

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

TEGRIS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 22-cv-5741
	)	
BRYCER, LLC and BRYCER	)	
MANAGEMENT, INC.,	)	
	)	
Defendants.	)	

**DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF
IN EXCESS OF FIFTEEN PAGES**

Defendants, Brycer, LLC and Brycer Management, Inc. (collectively "Defendants"), by and through their undersigned counsel, pursuant to Local Rule 7.1 for their Unopposed Motion for Leave to File Brief in Excess of Fifteen Pages, state as follows:

1. Counsel for Defendants has conferred with counsel for Plaintiff and Plaintiff does not oppose the relief requested in this Motion.
2. On October 19, 2022, Plaintiff filed a Complaint for Patent Infringement (the "Complaint"), alleging that Defendants have infringed U.S. Patent No. 11,126,966.
3. The issues raised in the Complaint are extensive and involve many legal arguments. A proper responsive pleading requires an in-depth analysis of the law applicable to this case and of the legal arguments set forth in the Complaint. Defendants have prepared their Motion to Dismiss; however, given the extent of the legal issues raised in the Complaint, Defendants require in excess of fifteen pages to fully respond to the arguments raised in the Complaint.

4. On January 6, 2023, Defendants filed their FED. R. CIV. P. 12(b)(6) MOTION TO DISMISS (the “Motion”), including 20 pages of argument. The Motion seeks the dismissal of the Complaint in its entirety. A copy of the Motion is also attached hereto as Exhibit A.

5. In accordance with Local Rule 7.1, the Motion includes a Table of Contents and Table of Authorities, which are also separately attached hereto as Exhibit B.

WHEREFORE, Defendants, Brycer, LLC and Brycer Management, Inc., respectfully request that this Court enter an order as follows:

- A. That Defendants are granted leave to file the Motion *instanter*; and
- B. For any further relief this Court deems just under the circumstances.

Respectfully submitted,

**BRYCER, LLC AND BRYCER
MANAGEMENT, INC.**

Defendants.

By: /s/ Richard Z. Wolf
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Defendants' Motion for Leave to File Brief in Excess of Fifteen Pages to be filed electronically in the United States District Court for the Northern District of Illinois on this 6th day of January 2023. Notice and a complete copy of this filing will be served upon all counsel of record by operation of the Court's CM/ECF electronic filing system.

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EXHIBIT A

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	)	
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DEFENDANTS' FED. R. CIV. P. 12(b)(6) MOTION TO DISMISS

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Statement of Facts.....	2
	A. The Asserted '966 Patent.....	2
	B. Tegriss's Complaint.....	2
III.	Legal Standard	3
	A. Pleading Requirements Under Rule 12(b)(6)	3
	B. Patent Eligibility	3
	C. Infringement Law.....	5
IV.	Argument	6
	A. The '966 Patent Is Patent-Ineligible	6
	1. The Asserted Claims of the '966 Patent are Directed to the Abstract Idea of Receiving, Storing, and Transmitting Information.....	6
	2. The Claims Fail to Recite an "Inventive Concept" at the Second Step of the <i>Alice</i> Test	13
	3. Tegriss's Allegations in the Complaint are Conclusory and Do Not Create a Plausible Fact Issue that Should Preclude Dismissal.	15
	B. Tegriss has Failed to State A Claim for Infringement of any Asserted Claim by Brycer's TCE Service.	16
	1. Tegriss has Failed to Plausibly Allege that, Using the TCE Service, "the owner of the asset, upon remotely accessing the fire hydrant management software compliance registry, may update and review the status of the assets."	16
	2. Tegriss has Failed to Plausibly Allege that the TCE Service "notif[ies] an owner...wherein the notice includes...a cost associated with the type of inspection."	18
V.	Conclusion	20

TABLE OF AUTHORITIES

Cases

<i>Advanced Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc.</i> , 261 F.3d 1329 (Fed. Cir.2001)	5
<i>Alice Corp. Pty. Ltd. v. CLS Bank Int'l</i> , 573 U.S. 208 (2014).....	1, 3, 4, 6, 9, 13, 15
<i>Affinity Labs of Tex., LLC v. DIRECTV, LLC</i> , 838 F.3d 1253 (Fed. Cir. 2016).....	5, 6, 8, 10, 14, 15
<i>Apple, Inc. v. Ameranth, Inc.</i> , 842 F.3d 1229 (Fed. Cir. 2016).....	5
<i>Atlas IP, LLC v. City of Naperville</i> , 15 C 10744, 2016 WL 3907029 (N.D. Ill. July 19, 2016).....	16, 18
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	3
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	3
<i>Berkheimer v. HP Inc.</i> , 881 F.3d 1360 (Fed. Cir. 2018).....	4, 5
<i>Bilski v. Kappos</i> , 561 U.S. 593 (2010).....	3
<i>Boom! Payments, Inc. v. Stripe, Inc.</i> , 839 Fed. App'x. 528 (Fed. Cir. 2021).....	15
<i>Bot M8 LLC v. Sony Corp. of Am.</i> , 4 F.4th 1342 (Fed. Cir. 2021)	18, 20
<i>BSG Tech LLC v. Buyseasons, Inc.</i> , 899 F.3d 1281 (Fed. Cir. 2018).....	5, 11, 15
<i>Charge Point, Inc. v. SemaConnect, Inc.</i> , 920 F.3d 759 (Fed. Cir. 2019).....	4, 5
<i>Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n</i> , 776 F.3d 1343 (Fed. Cir. 2014).....	5, 8

<i>CyberSource Corp. v. Retail Decisions, Inc.</i> , 654 F.3d 1366 (Fed. Cir. 2011).....	9, 10
<i>DDR Holdings, LLC v. Hotels.com L.P.</i> , 773 F.3d 1245 (Fed. Cir. 2014).....	5
<i>Design Ideas, Ltd. v. Target Corp.</i> , No. 20-cv03231, 2021 WL 6058698 (C.D. Ill. Dec. 21, 2021)	18
<i>Elec. Power Group, LLC v. Alstom S.A.</i> , 830 F.3d 1350 (Fed. Cir. 2016).....	4, 8, 9, 10, 13
<i>Enfish, LLC v. Microsoft Corp.</i> , 822 F.3d 1327 (Fed. Cir. 2016).....	5
<i>FairWarning IP, LLC v. Iatric Sys., Inc.</i> , 839 F.3d 1089 (Fed. Cir. 2016).....	5, 10, 11 12
<i>Intell. Ventures I LLC v. Cap. One Fin. Corp.</i> , 850 F.3d 1332 (Fed. Cir. 2017).....	6
<i>Intell. Ventures I LLC v. Symantec</i> , 838 F.3d 1307 (Fed. Cir. 2016).....	10
<i>Liqui-Box Corp. v. Scholle IPN Corp.</i> , 449 F. Supp. 3d 790 (N.D. Ill. 2020)	3, 17
<i>Mayo Collaborative Servs. v. Prometheus Labs., Inc.</i> , 566 U.S. 66 (2012).....	13, 14
<i>Miller Mendel, Inc. v. City of Anna, Tex.</i> , 2022 WL 1437686 (E.D. Tex. April 14, 2022).....	16
<i>Quad Env't Techs. Corp. v. Union Sanitary Dist.</i> , 946 F.2d 870 (Fed. Cir. 1991).....	16
<i>SAP Am., Inc. v. InvestPic, LLC</i> , 898 F.3d 1161 (Fed. Cir. 2018).....	8, 14
<i>Simio, LLC. v. FlexSim Software Prods., Inc.</i> , 983 F.3d 1353 (Fed. Cir. 2020).....	15
<i>Southwall Techs., Inc. v. Cardinal IG Co.</i> , 54 F.3d 1570 (Fed. Cir. 1995).....	5

<i>Synopsys, Inc. v. Mentor Graphics Corp.</i> , 839 F.3d 1138 (Fed. Cir. 2016).....	4, 9, 10
<i>In re TLI Commc'ns LLC Pat. Litig.</i> 823 F.3d 607 (Fed. Cir. 2016).....	4
<i>Trading Techs., Int'l, Inc. v. IBG LLC</i> , 921 F.3d 1084 (Fed. Cir. 2019).....	6, 13
<i>Wisk Aero LLC v. Archer</i> , 2022 WL 1157489 (N.D. Cal. April 19, 2022).....	16

Statutes

35 U.S.C. § 101.....	3
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I. INTRODUCTION

Tegris's Complaint should be dismissed for failure to state a claim for relief.

First, the claims of the asserted patent—United States Patent No. 11,126,966 (“the ’966 patent”)—are directed to the abstract idea of receiving, storing, and transmitting information over the “web” and are ineligible for patenting under 35 U.S.C. § 101.

The Supreme Court has long held that abstract ideas form the building blocks of all invention and allowing patents on them risks preemptions of entire fields of technology. And, simply taking an abstract idea and doing it “on a computer” is no more eligible for patenting than the underlying abstract idea itself. *Alice Corp. Pty. Ltd. v CLS Bank Int’l*, 573 U.S. 208, 223 (2014). Since *Alice*, the Court of Appeals for the Federal Circuit has repeatedly held that patent claims, including claims similar to those of the ’966 patent, are ineligible as directed to various categories of abstract ideas, without an inventive concept. Many of those ineligibility rulings are affirmances of dismissal orders at the pleadings stage.

The ’966 patent claims do nothing more than computerize the longstanding manual “paper” and “pencil” (’966 patent, col. 2, ll. 10-11) process of allowing multiple parties to review and update inspection records. There is nothing unconventional about the way this process is done; the Tegrise patent concedes it uses generic computer components in a generic way in order to put this database on the “web,” thereby allowing access by multiple stakeholders. *Id.* at col. 5, ll. 9-11. Accordingly, under *Alice* and its progeny, the ’966 patent is ineligible on its face, and no fact or claim construction disputes would change that conclusion.

Second, Tegrise has plead insufficient facts to plausibly allege that Brycer’s TCE service infringes any asserted claims. To the contrary, the facts Tegrise has plead confirm that TCE does **not** infringe the asserted claims, thus rendering futile any possible amendment.

The Court should therefore grant Brycer’s motion to dismiss, with prejudice.

II. STATEMENT OF FACTS

On October 19, 2022, Tegriss filed its complaint against Brycer alleging infringement of claims 8-14 of the '966 patent. ECF No. 1 ("Complaint"), ¶¶ 36–56.

A. The Asserted '966 Patent

The '966 patent describes methods for “using a web registry to track the inspection compliance of an owned asset” that includes notifying an asset owner “that an inspection is needed to comply with a code,” *e.g.*, a fire safety code. '966 patent, col. 3, ll. 8-11. The '966 patent focuses on a “fire hydrant” as a non-limiting example of an asset. *Id.* at col. 1, ll. 22-38.

In a “Background” section, the '966 patent explains that “[c]omputer software has been used in the past as a way for inspecting authorities to track fire hydrant usage.” *Id.* at col. 1, ll. 59-60. Per the patent, the disadvantage of using this software is that not all interested parties can access the local computer running the software. *Id.* at col. 2, ll. 19-33. The '966 patent explains that the systems and methods of its claimed web-based registry may be implemented with “general-purpose or special purpose computing system environments or configurations.” *Id.* at col. 5, ll. 9-11. Any “well-known” computing system would work. *Id.* at col. 5, ll. 11-20.

The '966 patent has three independent claims, each directed to “computer-implemented method[s]” of using fire hydrant management software and a web-based registry for tracking inspection compliance. *See, generally id.* at cols. 1, 5, and 8.

B. Tegriss's Complaint

Tegriss's Complaint alleges one count for “direct infringement” of “independent claim 8 [and] dependent claims 9–14” of the '966 patent. Complaint at 7, ¶ 39. Tegriss asserts that Exhibit 2 to its Complaint “illustrates Brycer's infringement of claim 8 through its The Compliance Engine [TCE] service offering.” *Id.* ¶ 40. Neither the Complaint nor Exhibit 2 (“Tegriss's Claim Chart”) alleges infringement under the doctrine of equivalents.

III. LEGAL STANDARD

“The law of this Circuit governs the procedural standards applicable to [this] motion . . . , but Federal Circuit precedent controls the substantive elements of Plaintiff’s patent infringement claim.” *Liqui-Box Corp. v. Scholle IPN Corp.*, 449 F. Supp. 3d 790, 796 (N.D. Ill. 2020).

A. Pleading Requirements Under Rule 12(b)(6)

To survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557, (2007)). To be “plausible on its face” a plaintiff’s factual allegations must support a reasonable inference of liability stronger than a mere possibility. *Iqbal*, 556 U.S. at 678-79.

B. Patent Eligibility

35 U.S.C. § 101 provides that “Whoever invents or discovers any new and useful process, machine, manufacture or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.”

While the “process, machine, manufacture, or composition of matter” language is written broadly, there are “three specific exceptions to § 101’s broad patent-eligibility principles: laws of nature, physical phenomena, and abstract ideas.” *Bilski v. Kappos*, 561 U.S. 593, 601 (2010) (internal citations omitted). The concern underlying these exclusions is “one of pre-emption.” *Alice*, 573 U.S. at 216. “Laws of nature, natural phenomena, and abstract ideas are the basic tools of scientific and technological work,” and pre-empting use of them through patenting would impede innovation “thereby thwarting the primary object of the patent laws.” *Id.*

The Court has set out a two-step test for determining whether a patent claim is eligible:

- (1) Is it directed to a “patent-ineligible concept[],” *i.e.*, a law of nature, natural phenomenon, or abstract idea?; and

(2) If so, do the particular 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?

Alice, 573 U.S. at 217.

“Ultimately, ‘the § 101 inquiry must focus on the language of the Asserted Claims themselves,’ *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016), and the specification cannot be used to import details from the specification if those details are not claimed.” *Charge Point, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 769 (Fed. Cir. 2019).

Since *Alice*, the Federal Circuit has articulated categories of “abstract ideas” that meet the first part of the *Alice* test. As is relevant to the ’966 patent, “collecting information, including when limited to particular content (which does not change its character as information), [is] within the realm of abstract ideas.” *Elec Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). Similarly, “analyzing information by steps people go through in their minds,” storing it in a generic database, and transmitting information to a computer user, are all “within the abstract idea category.” *Id.* at 1354; *In re TLI Communications LLC Patent Litigation*, 823 F.3d 607, 612-13 (Fed. Cir. 2016).

The second step of the *Alice* test is often referred to as the search for an inventive concept and is satisfied when the claim limitations “involve more than performance of well-understood, routine, [and] conventional activities previously known to the industry.” *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018) (internal citations omitted). Simply taking an abstract idea and doing it using a “generic computer implementation” does not render it patent-eligible. *Alice*, 573 U.S. at 222; *TLI Communications*, 823 F.3d at 614 (collecting cases). Nor does limiting the abstract idea to a “particular technological environment.” *Alice*, 573 U.S. at 223. An inventive concept requires something more, such as an improvement to computer technology itself, or solving an Internet-specific problem in a non-conventional manner. *See, e.g., Enfish, LLC v.*

Microsoft Corp., 822 F.3d 1327 (Fed. Cir. 2016); *DDR Holdings, LLC v. Hotels.com L.P.*, 773 F.3d 1245 (Fed. Cir. 2014).

Whether a claim supplies an inventive concept is a question of law that may include underlying factual determinations, such as whether a claim element or combination of elements is well-understood or conventional. *ChargePoint*, 920 F.3d at 773; *Berkheimer*, 881 F.3d at 1367. However, the patent specification itself often describes the invention using well-known generic components in a generic manner, thus allowing resolution at the motion to dismiss stage. *See, e.g., Apple Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1244 (Fed. Cir. 2016) (the specification described the hardware components as “typical and that the programming steps were well known.”); *ChargePoint*, 920 F.3d at 768 (affirming a Rule 12(b)(6) dismissal and holding that the asserted patent failed to recite an inventive concept because it did not suggest that the claimed technology “is improved from a technical perspective, or that it would operate differently than it otherwise could”). To this end, the Federal Circuit has repeatedly affirmed dismissals at the pleading stage on ineligibility grounds. *See, e.g., BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281 (Fed. Cir. 2018); *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253 (Fed. Cir. 2016); *ChargePoint*, 920 F.3d 759; *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343 (Fed. Cir. 2014); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089 (Fed. Cir. 2016).

C. Infringement Law

Direct infringement may be literal or under the doctrine of equivalents. *Advanced Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc.*, 261 F.3d 1329, 1336 (Fed.Cir.2001). To show literal infringement, “every limitation . . . in a claim must be found in an accused product exactly.” *Southwall Techs., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1575 (Fed. Cir. 1995).

