, Calif. or other smart phone. Such an application would have various screen views for performing

such functions as making a new reservation, examining current reservations, and maintaining the patron's account.” *Id.* at 6:65-7:4. But even if this “application” could be deemed an “improvement” for the purposes of § 101, the claims of the ’747 Patent do not recite these features. *See Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018) (finding several claims invalid that “do[] not recite any of the purportedly unconventional activities disclosed in the specification.”). Instead, the “application” in the ’747 is generically recited for receiving and transmitting the “reservation certificate and the communication setting,” and not for the purported “improvements” described in the specification.

As such, because computer components provide nothing more than a generic environment to advance the abstract idea, the ’747 Patent fails to establish that it constitutes patentable subject matter under 35 U.S.C. § 101. *See In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016) (holding ineligible claims reciting concrete physical components merely as “a generic environment in which to carry out the abstract idea of classifying and storing digital images in an organized manner”).

C. The ’474 Patent

This patent—also entitled, *Access Control System and Method for Use By An Access Device*—shares a substantially identical specification to the ’205 Patent and the ’747 Patent. Much like the ’205 Patent and the ’747 Patent addressed above, the ’474 Patent is directed to the abstract idea of allowing access based on receiving reservation information—a well-established business practice and method of organizing human activity—using generic computer components. *See Repifi Vendor Logistics, Inc. v. IntelliCentrics, Inc.*, No. 4:20-CV-448-SDJ, 2021 WL 1196271, at *2 (E.D. Tex. Mar. 30, 2021) (credentialing and checking in visitors “has been practiced ever since access-controlled facilities have existed” and “is also a well-established

business practice and a common method for organizing human activity.”). Like the ’205 Patent, the ’474 Patent makes no improvement to the functionality of a computer processors, servers, mobile devices, or communication module. The components of the claimed access control system lack any technical description that improves the relevant technology, but instead are “directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *Repifi Vendor*, 2021 U.S. Dist. LEXIS 60434, at *7 (quoting *McRO*, 837 F.3d at 1314) (internal quotation marks omitted). The generic functions of the access control system in the ’474 Patent are directed to the age-old abstract idea of a providing hotel guests access to hotel rooms based on reservation information.

For example, in addition to the “access device” recited in claim 1 of the ’205 Patent, claim 1 of the ’474 patent adds “an application” on “a portable terminal” and “a server” with no additional technical description—just what they do: the application “compares the interval of the reservation to a current time” and “activates the door lock;” the server “provides a communication setting to the application;” and the portable terminal includes no description at all. Dkt. No. 1-3, Ex. C at 9:2-18.

In other words, on their faces, while the claims of the ’474 Patent recite some tangible components (*e.g.*, “access device,” “communication module,” and “portable terminal”), these components are mere tools providing a generic environment (*e.g.*, “application”) to carry out the abstract idea of allowing access based on reservation information, which is a longstanding method of organizing human activity. *See In re TLI Commc’ns*, 823 F.3d at 612 (claims are abstract if directed to “use of conventional or generic technology in a nascent but well-known environment.”); *Customedia Techs.*, 951 F.3d at 1365 (claims abstract when directed to “an abstract idea for which computers are invoked merely as a tool.”); *Repifi Vendor*, 2021 U.S. Dist.

LEXIS 60434, at *13-14 (finding a claim abstract when it “merely applies existing technology to automate a human process.”).

Similar to the '205 Patent, any improvement presented in the '474 Patent is thus described at the abstract level of computerization, simply using a generic server to provide information to a generic application to confirm reservation information in order to provide access, without the need for a human hotel clerk. This renders the purported invention nothing more than an abstract idea at step one of *Mayo/Alice* framework.

