

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ATTENTIVE MOBILE INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 23-087 (CJB)
	)	
STODGE INC. d/b/a POSTSCRIPT,	)	
	)	
Defendant.	)	

**PLAINTIFF’S ANSWERING BRIEF IN OPPOSITION TO DEFENDANT’S
MOTION TO DISMISS COMPLAINT PURSUANT TO
FED. R. CIV. P. 12(B)(6)**

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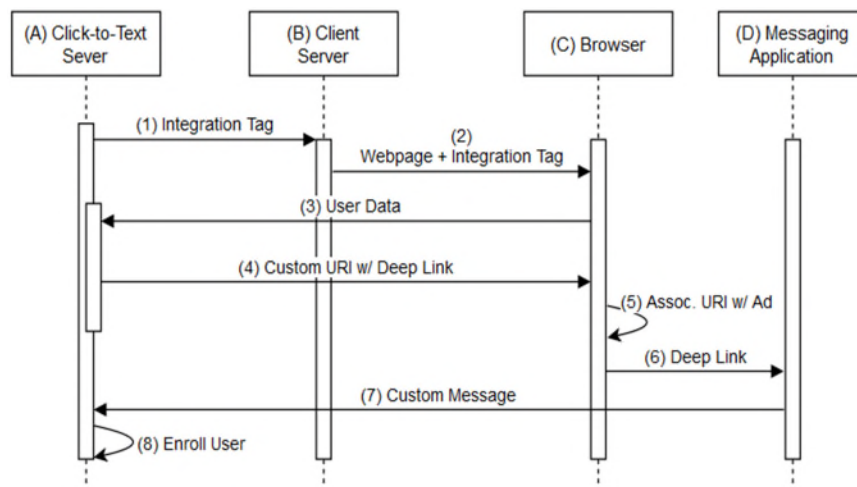
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Attentive Mobile opposes Stodge Inc.’s (“Postscript”) Motion to Dismiss. D.I. 10 (“Mot.”)

I. INTRODUCTION

Attentive’s claims are patent eligible under 35 U.S.C. § 101 because they recite an improved mobile sign-up system that overcame problems with earlier sign-up systems. As shown in the sequence diagram below, the claims recite specific components (A-D) that interact with one another in a specific way (steps 1-8) to achieve the desired result:



These claims are sufficiently specific because they recite how to implement the new mobile sign-up system, and that “how” is neither generic nor conventional. The claimed solution is “technical,” because it overcame problems with earlier mobile sign-up systems using technologies specific to mobile computing. The claims are thus directed to a “useful improvement” in mobile sign-up systems—not to an abstract idea.

To argue otherwise, Postscript makes the classic mistake of conflating the invention (a new mobile sign-up system) with an abstract idea that the invention *involves* (prefilled subscription requests). But one look at the sequence diagram above lays that error bare. Though Custom Message (7) can be characterized as a type of prefilled subscription request, that is no license to ignore the claims’ remaining non-generic and non-conventional combination of limitations. That combination is a specific improvement to mobile sign-up systems. It is patent eligible.

II. BACKGROUND

Online marketing is a game of inches: when a company advertises to millions of online users, even tiny differences in customer conversion rates can mean big differences in revenue. Online marketers therefore compete with one another to devise techniques that reduce sales friction by even small degrees, which can lead to big benefits when applied at scale.

In this game of inches, Attentive’s “two-tap” mobile signup technology is a true leap. The technology allows mobile phone users to sign up for promotions more easily than existing systems had, thus reducing sales friction and significantly increasing conversions.

At the time of invention, the dominant mobile sign-up system required multiple steps: (1) a user who tapped on an online promotion would be redirected to a sign-up form, (2) the user would enter his mobile number and information; (3) the system would send a text message to the mobile number; and (4) the user would respond with a certain message (*e.g.*, “yes”).

Attentive realized that this prior art system had multiple points of friction at which users were lost: (1) the approach interrupted the user’s browsing activity by redirecting to a separate form for the user to fill out manually; (2) the approach lost users who accidentally mistyped their phone numbers into the form; (3) the approach required the user to manually switch to the text messaging application; and (4) the user had to type out the required response (and do so correctly). Every one of these points of friction introduced a point of conversion failure.

Attentive’s “two-tap” solution improved upon the state of the art by eliminating these points of friction. D.I. 1 (“Compl.”), ¶ 31. The system enabled users to sign up using only two taps, with no manual input—merely one tap on a promotion to open a messaging application with a prepopulated message, and a second tap on “send” to complete the signup. *Id.* at ¶¶ 34, 36.