IV. ARGUMENT

A. The '966 Patent Is Patent-Ineligible Under 35 U.S.C. § 101

The '966 patent is directed to a pure abstract idea. It involves nothing more than putting fire-hydrant inspection information on the “web,” thereby allowing different stakeholders to access it, update it, and receive notifications. Putting existing information (no matter what kind of information) on the Internet is not a patent eligible idea under well-established Supreme Court and Federal Circuit law. The Court should therefore dismiss Tegriss’s complaint.

1. The Asserted Claims of the '966 Patent are Directed to the Abstract Idea of Receiving, Storing, and Transmitting Information

“Stripped of excess verbiage,” *Intellectual Ventures I LLC v. Capital One Fin. Cop.*, 850 F.3d 1332, 1339 (Fed. Cir. 2017), the '966 patent is directed to nothing more than the abstract idea of allowing access to a database of records, allowing updating of those records, and transmitting information, similar to claims that the Federal Circuit has previously ruled are ineligible. *See, e.g., Affinity Labs*, 838 F.3d at 1261 (affirming Rule 12(b)(6) dismissal and holding that claims were ineligible because they were directed to the “conveyance and manipulation of information using wireless communication and computer technology”). The fact that the claim is “computer-implemented” is insufficient. *Alice*, 573 U.S. at 223; *Trading Technologies, Int’l, Inc. v. IBG LLC*, 921 F.3d 1084 (Fed. Cir. 2019) (“The fact that this is a ‘computer-based method’ does not render the claims non-abstract.”). Nor is it relevant whether the claim is limited to “fire hydrant management” as opposed to some other owned asset; the abstract idea is the same. *See, e.g., Affinity Labs* 838 F.3d at 1259 (“The Supreme Court and this court have repeatedly made clear that merely limiting the field of use of the abstract idea to a particular existing technological environment does not render the claims less abstract.”)

The following color-coded breakdown of asserted independent claim 8, with explanation

set out below, illustrates its abstract focus:¹

8. A computer-implemented method for using a fire hydrant management software and a web-based registry to track requisite inspection of an owned asset comprising:

granting remote access to a web-based registry system, wherein the web-based registry is configured to run a fire hydrant management software, to at least three classes of user, wherein the three classes of user comprise:

(1) an owner of an asset

(2) an approval authority

(3) an inspector

retrieving, by a computer-based fire hydrant management software system, real time records of assets from a database, the database being accessible and augmentable by a classes of user;

analyzing the records of assets from the database to identify notification events;

based on the analysis, notifying an owner of an asset of a notification event, wherein the notice includes a standard format description of the type of inspection, and a cost associated with the type of inspection, and wherein the notification event comprises a designatable interval in advance of an impending deadline for the inspection, and wherein the owner of the asset, upon remotely accessing the fire hydrant management software compliance registry, may update and review the status of the assets;

based upon the analysis, sending a standard format notice to the approval authority of the status of the assets assigned to the approval authority, and wherein the approval authority, upon accessing the web-based registry, may update and review the status of the assets assigned;

upon logging on to a password controlled website configured to provide access to the fire hydrant management software, providing to an inspector the owner selects, the selection based upon a list of qualified inspectors that are available to inspect the asset based upon attributes including proximity to the asset, a web-based template configured to describe the asset at each of the steps of the inspection;

receiving from the inspector, inspection information in specific response to the web-based template;

storing in a database in association with the asset, the inspection information, wherein the inspection information is accessible to the users, and updating the database in association with the asset based upon the inspection information;

¹ The non-color-coded language before the word “comprising” is called the preamble and is generally not limiting for purposes of a Section 101 analysis. But even if it is, this language does nothing other than summarize the abstract nature of the claim with the instruction to implement it on a “computer.”

transmitting to the approval authority, a standard format compliance report including noting compliance, wherein the compliance report includes, noting deficiencies in the asset and storing the noted deficiencies in association with the asset.

The claim language in red provides that different types of users can have access to a web-based registry system. Providing access to a database is a type of “manipulation of information” held to be abstract in *Affinity Labs*. 838 F.3d at 1261; *see also Content Extraction*, 776 F.3d at 1347 (affirming 12(b)(6) dismissal and holding that the claims were “drawn to the abstract idea of 1) collecting data, 2) recognizing certain data within the collected data set, and 3) storing that recognized data in a memory.”). The concept is no less abstract just because certain types of people have access to the system, or because the system might manage “fire hydrant” records. *Affinity Labs*, 838 F.3d at 1259 (“[L]imiting the field of use of the abstract idea to a particular existing technological environment does not render the claims less abstract.”).

The language in green recites retrieval and “analysis” of the records. This is all abstract. *Elec Power Grp.*, 830 F.3d at 1353-54 (“[W]e have treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.”); *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167-68 (Fed. Cir. 2018) (holding patent ineligible claims directed to “selecting certain information, analyzing it using mathematical techniques, and reporting or displaying the results of the analysis.”). Indeed, the claim does not limit the type of analysis required; it could just be the computer-implemented equivalent of an “analysis” a person might otherwise perform in their head, *e.g.*, determining when a next inspection is due based on the date of the last inspection.

The language in blue requires notifications be sent “based on the analysis.” Again, this is no different than what a human might do in their head after reviewing data in a database. A human could perform an “analysis,” such as checking the status of fire hydrant maintenance and send a notification (such as an email, or a phone call) to (1) an owner of an asset; (2) an approval

authority; and/or (3) an inspector selected by the owner. There is nothing in the claims that changes the abstract nature of this concept; it simply involves the transmission of information (e.g., a notification), which could, aside from the generic “computer” requirement in the claim, be accomplished by human speech (among other transmission mechanisms). *Elec Power Grp.*, 830 F.3d at 1353-54 (collecting cases) (holding that the particular “content” of the information being analyzed is irrelevant and that “merely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis”). The language in blue further allows an owner of the asset and an approval authority to update and review the status of the asset. Again, these claim elements are irrelevant to the Section 101 inquiry. An asset owner and approval authority could, absent the “computer” and “web” limitations, update records by hand with pencil, paper, and an eraser, or communicate them orally to a central bookkeeper. *See, e.g., CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371 (Fed. Cir. 2011) (“Methods which can be performed entirely in the human mind are unpatentable . . . because [they] embody the ‘basic tools of scientific and technological work’ that are free for to all men and reserved exclusively to none.”) (internal citations omitted); *Synopsis*, 839 F.3d at 1146-47 (holding claims unpatentable when they were “so broad as to read on an individual performing the claimed steps mentally or with pencil and paper.”). Indeed, the ’966 patent admits that its “web” registry has a paper/pencil analog. Col. 2, ll. 9-12.

And, per *Alice*, taking a manual or mental process and writing “apply it on a computer” or “do it on the web” does not render that process patent eligible. *See Alice*, 573 U.S. at 223. Looked at another way, these additional elements are nothing more than the manipulation and modification of information in a database, which the Federal Circuit has explained time and time

again, is completely abstract. *Elec Power Grp.*, 830 F.3d at 1353-54 (collecting cases).

The limitations in orange are no different from an abstract idea perspective than what has already been explained—they, again, simply relate to the organization of human activity and describe the transmission of information, which could have been accomplished in a pre-computer world with a series of phone calls and a piece of paper for record keeping. *CyberSource*, 654 F.3d at 1371 (methods performable in the human mind are abstract); *Synopsis*, 839 F.3d at 1146-47 (methods performable with pen and paper are abstract); *Intellectual Ventures I LLC v. Symantec*, 838 F.3d 1307, 1318 (Fed. Cir. 2016) (claims were directed to an electronic “post office,” akin to that employed for centuries by the United States Postal Service, and thus were abstract and ineligible “methods of organizing human activity.”)

To be more specific, the first limitation in “orange” requires receiving inspection information from the inspector. The ’966 patent specification even indicates that one way for the inspector to do this is using “pen and paper means.” Col. 8, ll. 61-63 (“Generally, if an inspector uses the pen and paper means for an inspection the inspector or the asset owner will update the registry manually using the data recorded on site.”).

The second and third limitations in orange are, for purposes of Section 101, the same as the first; they involve “storing” updated inspection information in a database, and then transmitting a report to an approval authority. This is nothing more than the storing and transmitting information, which is abstract. *FairWarning IP*, 839 F.3d at 1093-94 (affirming Rule 12(b)(6) dismissal and holding that claims were directed to a “combination” of abstract-idea categories” including “notifying a user when misuse [of patient health records] is detected.”). It makes no legal difference what type of information is transmitted to the approval authority, or in what format it comes. *Affinity Labs*, 838 F.3d at 1263 (limitations on the

“content” of the transmission of information “does not cross out of the abstract idea category”).

For context, claim 8 of the ’966 patent is substantively indistinguishable from other similar claims that the Federal Circuit has held to be ineligible at the pleading stage.

For example, in *BSG Tech LLC v. Buyseasons, Inc.*, the Federal Circuit affirmed the Rule 12(b)(6) dismissal of claims directed to indexing data, including claim 1 set out below:

A method of indexing and retrieving data being posted by a plurality of users to a wide area network, comprising:

Providing the users with a mechanism for posting the data as parametrized items;

Providing the users with listings of previously used parameters and previously used values for use in posting the data;

Providing the users with summary comparison usage information corresponding to the previously used parameters and values for use in posting the data; and

Providing subsequent users with the listings of previously used parameters and values, and corresponding summary comparison usage information for use in searching the network for an item of interest.

899 F.3d at 1284.

As with claim 8 of the ’966 patent, claim 1 of the patent at issue in *BSG Tech* involved posting, storing and retrieving data, and transmitting it to a different set of users (*i.e.*, “providing subsequent users....”). The Federal Circuit held that it was abstract, and was not saved either by the use of computer components or the limitation narrowing the transmitted information to “summary comparison usage information.” *Id.* at 1287 (“[W]e have never suggested that such minimal narrowing, by itself, satisfies *Alice*’s test.”).

The Federal Circuit’s decision in *FairWarning IP* is also instructive, including its discussion of claim 1 of the patent at issue, set out below:

1. A method of detecting improper access of a patient’s protected health information (PHI) in a computer environment, the method comprising:

generating a rule . . . that is indicative of improper access of the patient's PHI by

an authorized user wherein the improper access is an indication of potential snooping or identity theft of the patient's PHI, the authorized user having a pre-defined role comprising authorized computer access to the patient's PHI;

applying the rule to the audit log data to determine if an event has occurred, the event occurring if the at least one criterion has been met;

storing, in a memory, a hit if the event has occurred; and

providing notification if the event has occurred.

FairWarning IP, 839 F.3d at 1092 (emphasis added).

Although claim 1 in *FairWarning* related to monitoring of patient health records and not fire-hydrant maintenance and inspection, the abstract nature of the claim is indistinguishable from claim 1 of the '966 patent. The claim in *FairWarning* involves a method of generating a rule indicative of improper access of a patient's PHI by a certain type of user (an authorized user). And, like claim 1 of the '966, the claim at issue in *FairWarning* requires application of the rule, storing a result in memory, and providing notification if an event has occurred. The Federal Circuit held that it was all abstract, and that the district court was correct to dismiss the complaint at the pleading stage for failure to state a claim. As the Federal Circuit explained:

FairWarning's claims merely implement an old practice in a new environment. The claimed rules ask whether access of PHI, as reflected in the audit log data, are 1) "by a specific user," 2) "during a pre-determined time interval," or 3) "in excess of a specific volume." These are the same questions (though perhaps phrased with different words) that humans in analogous situations detecting fraud have asked for decades, if not centuries. Although FairWarning's claims require the use of a computer, it is this incorporation of a computer, *not* the claimed rule, that purportedly improves the existing technological process by allowing the automation of further tasks.

Id. at 1094-95.

In sum, claim 8 of the '966 patent is simply directed to a series of steps for updating a database of information and transmitting information when a series of events occurred. It uses generic computer components in a completely generic way. But for the generic computer

elements and the inherent benefits of the Internet, it could be performed in the human mind or with a pencil and paper. This is a classic “abstract idea” claim and fails the *Alice* test at Step 1. *See, e.g., Trading Technologies*, 921 F.3d at 1385 (“Like *Electric Power*, the purported advance ‘is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions.’ 830 F.3d at 1354. We thus conclude that the claims are directed to an abstract idea.”).

In addition to independent claim 8, Tegriss also asserts dependent claims 9-14. Complaint, ¶ 39. These dependent claims are similarly abstract and mainly just focus on the information being received, stored, or transmitted. Claim 9 further limits the “storing” step to particular information, whereas claim 10 relates to receiving and presenting multiple inspector bids. It is still just storing, receiving, and transmitting information, all of which is analogous to pre-computer inspection processes. *See Elec. Power Grp.*, 830 F.3d at 1353 (the particular content of information “does not change its character as information” and is “within the realm of abstract ideas.”). Claims 11 and 12 are similar and relate to scheduling an inspection, and receiving and storing photographs, respectively. Claims 13 and 14 add elements relating to remedying the deficiencies noted in a transmitted report. They are no different and, again, just computerize a conventional asset management process (*i.e.*, inspectors and/or approval authorities have always required fire hydrant deficiencies to be remedied).

2. The Claims Fail to Recite an “Inventive Concept” at the Second Step of the *Alice* Test

The second step of *Alice* requires the court to “consider the elements of each [asserted] claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78-79

(2012)). Step two “looks more precisely at what the claim elements add” to determine whether “they identify an inventive concept in the application of the ineligible matter to which . . . the claim is directed.” *SAP*, 898 F.3d at 1167 (internal citation omitted). The inventive concept must be more than “well-understood, routine, conventional activity.” *Mayo*, 566 U.S. at 73.

Here, the process recited by claims 8-14 invokes only “generic computer implementation, which is insufficient to transform a patent-ineligible abstract idea into a patent-eligible invention.” *Affinity Labs*, 838 F.3d at 1262-63 (internal citations omitted). Indeed, the ’966 patent is clear that the web-registry system and method is “operational with numerous [] general-purpose or special purpose computing system environments or configurations.” Col. 5, ll. 9-11. The ’966 patent provides a laundry list of “well-known” computer systems that would “be suitable for use with embodiments of the invention.” *Id.* at col. 5, ll. 11-14. In other words, the claims do not purport to cover a new type of computer system, database, or otherwise affect the functionality of any computer-related product. Instead, they merely computerize (using general purpose computing components) what was otherwise a well-known approach to fire-hydrant (and other asset) inspection management, including giving access to inspection records to each of an owner, an approval authority, and an inspector. The specification admits as much in the “Background” discussion of prior systems. Col. 1, ll. 39-48.

The specification indicates that, because of cost and a lack of organization, many departments “rely on pencil, paper, calendars, and file cabinets.” Col. 2, ll. 9-12. To remedy this, the ’966 patent sought to computerize this pencil and paper approach and create a “global registry” accessible on the Internet with a “standard format” for collecting fire hydrant information. Col. 2, ll. 13-34; Col. 3, ll. 8-24. Even if the ’966 patent accomplished this, it does not constitute an inventive concept; the ’966 patent claims simply took the prior art “pencil” and

“paper” approach and “applied it on a computer” using the “web,” which inherently allows access to multiple parties in remote locations. This does not make it patent eligible since the web and computer functionality are all (admittedly, per the patent specification) conventional and applied in conventional ways. *Alice*, 573 U.S. at 223, 225; *Affinity Labs*, 838 F.3d at 1263 (collecting cases). Moreover, the concept of allowing access to a database of fire hydrant records, allowing updating of those records, and transmitting information cannot serve as the inventive concept since it is the essence of the abstract idea itself. *BSG Tech LLC*, 899 F.3d at 1290 (“[A] claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept . . .”).

Simply put, claims 8-14 are directed to nothing more than performing an abstract idea on a computer with a “web” registry. This is not an inventive concept and the claims are ineligible.

3. Tegriss’s Allegations in the Complaint are Conclusory and Do Not Create a Plausible Fact Issue that Should Preclude Dismissal.

Nothing in Tegriss’s Complaint should preclude dismissal. *See* Complaint, ¶¶ 41-52.

First, the majority if not all of Tegriss’s Section 101 allegations, including ¶¶ 43-52, are simply conclusions that the Court can and should disregard. *Simio, LLC v. FlexSim Software Products, Inc.*, 983 F.3d 1353, 1365 (“We disregard conclusory statements when evaluating a complaint under Rule 12(b)(6).”); *Boom! Payments, Inc. v. Stripe, Inc.*, 839 Fed. Appx. 528, 533 (Fed. Cir. 2021) (“Boom’s amended complaint repeatedly asserts that its claims are not routine or conventional but does not provide plausible factual allegations to support those assertions.”).