At step two of the *Mayo/Alice* framework, the fact that conventional computer components (*e.g.*, smart phones, servers, wireless technology) is referenced in the specification (to implement the abstract idea), makes the claimed idea no less abstract. *See, e.g.*, '474 Patent at 2:17-20; 6:65-67). The claims of the '474 Patent recite no novel hardware in addition to that recited in the '205 patent. Instead, claim 1 of the '474 Patent recites “an application on a portable terminal” for the routine function of “compar[ing] the interval of the reservation to the current time” and “activat[ing] the door lock,” and “a server” for the routine function of “provid[ing] a communication setting to the application.” Dkt. No. 1-3, Ex. C at 9:2-18.

Accordingly, nothing in the claimed components, either taken individually or as a collective, provide significantly more so to supply the abstract idea with inventive concept. For example, claim 1 recites components being conventional to the skilled artisan at the priority date—including a processor, a communication module, a server, and, indirectly, a door lock and a “portable terminal.” Critically, in view of the specification alone, these components would have been well understood as conventional before the priority dates of the Asserted Patents. *See, e.g.*, Dkt. No. 1-3, Ex. C at 1:36-38 (electronic door locks were gaining popularity and thus previously known), 1:60-67 (mobile authorization based on transferring data was taught by the prior art),

6:65-67 (portable terminal is just a conventional smartphone), 4:56-59 (communication module could be Bluetooth, Wi-Fi, or other known wireless technique). Specifically, the “server” in the claims is not specialized hardware but may be any generic server that “can then transfer a digital token or certificate” and “communicates with the Internet.” *Id.* at 2:17-20; 3:63-64. The first and second “devices” or “portable terminal” recited in the claims are simply conventional smartphones. *Id.* at 6:65-67. The specification does not assert inventing electronic door locks, as it admits those were “gaining in popularity.” *Id.* at 1:36-38. Further, the specification does not describe a “secure reservation interface” at all, but instead only describes a generic “website” that is “hosted on a server” and “can contain information about different services available,” with no novel technical features. *Id.* at 4:5-7. Finally, communication between these components may occur via known communication security protocols, “such as https or IPSec,” which “may be used in any part of the system of the present invention.” *Id.* at 4:2-4. Moreover, even if the purported invention could preclude the need for a human hotel clerk, for example, this does not improve the functioning of the processor, communication module, server, devices, or door lock themselves compared to what was routine, conventional and well-understood at the priority date.

The only purported improvement explicitly recited in the ’474 Patent itself pertains to “a smart phone application that could, for example, run on an iPhone by Apple, Inc. of Cupertino, Calif. or other smart phone. Such an application would have various screen views for performing such functions as making a new reservation, examining current reservations, and maintaining the patron’s account.” *Id.* at 6:65-7:4. But even if this “application” could be deemed an “improvement” for the purposes of § 101, the claims of the ’474 Patent do not recite these features. *See Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018) (finding several claims invalid that “do[] not recite any of the purportedly unconventional activities disclosed in the

specification.”). Instead, the “application” in the ’474 is recited for receiving and comparing the “reservation certificate,” and not for the purported “improvements” described in the specification.

Because the computer components provide nothing more than a generic environment to advance the abstract idea, the ’474 Patent fails to establish that it constitutes patentable subject matter under 35 U.S.C. § 101. *See In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016) (holding ineligible claims reciting concrete physical components merely as “a generic environment in which to carry out the abstract idea of classifying and storing digital images in an organized manner”).

VII. ACCOMPANYING DOCUMENT PRODUCTION

Marriott references the previously produced documents at MARRIOTT_0001165-MARRIOTT_0004399 and the concurrently produced documents at MARRIOTT_0004400-MARRIOTT_0005243 and MARRIOTT_0005279-MARRIOTT_0005306.

Marriott’s investigation is ongoing. If and when any additional documents required to be disclosed under this rule are discovered, including any documents received in response to the subpoenas, Marriott will timely produce them.

DATED: July 20, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 20, 2023, a true and correct copy of the foregoing document was caused to be served on all counsel of record who are deemed to have consented to electronic service via email pursuant Local Rule CV-5(d).

/s/ Jonathan L. Ko