The system achieved this result as shown in the sequence diagram above. To start, a “click-to-text server” (A) sends an “integration tag” (1) to a client server (B). The client server (B) embeds

the integration tag into a webpage, which it serves (2) to a mobile device application, such as a browser (C). The browser (C) responds to the integration tag by automatically sending its user's data (3) to the click-to-text server (A). The click-to-text server (A) uses that received data to create a custom Uniform Resource Locator ("URI") that deep links to the mobile device's messaging application (D) with a custom message that includes the click-to-text server's address and an identifier for the user or the webpage, and it communicates that custom URI (4) back to the browser (C). The browser (C) associates the URI with a promotional message that it displays to the user (5). If the user taps on the promotional message, the browser (C) uses the URI to open a messaging application with the custom message. The custom message is automatically addressed to the click-to-text server, as indicated by the URI (6). If the user sends the message (7) to the click-to-text server (A), the mobile device is enrolled in the promotion (8). *See id.* at ¶ 73.

Attentive's solution thus enabled users to sign up for promotions with only two taps and no data entry—a process with far less friction compared to the dominant existing system. The industry press hailed the new system as a "novel" "key differentiator," and Forbes named Attentive one of the top ten private cloud companies in the country. *Id.* at ¶¶ 4, 11-17, 28, 51. The USPTO awarded Attentive multiple patents on its two-tap system, including U.S. Patent Nos. 11,416,887 ("887 Patent"); 11,416,897 ("897 Patent"), and 11,553,074 ("074 Patent").

Competitors were quick to copy Attentive's new two-tap system. *Id.* at ¶ 7. To stop the infringement, Attentive sued competitor Emotive in September 2022 (*Attentive Mobile Inc. v. 317 Labs Inc. d/b/a Emotive*, C.A. No. 22-01163-CJB (D. Del.)) and Postscript in January 2023.

Defendants in both cases have moved to dismiss on the basis that the two-tap solution is a patent-ineligible abstract idea—specifically, a monopoly on the idea of pre-filled signup requests.

III. LEGAL STANDARDS

To decide eligibility, courts apply a two-step framework. *Alice Corp. Pty. v. CLS Bank Int'l*, 573 U.S. 208, 217-18 (2014). At step one, they decide whether the claim’s “character as a whole” is “directed to” an abstract idea. *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016). If so, they move to step two and decide whether the claim nevertheless adds an “inventive concept”—*i.e.*, “combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [abstract idea].’” *Alice*, 573 U.S. at 217-18. That step is “satisfied when the claims involve more than performance of well-understood, routine, [and] conventional activities previously known to the industry”—a fact question. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1367 (Fed. Cir. 2018).

IV. ARGUMENT

Attentive’s claims are patent eligible at either step of *Alice*. At step one they are directed to a specific technical system that secures sign-ups in a mobile environment more effectively than had previous systems. While that system ultimately generates what Postscript characterizes as a prefilled enrollment request (Mot. 8), the system is obviously not a generic or conventional way to achieve that result. The claims are therefore “directed to” a new mobile sign-up system, not to the bare result of generating prefilled enrollment requests. If the Court nevertheless holds that the claims are “directed to” the idea of prefilled enrollment requests, then the claims would still be eligible under step two because they add a combination of structure and function that is both (1) non-generic and (2) unconventional (as plausibly alleged).

A. Step One: The claims are “directed to” a specific way to enroll users in a mobile-computing environment.

Postscript is wrong that the asserted claims are directed to “the abstract idea of enrolling customers in promotions using a prefilled and preaddressed request.” Mot. 8. While that bare idea may be abstract, the asserted claims are not “directed to” that idea but to an *improved mobile sign-*

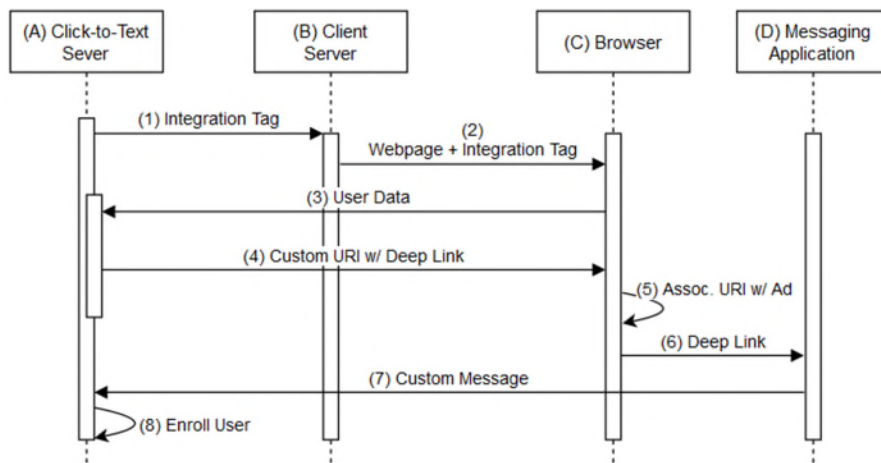
up system that merely involves that idea. The mobile sign-up system is a “technological” invention, even if it serves a business goal. And because the claims recite *how* to build that system, they are not analogous to the “do-it-on-a-computer” claims in the cases Postscript cites.