Second, the Court should not give any deference to the findings of the single U.S. Patent Office examiner during prosecution. Courts routinely hold patents to be ineligible after allowance by the USPTO; by definition, all patents held ineligible by federal courts were previously allowed and issued, notwithstanding Section 101. *See, e.g., Wisk Aero LLC v.*

Archer, 2022 WL 1157489, at *8, n. 2 (N.D. Cal. April 19, 2022) (“Wisk argued that the patent examiner considered the issue of abstraction and determined that the claims were tied to a practical application. But, now that the issues have been through the crucible of a fully briefed adversarial challenge, I find otherwise for the reasons explained.”); *Miller Mendel, Inc. v. City of Anna, Texas*, 2022 WL 1437686, at *5, 8-9 (E.D. Tex. April 14, 2022) (granting Rule 12(c) motion of patent ineligibility notwithstanding the fact that, post-*Alice*, the patent owner had overcome a Section 101 rejection during prosecution); *Quad Environmental Technologies Corp. v. Union Sanitary Dist.*, 946 F.2d 870, 876 (Fed. Cir. 1991) (“The courts are the final arbiter of patent validity and, although courts may take cognizance of, and benefit from, the proceedings before the patent examiner, the question is ultimately for the courts to decide, without deference to the rulings of the patent examiner.”).

B. Tegriss has Failed to State A Claim for Infringement of any Asserted Claim by Brycer’s TCE Service.

Tegriss’s Complaint alleges Brycer’s TCE service directly and literally infringes independent claim 8 and claims 9-14, which depend from claim 8 (collectively, the “asserted claims”). Complaint, ¶¶ 39–40.² Accordingly, to state its claim, Tegriss must plausibly plead that every limitation in representative claim 8 can be literally found in TCE. *Atlas IP*, 2016 WL 3907029, at *3. Tegriss has not done so and cannot do so.

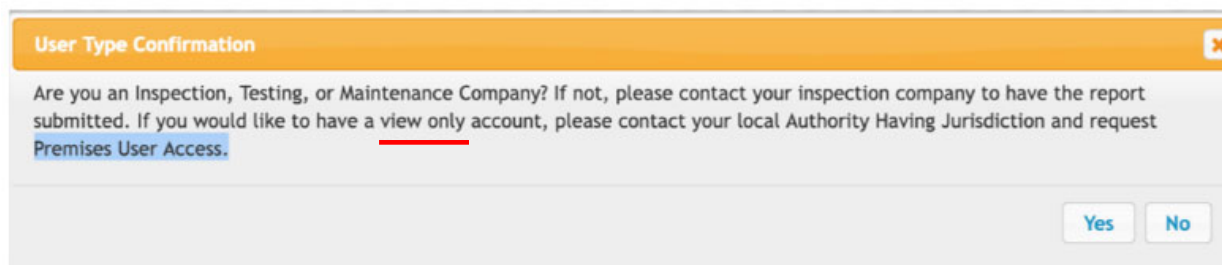
1. Tegriss has Failed to Plausibly Allege that, Using the TCE Service, “the owner of the asset, upon remotely accessing the fire hydrant management software compliance registry, may update and review the status of the assets.”

The asserted claims require that the *owner* of an asset managed by the fire hydrant

² The Complaint does not allege that the accused products practice, or contain, an equivalent of, any limitation, and thus do not state a claim under the doctrine of equivalents. *See Atlas IP, LLC v. City of Naperville*, 15 C 10744, 2016 WL 3907029, at *3 (N.D. Ill. July 19, 2016).

management software be able to “update and review the status of the asset[.]” “upon remotely accessing the fire hydrant management software compliance registry.” Even assuming, without conceding, that the TCE service includes a “fire hydrant management software compliance registry,” Tegriss fails to plausibly plead that TCE permit an “owner” to perform these steps.

Tegriss’s Complaint identifies three (and only three) classes of TCE user: “inspection company,” local “Authority Having Jurisdiction,” *e.g.*, a fire department, and “Premises User.”



Complaint, Ex. 2 at 6 (red line added and discussed below; blue annotation in original).

The blue annotation in the above dialog box was added by Tegriss, ostensibly to identify TCE’s alleged “owner of an asset” class of user.³

Next, on pages 12–16 of its Claim Chart (Complaint, Ex. 2), Tegriss provides excerpts from a Brycer response to a City of Tumwater “Request for Proposal.” These excerpts are charted in connection with, and supposedly show that the TCE practices, the limitation of claim 8: “the owner of the asset, upon remotely accessing the fire hydrant management software compliance registry, may update and review the status of the assets.” ’966 patent, cl. 8.

Nothing in these cited excerpts even reference the aforementioned “Premises User” (the

³ The original (unannotated) is provided at Ex. 1 to the Declaration of Matthew G. Berkowitz filed herewith as Exhibit A. *See Liqui-Box Corp.*, 449 F. Supp. at 796 (In deciding a Rule 12(b)(6) motion to dismiss, “[t]he court may consider the complaint, documents that are attached to the complaint, documents that are central to the complaint and referred to in it, and information that is properly subject to judicial notice.” (internal quotations omitted)).

supposed “owner of the asset”) class of accounts. Nor do the excerpts show that “upon remotely accessing the fire hydrant management software compliance registry,” such Premises Users “may update ... the status of the assets,” as required by claim 8. These omissions alone are sufficient to establish that Tegriss has failed to state a claim for infringement. *Atlas IP, LLC*, 2016 WL 3907029, at *3; *Design Ideas, Ltd. v. Target Corp.*, No. 20-cv03231, 2021 WL 6058698, at *4-5 (C.D. Ill. Dec. 21, 2021).

Tegriss’s pleadings, however, suffer from an even greater flaw— they show that the “owner of an asset” is affirmatively *not* given permission to “update ... the status of assets” when remotely accessing the Brycer TCE system, as claim 8 requires. Instead, the excerpt at page 6 of Tegriss’s Claim Chart (reproduced above) states that “Premises Users,” *i.e.*, Tegriss’s alleged asset owners, are granted “view only” access to TCE (shown in red), and that even that limited access is only granted upon request.

It is, of course, illogical and unreasonable to conclude that TCE users having “view only” access can “update” asset status. So, Tegriss has not only failed to plausibly allege that TCE infringes its asserted claims; it has, in fact, plead that TCE can *not* infringe those claims. *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1354 (Fed. Cir. 2021) (“Where, as here, the factual allegations are actually *inconsistent* with and contradict infringement, they are likewise insufficient to state a plausible claim. As we have said before, while a plaintiff’s pleading obligations are not onerous, it is possible that, in pleading its claims, a plaintiff may find it has pleaded itself out of court.” (emphasis in original) (internal quotations omitted)).

2. Tegriss has Failed to Plausibly Allege that the TCE Service “notif[ies] an owner...wherein the notice includes...a cost associated with the type of inspection.”

Claim 8 also requires that the owner of an asset receive notices in advance of inspection deadlines “wherein the notice includes a . . . cost associated with the type of inspection.” The

only facts that Tegriss pleads in alleging that TCE meets this limitation are again contained on pages 12–16 of its Claim Chart. Of the various excerpts presented on these pages, Tegriss identifies only one as disclosing a “notice of costs.” Specifically, Tegriss alleges:

The following image from Brycer's Tumwater RFP response, page 25 shows a sample notice of costs associated with each type of inspection.

System Type	Submittal Option	Price	Billing Frequency
5-Year Obstruction Sprinkler	Annual	\$15.00	Annual
Commercial Kitchen Exhaust Cleaning	Annual, Semi-Annual, Quarterly, Monthly	\$15.00	Per Submittal
Emergency Power Generator	Annual	\$15.00	Annual
Fire Alarm	Annual, Semi-Annual, Quarterly, Monthly	\$15.00	Annual
Fire Escape	Annual, 5-Year	\$15.00	Annual
Fire Pump	Annual, Quarterly, Monthly, Weekly	\$15.00	Annual
Hood Suppression System	Semi-Annual	\$15.00	Per Submittal
Paint/Spray Booth Suppression	Annual, Semi-Annual	\$15.00	Per Submittal
Private Fire Hydrant	Annual	\$15.00	Annual
Smoke Control System	Annual	\$15.00	Annual
Special Suppression	Annual, Semi-Annual	\$15.00	Per Submittal
Sprinkler System	Annual, Quarterly, Monthly	\$15.00	Annual
Standpipe	Annual, 5-Year	\$15.00	Annual

Reports Submitted after 31 days of inspection date will be charged an additional \$5.00

Revised November 2, 2020

Complaint, Ex. 2 at 14.

But the costs identified in this excerpted portion of the City of Tumwater RFP response are **not** costs associated with the type of inspection that is due. At most, this show that inspectors incur a flat \$15 fee for filing inspection reports. This is confirmed by the RFP text following Tegriss's excerpted portion—text omitted by Tegriss but included in the cited document.

Pricing Breakdown: There is no cost to the City of Tumwater for the use of the solution. The \$15 fee is charged to the ITM Service Providers when uploading a report to the Fire Department via The Compliance Engine platform on a per system, per building, per code basis. For example, BRYCER does not charge per sprinkler riser or per hood. If an ITM service provider performs quarterly sprinkler inspections, BRYCER does not charge for each quarterly report, only the annual. Additionally, BRYCER does not charge the contractor of record for deficiency repair submissions.

Ex. 2 to Declaration of Matthew G. Berkowitz at 25.

Further, Tegriss does not plead any facts suggesting that a “cost associated with [a] type of inspection” is included in notices to asset owners, as the asserted claims require. Rather, Tegriss pleads “The following image from Brycer's Tumwater RFP response, page 18 shows a sample standard format notification [sic] to an owner of an asset due for inspection:”

YOUR DEPARTMENT NAME 1234 STREET ADDRESS CITYOF, XX 99999		System Type - Contractor of Record: SYSTEM TESTING COMPANY (555) 555-5555 THEFIREMAN@COMPANY.COM
MONTH DAY, YEAR		
BUILDING IN YOUR CITY 1234 MAIN RD YOUR CITY, IL 60540		
Re: SYSTEM TYPE INSPECTION RENEWAL - 1234 MAIN RD, YOUR CITY, STATE ZIPCODE		
Dear Building Occupant/Owner:		
In accordance with the (YOUR CODE), our records indicate the SYSTEM TYPE is <u>coming due</u> for inspection by a licensed company and must be tested within the month of your renewal date which is 01/21/20 .		
It is the responsibility and requirement of the inspection company testing your system to submit all test reports to us via the web at www.thecomplianceengine.com .		
If you have questions regarding this notification, please contact our Compliance Program Partner BRYCER LLC at 630-413-9511 or via email at tce@mybrycer.com		
Sincerely Yours in Life & Fire Safety,		
DIGITAL SIGNATURE		
YOUR NAME YOUR TITLE YOUR DEPARTMENT NAME		

Complaint, Ex. 2 at 13.

As is evident from the above sample letter, no cost information is included in the notice sent to asset owners. Tegriss's Complaint fails to plausibly state a claim for infringement for this additional reason. In fact, Tegriss has once again plead facts suggesting that TCE does *not* infringe the asserted claims, and should, therefore, be dismissed with prejudice. *Bot M8 LLC*, 4 F.4th at 1354.

V. CONCLUSION

Tegriss's Complaint should be dismissed with prejudice because (i) the asserted claims are patent ineligible on their face under 35 U.S.C. § 101, and (ii) the Complaint pleads facts establishing that Brycer's TCE service does not infringe the asserted claims.

Dated: January 6, 2023

Respectfully submitted,

**BRYCER, LLC AND BRYCER
MANAGEMENT, INC.**

Defendants.

By: /s/ Richard Z. Wolf
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Defendants' Fed. R. Civ. P. 12(B)(6) Motion to Dismiss to be filed electronically in the United States District Court for the Northern District of Illinois on this 6th day of January 2023. Notice and a complete copy of this filing will be served upon all counsel of record by operation of the Court's CM/ECF electronic filing system.

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EXHIBIT B

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Statement of Facts.....	2
	A. The Asserted '966 Patent.....	2
	B. Tegriss's Complaint.....	2
III.	Legal Standard	3
	A. Pleading Requirements Under Rule 12(b)(6)	3
	B. Patent Eligibility	3
	C. Infringement Law.....	5
IV.	Argument	6
	A. The '966 Patent Is Patent-Ineligible	6
	1. The Asserted Claims of the '966 Patent are Directed to the Abstract Idea of Receiving, Storing, and Transmitting Information.....	6
	2. The Claims Fail to Recite an "Inventive Concept" at the Second Step of the <i>Alice</i> Test	13
	3. Tegriss's Allegations in the Complaint are Conclusory and Do Not Create a Plausible Fact Issue that Should Preclude Dismissal.	15
	B. Tegriss has Failed to State A Claim for Infringement of any Asserted Claim by Brycer's TCE Service.	16
	1. Tegriss has Failed to Plausibly Allege that, Using the TCE Service, "the owner of the asset, upon remotely accessing the fire hydrant management software compliance registry, may update and review the status of the assets."	16
	2. Tegriss has Failed to Plausibly Allege that the TCE Service "notif[ies] an owner...wherein the notice includes...a cost associated with the type of inspection."	18
V.	Conclusion	20

TABLE OF AUTHORITIES

Cases

<i>Advanced Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc.</i> , 261 F.3d 1329 (Fed. Cir.2001)	5
<i>Alice Corp. Pty. Ltd. v. CLS Bank Int'l</i> , 573 U.S. 208 (2014).....	1, 3, 4, 6, 9, 13, 15
<i>Affinity Labs of Tex., LLC v. DIRECTV, LLC</i> , 838 F.3d 1253 (Fed. Cir. 2016).....	5, 6, 8, 10, 14, 15
<i>Apple, Inc. v. Ameranth, Inc.</i> , 842 F.3d 1229 (Fed. Cir. 2016).....	5
<i>Atlas IP, LLC v. City of Naperville</i> , 15 C 10744, 2016 WL 3907029 (N.D. Ill. July 19, 2016).....	16, 18
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	3
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	3
<i>Berkheimer v. HP Inc.</i> , 881 F.3d 1360 (Fed. Cir. 2018).....	4, 5
<i>Bilski v. Kappos</i> , 561 U.S. 593 (2010).....	3
<i>Boom! Payments, Inc. v. Stripe, Inc.</i> , 839 Fed. App'x. 528 (Fed. Cir. 2021).....	15
<i>Bot M8 LLC v. Sony Corp. of Am.</i> , 4 F.4th 1342 (Fed. Cir. 2021)	18, 20
<i>BSG Tech LLC v. Buyseasons, Inc.</i> , 899 F.3d 1281 (Fed. Cir. 2018).....	5, 11, 15
<i>Charge Point, Inc. v. SemaConnect, Inc.</i> , 920 F.3d 759 (Fed. Cir. 2019).....	4, 5
<i>Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n</i> , 776 F.3d 1343 (Fed. Cir. 2014).....	5, 8

<i>CyberSource Corp. v. Retail Decisions, Inc.</i> , 654 F.3d 1366 (Fed. Cir. 2011).....	9, 10
<i>DDR Holdings, LLC v. Hotels.com L.P.</i> , 773 F.3d 1245 (Fed. Cir. 2014).....	5
<i>Design Ideas, Ltd. v. Target Corp.</i> , No. 20-cv03231, 2021 WL 6058698 (C.D. Ill. Dec. 21, 2021)	18
<i>Elec. Power Group, LLC v. Alstom S.A.</i> , 830 F.3d 1350 (Fed. Cir. 2016).....	4, 8, 9, 10, 13
<i>Enfish, LLC v. Microsoft Corp.</i> , 822 F.3d 1327 (Fed. Cir. 2016).....	5
<i>FairWarning IP, LLC v. Iatric Sys., Inc.</i> , 839 F.3d 1089 (Fed. Cir. 2016).....	5, 10, 11 12
<i>Intell. Ventures I LLC v. Cap. One Fin. Corp.</i> , 850 F.3d 1332 (Fed. Cir. 2017).....	6
<i>Intell. Ventures I LLC v. Symantec</i> , 838 F.3d 1307 (Fed. Cir. 2016).....	10
<i>Liqui-Box Corp. v. Scholle IPN Corp.</i> , 449 F. Supp. 3d 790 (N.D. Ill. 2020)	3, 17
<i>Mayo Collaborative Servs. v. Prometheus Labs., Inc.</i> , 566 U.S. 66 (2012).....	13, 14
<i>Miller Mendel, Inc. v. City of Anna, Tex.</i> , 2022 WL 1437686 (E.D. Tex. April 14, 2022).....	16
<i>Quad Env't Techs. Corp. v. Union Sanitary Dist.</i> , 946 F.2d 870 (Fed. Cir. 1991).....	16
<i>SAP Am., Inc. v. InvestPic, LLC</i> , 898 F.3d 1161 (Fed. Cir. 2018).....	8, 14
<i>Simio, LLC. v. FlexSim Software Prods., Inc.</i> , 983 F.3d 1353 (Fed. Cir. 2020).....	15
<i>Southwall Techs., Inc. v. Cardinal IG Co.</i> , 54 F.3d 1570 (Fed. Cir. 1995).....	5

