

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NATERA, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:23-CV-629
	)	
NEOGENOMICS LABORATORIES,	)	
INC.,	)	
	)	
Defendant.	)	

ORDER

Section 101 of the Patent Act defines the subject matter eligible for patent protection. It provides:

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.

35 U.S.C. § 101. This provision contains an “important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013) (cleaned up); accord *Alice Corp. Proprietary Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014). Because almost all inventions rely on laws of nature, natural phenomena, and abstract ideas in some fashion, courts use a two-step test to determine whether an invention is patentable. *See Alice*, 573 U.S. at 217. First, courts “determine whether the claims at issue are directed to” a patent-ineligible concept. *Id.* If so, courts ask if the patent contains an “inventive concept” that transforms the nature of the claim into a patent-eligible application. *Id.* at 217–18.

Alice was decided at summary judgment. *Id.* at 214. *Mayo*, a case cited repeatedly by the Supreme Court in *Alice*, was also decided at summary judgment. *Mayo Collaborative Servs. v. Prometheus Lab'ys, Inc.*, 566 U.S. 66, 76 (2012); *see e.g., Alice*, 573 U.S. at 216–18.

Here, NeoGenomics moves to dismiss the complaint for failure to state a claim, contending the subject matter is ineligible for patent protection. Doc. 51. Yet it submitted evidence in support of its arguments, *see, e.g.*, Doc. 52-2; Doc. 52-3; Doc. 52-4; Doc. 52-5; Doc. 53-1; Doc. 53-2, and explicitly asks the Court to consider evidence submitted in connection with Natera's motion for a preliminary injunction. *See* Doc. 135 at 5 (“[I]n no event should the Court find § 101 satisfied without considering all the supporting evidence, including that identified in the preliminary injunction submissions.”). NeoGenomics makes virtually no argument directed to the allegations of the complaint, which on its face does not establish ineligible subject matter.

It is **ORDERED** that the defendant's motion to dismiss, Doc. 51, is **DENIED** without prejudice to a motion for summary judgment.

This the 27th day of December, 2023.


UNITED STATES DISTRICT JUDGE