1. The claims are not directed to the idea of prefilled signup requests.

Postscript’s lead argument is that enrolling customers in a promotion using prefilled requests is an abstract idea, *and the asserted claims are “directed to” that abstract idea*. Mot. 8-10. The problem lies with the second half of that analysis. While the bare idea of using prefilled signup requests may be abstract, Attentive’s claims are not “directed to” that bare idea. They are directed to a specific system, including both structure and function, which Postscript ignores.

“The Step 1 ‘directed to’ analysis ... depends on an accurate characterization of what the claims require.” *TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1294 (Fed. Cir. 2020). Consequently, courts must “avoid oversimplifying the claims by looking at them generally and failing to account for the specific requirements of the claims.” *McRO*, 837 F.3d at 1313.

As shown in this sequence diagram below, Attentive’s claims recite far more than the bare idea of using a prefilled enrollment request. They recite at least four structures (A-D) and eight functions (1-8). Of these, only function (7) might be characterized as a prefilled enrollment request. Yet, Postscript’s analysis ignores everything else.



Postscript could ignore those additional structural and functional elements if they were *inherent* to the abstract idea of using prefilled requests—*i.e.*, that they merely “spell out what it means to apply it on a computer.” *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015). But that is obviously not the case. To the contrary, the recited combination of elements reflects a slew of original design choices. For example, the inventors decided that the prefilled message should be created by a custom URI that deep links to the messaging application. They decided that the URI should be created by a click-to-text server in response to user or webpage data received earlier from a mobile device. They decided that the mobile device would send that user or webpage data in response to executing an integration tag created by the click-to-text server. They decided that the mobile device should receive that integration tag in a webpage, received from a client server, which received the tag from the click-to-text server. None of these design choices is inherent in the bare idea of using prefilled enrollment requests. The recited combination of structures and functions is therefore plainly far more than “the abstract idea of enrolling customers in promotions using a prefilled and preaddressed request.” Mot. 8.

Postscript seems to think that the “directed to” inquiry is satisfied by identifying any abstract concept that the claim “involves.” That is wrong because “all inventions ... embody, use, reflect, rest upon, or apply ... abstract ideas,” and consequently, “an invention is not rendered ineligible for patent simply because it involves an abstract concept.” *Alice*, 573 U.S. at 217.

Under these principles, Attentive’s claims are no more “directed to the abstract idea of enrolling customers in promotions using a prefilled ... request” than the Wright Brothers’ airplane was directed to the abstract idea of flying using Bernoulli’s principle (an idea practiced by dinosaurs). Both inventions involved many additional limitations needed to make the idea work,

and those limitations cannot be ignored in the “directed to” inquiry. While the operation of Attentive’s system ultimately uses prefilled enrollment request (as the airplane ultimately uses Bernoulli’s principle), that use does not render the system “directed to” that abstract idea generally.

Postscript’s error mirrors that in *TecSec*, where the Federal Circuit highlighted this distinction between claims that merely “involve” an abstract idea and those “directed to” it. *TecSec*, 978 F.3d 1278. As here, the *TecSec* defendant’s description of the claims was “materially inaccurate” because it failed to “go beyond what is required simply by the [abstract idea]”—there, “multi-level security.” *Id.* at 1294-95. The court held that, “although the patent *involves* multilevel security, that does not negate the conclusion that the patent is aimed at solving a particular problem of [computers].” *Id.* at 1295-96 (emphasis added).

The same reasoning applies here. While the claims *involve* the idea of prefilled enrollment requests, they are certainly not “directed to” that idea. As in *TecSec*, Postscript “disregard[s] elements of the claims at issue that the specification makes clear are important parts of the claimed advance in the combination of elements.” *Id.* at 1294. That is error because “[t]he focus of the claimed advance cannot ignore all but the [abstract idea].” *Id.* at 1295.