<i>Synopsys, Inc. v. Mentor Graphics Corp.</i> , 839 F.3d 1138 (Fed. Cir. 2016).....	4, 9, 10
<i>In re TLI Commc'ns LLC Pat. Litig.</i> 823 F.3d 607 (Fed. Cir. 2016).....	4
<i>Trading Techs., Int'l, Inc. v. IBG LLC</i> , 921 F.3d 1084 (Fed. Cir. 2019).....	6, 13
<i>Wisk Aero LLC v. Archer</i> , 2022 WL 1157489 (N.D. Cal. April 19, 2022).....	16

Statutes

35 U.S.C. § 101.....	3
----------------------	---

TABLE OF CONTENTS

TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. STATEMENT OF FACTS.....	1
A. The Novel Invention of the ‘966 Patent	1
B. The Asserted Claims.....	4
C. Patent Eligibility During Prosecution of the ‘966 Patent	5
III. STATEMENT OF LAW AND ARGUMENT.....	7
A. Legal Standards Motion to Dismiss.....	7
B. Patent Eligible Subject Matter	7
1. <i>Alice</i> step one	8
2. <i>Alice</i> step two.....	12
C. The Complaint States a Claim for Infringement	17
1. Tegriss plausibly alleges that, using the TCE Service, “the owner of the asset, upon remotely accessing the fire hydrant management software compliance registry, may update and review the status of the assets.”	17
2. Tegriss plausibly allege the TCE Service “notif[ies] an owner...wherein the notice includes...a cost associated with the type of inspection.”	18
D. Tegriss Should be Granted Leave to Amend, if Necessary.....	19
IV. CONCLUSION.....	20

TABLE OF AUTHORITIES

Cases

<i>Aatrix Software, Inc. v. Green Shades Software, Inc.</i> , 882 F.3d 1121 (Fed. Cir. 2018)	18
<i>Affinity Labs of Tex. v. DIRECTV, LLC</i> , 838 F.3d 1253 (Fed. Cir. 2016)	9
<i>Alice Corp. Pty. Ltd. v. CLS Bank Int’l.</i> , 573 U.S. 208, 217 (2014)	8, 12
<i>AnchorBank, FSB v. Hofer</i> , 649 F.3d 610 (7th Cir. 2011)	7
<i>BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC</i> , 827 F.3d 1341 (Fed. Cir. 2016)	12
<i>Celgene Corp. v. Mylan Pharm., Inc.</i> , 17 F.4th 1111 (Fed. Cir. 2021)	20
<i>Core Wireless Licensing S.A.R.L. v. LG Elecs. Inc.</i> , 880 F.3d 1356 (Fed. Cir. 2018)	9, 10
<i>Data Engine Techs. LLC v. Google LLC</i> , 906 F.3d 999 (Fed. Cir. 2018)	8
<i>EcoServices, LLC v. Certified Aviation Serv., LLC</i> , 830 Fed. Appx. 634 (Fed. Circ. 2020)	10
<i>Enfish, LLC v. Microsoft Corp.</i> , 822 F.3d 1327 (Fed. Cir. 2016)	8, 12
<i>Finjan, Inc. v. Blue Coat Sys.</i> , 879 F.3d 1299 (Fed. Cir. 2018)	9, 10
<i>Firestone Fin. Corp. v. Meyer</i> , 796 F.3d 822 (7th Cir. 2015)	7
<i>Gaelco S.A. v. Arachnid 360, LLC</i> , 293 F. Supp. 3d 783 (N.D. Ill. 2017)	8
<i>Gibson v. City of Chicago</i> , 910 F.2d 1510 (7th Cir. 1990)	17

<i>Innovaport LLC v. IKEA N. Am. Servs., LLC</i> , 2022 U.S. Dist. LEXIS 139430 (E.D. Wis. Aug. 5, 2022)	10
<i>Intellectual Ventures I LLC v. Capital One Fin. Corp.</i> , 850 F.3d 1332 (Fed. Cir. 2017)	9
<i>Johnson v. City of Shelby</i> , 574 U.S. 10 (2014)	17
<i>Killingsworth v. HSBC Bank Nevada, N.A.</i> , 507 F.3d 614 (7th Cir. 2007)	17
<i>Kove Io, Inc. v. Amazon Web Servs.</i> , 448 F. Supp. 3d 849 (N.D. Ill. 2020)	10
<i>McRO, Inc. v. Bandai Namco Games Am. Inc.</i> , 837 F.3d 1299 (Fed. Cir. 2016)	11
<i>Runnion ex rel. Runnion v. Girl Scouts of Greater Chicago and Northwest Indiana</i> , 786 F.3d 510 (7th Cir. 2015)	21
<i>Thales Visionix Inc. v. United States</i> , 850 F.3d 1343 (Fed. Cir. 2017)	11
<i>White v. Illinois State Police</i> , 15 F.4th 801 (7th Cir. 2021).....	21
Statutes	
35 U.S.C. § 101.....	5, 8, 12
Rules	
Fed. R. Civ. P. 15(a)(2).....	20
Fed. R. Civ. P. 12(b)(6).....	7, 17

I. INTRODUCTION

The Complaint (ECF #1) states a plausible claim for infringement of U.S. patent 11,126,966 (the “’966 Patent”) against Brycer, LLC and Brycer, Inc. (collectively “Brycer”). Brycer’s patent-eligibility arguments require dissecting the claim limitations one-by-one rather than looking at the Claims¹ as whole. The Claims are like those that courts have found directed to patent-eligible subject matter. Even if the Court concludes the Claims are directed to patent-ineligible concepts, they recite inventive steps sufficient to ensure the ’966 Patent, in practice, amounts to significantly more than a patent on an ineligible concept itself. Tegriss’s invention claimed in the ’966 Patent revolutionized the industry because it did not employ conventional and well-understood techniques.

Brycer’s arguments regarding infringement implicate issues of claim construction. When the Court accepts Tegriss’s allegations as true, the Complaint states a plausible claim for infringement and puts Brycer on notice of those claims. Brycer’s arguments cannot be resolved at the motion to dismiss stage. The Court should deny Brycer’s Motion to Dismiss.

II. STATEMENT OF FACTS

A. The Novel Invention of the ’966 Patent

Tegriss’s patented method solves industry problems by tracking assets and prompting collaboration from stakeholders, namely, asset owner, relevant approval

¹ Tegriss uses the term “Claims” to include the Asserted Claims, including independent claim 8 and dependent claims 9 – 14. (ECF # 1, ¶ 39).

authority, and inspector. (ECF # 1, Complaint, ¶ 34). The '966 Patent describes novel combinations of methods for using a web registry² to track the inspection compliance of an asset. The '966 Patent provides improvements over prior art methods through an improved user database and interface. Those methods include: (1) notifying an owner of an asset that an inspection is needed to comply with a code; (2) electronically transmitting a list of at least one qualified inspector to a user; (3) receiving a completed inspection uploaded from an inspector; (4) transmitting the completed inspection to an approving authority; (5) completing a monetary transaction between the asset owner and the inspector when the inspection is approved by the approving authority;³ (6) providing a system for a web-based compliance registry including a database configured to store owned asset information; (7) providing a user interface in data communication with the database to show owned asset information on the display in real-time; and (8) providing a handheld device configured to wirelessly connect to the user interface and with the database to input and view owned asset data wirelessly and specific information based on its global position. (ECF # 1, ¶ 38).

Using a fire hydrant example, fire fighters had no access to inspection information in real-time to determine which hydrants to use. (ECF # 1-1, '966

² A web-based registry is a system comprising, *inter alia*, a client device connected to the internet through a network. The client device accesses a web-based compliance registry configured to show information on inspection compliance for an asset. The registry presents to the user as a web interface, which is linked to a database containing web-based compliance registry information. (ECF # 1-1, 7:6-23 discussing Fig. 3).

³ The Claims currently asserted against Brycer do not require completing a monetary transaction. Discovery may show how Brycer performs monetary transactions.

Patent, 1:19-58). Pre-existing inspections did not record data such as water quality, GPS location, or condition, did not record requests for maintenance or improvements, and did not communicate with each other or a global web registry. (*Id.* at 1:59-2:5). Prior systems did not combine data about a hydrant, did not allow stakeholders to communicate with each other in a unified interface for electronic devices, and did not allow fire fighters to access or use that data in real-time. (*Id.* at 2:5-8). The person who inputted the data was not the person who used that data, the software was installed on a specific computer, and the system of inputting and using data relied on the location and type of the specific computer. (*Id.* at 2:19-23). Pre-existing software did not record all available data for a hydrant upon an inspection. (*Id.* at 2:50-51).

Without inspections, a fire hydrant may not operate properly in an emergency. (*Id.* at 3:60-62). The claimed methods allow fire fighters to use the information in real-time enroute to a fire to determine which hydrants are available for use. (*Id.* at 4:2-8). One embodiment of the invention comprises a series of steps to ensure the inspection takes place and the results recorded online in the web-based registry. (*Id.* at 4:10-13). The registry allows a user with a global positioning system to access and view the status of hydrants. (*Id.* at 4:17-20).

The claimed methods allow government agencies, property owners, insurance bureaus, businesses, and the public to provide information regarding hydrant condition, location, and water quality. (*Id.* at 10:10-13). One important purpose permits fire fighters, before arriving at a fire, to assess the hydrant and water

conditions and to obtain a visual reference for locating hydrants. (*Id.* at 10:13-19). This practical application improves a fire fighter's ability to extinguish a fire and save more lives than was possible with prior art systems. (*Id.* at 10:19-21).

The '966 Patent claims specific methods to resolve specific industry problems. The Claims combine resources from three parties that traditionally had different resources, motivation, timing, and limitations, in a manner that securely stores, modifies, and transmits data without risk of public disclosure, as would exist in a system performed by manual means (even if the parties could be motivated to collaborate in such fashion). The claimed methods automate key functions of compliance precisely in real-time when it is most meaningful for each user's best interests. The claimed methods are directed to a complex engine that automates enforcement of inspection compliance to specific users in real-time without manual intervention. The real-life results are palpable, with historical compliance rates increasing by as much as 72% in those jurisdictions using the patented system. (ECF 1-3, PageID#:69).

B. The Asserted Claims

The Complaint alleges infringement of claims 8 -14. Claims 9-14 recite additional limitations not found in claim 8. Claim 9 requires storing a new deadline date. Claim 10 adds receiving bids to perform a suitable asset inspection from a group of qualified inspectors and presenting to the owner a compilation of the bids for selection of the inspector. Claim 11 adds scheduling the asset inspection based on the impending deadline, the inspector's availability, and the asset availability. Claim 12 adds receiving, from the inspector, photographs of the asset or components

of the asset and storing the photographs and the date of the inspection. Claim 13 adds selecting a remedy deficiency deadline based on the deficiency and the date of the inspection and storing the remedy deficiency deadline. Claim 14 adds receiving bids to remedy the deficiency from a group of qualified contractors and presenting to the owner a compilation of the bids for selection of a contractor. (ECF # 1-1, 16:14-47). These additional steps are performed by the computer implemented method using the fire hydrant software and the registry. (*Id.* at 15:16-18).

C. Patent Eligibility During Prosecution of the '966 Patent

The patent examiner initially rejected the claims under 35 U.S.C. § 101, arguing they were directed to unpatentable subject matter. (ECF # 1, ¶ 41). After Tegriss amended the claims, the examiner withdrew the § 101 rejection. (*Id.*, ¶ 41). The examiner stated the claimed process does not recite a mental process or any mathematical concept but rather “certain methods of organizing human activity grouping.” (*Id.*, ¶ 41 & ECF # 1-3, PageID#:88-9). The USPTO examiner concluded:

[T]he combination of additional elements use the fire hydrant management software in a specific manner over prior art systems by allowing remote users to process inspections in a standard format, track inspection compliance, and pay for inspection of an owned asset. The claim as a whole integrates the certain method of organizing human activity into a practical application.

(ECF # 1-3, PageID#:90).

The Claims contain combinations of additional elements that integrate methods of organizing human activity into a practical application. (ECF # 1, ¶ 42). The combinations of additional elements use the fire hydrant management software in a specific manner that allows remote users to process inspections in a standard

format, track inspection compliance, and pay for inspection of an owned asset. (ECF # 1, ¶ 44 & ECF # 1-3, PageID#:90). The additional elements of the Claims transform their nature into a patent-eligible application of that idea. (ECF # 1, ¶ 45 & ECF # 1-3, PageID#:90).⁴

In practice, the Claims amount to significantly more than a patent on an ineligible concept. (ECF # 1, ¶ 46). The Claims do not broadly and generically claim use of the Internet to perform an abstract business practice. (*Id.* at ¶ 47). When the limitations are taken together as an ordered combination, the Claims recite inventions that are not merely the routine or conventional use of the Internet. (*Id.* at ¶ 48). The Claims do not attempt to preempt every application of the idea of coordinating compliance with fire inspection laws and regulations. (*Id.* at ¶ 49).

The Claims recite specific ways to automate the compliance process that incorporate elements from multiple sources to solve a problem faced by fire departments, municipalities, inspection contractors, and building owners. (ECF # 1, ¶ 50). The Claims include additional features that ensure they are more than a drafting effort designed to monopolize the abstract idea. (ECF # 1, ¶ 51). The claimed solutions provide inventive concepts for resolving specific inspection problems, rendering the Claims patent eligible. (ECF # 1, ¶ 52). The Claims do not merely recite an abstract idea or process traditionally performed on pencil and paper now being implemented by a computer. The Claims define a specific

⁴ Brycer argues these are conclusory allegations; they are not. They provide short, plain statements of fact taken from the prosecution history and the claim language. (*See e.g.*, ECF # 1-3, PageID #: 88-90).

technological system not previously conceived or implemented. The claimed methods define industry behavior that they make possible, prompting coordination and exchange of information between parties in manners that were not previously conducted and were not possible without the claimed methods.

III. STATEMENT OF LAW AND ARGUMENT

A. Legal Standards Motion to Dismiss

The question on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) is whether the complaint states “a claim to relief that is plausible on its face.” *Firestone Fin. Corp. v. Meyer*, 796 F.3d 822, 826 (7th Cir. 2015). The court must take as “true all well-pleaded factual allegations and mak[e] all possible inferences from the allegations in the plaintiff’s favor.” *AnchorBank, FSB v. Hofer*, 649 F.3d 610, 614 (7th Cir. 2011).

B. Patent Eligible Subject Matter

Tegris does not repeat the legal standards under 35 U.S.C. § 101 but provides additional jurisprudence for guidance.

At the same time, we tread carefully in construing this exclusionary principle lest it swallow all of patent law. At some level, “all inventions . . . embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept. “[A]pplication[s]” of such concepts “to a new and useful end,” we have said, remain eligible for patent protection.