Postscript is also wrong that the invention is “directed to” an abstract idea because its *result* is “automating the sign-up process or saving time.” Mot. 9. No rule of law prevents patenting inventions whose result is “automating” or “saving time.” The printing press, the steam engine, and the cotton gin all resulted in “automating” and “saving time” too, but none is an abstract idea.

What the law forbids is patenting the bare *result* of automation, “where it matters not by what process or machinery the result is accomplished.” *McRO*, 837 F.3d at 1312. As shown above, the claims here are eligible because they do recite the “process or machinery” by which the result is accomplished. That process and machinery is a particular improved mobile sign-up system.

2. The claims recite technical solutions.

Attentive’s claims are also eligible because they are directed to technical solutions. When upholding the eligibility of claims, the Federal Circuit has sometimes asked whether “the focus of the claimed advance is on a solution to a problem specifically arising in the realm of computer[s].” *TecSec*, 978 F.3d at 1293. That inquiry separates claims covering a “specific asserted improvement in computer capabilities” (*e.g.*, a new database) from those covering only “an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335-36 (Fed. Cir. 2016). Attentive’s claims focus on an improvement to computer capabilities—specifically, an improved mobile enrollment system—rather than merely invoke computers as tools. The claimed solution confronts a problem specific to prior art solutions in mobile enrollment systems, where “the user often pauses its previous activities ... and is redirected to the vendor’s application or website” to complete the transaction “via many user input[s],” leading to user loss. ’887 at 1:40-47. That problem arose in a technical environment (mobile sign-up systems), and Attentive mitigated the problem with technical tools particular to that technical environment (the specific combination of structures and functions recited in the claims). “[T]he focus of the claimed advance is [therefore] on improving” the prior art systems, “with the improvement assertedly being an efficient way” to sign up users in a mobile-computing environment. *TecSec*, 978 F.3d at 1296. The claims thus recite a technical solution to a technical problem.

Postscript argues that the improved mobile signup system cannot be patented because it does not “solve a technology-specific problem.” Mot. 10. Instead, Postscript argues, the system solves the *business* problem of “eas[ing] the process of subscribing customers to their promotions” or (more dismissively) “of taking time to manually write down information.” *Id.*

Postscript misunderstands the technical-invention inquiry. *All* inventions address some underlying real-world problem, like “the ‘problem’ of taking time to manually write down

information.” *Id.* Indeed, the printing press addressed exactly that problem. Consequently, many claims that the Federal Circuit has characterized as improvements to technology could be described as solving “business” problems. That businesses have long stored data did not prevent patenting a more efficient way of doing that with a computer. *Enfish*, 822 F.3d 1327. That businesses had long sought to access data did not prevent patenting a better way of doing that on a device with a small screen. *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356 (Fed. Cir. 2018). That businesses had long synchronized the speech of animated characters did not prevent patenting a more efficient way of doing that using a computer. *McRO*, 837 F.3d 1299. Even the opinion that introduced the “technology” inquiry into the post-*Alice* jurisprudence involved claims that ultimately addressed a business problem: “the problem of retaining [business] visitors.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014). That an invention ultimately serves a business purpose does not render it non-technical.

Patent-eligible technological advances are simply those that address issues arising in technical contexts with solutions rooted in those contexts. For example, the method of retaining website visitors in *DDR* addressed the business problem of retaining customers, but in the context of websites, which introduced the additional problem of “near-instantaneous transport between ... locations” when a user clicks a link. *DDR*, 773 F.3d at 1258. The claimed solution was not “technologically complex” and was built using only existing technology (*e.g.*, “computer processor,” “data store,” *etc.*): when a user clicks a link to a third-party merchant, “display[] product information from the third-party merchant, but retain[] the host website’s ‘look and feel.’” *Id.* at 1248-49. That was a “technical” improvement because the idea “specif[ied] how interactions with the Internet are manipulated to yield a desired result ... that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.” *Id.* at 1258.

Attentive’s claims are at least as “technical.” While they too ultimately address a business problem (obtaining signups), they do so in a technical context (mobile devices) that introduces both challenges and opportunities absent from the brick-and-mortar context—including the problem confronted in *DDR* (*i.e.*, the transport between locations when a user taps an ad). Attentive’s solution too is built using existing technology, but it too is technical because it “specif[ies] how interactions with the Internet are manipulated to yield a desired result ... that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.” *Id.* The claims thus recite a technical solution.

The Court should reject Postscript’s improper view of the “technical invention” doctrine. The doctrine does not bar patents on all software that serves a real-world purpose.

3. The claims recite a specific solution.

Most of Postscript’s argument regarding the “technical invention” issue is mistakenly directed instead on the separate issue of whether the claims are sufficiently *specific* (a.k.a. the “O’Reilly Test”). Mot. 11-12. Though Postscript conflates these two issues, the Federal Circuit distinguishes the “two inquiries” of (1) “whether the focus of the claimed advance is on a solution to a problem specifically arising in the realm of computer[s]” and (2) “whether the claim is properly characterized as identifying a ‘specific’ improvement rather than only claiming a desirable result.” *TecSec*, 978 F.3d at 1293. The cases Postscript cites, including “*Affinity Labs*, and other similar cases[,] hearken back to [that second] principle: that a result ... is not itself patentable.” *Finjan Inc. V. Blue Coat Sys., Inc.*, 879 F.3d 1299, 1305 (Fed. Cir. 2018).

The specificity requirement bars “patenting a result where it matters not by what process or machinery the result is accomplished.” *McRO*, 837 F.3d at 1312; *see TecSec*, 978 F.3d at 1293 (collecting cases applying the specificity requirement); *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1342 (Fed. Cir. 2018) (tracing the historical roots of the requirement). As shown above,

Attentive’s claims qualify because they do not simply recite a desired “result”—*e.g.*, enrolling users using prefilled requests—but the structure and function for achieving that result.

Postscript argues that the asserted claims do not meet the specificity requirement because they define elements by function (*e.g.*, “send,” “define”) and because they purportedly “lack any guidance about how those [] functions are performed.” Mot. 11. But the specificity requirement does not bar a patentee from describing claim elements by their functions. To the contrary, “[a] patent applicant is free to recite features of an apparatus either structurally or functionally.” *In re Schreiber*, 128 F.3d 1473, 1478 (Fed. Cir. 1997). Indeed, the Federal Circuit has upheld many software inventions claimed in functional terms. *See, e.g., TecSec*, 978 F.3d at 1282 (“accessing,” “selecting,” “encrypting”); *SRI Int’l, Inc. v. Cisco Sys., Inc.*, 930 F.3d 1295, 1301 (Fed. Cir. 2019) (“detecting,” “generating,” “receiving”); *Ancora Techs., Inc. v. HTC Am., Inc.*, 908 F.3d 1343, 1346 (Fed. Cir. 2018) (“selecting,” “using,” “verifying,” “acting on”); *Finjan*, 879 F.3d at 1303 (“receiving,” “generating,” “linking”). Nor does the specificity principle require that the written description articulate how every claim limitation is implemented. That is the concern of a different section of the Patent Act (35 U.S.C. § 112).

Attentive’s claims are sufficiently specific because they recite the structure and function of a new system that obtains mobile signups more effectively than previous systems. Thus, “it matters ... by what process or machinery the result is accomplished.” *McRO*, 837 F.3d at 1312.

4. Similar claims have been upheld as eligible.

Attentive’s claims are analogous to those upheld by the Federal Circuit in cases such as (1) *DDR*, 773 F.3d 1245 (generating a composite web page); *TecSec*, 978 F.3d 1278 (improved way to restrict access to data); (2) *Uniloc USA, Inc. v. LG Elecs. USA, Inc.*, 957 F.3d 1303 (Fed. Cir. 2020) (improved way to exchange data between devices); (3) *Finjan*, 879 F.3d 1299 (improved

way to detect malware); (4) *CardioNet, LLC v. InfoBionic, Inc.*, 955 F.3d 1358 (Fed. Cir. 2020) (improved way to monitor cardiac conditions); and others.

As here, each of these cases involved a piece of software that achieved some desired result more effectively than had previous solutions. Even though the software claims in each case *involved* an abstract idea, they were nevertheless “directed to” a technical solution that improved upon the prior art. As the court explained in *TecSec* (which involved the abstract idea of “multi-level security”):

While non-computer settings may have security issues addressed by multilevel security, it does not follow that all patents relating to multilevel security are necessarily ineligible for patenting. Here, although the patent involves multilevel security, that does not negate the conclusion that the patent is aimed at solving a particular problem of multicasting computer networks.

TecSec, 978 F.3d at 1296. The same is true here, where the claims may involve the abstract idea of prefilled subscription requests at some level, but they are not “directed to” that idea generally.

Postscript argues that the claims here are closer to (1) those invalidated in three non-binding opinions (Mot. 12-13), and (2) those invalidated as seeking to patent “the mere display, collection, and processing of information” (*id.* at 13-14). That is not so.