Alice Corp. Pty. Ltd. v. CLS Bank Int’l., 573 U.S. 208, 217 (2014) (internal citations omitted). The Court must distinguish between patents that claim the building blocks of human ingenuity and those that integrate the building blocks into something more, thereby transforming them into patent-eligible inventions. *Id.*

1. *Alice* step one

“At *Alice* step one, it is not enough to merely identify a patent-ineligible concept underlying the claim; [the court] must determine whether that patent-ineligible concept is what the claim is directed to . . . [a]nd that inquiry requires that the claims be read as a whole.” *Data Engine Techs. LLC v. Google LLC*, 906 F.3d 999, 1011 (Fed. Cir. 2018) (holding patent-eligible at step one claims directed to a specific method for navigating through three-dimensional electronic spreadsheets as providing a specific solution to existing technological problems) (internal quotation omitted). “The Supreme Court has not established a definitive rule to determine what constitutes an “abstract idea” sufficient to satisfy the first step of the *Mayo/Alice* inquiry. Rather, both this court and the Supreme Court have found it sufficient to compare claims at issue to those claims already found to be directed to an abstract idea in previous cases.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016) (internal citations omitted); *accord Gaelco S.A. v. Arachnid 360, LLC*, 293 F. Supp. 3d 783, 789 (N.D. Ill. 2017). “Although there is difficulty inherent in delineating the contours of an abstract idea, we must be mindful that all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Core Wireless Licensing S.A.R.L. v. LG Elecs. Inc.*, 880 F.3d 1356, 1361 (Fed. Cir. 2018) (holding as patent-eligible claims directed to improved user interface for computing devices because they were directed to a particular manner of summarizing and presenting information) (internal quotation omitted).

The claims in the cases cited by Brycer differ from the Claims here. In *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332 (Fed. Cir. 2017), the court invalidated the claims on § 101 grounds on summary judgment, not a motion to dismiss. The claims recited an apparatus with components in functional language only. *Id.* at 1339. The claims related to the collection, display, and manipulation of data. The claims did not recite methods that organized human activity into a practical application as do the instant Claims.

In *Affinity Labs of Tex. v. DIRECTV, LLC*, 838 F.3d 1253 (Fed. Cir. 2016), the patent claimed the general concept of out-of-region delivery of broadcast content using conventional devices, without anything more. *Id.* at 1262. The Federal Circuit has explained that *Affinity Labs* and similar cases harken back to the principle that a result is not itself patentable. *Finjan, Inc. v. Blue Coat Sys.*, 879 F.3d 1299, 1305-6 (Fed. Cir. 2018) (holding that claims that recite specific steps that accomplish the desired result are not abstract and there is no need to proceed to *Alice* step two).

The Federal Circuit's holding in *Finjan* is instructive. The patent was directed to a method of providing computer security by scanning a downloadable computer program and attaching the results to the program in the form of a security profile. *Finjan*, 879 F.3d at 1303. The claimed invention "enables a computer security system to do things it could not do before" and "allows access to be tailored for different users." *Id.* at 1305. The Federal Circuit concluded the claims were "directed to a non-abstract improvement in computer functionality, rather than the abstract idea of computer security writ large." *Id.* The Federal

Circuit further explained the claims “recite specific steps . . . that accomplish the desired result” and “there is no need to set forth a further inventive concept for implementing the invention.” *Id.* at 1305-06; *see also EcoServices, LLC v. Certified Aviation Serv., LLC*, 830 Fed. Appx. 634 (Fed. Circ. 2020) (affirming patent eligibility of claims directed to a specific system that improves jet engine washing and not to a result or effect that is the abstract idea).

Tegris’s Claims are similar. They recite specific steps that accomplish the desired result of creating an inspection profile for an asset, allowing access to be tailored for different users, and generating specific reports for the asset to be delivered to appropriate users. The Claims are directed to a non-abstract improvement and there is no need to proceed to *Alice* step two. *Finjan.* at 1305-06.

The Asserted Claims resemble those in cases in which courts have denied motions to dismiss. Like *Core Wireless*, the Claims are directed to a particular manner of summarizing and presenting information, effectively operating as an improved user interface and database, not the abstract idea of storing information. 880 F.3d 1356, 1440-41 (Fed. Cir. 2018); *see also, e.g., Innovaport LLC v. IKEA N. Am. Servs., LLC*, 2022 U.S. Dist. LEXIS 139430, *7 (E.D. Wis. Aug. 5, 2022) (denying motion to dismiss because of elements linking product location information to additional information); *Kove Io, Inc. v. Amazon Web Servs.*, 448 F. Supp. 3d 849, 806-864 (N.D. Ill. 2020) (denying a motion to dismiss where a method claim was directed to an improvement in the way networks operate).

A court must “articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful.” *Thales Visionix Inc. v. United States*, 850 F.3d 1343, 1347 (Fed. Cir. 2017). Claims reciting a system for tracking an object’s motion relative to a moving reference frame were not directed to patent-ineligible subject matter. *Id.* at 1349. “The “claims seek to protect only the application of physics to the unconventional configuration of sensors as disclosed. As such, these claims are not directed to an abstract idea and thus the claims survive *Alice* step one.” *Id.*

In *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), the Federal Circuit held a patent claiming a process to automatically synchronize lip and facial expressions of animated characters was directed at patent-eligible subject matter. 837 F.3d at 1316. Although the process was carried out by general-purpose computers, the claims were still patentable because they “use[d] the limited rules in a process specifically designed to achieve an improved technological result in conventional industry practice.” *Id.* at 1316.

Here, the Claims provide significantly more than general concepts. The Claims achieve an improved technical result, *e.g.*, providing asset inspection and status information in real-time to emergency personnel, asset owners, and inspectors. The Claims recite specific steps that accomplish results that are not abstract and that cannot practically be performed in the human mind. The Claims use rules in a process specifically designed to achieve an improved technical result. The Claims are directed to patent-eligible subject matter.

2. *Alice* step two

Step two asks if there is an “inventive concept . . . sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.” *Alice*, 573 U.S. at 217-18. Courts “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Id.* at 217.

“An inventive concept that transforms the abstract idea into a patent-eligible invention must be significantly more than the abstract idea itself, and cannot simply be an instruction to implement or apply the abstract idea on a computer.” *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016). “[D]escribing the claims at such a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule.” *Enfish*, 822 F.3d at 1337. A claim must be analyzed as a whole, respecting each element of the claim. The claims must be read in light of the specification. *Id.* at 1335. Brycer’s color-coded arguments (ECF # 13, pp. 7-8) impermissibly deconstruct the claim as whole.

The Claims are directed to a “computer-implemented method for using a fire hydrant management software and a web-based registry to track requisite inspection of an owned asset.” (ECF # 1, ¶ 39). The combination of additional elements in the Claims include the following:

- retrieving, by a computer-based fire hydrant management software system, real time records of assets from a database, the database being remotely accessible and augmentable by each of the at least three classes of user;

- analyzing the records of assets from the database to determine whether an asset requires inspection;
- automatically creating, according to computer-executable instructions of the fire hydrant management software, a standard format inspection list, based upon the analysis of records of assets from the database, wherein the standard form inspection list includes each asset due for inspection and each asset within a designatable interval of being due for inspection;
- for each asset on the inspection list, according to computer-enabled instructions of the fire hydrant management software, retrieving a list of qualified inspectors according to designatable attributes including proximity to the asset, wherein an inspector, upon accessing the web registry, can review and update information, including location;
- for each asset on the inspection list, generating a standard format notice notifying the approval authority of the status of the assets assigned to the approval authority, and wherein the approval authority, upon accessing the compliance registry, may update and review the status of the assets;
- for each asset on the inspection list, generating, according to computer-executable instructions of the fire hydrant management software, a standard format notice notifying an owner of the asset of an impending deadline for the inspection such notice to include the list of qualified inspectors for the asset, a description of the type of inspection, and a cost associated with the type of inspection, and wherein the owner of the asset, upon accessing the web-based registry, may update and review the status of the assets assigned to the owner;
- receiving, by a computer-based system, at a server through an internet portal the server in communication with the web-based registry, information that one of the qualified inspectors supplies, the information garnered by performing the required inspection;
- retrieving, by a computer-based fire hydrant management software system, a standard format report template configured to the asset, compiling a report based upon the information the inspector supplies;
- transmitting, by a computer-based system, the completed inspection report, based on the report template and the information garnered by performing the inspection, to the approving authority;
- transmitting, from the approving authority, by the web-based registry, a standard format notice to the owner of the asset, the notice to include a report of the received information and where the received information includes a noted deficiency;
- storing, in association with the asset a new deadline date, based upon completion of the inspection;
- receiving bids to perform a suitably compliant inspection of the asset from a group of qualified inspectors including, at least, the inspector; and presenting to the owner a compilation of the bids for selection of the inspector;

- based upon the owner selecting the inspector, scheduling the inspector's inspection of the asset based upon the impending deadline, the inspector's availability, and the asset availability;
- receiving, from the inspector, photographs of the asset or components of the asset; and storing the photographs in association with the asset and the date of the inspection;
- selecting a remedy deficiency deadline based upon the noted deficiency and the date of the inspection; and storing in association with the asset a remedy deficiency deadline;
- receiving bids to perform a suitably compliant remedy of the deficiency from a group of qualified contractors; and presenting to the owner a compilation of the bids for selection of a contractor to remedy the deficiency.

(ECF # 1-1, '966 Patent, 15:16-16:47).

The detailed combination of additional elements constructs, describes, and encompasses fire hydrant management software systems that organize and motivate stakeholders to collaborate in the collection and processing of data in a specific manner. The Claims assign tasks to users based on specific events; they do not simply collect and transmit information. For example, Claim 8 recites the method analyzes asset records from the database to identify notification events. (ECF # 1-1, 15:31-2). Claim 8 recites retrieving real-time records of assets from a database and making them accessible and augmentable by all classes of users. (*Id.*, 1:27-30). Claim 8 recites using the information collected to ensure that data is current and collaborated for fire and life safety emergency purposes. (*Id.* 1:49-56).

The claimed methods permit fire fighters to obtain valuable information regarding hydrant status in real-time. Tegris does not claim the abstract idea of simply collecting information, transmitting, and presenting information in a conventional manner. The inventive method of time-sensitive and event-driven collaboration between stakeholders in the fire and life safety industry cannot be

performed in the human mind. The software performs the “analyzing.” The claimed methods automate complicated tasks in real-time and in a manner that cannot be done manually at the speed needed for fire fighters on emergency responses. The methods uniquely identify notification events in real-time and automate notification to the responsible person to take immediate action. These are non-abstract ideas that the human mind cannot realistically perform.

In the Claims, the term ‘registry’ represents an official singular list. (ECF # 1-1, 8:15-38). It is not a simple database, or three separate databases maintained by different users. Multiple users use the registry as the only official one. (*Id.*). Before the ‘966 Patent, governmental authorities, property owners, and inspectors had to maintain their own information on their own databases. The claimed registry is implemented as an unprecedented third-party registry to achieve the claimed methods. The software works in conjunction with the registry to allow all stakeholders to use the data in unique and meaningful ways.

The claimed methods analyze the work of three minds, determines who receives what information and when, and prompt and track participation to ensure compliance and to enhance safety. The claimed methods go far beyond simple steps a person might process in her mind. The Claims cover methods that collect information from at least three inputs, analyze and transform the data in real-time, find errors and deficiencies, and prompt correction in real-time. The Claims require far more than storing and transmitting data. For example, the claimed methods

change data regarding status from “Compliant” to “Non-Compliant” without human intervention and provide that information in real-time.

The claimed methods integrate organized activity into a practical application. The combination of additional elements uses the fire hydrant management software system in a specific manner to allow remote users to process inspections in a standard format, track inspection compliance, and pay for inspection of an owned asset. The additional elements of the Claims transform their nature into a patent-eligible application of that idea.

In practice, the Claims amount to “significantly more” than a patent on an ineligible concept. The Claims do not broadly and generically claim use of the Internet to perform an abstract business practice. When the Claims’ limitations are taken together as an ordered combination, they recite an invention that far exceeds the routine or conventional use of the Internet. The Claims do not attempt to preempt every application of the idea of coordinating compliance with fire inspection laws and regulations. The Claims recite specific ways to automate the compliance process that incorporate elements from multiple sources to solve a problem faced by fire departments, municipalities, inspection contractors, and building owners. The Claims include additional features that ensure they are more than a drafting effort designed to monopolize the abstract idea. The claimed solution amounts to inventive concepts for resolving regulated inspection compliance problems. The Claims satisfy step two of *Alice* and are patentable.

C. The Complaint States a Claim for Infringement

“Federal pleading rules call for ‘a short and plain statement of the claim showing the pleader is entitled to relief’ [T]hey do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted.” *Johnson v. City of Shelby*, 574 U.S. 10, 11 (2014) (*per curiam*) (internal citation omitted). A motion to dismiss tests the sufficiency of the complaint’s allegations and does not to decide the merits of the case. *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). The Court takes all the factual allegations as true and draws all reasonable inferences in plaintiff’s favor. *Killingsworth v. HSBC Bank Nevada, N.A.*, 507 F.3d 614, 618 (7th Cir. 2007). If there are claim construction disputes, the Court must either adopt the non-moving party’s (Tegris) construction or resolve the disputes. *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1125 (Fed. Cir. 2018) (internal citations omitted).

1. **Tegris plausibly alleges that, using the TCE Service, “the owner of the asset, upon remotely accessing the fire hydrant management software compliance registry, may update and review the status of the assets.”**

The Claims do not limit which account the owner has to use to update and review asset status. The Claims encompass situations in which the owner directs or controls others to update the asset’s status. The ‘966 Patent explains the owner is responsible for updating and reviewing the status of the asset. The Claims do not limit the specific user account to access the database. The Claims permit updating capabilities by a surrogate with proper credentials (*e.g.*, an authority having jurisdiction (“AHJ”), an inspection company, or Brycer). If the owner reviews

information and sees a correction is needed, it is responsible for updating it themselves if possible or getting help from someone who has edit capabilities within the TheComplianceEngine (“TCE”) software. (ECF # 1-2, Claim Chart, PageID#:63-7) The TCE system shows that building superintendents and technicians can submit reports to the AHJ. (ECR 1-2, PageID #: 75 & 80).

The Complaint states a plausible claim for infringement of the limitation “*the owner of the asset, upon remotely accessing the fire hydrant management software compliance registry, may update and review the status of the assets.*” Dismissal on this basis is not warranted.

2. Tegriss plausibly allege the TCE Service “notif[ies] an owner...wherein the notice includes...a cost associated with the type of inspection.”

The ‘966 Patent uses the broad term ‘cost’ and includes (without limitation) ‘time,’ ‘effort,’ and ‘price.’ (ECF # 1-1, ‘966 Patent, 8:26-37). The sample Brycer notification letter satisfies the claim limitations. (ECF # 1-2, Claim Chart, PageID#:64-5). The Brycer system provides the owner notice of the associated cost in multiple ways. First, the notice lists a previous contractor of record for the owner to hire. Second, the municipality sends the notice that requires the owner’s involvement. Third, the notice references the city code, which lists more details of time, effort, and price. Fourth, the notice details a required inspection by a licensed company. Fifth, the notice states the inspection company must submit the reports using Brycer’s TCE platform, which also lists fees for the specific inspection type and charges that fee as the owner’s responsibility. These examples exist in the notification letter sent through Brycer’s TCE platform.

Brycer also provides notification emails and phone calls that notify the owner of a change of status to an asset and that the owner will have to become involved. Its TCE platform notifies the owner there is a cost associated with the required inspection and, whether prompted or not, notifies the owner there is a price or fee associated with the inspection. (ECF # 1-2, Claim Chart, PageID#:65).

Brycer's positions are not correct. Brycer's sample letter cited in the claim chart references and incorporates the city code. (ECF # 1-2, Claim Chart, PageID#:64). The city code can reference an explicit cost, although Tegriss is not restricting its definition of 'cost associated' to an explicitly listed cost. The claim limitation 'costs associated' is not restricted to Brycer's interpretation, *e.g.*, the term is not limited to platform costs, AHJ costs, inspector costs, late fee costs, taxes, or any other non-monetary costs.

The Complaint plausibly alleges infringement of the limitation "*notifies/ an owner...wherein the notice includes...a cost associated with the type of inspection.*" The Court should deny Brycer's motion to dismiss on this basis.

D. Tegriss Should be Granted Leave to Amend, if Necessary.

Regional circuit law governs leave to amend a complaint. *Celgene Corp. v. Mylan Pharm., Inc.*, 17 F.4th 1111, 1130 n.13 (Fed. Cir. 2021). A district court should freely give leave to amend a complaint "when justice so requires." Fed. R. Civ. P. 15(a)(2). Policy of the Seventh Circuit strongly favors a plaintiff having an opportunity to replead a complaint that is found to be subject to dismissal for failure to state a claim, but the plaintiff may have to request leave to file and demonstrate that justice so requires. *White v. Ill. State Police*, 15 F.4th 801, 808 (7th Cir. 2021).

Unless “it is certain from the face of the complaint that any amendment would be futile or otherwise unwarranted, the district court should grant leave to amend after granting a motion to dismiss.” *Runnion ex rel. Runnion v. Girl Scouts of Greater Chicago and Northwest Ind.*, 786 F.3d 510, 519 (7th Cir. 2015).