Postscript’s three district court analogies are easily distinguishable as concerning only the ***generic*** automation of an abstract idea:

- *DiStefano*. The “invention” merely automated the abstract idea of adding a link on each website to the other. The claims were ineligible because “reciprocal linking” is an abstract idea, and the claims merely added *generic automation by generic computer*.
- *Everglades* (an unpublished district court decision from 2015). The “invention” merely automated a classic collection game, like McDonald’s “Monopoly.” The claims were

ineligible because the game is abstract, and the claims merely added *generic automation by generic computer*.

- *Kroy* (an out-of-Circuit, district court decision from 2015) The “invention” automated an incentive award program using a computer. The claims were ineligible because an incentive award program is abstract, and the claims merely added the instruction to perform the abstract idea on a *generic automation by generic computer*.

Attentive’s claims “stand apart because they do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet.” *DDR*, 773 F.3d at 1257. Instead, they recite a specific software system that improved upon the prior art systems.

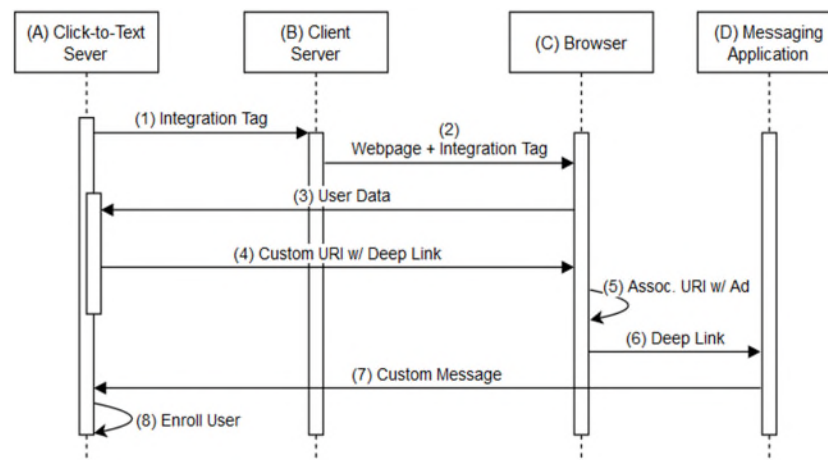
Postscript’s other argument—that the claims violate the rule against patenting the gathering and analyzing of information—is a throwaway because it so plainly overstretches the rule it purports to apply. At some level, *every* software invention gathers, analyzes, and outputs information because “[t]hese activities are *all* that computers can do.” *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1317 (Fed. Cir. 2016) (Reyna, J. concurring in part). The Federal Circuit has therefore warned against “generalizing” this rule against patenting the gathering and analysis of information prohibition, and it has clarified that the rule applies only to claims that “merely collect electronic information, display information, or embody mental processes.” *CardioNet*, 955 F.3d at 1371; *see Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353-54 (Fed. Cir. 2016) (collecting cases). This principle is inapplicable to Attentive’s claims, which recite a specific software system with specific structure and function—not a mental process of collecting and analyzing information, adorned only with the instruction to “do it on a computer.”

B. Step Two: The claimed combination is inventive.

The Court can also dispose of this motion at step two because the recited *combination* of structure and function distinguishes the claims from a mere drafting effort to patent the idea of “enrolling customers in promotions using a prefilled ... request.” Mot. 6.

The step two inquiry sets aside the purported abstract idea and asks, “[w]hat else is there in the claims before us?” *Alice*, 573 U.S. at 217. Thus, if the Court agrees with Postscript that the claims are “directed to” the abstract idea of “enrolling customers in promotions using a prefilled ... request” (Mot. 6), it must consider the remaining combination of elements at step two.

For convenience, here again is an embodiment of the claimed solution:



At best, the abstract idea of using prefilled enrollment requests might correspond to custom message (7) and enrollment (8). At step two then, Postscript must explain why adding the remaining combination of limitations—including structures (A)-(D) and functions (1)-(6)—fails 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.

Postscript makes two arguments for why the recited combination fails to meet that test: (1) the combination is *generic*—*i.e.*, inherent to every solution for using prefilled enrollment requests

in mobile environments, and (2) the combination is the *conventional* way in which prefilled enrollment requests were implemented in mobile environments. Both arguments are wrong.

1. The claimed combination of elements is not generic.

Postscript argues that the claimed combination is *generic* because “[t]here is no other order in which to perform this functionality.” Mot. 16. It reasons that making a prefilled enrollment request requires (1) obtaining user info, (2) creating the prefilled request, and (3) sending the request. *Id.* And it observes that the claims here perform each of these steps. *Id.*

Postscript’s analysis is backwards: the question is not whether the abstract idea captures the claimed solution (as it must), but whether the claimed solution captures the abstract idea. The abstract idea of making prefilled enrollment requests *requires* the intermediate milestones that Postscript identifies (*i.e.*, obtaining user info, creating the prefilled request, and sending the request), so *every* way of creating and using prefilled requests will necessarily include some mechanism for achieving those milestones. That does not mean that every way of creating and using prefilled requests is an attempt to monopolize that abstract idea. Rather, the claim is eligible if, as here, it constitutes a specific inventive way to achieve these milestones rather than merely “a drafting effort designed to monopolize the abstract idea.” *Alice*, 573 U.S. at 221.