Should the Court find the factual allegations in the Complaint, when taken as true, to be insufficient, it should grant Tegriss leave to file an amended complaint to cure any such deficiency.

IV. CONCLUSION

For the foregoing reasons, Tegriss submits the Asserted Claims pass muster under the two-step *Alice* framework. Tegriss respectfully requests the Court deny Brycer’s motion to dismiss and grant all other just and proper relief.

Dated: January 30, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed electronically in the United States District Court for the Northern District of Illinois on January 30, 2023. Notice and a complete copy of this filing will be served upon all counsel of record by operation of the Court's CM/ECF electronic filing system.

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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

TEGRIS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 22-cv-5741
	)	
BRYCER, LLC and BRYCER	)	JURY TRIAL DEMANDED
MANAGEMENT, INC.,	)	
	)	
Defendants.	)	

**REPLY BRIEF IN SUPPORT OF DEFENDANTS’
FED. R. CIV. P. 12(b)(6) MOTION TO DISMISS**

TABLE OF CONTENTS

I.	Introduction.....	1
II.	The Asserted Claims are Patent-Ineligible on Their Face	2
A.	The Asserted Claims are Abstract Under <i>Alice</i> Step One.....	2
B.	The Elements of the Asserted Claims Do Not Embody a Patentable Invention under <i>Alice</i> Step Two.....	5
III.	Tegris Has Not, and Can Not, State a Claim for Infringement	7
A.	Tegris has Failed to Plausibly Allege that, Using the TCE Service, “the owner of the asset, upon remotely accessing the fire hydrant management software compliance registry, may update and review the status of the assets”.....	7
B.	Tegris has Failed to Plausibly Allege that the TCE Service “notif[ies] an owner...wherein the notice includes...a cost associated with the type of inspection”	9

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Atlas IP, LLC v. Exelon Corp.</i> , 189 F. Supp. 3d 768 (N.D. Ill. 2016)	7
<i>Bicon, Inc. v. Straumann Co.</i> , 441 F.3d 945 (Fed. Cir. 2006).....	8
<i>Core Wireless Licensing S.A.R.L. v. LG Elecs.</i> , 880 F.3d 1356, (Fed. Cir. 2018).....	3, 4
<i>Elec. Power Grp., LLC v. Alstom S.A.</i> , 830 F.3d 1350 (Fed. Cir. 2016).....	6
<i>Finjan, Inc. v. Blue Coat Sys.</i> , 879 F.3d 1299 (Fed. Cir. 2018).....	2, 3, 5
<i>K-2 Corp. v. Salomon S.A.</i> , 191 F.3d 1356 (Fed. Cir. 1999).....	10
<i>Kove IO, Inc. v. Amazon Web Services</i> , 448 F. Supp. 3d 849 (N.D. Ill. 2020)	4
<i>Liqui-Box Corp. v. Scholle IPN Corp.</i> , 449 F. Supp. 3d 790 (N.D. Ill. 2020)	1
<i>McRO v. Bandai Namco Games America</i> , 837 F.3d 1299 (Fed. Cir. 2016).....	4, 5
<i>Ottah v. Fiat Chrysler</i> , 884 F.3d 1135 (Fed. Cir. 2018).....	7
<i>PersonalWeb Techs. LLC v. Google LLC</i> , 8 F.4th 1310 (Fed. Cir. 2021)	6
<i>In re Rosenberg</i> , 813 F. App'x 594 (Fed. Cir. 2020)	6
<i>SAP Am., Inc. v. InvestPic, LLC</i> , 898 F.3d 1161 (Fed. Cir. 2018).....	5
<i>Uniloc USA, Inc. v. ADP, LLC</i> , 772 F. App'x 890 (Fed. Cir. 2019)	6

I. INTRODUCTION

Buried in footnote 2 of its Response, Tegriss all but admits the abstract and patent-ineligible nature of the claims of the '966 patent. Specifically, footnote 2 states that the “web-based registry,” which is at the core of every Asserted Claim in the '966 patent, is “a system comprising, *inter alia*, a client device connected to the internet through a network,” *i.e.*, it is merely devices connected via the basic Internet. Every purported benefit and “novel” aspect of the claims that Tegriss argues results from the '966 patent invention flows from this web-registry (*i.e.*, from putting data online on a website). This includes, for example, Tegriss’ assertion that the claims “allow[] access to be tailored for different users, and generat[e] specific reports for the asset to be delivered to appropriate users.” Response Br. at 10. This also includes Tegriss’ assertion that the claims “provid[e] asset inspection and status information in real-time to emergency personnel, asset owners, and inspectors.” Indeed, Tegriss admitted and argued to the Examiner during prosecution that the “web registry” was key to the invention, and used that argument to get the patent allowed.¹ There is simply no post-*Alice* decision holding that a process for recording, storing, and transmitting data all of a sudden becomes patent-eligible just because of the inherent benefits of the Internet (such as enabling “real-time” communication), regardless of how “practical” it might be in application.

In terms of its infringement claim, Tegriss’ positions are facially unreasonable. Tegriss admits that the accused Brycer TCE system does not allow an “owner” to update the status of an

¹ See Amendment dated May 28, 2019 in U.S. Patent Application No. 12/011,202, at 9-10, included as Ex. 1 to the Declaration of Matthew G. Berkowitz in Support of Defendant’s Reply filed herewith as Exhibit A. This amendment is part of the '966 patent prosecution history relied on in the Complaint (*see, e.g.*, Complaint, ¶ 41 and Ex. 3) and is properly considered when deciding a Rule 12(b)(6) motion. *See Liqui-Box Corp. v. Scholle IPN Corp.*, 449 F. Supp. 3d 790, 796 (N.D. Ill. 2020).

asset. Tegriss nevertheless asserts that someone else, such as a different class of user, could do it for the owner, using non-owner login credentials, as a “surrogate.” This is not how patent infringement works; the claim requires an “owner” to do the updating, not some other non-owner entity using non-owner credentials. Tegriss also admits that Brycer’s system does not notify an owner of a “cost” associated with an inspection (as required by the claims), at least not in any ordinary sense of the word. Tegriss argues that the term “cost” can mean “effort,” and that even if “cost” really should be read in connection with its ordinary meaning, that Brycer infringes because it notifies an owner about a regulatory code section specifying that an inspection is coming due. Tegriss appears to be suggesting that infringement is plausible because this regulatory code provision might cross-reference or include information about a “cost.” Even if so, both of these positions are implausible. A “cost” means “cost,” not effort. Nor does it mean a regulatory code section. Tegriss has no plausible argument for why Brycer infringes, and does not specify what it would, or could (given its admissions to date), allege in an amended pleading that might cure the problems. The Complaint should be dismissed with prejudice.

II. THE ASSERTED CLAIMS ARE PATENT-INELIGIBLE ON THEIR FACE

A. The Asserted Claims are Abstract Under *Alice* Step One

Tegriss’ cited cases under *Alice* step 1 are inapposite.

First, Tegriss relies on *Finjan, Inc. v. Blue Coat Sys.*, 879 F.3d 1299, 1305-6 (Fed. Cir. 2018)). *Finjan* held only that “software-based innovations can make non-abstract improvements to computer technology and can be deemed patent-eligible subject matter at step 1” of the *Alice* inquiry. *Finjan*, 879 F.3d at 1305-6; *id.* at 1304 (“The question, then, is whether ... the ... patent constitutes an improvement in computer functionality.”). Specifically, in *Finjan*, the claims were directed to a new “behavior-based” approach to virus scanning. The Federal Circuit held that the invention “employs *a new kind of file* that enables a computer security system to do things it could

not do before.” *Id.* at 1305.

Tegris’ Asserted Claims contain no such innovations. The Asserted Claims merely recite generic terms like “computer implemented,” “computer-based,” “management software,” database,” and “website,” performing in a conventional manner to receive, analyze, and transmit data. They do not improve any computer functionality, let alone computer security. To the contrary, per the specification of the ’966 patent, the claimed methods are “operational with numerous [] general-purpose or special purpose computing system environments or configurations.” Col. 5, ll. 9-14.

Consequently, Tegris’ further assertion that the improvement offered by its claims is technological—*i.e.*, “providing asset inspection and status information in real-time”—is not relevant to the step one analysis. Response Br. at 11. The assertion is also *false*. The alleged improvement merely reflects the benefit that would coincide with moving any record-keeping process capable of being performed manually, albeit more slowly, onto a conventional network computing environment, and this is not patentable (see Section II.B below; Opening Br. at 13-15).

Second, Tegris cites *Core Wireless Licensing S.A.R.L. v. LG Electronics*, but the claims in this case involved an improved computer display interface, a specific improvement over conventional computer functionality. 880 F.3d 1356, 1363 (Fed. Cir. 2018). More specifically, the claims involved the display of a summary of applications that “can be reached directly” from a menu listing available applications where “the application summary is displayed while the one or more applications is in an *unlaunched state*,” a requirement that the device applications exist in a particular state. 880 F.3d 1356, 1362-63 (Fed. Cir. 2018) (emphasis added). The Federal Circuit distinguished this type of claim from a generic display of summary information, reasoning that the claims “specify a particular manner by which the summary window must be accessed,” namely,

“directly from the menu,” which was an unconventional manner of using a computer and displaying an interface, and was an “improvement over prior art systems.” *Id.*

In contrast, the Tegrís claims use admittedly conventional computer equipment functioning in a conventional manner. For example, Tegrís has now confirmed that a “web registry” is just conventional devices connected to the conventional Internet. There is nothing even arguably unique or unconventional about that. Tegrís asserts that its invention is “effectively operating as an improved user interface and database,” but given Tegrís’ admissions, this is just a fancy way of saying that the Internet enables more people to see more information at the same time as compared to keeping records using pen and paper, and this is not patentable. Using the Internet to computerize a manual process does not make that process less abstract, for all the reasons Brycer explained in its opening brief. The *Kove IO, Inc. v. Amazon Web Services* decision is no different, and similarly concerned claims that focused on a “specific asserted improvement in computer capabilities” and not “an abstract idea for which computers are invoked merely as a tool.” 448 F. Supp. 3d 849, 859 (N.D. Ill. 2020) (cleaned up).

Finally, Tegrís relies on *McRO v. Bandai Namco Games America*, which involved claims directed to improved computer animation techniques. 837 F.3d 1299, 1315-16 (Fed. Cir. 2016). *McRO* is not remotely on point. In short, the claims in *McRO* had no pre-computer analog; they were directed to a set of rules and techniques for creating animations that appeared life-like as they moved and spoke. The claims were held to be patent eligible because the claimed approach was fundamentally different than what existed in any non-computer conventional system. *Id.* at 1314. That is simply not the case here. As Brycer has explained, everything recited in the ’966 patent claims has a pre-computer and pre-Internet analog. Tegrís simply put the database of information on the world wide web and claimed the inherent benefits flowing therefrom.

In sum, the Federal Circuit cases draw a distinction between claims that simply automate conventional approaches to a technology using generic computer tools, and those that fundamentally alter or improve the underlying technology itself, such as with new “behavior-based” virus scanning techniques “that enable[] a computer security system to do things it could not do before,” *see Finjan*, 879 F.3d at 1305, and a new method for creating computer animations that eliminated the need for subjective input from human animators. *See McRO*, 837 F.3d at 1314. Tegriss wants its claims to fall into this latter bucket, but they don’t come close. The ’966 patent specification affirms, and Tegriss admits, that the purported web-registry invention of the ’966 patent uses conventional computer technology, namely conventional devices communicating via the Internet in a conventional manner.

The claims are therefore abstract as a matter of law, as explained further in Brycer’s opening brief.

B. The Elements of the Asserted Claims Do Not Embody a Patentable Invention under *Alice* Step Two

Alice step two examines “what the claim elements add” to determine whether “they identify an inventive concept in the application of the ineligible matter to which . . . the claim is directed.” *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (internal quotation omitted).

The Asserted Claims add nothing to the abstract idea of receiving, storing, and transmitting information over the Internet. Nor does Tegriss actually articulate any non-boilerplate specifics about a real inventive concept in the claims. Tegriss argues that the claimed methods “permit fire fighters to obtain valuable information regarding hydrant status in real time” and involves “event-driven collaboration.” Response Br. at 14. But, again, these are just fancy ways of describing the generic benefit of sharing information over the Internet. The Internet (the “web-registry”) is the tool that enables “real-time” and “event-driven collaboration.” Tegriss just avoids saying it that

way. See *Uniloc USA, Inc. v. ADP, LLC*, 772 F. App'x 890, 902 (Fed. Cir. 2019) (“Uniloc is incorrect that the real-time availability of authorization information improves efficiency and is an inventive concept. Such real-time availability of information is a staple of a conventional network.”).

Tegris also argues that the claimed method “analyzes the work of three minds.” Again, this is just the Internet. Three parties² can input information on a cloud-hosted database (on the Internet), and the others can view it. That’s all that is happening with the Asserted Claims. Again, while full of excess verbiage, the Asserted Claims do nothing more than put a conventional manual process (recording and disseminating information about fire-hydrant status) on Internet-connected computers. This is not eligible for patenting. *PersonalWeb Techs. LLC v. Google LLC*, 8 F.4th 1310, 1319 (Fed. Cir. 2021) (“Our precedent is clear that merely adding computer functionality to increase the speed or efficiency of the process does not confer patent eligibility on an otherwise abstract idea.”) (citation omitted).³ Moreover, Tegris does not dispute (perhaps given the admissions in the ’966 patent itself) that the issue of patentability under Section 101 is ripe for this court’s determination at the pleading stage, and Tegris has not requested further discovery on the

² As noted below, for infringement purposes, Tegris argues that the claim doesn’t *actually* require analyzing information from three minds. Rather, one of those three minds, the authority having jurisdiction, can apparently do the thinking for both itself and the owner.

³ See also *In re Rosenberg*, 813 F. App'x 594, 597 (Fed. Cir. 2020) (“[I]t is not enough, for patent-eligibility purposes, to improve an abstract process by invoking a computer merely as a tool for carrying out that process.... The ability to make assessments more quickly to provide instructions on whether to modify a clinical trial is at best an improvement on an abstract process itself and not a technical improvement.”); *Uniloc*, 772 F. App'x at 902; *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1356 (Fed. Cir. 2016) (“The claims in this case ... do not include any requirement for performing the claimed functions of gathering, analyzing, and displaying in real time by use of anything but entirely conventional, generic technology. The claims therefore do not state an arguably inventive concept in the realm of application of the information-based abstract ideas.”).

issue.

Accordingly, Tegriss' claims are ineligible on their face under Section 101 and the Court should dismiss the Complaint for failure to state a claim.

III. TEGRIS HAS NOT, AND CAN NOT, STATE A CLAIM FOR INFRINGEMENT

Tegriss contends that claim construction is necessary, and that this bars resolution of Brycer's motion as it concerns Tegriss' failure to plead a plausible infringement claim. Response Br. at 1, 17. This is just a smokescreen. Tegriss identifies no technical terms requiring construction, and, instead advances arguments that turn the ordinary meaning of non-technical claim terms such as "update" and "costs" on their head.

Under such circumstances, it is proper to decide, at the pleadings stage, whether Tegriss has plausibly stated a claim for infringement. *See, e.g., Atlas IP, LLC v. Exelon Corp.*, 189 F. Supp. 3d 768, 778 (N.D. Ill. 2016); *id.* at 778 (dismissing under Rule 12(b)(6), and denying a motion to amend, a claim for infringement that depended "on a claim construction that is wrong as a matter of law" because it is contrary to the claim language and the patent specification); *Ottah v. Fiat Chrysler*, 884 F.3d 1135, 1141 (Fed. Cir. 2018) (affirming a district court decision that the asserted claims cannot be construed as plausibly supporting infringement, and dismissing under Rule 12(b)(6)).

A. Tegriss has Failed to Plausibly Allege that, Using the TCE Service, "the owner of the asset, upon remotely accessing the fire hydrant management software compliance registry, may update and review the status of the assets"

In its opening brief, Brycer explained that Tegriss' Complaint made no factual allegations that could possibly, let alone plausibly, establish that the accused TCE service meets the limitation: "the *owner of the asset*, upon remotely accessing the fire hydrant management software compliance registry, *may update ... the status of the assets.*" '966 patent, col. 15, ll. 39-42

(emphasis added); *see also* Opening Br. at 16-18.