The claims here recite a patentable way to create and use prefilled enrollment requests. While the abstract idea of using prefilled enrollment requests requires “receiv[ing] information about how to contact a customer” (Mot. 16), it is not *inherent* that one must do so by having a click-to-text server transmit an integration tag to a client server, which embeds the tag into a webpage and serves the combination to a browser, which automatically executes the integration tag to return user data to the click-to-text server. While the abstract idea of using prefilled enrollment requests requires creating such a request, it is not *inherent* that one must accomplish that goal by having the click to text server send a custom URI with a deep link to the browser, for

the browser to associate the URI with an advertisement on the webpage, for the URI to deep link to a messaging application, and for the deep link to cause the application to create a prefilled request with a custom text message. While the abstract idea of using prefilled enrollment requests requires submitting the prefilled request, it is not *inherent* that one must accomplish that goal by submitting a custom message from a messaging application, which thus validates a phone number.

This claimed combination (as a whole) is not *inherent* to the abstract idea of using prefilled enrollment requests. Rather, as shown above, the claimed combination reflects a slew of original design choices not inherent to the abstract idea of prefilled subscription requests. The combination is therefore not “generic.”

2. The claimed combination was unconventional.

Postscript’s other argument for why the claimed combination adds nothing significant to the abstract idea of prefilled subscription requests is that the claimed combination was purportedly a *conventional* way to implement that idea in mobile environments. Mot. 14-17. But that is a fact issue on which Postscript provides no evidence. It cannot be resolved for Postscript on this posture.

“[P]lausible and specific factual allegations that aspects of the claims are inventive” will defeat a motion to dismiss a claim on §101 grounds. *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1317 (Fed. Cir. 2019). That is because “whether a ... combination of elements is ... conventional ... is a question of fact” (*Berkheimer*, 881 F.3d at 1368), and genuine questions of fact cannot be resolved for the defendants on the pleadings. To raise a fact dispute that is genuine, “a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations”—only “enough fact to raise a reasonable expectation that discovery will reveal evidence” that the disputed fact is true (here, that the identified combination of elements was indeed unconventional). *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007).

Attentive has plausibly alleged that the claimed combination was unconventional. *See* Compl. at ¶¶ 36-52. To start, the Complaint is explicit that “the technologies covered by the claims consist of ordered combinations of features and functions that, at the time of the inventions, were **not** ... conventional.” *Id.* at ¶ 36 (emphasis added); *see also id.* at ¶ 51 (describing the “ordered combination of components and interactions” as “unconventional”).

That allegation is plausible because it is consistent with the disclosure in the specification (*e.g.*, ’887 Patent, 1:30-52) and the Complaint. Both sources describe traditional signup systems and explain that the invention “constitute[s] technical improvements over [those] traditional mobile-signup and mobile-messaging systems” because the invention no longer requires users to “pause [their] previous activities,” “be redirected to the vendor’s application,” and “enter a phone number or message as part of the signup process.” *Id.* at ¶¶ 37, 41, 47 (describing advantages over “conventional code solutions”). The Complaint goes on to plausibly allege that this system “revolutionize[d]” the field, was “widely adopted,” and “received numerous accolades and awards.” *Id.* at ¶¶ 1, 4. The Complaint substantiates those claims with reference to industry publications that praise the claimed solution as a “novel” “key differentiator” that “sounds simple, but ... took months for Attentive’s engineering team to develop.” *Id.* at ¶ 51. It is unclear what more Attentive could have done to plausibly allege that its *patented* system was unconventional.

On the other side of the scale, Postscript identifies nothing suggesting that the claimed *combination* was conventional. Twice (Mot. 14-15 and 16-17) Postscript argues that each claimed element, considered individually, uses pre-existing technology (*e.g.*, integration tags and deep links). But even if that were so, it would not suggest that the claimed *combination* was conventional. “[C]laimed discoveries almost necessarily will be combinations of what, in some sense, is already known.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 401 (2007). Consequently,

the eligibility inquiry “requires more than recognizing that each claim element, by itself, was known.” *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016). “As is the case here, an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.” *Id.* And as shown above, the claimed combination here is neither generic nor conventional.

On why the claimed *combination* was purportedly conventional, Postscript has little to say. Mot. 15-16. It argues that the combination was conventional because the individual “components behave exactly as expected.” Mot. 15. It is unclear what this means, let alone what rule of law requires the individual elements of an inventive combination to behave *unexpectedly*. The authority Postscript cites (*In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607 (Fed. Cir. 2016)) does not announce any such rule—only the settled proposition that a claimed combination must do “more than spell out what it means to apply [the abstract idea] on a computer.” *Id.* at 615. As shown above, Attentive’s claims do that by reciting a specific combination of structure and function. Postscript cites no evidence to suggest that the claimed combination was conventional.

Rather than cite any such evidence, Postscript dedicates an entire section of its brief (Mot. 17-19) to attacking the plausibility of Attentive’s allegations. But those attacks are fruitless.

First, Postscript argues that the Court should ignore Attentive’s allegations that the claimed combination was unconventional because those allegations are “legal conclusions ... couched as factual allegations.” Mot. 17-18. But “whether a ... combination of elements is ... conventional ... is a question of fact” (*Berkheimer*, 881 F.3d at 1368), not a legal conclusion. It is therefore unclear why the Court should treat Attentive’s factual allegations on that issue (*see, e.g.*, Compl. ¶¶ 36-52) as “legal conclusions.” The Court need only confirm that Attentive’s fact allegations are “plausible.” *Twombly*, 550 U.S. at 556. The allegations are certainly plausible: not only is the

invention patented (which requires the PTO to determine it was novel and non-obvious at the time), but the Complaint further cites industry publications praising the novelty and impact of the claimed combination. Compl. ¶ 51. On the other side of the ledger is *nothing*. Absent any evidence to the contrary, it is certainly plausible that Attentive’s patented and praised system was unconventional at the time, as Plaintiff alleges and as the patents explain.

Second, Postscript argues that “Attentive cannot shelter behind alleged novelty or industry praise” because a novel abstract idea is still an abstract idea. Mot. 18-19. Postscript is misapplying that legal principle. The step two inquiry ignores the abstract idea and asks whether the *additional* limitations (here, at least structures (A)-(D) and functions (1)-(6)) are unconventional. *Berkheimer*, 881 F.3d at 1367. Evidence of “novelty or industry praise” (Mot. 18) regarding *those* limitations therefore *is* relevant. Here, because those “additional” limitations constitute nearly the entire claim, it is relevant that industry publications describe the resulting “two-tap” system as Attentive’s “key differentiator” against previous sign-up solutions. Compl. ¶ 51. Such descriptions plausibly suggest that the combination of additional elements—which encompasses nearly the entire claim—was *not* conventional at the time.

Third, Postscript argues that Attentive’s allegations contradict the specification’s disclosure that certain elements *in isolation* (e.g., computer networks, deep links, etc.) were known. Mot. 18. But this argument again fails to consider that it is the claimed *combination* that is unconventional. Because “an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces” (*Bascom*, 827 F.3d at 1350), the patent’s disclosure of individual elements cannot show that the claimed *combination* was conventional.

Finally, Postscript argues that the invention’s result of saving time is not an inventive concept. Mot. 19. Agreed. But Attentive’s claims are not eligible on the basis that they achieve

automation; they are eligible because they recite *how* to achieve the automation, in a particular technological context. A specific new way to achieve a desired automation more efficiently than was previously possible is a patent eligible improvement.

Though Attentive has only asserted three claims, Postscript argues briefly (Mot. 19-20) that the Court should invalidate all of Attentive’s claims, but Postscript does not cite any evidence suggesting the limitations recited there were conventional either. For example, claim 3 of the ’887 patent recites that the click-to-text server uses the user data to “authenticate” the user, claim 12 recites that the user data includes a “user agent associated with the first application,” and claim 13 recites that the user data includes viewing history, referring webpage, or other information. Postscript cites nothing suggesting that these additional limitations were conventional.

Attentive’s allegations thus raise a factual dispute about whether the claimed *combination* of elements constituted an unconventional way to generate prefilled signup requests on mobile devices. At this stage, no more is required. *Cellspin*, 927 F.3d at 1317 (“plausible and specific factual allegations that aspects of the claims are inventive” sufficient to overcome a §101 motion at step two).

V. CONCLUSION

Postscript’s Motion should be denied. Should the Court find Attentive’s Complaint deficient, Attentive respectfully requests leave to amend, which shall be “freely give[n] ... when justice so requires.” Fed.R.Civ.P. 15(a).

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on March 15, 2023, upon the following in the manner indicated:

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