In fact, the only pertinent factual allegations in the Complaint establish that the “Premises User” class of accounts (the alleged “owner” class of users) *cannot* “update ... the status of the assets” “upon remotely accessing the fire hydrant management software compliance registry,” because “Premises Users” are given “view only” access to TCE. Opening Br. at 18.

Tegris, in its Response, does not dispute that its infringement contentions identify “Premises Users” as the claimed “owner of the asset” class of user, and further does not dispute that the TCE service does not allow Premises Users to update asset status. This is all that should be needed for this Court to grant Brycer’s motion to dismiss for failure to allege infringement with prejudice (given that there can be no fixing what Tegriss has already admitted).

Nevertheless, Tegriss persists in the face of these fatal admissions. Tegriss argues that this claim limitation “permit[s] updating capabilities by a surrogate with proper credentials (*e.g.*, an authority having jurisdiction (‘AHJ’), an inspection company, or Brycer).” Response 17. In other words, Tegriss admits that the accused system does not actually permit an “owner” of an asset to update the status of the assets, but nevertheless argues that someone else could do it. This is unreasonable on its face and should be rejected as a matter of law. The claim doesn’t recite that a “surrogate” of an owner belonging to a different class of user may update the status. The claim specifically requires the owner class of users be able to update status. Tegriss’ position ignores the “owner” requirement altogether. *See Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006) (“[C]laims are interpreted with an eye toward giving effect to all terms in the claim.”).

Indeed, allowing the owner to update the status is a key point of the invention. For example, the ’966 patent specification explains that the purported invention is specifically intended to improve upon prior art practices where not all interested parties could update asset status, a

shortcoming that allegedly led to inefficiencies:

For example, the fire department personnel may inspect the fire hydrant and document required maintenance, but the hydrant maintenance crew (commonly water department personnel) does not have easy access to the software and cannot review or update required maintenance. Also, the maintenance crew does not have an easy way to communicate the status of a damaged hydrant to the fire marshal. There is not a software program that gives one department the ability to share their information with other departments either using the same software or using other software.

'966 patent, col. 2, ll. 23-33. Tegriss' infringement read would therefore encompass the very prior art practice that the specification disparages. In fact, a significant portion of Tegriss' (flawed) argument in response Brycer's motion to dismiss under Section 101 highlights just this issue, noting how the invention supposedly allows collaboration and updates from all stakeholders, including *owners*. *See, e.g.*, Response Br. at 1-2 ("Tegriss's patented method solves industry problems by tracking assets and prompting collaboration from stakeholders, namely, asset owner, relevant approval authority, inspector."); *id.* at 2 (The "claimed methods allow . . . property owners . . . to provide information regarding hydrant condition..."); *id.* at 15 ("The claimed methods analyze the work of three minds."). But when it comes time to defend its infringement position, Tegriss walks away from this supposed key inventive concept, and argues the owner doesn't *really* have to have these capabilities. Tegriss' infringement position is inconsistent with the ordinary meaning of the claims, Federal Circuit law, the patent specification itself, and its own arguments concerning patent eligibility under Section 101. Tegriss' position is implausible and can't be fixed.

B. Tegriss has Failed to Plausibly Allege that the TCE Service "notif[ies] an owner...wherein the notice includes...a cost associated with the type of inspection"

In its opening brief, Brycer explained that Tegriss' Complaint made no factual allegations that could possibly, let alone plausibly, establish that the accused TCE service "notif[ies] an owner...wherein the notice includes...a *cost* associated with the type of inspection." '966 patent,

col. 15, ll. 33-36 (emphasis added); *see also* Opening Br. at 18-20. In fact, the sample notice letter to Premises Owners referenced in the Complaint (Complaint, Ex. 2 at 13) establishes that the alleged “notice” does *not* include “a cost associated with the type of inspection,” as required by all Asserted Claims. Opening Br. 19-20.

Tegris, in its Response, does not dispute that its infringement allegations (including the sample notice letter) fail to identify a “cost” in any ordinary sense of that word. Instead, Tegris argues, in effect, that “cost associated with the type of inspection” due, could simply mean, *e.g.*, “time” or “effort” associated with the type of inspection due. Response at 18. This, again, borders on frivolous, and once again disregards the words of the claim—words particularly chosen by the patentee. *See K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1364 (Fed. Cir. 1999) (“Courts do not rewrite claims; instead, we give effect to the terms chosen by the patentee.”).

Notwithstanding Tegris’ argument, the specification provides no support for its position. The portion cited by Tegris merely states: “Preferably the owner is sent recommendations on how the property is to be inspected, for example recommendations include names of inspectors, types of inspection needed and general costs associated with the inspection.” ’966 patent, col. 8, ll. 26-37. This sentence hardly transforms the ordinary meaning of “cost” into an expression about “effort.” The rest of the specification confirms the ordinary meaning of “cost,” referring to, for example, “high software costs” (*id.* at col. 2, ll. 9) and “cheaper maintenance costs” (*id.* at col. 3, ll. 3), both of which clearly use “cost” to refer to a monetary amount. The specification also explains that “Budgeting committees will use the registry to more accurately predict annual maintenance and repair costs.” *Id.* at col. 10, ll. 44-46. Budgeting committees are not concerned with effort, they are concerned with money.

Second, Tegris argues that even if “cost” really does mean “cost” as the claims,

specification, and dictionaries say, Brycer could still infringe, because a portion of the sample letter reads “Dear Building Occupant/Owner: In accordance with the (YOUR CODE), our records indicate the **SYSTEM TYPE** is coming due for inspection....” Complaint, Ex. 2 at 13 (emphasis in original). Tegriss seems to argue that “YOUR CODE” could reference a “price” and that a recipient of the letter could consequently obtain a copy of the code and, potentially, look up a “cost.” Response Br. at 18. But a regulatory code citation is not a “cost.” Nor does the claim language recite that the “notice” provided to the asset owner can be a cross-reference to something else (regulatory code or otherwise) that may or may not include some monetary information among other data and regulations. The claim says that the notice to the owner must include a “cost.” Absent that, there can be no infringement. Tegriss’ position falls far short of the “plausible” standard required to support a viable claim for patent infringement.

In conclusion, none of the disputed claim terms employ technical language. Brycer’s motion depends upon a plain and ordinary meaning of the claims that is supported by the context of the claims themselves as well as specification of the ’966 patent. Tegriss’ claim constructions do not. The Court can and should resolve the disputes in Brycer’s favor and dismiss Tegriss’ complaint with prejudice for failure to plausibly allege infringement.

Dated: February 13, 2023

Respectfully submitted,

**BRYCER, LLC AND BRYCER
MANAGEMENT, INC.**

Defendants.

By: /s/ Richard Z. Wolf
One of Their Attorneys

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Reply Brief in Support of Defendants' Fed. R. Civ. P. 12(B)(6) Motion to Dismiss to be filed electronically in the United States District Court for the Northern District of Illinois on this 13th day of February 2023. Notice and a complete copy of this filing will be served upon all counsel of record by operation of the Court's CM/ECF electronic filing system.

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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

TEGRIS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 22-cv-5741
	)	
BRYCER, LLC and BRYCER	)	JURY TRIAL DEMANDED
MANAGEMENT, INC.,	)	
	)	
Defendants.	)	

SECOND DECLARATION OF MATTHEW G. BERKOWITZ
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

I, Matthew G. Berkowitz, declare as follows,

1. I am a partner at the law firm of Shearman & Sterling LLP, counsel for Defendants Brycer LLC and Brycer Management, Inc. (collectively, "Brycer"). I am a member in good standing of the Bar of the State of California.
2. I make this declaration based upon my personal knowledge and my investigation of the facts below. If called as a witness, I could and would testify competently to the matters set forth herein. I submit this second declaration in support of Brycer's Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure in the above-captioned action.
3. Attached hereto as Exhibit 1 is a true and correct copy of the Amendment dated May 28, 2019 in the prosecution file wrapper for U.S. Patent Application No. 12/011,202, the application from which Tegriss's asserted U.S. Patent No. 11, 126,966 issued.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 13th day of February, 2023, in Menlo Park, California.

/s/ Matthew G. Berkowitz

Matthew G. Berkowitz

Exhibit 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Andrew Moren et al. Attorney Docket No. 220867-1000-100
Application No. 12/011,202 Group Art Unit: 3629
Filing Date: January 23, 2008 Examiner: PRATT, EHRIN LARMONT

Title: SYSTEMS AND METHODS FOR A WEB BASED INSPECTION COMPLIANCE
REGISTRY AND COMMUNICATION TOOL

AMENDMENT AND RESPONSE TO FINAL OFFICE ACTION

TO THE COMMISSIONER OF PATENTS:

This paper is responsive to the outstanding Final Office Action mailed November 26,
2018.

Amendments to the claims begin on page 2.

Remarks begin on page 9.

IN THE CLAIMS:

1. (Currently Amended) A computer-implemented method for using a web registry to track a requisite inspection of an owned asset comprising:

retrieving records of assets from a database to generate an inspection list including each asset due and each asset within a designatable interval of being due for inspection;

for each asset on the inspection list, retrieving a list of qualified inspectors according to designatable attributes including proximity to the asset;

generating a notice notifying an owner of the asset of an impending deadline for the inspection such notice to include the list of qualified inspectors for the asset;

receiving, at a server through an internet portal, information that one of the qualified inspectors supplies, the information garnered by performing the required inspection;

compiling a report based upon the information the inspector supplies in accord with a template configured to the asset;

transmitting the report completed inspection to an approving authority;

transmitting, from the approving authority, a notice to the owner of the asset, the notice to include a report of the received information and where the received information includes a noted deficiency;

augmenting at the database, the records relative to the asset to reflect the information the inspector supplies when the inspection is approved by the approving authority; and

completing a monetary transaction between the asset owner and the inspector when the inspection is approved by the approving authority.

2. (Previously Presented) The method of Claim 1 further comprising:

at a computer in network communication with the database, entering initial information about a non-included asset that requires periodic inspection to comply with a code.

3. (Currently Amended) The method of Claim 1 further comprising:

for each asset on the inspection list, transmitting to each qualified inspector on the list of qualified inspectors relative to the asset information about the asset sufficient for the qualified inspectors to generate a bid to inspect the asset;

receiving bids for a contract to inspect the asset from at least one of the qualified inspectors relative to the asset;
transmitting the received bids of the asset;
receiving a selection of a bid from the owner of the asset from among the received bids;
and
transmitting to the qualified inspector who submitted the received selection, an acceptance of the bid.

4. (Currently Amended) The method of Claim 1, wherein further comprising:
~~transmitting a notice to the owner of the asset, the notice to include a report of the received information and where the received information includes a noted deficiency, the report of the received information to include~~ includes a course of action based upon the received information, the course of action to include remedy of the deficiency, ~~the report transmitted from the approving authority.~~

5. (Currently Amended) A computer-implemented method for using a web registry to track an asset owner's inspection compliance, the computer-implemented method comprising:
at a database including records of assets, compiling an inspection list to include those assets which, after expiration of a designatable interval, will require an inspection;
generating with respect to at least one asset, a list of the qualified inspectors that are available to inspect the asset based upon attributes including proximity to the asset;
transmitting a notification to an owner of the at least one asset on the inspection list, including the list of qualified inspectors, indicating that the asset requires an inspection;
displaying, at a web portal, attributes of the at least one asset, to at least one of the qualified inspectors from the list of qualified inspectors relative to the asset, the attributes selected to enable the at least one of the qualified inspectors to formulate a bid for a contract to inspect the asset;
receiving at the web portal a bid from the at least one inspector from a list of qualified inspectors;
displaying to the owner the bid from the at least one inspector for selection;

receiving, at the web portal, the selection of a bid from the owner, such selection to include a form of payment for the inspection;

notifying the at least one inspector of a contract to inspect based upon the selected bid;

receiving, from the at least one inspector, inspection information indicating the status of the asset, wherein the received inspection information includes receiving information describing deficiencies in the asset job, the owner of an asset receiving bids from qualified inspectors based on the needs of the asset;

notifying the approval authority of the inspection information;

receiving approval from the approval authority;

transmitting a notification that an inspection was completed and approved by an approving authority; and

releasing to the inspector the payment.

6. (Previously Presented) The method of Claim 5 further comprising:
populating the database with initial information about an asset that requires periodic inspection to comply with a code.

7. (Cancelled)

8. (Currently Amended) The method of Claim 5[[7]], wherein the receiving inspection information, further comprises:
collecting inspection information using a handheld device.

9. (Withdrawn) A method for using a web based registry containing fire hydrant information comprising: activating a handheld device configured to receive global positioning system location signals and wirelessly connected to the web registry containing fire hydrant information; determining fire hydrants in proximity to the handheld device using the global positioning system location and the web registry containing fire hydrant information; and displaying on a handheld device display a status of a plurality of fire hydrants within a predefined radius of the handheld device.

10. (Withdrawn) The method of Claim 9 further comprising: displaying on a handheld device display detailed information about each fire hydrant within a predefined radius of the handheld device.

11. (Withdrawn) The method of Claim 9 further comprising: displaying a route to the closest working fire hydrant to the handheld device.

12. (Withdrawn) The method of Claim 9 further comprising: displaying a route to the closest non-working fire hydrant to the handheld device.

13. (Withdrawn) The method of Claim 10 further comprising: entering a location of interest into the handheld device; determining fire hydrants in proximity to the location of interest and the web registry containing fire hydrant information; and displaying on the handheld device display a status of a plurality of fire hydrants in proximity to the location of interest.

14. (Withdrawn) The method of Claim 9 further comprising: receiving radio frequency identification signals from a fire hydrant with an installed radio frequency identification chip.

15. (Withdrawn) The method of Claim 9 further comprising: receiving information using the handheld device have a bar code reader from a fire hydrant with an installed barcode.

16. (Withdrawn) A system for a web based compliance registry comprising: a processor; a display; a database in data communication with the processor and the display configured to store owned asset information; a user interface in data communication with the database configured to show owned asset information on the display; and a handheld device configured to wirelessly connect to the user interface and with the database in order to input and view owned asset data wirelessly and to store specific information based on its global position.

17. (Withdrawn) The system of Claim 16 wherein the database is stored locally on a computer.

18. (Withdrawn) The system of Claim 16 wherein the database is accessible by a computer over a network connection.

19. (Withdrawn) The system of Claim 16 wherein the owned asset is a fire hydrant.

20. (Withdrawn) The system of Claim 19 wherein the database is configured to store fire hydrant information related to at least one of hydrant ownership, make, model, year, color, condition, rating of needed maintenance, specific recommended maintenance, pressure, flow, location, address, time of inspection, environment conditions during inspection, landscaping, digital picture of hydrant, nozzle size and orientation, physical description of hydrant, special markings, service record, water quality, and hydrant number.

21. (Currently Amended) A computer-implemented method for using a web-based registry to track requisite inspection of an owned asset comprising:

notifying an owner of an asset at a designatable interval in advance of an impending deadline for the inspection;

upon logging on to a password controlled website, providing to an inspector the owner selects, the selection based upon a list of qualified inspectors that are available to inspect the asset based upon attributes including proximity to the asset, a web-based template configured to describe the asset at each of the steps of the inspection;

receiving from the inspector, inspection information in specific response to the web-based template;

storing in a database in association with the asset[[:]], the inspection information;

transmitting to the approval authority, a compliance report including noting compliance, wherein the compliance report includes, noting deficiencies in the asset and storing the noted deficiencies in association with the asset.

22. (Currently Amended) The method of Claim 21, wherein the storing further includes:

storing, in association with the asset a new deadline date, based upon completion of the inspection.

23. (Previously Presented) The method of Claim 22 further comprising:
receiving bids to perform a suitably compliant inspection of the asset from a group of qualified inspectors including, at least, the inspector; and
presenting to the owner a compilation of the bids for selection of the inspector.

24. (Previously Presented) The method of Claim 23 further comprising:
based upon the owner selecting the inspector, scheduling the inspector's inspection of the asset based upon the impending deadline, the inspector's availability, and the asset availability.

25. (Currently Amended) The method of Claim 21, wherein the compiling the report includes:

receiving, from the inspector, ~~Inspector~~ photographs of the asset or components of the asset; and

storing the photographs in association with the asset and the date of the inspection.

26. (Cancelled)

27. (Currently Amended) The method of Claim ~~[[26]]~~21, wherein the noting deficiencies further comprises:

selecting a remedy deficiency deadline based upon the noted deficiency and the date of the inspection; and

storing in association with the asset a remedy deficiency deadline.

28. (Previously Presented) The method of Claim 27, further comprising

receiving bids to perform a suitably compliant remedy of the deficiency from a group of qualified contractors; and

presenting to the owner a compilation of the bids for selection of a contractor to remedy the deficiency.

29. (Presently Presented) The method of Claim 28 further comprising:

based upon the owner selecting the contractor, scheduling the contractor to remedy the deficiency based upon the remedy deficiency deadline, the contractor's availability, and the asset availability.

30. (Currently Amended) The method of Claim ~~[[26]]~~21, further comprising:
compiling compliance report including the noted deficiency.

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CUSTOMER NUMBER

REMARKS

Claims 1-6, 8, and 21-30 are pending and stand rejected. Claims 9-20 have been withdrawn. Claims 7 and 26 have been cancelled. Claims 1, 3-5, 8, 21-22, 25, 27, and 30, have been amended. No new matter has been added to the application. Pursuant to 37 C.F.R. § 1.111, Applicants respectfully request reconsideration of the present application.

A three-month extension of time in which to respond to the Office Action dated November 26, 2018 is respectfully requested.

REJECTION OF CLAIMS 1-8 AND 21-30 UNDER 35 U.S.C. § 101

Claims 1-8 and 21-30 are rejected under 35 U.S.C. 101 as being allegedly directed to a judicial exception without significantly more. The Examiner's rejection is respectfully traversed.

In making the rejection, the Examiner states that:

“Claim(s) 1-8 and 21-30 is/are directed to the abstract idea... and the claim(s) does/do not include additional elements that are sufficient to amount to significantly more than the judicial exception because when considered both individually and as an ordered combination they do not amount to significantly more than the abstract idea. . . . At best, each step requires generic computing components to perform generic computer functions,” Action, pages 2-4.

In response, Applicant states that as per the new revised 101 subject matter eligibility guidance as of January 7, 2019, the rejection should be withdrawn.

Applicant submits that the claims are directed to a computer-implemented method for tracking a requisite inspection of an owned asset using a web registry, and therefore qualifies over the Step 1 of analysis proposed by USPTO.

With respect to prong 1 of Step 2A “Evaluate whether the claim recites a judicial exception (an abstract idea, a law of nature, or a natural phenomenon),” and Office Action on page 2 recites that “the claims are directed to an abstract idea”. Applicant respectfully rejects such assertion.

In response, Applicant submits that the claims are directed to a computer-implemented method for tracking a requisite inspection of an owned asset using a web registry. Further, the claims are directed to a novel method and/or system for collecting asset information and posting the same along with the inspection in a web registry, so that **the updated information is advantageously viewed by all interested parties. This helps in saving valuable time**, for example, trying to locate the asset at the time of an emergency.

Further, the information stored in the web registry includes asset ownership, make, model, year, color, condition, rating of needed maintenance (critical, important, light, or none), specific recommended maintenance, pressure, flow, GPS location, address, time of inspection, environment conditions during inspection, landscaping, digital picture of asset, nozzle size and orientation, physical description of asset, special markings, service record, water quality, and asset number. Thus, sharing this information via the web registry, enables all the viewers, including the asset owner, the asset inspectors, and even the first responders to utilize this information and make use of the asset, whenever required.

Therefore, the claims are not related to the abstract idea and thus the rejection should be withdrawn.

With respect to prong 2 of Step 2A “Evaluate whether the claim recites additional elements that integrate the exception into a practical application of the exception,” Applicant states that the claims are directed to a computer-implemented method for tracking a requisite inspection of an owned asset using a web registry. Such method includes retrieving records of assets from a database to generate an inspection list including each asset due and each asset within a designatable interval of being due for inspection. For each asset on the inspection list, a list of qualified inspectors is retrieved. Further, a notice is generated which notifies an owner of the asset of an impending deadline for the inspection. Further, the method includes receiving at a server through an internet portal, information that one of the qualified inspectors supplies, the

information garnered by performing the required inspection. Based upon the received information, a report is compiled. Successively, the report is transmitted to an approving authority and the records relative to the asset is augmented to reflect the information the inspector supplies when the inspection is approved by the approving authority. Thereafter, a monetary transaction is completed between the asset owner and the inspector when the inspection is approved by the approving authority. Thus, such improved method results as an improvement in the field of computer technology, facilitating in better approach of tracking a requisite inspection of an owned asset.

Further, in a scenario, a better approach of extinguishing a fire by showing best hydrant (asset) for fire department to connect to and also give visual reference of that hydrant prior to arriving at the site. Such **improved method of record keeping** hydrant information will improve a city's ISO (insurance) rating **which will save money in fire insurance premiums for local businesses and homes**. Further, the web based compliance registry is advantageous to improve the process of inspections and in many cases introduce a new ability to enforce inspections. Further, the claimed method provides an **easier way for authorities to charge for their review time and a way to confirm inspection companies are licensed to work in their city**.

Thus, the current claimed invention recites additional elements that integrate the exception into a practical application of the exception. Therefore, the rejection is improper and should be withdrawn.

With respect to Step 2B “Does the claim recite additional elements that amount to significantly more than the judicial exception” of USPTO guidelines, Applicant respectfully submits that the claims also include specific limitations that "amount to significantly more than the abstract idea of itself."

To summarize, independent claim 1, for example, recites

*“transmitting, from the approving authority, a notice to the owner
of the asset, the notice to include a report of the received information;*

augmenting at the database, the records relative to the asset to reflect the information the inspector supplies when the inspection is approved by the approving authority.”

Firstly, the claimed invention enables tracking a requisite inspection of an owned asset using a web registry, so that the updated information is advantageously viewed by all interested parties. Further, the web based compliance registry is advantageous to improve the process of inspections and in many cases introduce a new ability to enforce inspections.

Secondly, the claimed method provides a method to augment the records relative to the asset to reflect the information the inspector supplies when the inspection is approved by the approving authority. Thus, the method may enable a particular standard format for collecting asset information, so that all the interested parties can easily access the information. In an aspect, such method provides an easier way for authorities to charge for their review time and a way to confirm inspection companies are licensed to work in their city. In another aspect, such improved method overcomes the disadvantage of using current fire hydrant management software i.e. the limitation of communication within the department and interdepartmentally.

Therefore, the claims include limitations that amount to significantly more than "an idea of itself.”

The Applicant thus respectfully requests the Examiner to avoid oversimplifying the claims by looking at them generally to interpret an abstract idea in terms of “abstract idea of itself” and to consider the specific requirements of the claim, as explained above, that amounts to significantly more.

Further, similar to automatic lip synchronization and facial expression animation using computer-implemented rules that was found patent eligible under 35 U.S.C. § 101 in *McRO, Inc. v. Bandai Namco Games America*, claims 1, 5, and 21 are also directed to an improvement in computer-related technology i.e. facilitating tracking a requisite inspection of an owned asset

using a web registry and so that **the updated information is advantageously viewed by all interested parties**, that previously couldn't be achieved.

Accordingly, Applicant respectfully submits that the amended claim 1 and the above-mentioned arguments recite patent eligible subject matter, rendering the rejection improper, and Applicant requests withdrawal of the rejection.

The Office Action, on pages 4-5, recites “[a]dditionally, the claimed invention of independent claim 5 recites a "computer- implement method" and the claimed invention of independent claim 21 recites a ‘computer-implement method’ with limitations that are substantially similar to the claimed invention of claim 1, thus have been found patent in-eligible for the same rationales.”

In response, Claims 5 and 21 also include the above argued significant limitations and direct to a patent eligible subject matter, and therefore withdrawal of their rejection is also requested.

Further, dependent claims 2-4 are also allowable under 35 USC § 101 for their dependence on allowable claim 1, and claims 6 and 8 are also allowable for their dependency on independent claim 5. Further, claims 22-25 and 27-30 are also allowable for their dependency on independent claim 21. Thus, Applicant respectfully requests the Examiner to withdraw this rejection.

REJECTION OF CLAIMS 1-2 AND 4 UNDER 35 U.S.C. § 103(A)

Claim 1-2 and 4 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication Application No. 2008/0084291 (hereinafter known as “Campion”) in further view of U.S. Patent Application No. 7,831,628 (hereinafter known as “Silva”).

Independent Claim 1

Independent claim 1 has been amended to incorporate features of dependent claim 4. Further, amended independent claim 1, in pertinent parts, recites “transmitting the report completed inspection to an approving authority;” and **“transmitting, from the approving authority, a notice to the owner of the asset, the notice to include a report of the received information and where the received information includes a noted deficiency.”** Such limitations are not disclosed by the cited references, neither alone nor in combination.

Regarding claim 4, the Office Action, on page 9 recites, “transmitting a notice to the owner of the asset (0043: discloses providing a notification to a building owner.), the notice to include a report of the received information (0043) and where the received information includes a noted deficiency (0029, 0058), the report to include a course of action based upon the received information (0057), the course of action to include remedy of the deficiency(0057), the report transmitted from the approving authority (0065-0066).” The Applicant disagrees with this assertion.

Campion, in cited paragraphs or elsewhere, describes a method for facilitating operations such as an authenticated test of life safety equipment having components including a control panel and sensors. Campion further discloses about providing proper forms for submitting authenticated information as to why a system has failed. Campion, at best, discloses that a notification is provided to a building owner. However, Campion nowhere discloses that the notification includes deficiencies related to the asset, that is being provided to the building owner. Hence, Campion fails to teach or suggest, “transmitting, from the approving authority, a

notice to the owner of the asset, the notice to include a report of the received information and where the received information includes a noted deficiency.”

On the other hand, Silva discloses a method to facilitate a building department of a municipality's management and administration of its operations over an electronic data transfer network. However, Silva nowhere discloses that a noted deficiency related to the assets is included in the notification being provided to the building owner.

Hence, Campion and Silva, either alone or in combination, fails to teach or suggest every limitation required by Claim 1. Therefore, Applicant respectfully submits that in light of the above discussion, the rejection of claim 1 should be withdrawn. Thus, the Claim 1 is patentable.

Further, rejection of dependent claims 2 and 4 shall be withdrawn, in light of their dependency on amended independent claim 1, which is shown above to be patentable.

REJECTION OF CLAIMS 3 AND 5-8 UNDER 35 U.S.C. § 103(A)

Claims 3 and 5-8 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Campion in view of Silva in further view of U.S. Patent Application No. 6,446,053 (hereinafter known as “Elliott”).

Independent Claim 5

Independent claim 5 has been amended to incorporate features of dependent claim 7. Further, amended independent claim 5, in pertinent parts, recites “receiving, from the at least one inspector, **inspection information indicating the status of the asset, wherein the received**

inspection information includes receiving information describing deficiencies in the asset job, the owner of an asset receiving bids from qualified inspectors based on the needs of the asset.” Such limitations are not disclosed by the cited references, neither alone nor in combination.

The Office Action, on pages 11 and 12, recites, “receiving, from the at least one inspector, inspection information indicating the status of the asset (0043: discloses multiple testers can perform inspections by accessing data server. The test data generated from the test can be stored such that test data can be provided into standard forms required by jurisdictions for reporting information such as inspection status, test results, and the like.)”

The Office Action relies on paragraph [0043] of Campion, which discloses as:

It will be appreciated that the present invention is contemplated such that multiple testers can perform inspections by accessing, for example, data server 520 from multiple web browsers such as from devices 532-535 at one time. Also, while one web server 530 is shown, it is also contemplated that many web servers 530 could be used to access data server 520 to perform multiple inspections on multiple sites by multiple testers at one time, subject, of course, to ordinary delays caused by the demands for access generated by the multiple inspectors or testers. It should be noted that the test data generated from the tests can be stored as described such that the test data can be provided into standard forms required by jurisdictions for reporting information **such as inspection status**, test results and the like. The data and authenticated forms can be used to provide notification to a building owner of inspections required during a particular time frame, notification of upcoming inspections and scheduling of upcoming inspections through calendars or other schedule management tools. The data can also include inventories of equipment or the like.

Campion, at best, describes that test data generated from the test is stored such that the test data is provided to into standard forms required by jurisdictions for reporting information such as the **inspection status**. However, Campion nowhere discloses that the inspection

information **indicates the status of the asset**. Thus, Campion fails to teach or suggest “receiving, from the at least one inspector, **inspection information indicating the status of the asset**, wherein the received inspection information includes receiving information describing deficiencies in the asset job, the owner of an asset receiving bids from qualified inspectors based on the needs of the asset.”

Further, regarding claim 7, the Office Action on page 15 recites, “col. 10: 47-67 and col. 11: 1-60: Elliott discloses once the proposal is complete to the user's satisfaction the application prepares it for submission. The contractor database is searched for contractors in the designated area. Each contractor tends to bid differently so by sending the proposal to several contractors the user can compare prices for different contractors for the project.” The Applicant respectfully disagrees such assertion.

Elliot, in cited paragraphs or elsewhere, describes a method which enables a user to develop a construction proposal including a detailed graphical model and a detailed cost estimate model. Further, Elliot discloses that a contractor is able to contact the user in real-time. However, Elliot nowhere discloses that inspection information describes deficiencies in the asset.

Hence, Elliot fails to teach or suggest the features, as recited by amended independent claim 5, more particularly, “receiving, from the at least one inspector, inspection information indicating the status of the asset, **wherein the received inspection information includes receiving information describing deficiencies in the asset job, the owner of an asset receiving bids from qualified inspectors based on the needs of the asset.**”

Hence, Campion, Silva, and Elliot, either alone or in combination, fails to teach or suggest every limitation required by Claim 5. Therefore, Applicant respectfully submits that in light of the above discussion, the rejection of claim 5 should be withdrawn. Thus, the Claim 5 is patentable.

Further, rejection of dependent claim 3 shall be withdrawn, in light of its dependency on independent claim 1, which is shown above to be patentable.

Further, rejection of dependent claims 6 and 8 shall be withdrawn, in light of their dependency on independent claim 5, which is discussed above to be patentable.

Rejection of claim 7 stands moot, in view of its cancellation.

REJECTION OF CLAIMS 21-22, 25-27 AND 30 UNDER 35 U.S.C. § 103(A)

Claims 21-22, 25-27 and 30 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Campion in view of U.S. Publication Application No. 2008/0114638 (hereinafter known as “Colliau”).

Independent Claim 21

Independent claim 21 has been amended to incorporate features of dependent claim 26. Further, amended independent claim 21, in pertinent parts, recites “transmitting to the approval authority, a compliance report including noting compliance, **wherein the compliance report includes, noting deficiencies in the asset and storing the noted deficiencies in association**

with the asset.” Such limitations are not disclosed by the cited references, neither alone nor in combination.

Regarding claim 26, the Office Action on page 18 recites, “With respect to claims 26 and 30, the combination of Campion and Colliau discloses the method, wherein the compiling the report includes; Noting deficiencies in the asset and storing the noted deficiencies in association with the asset. (See Campion - 0054-0055, 0064-0066).” The Applicant respectfully disagrees such assertion.

In response, Applicant has amended claim 21 to include the above-argued limitation of Claim 1. Hence, Campion fails to teach or suggest, “transmitting to the approval authority, a compliance report including noting compliance, **wherein the compliance report includes, noting deficiencies in the asset and storing the noted deficiencies in association with the asset.**”

Further, Colliau is neither contended to, neither does it teaches or suggests the features of claim 21, as discussed above.

Hence, Campion and Colliau, either alone or in combination, fails to teach or suggest every limitation, as disclosed in amended independent claim 21.

Therefore, Applicant respectfully submits that in light of the above discussion, the rejection of claim 21 should be withdrawn. Thus, the Claim 21 is patentable.

Further, rejection of dependent claims 22, 25-26, and 30, shall be withdrawn, in light of its dependency on independent claim 21, which is shown above to be patentable.

Rejection of claim 26 stands moot, in view of its cancellation.

REJECTION OF CLAIMS 23-24 AND 28-29 UNDER 35 U.S.C. § 103(A)

Claims 23-24 and 28-29 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Campion in view of Colliau in further view of Elliott.

Further, rejection of dependent claims 23-24 and 28-29 shall be withdrawn, in light of their dependency on amended independent claim 21, which is shown above to be patentable.

CONCLUSION

For the foregoing reasons, Applicants respectfully request withdrawal of the aforementioned objections and rejections and reconsideration of the application. If there are any remaining matters that may be handled by telephone conference, the Examiner is kindly invited to call the undersigned. Any additional fees or overpayment as a result of this filing may be charged to Deposit Account No. 061629.

Respectfully submitted,

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