

Juliette P. White, USB #9616
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Telephone: 801.532.1234
Facsimile: 801.536.6111
JWhite@parsonsbehle.com
ecf@parsonsbehle.com

Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

EAGLE VIEW TECHNOLOGIES INC., and
PICTOMETRY INTERNATIONAL CORP.,

Plaintiffs,

vs.

NEARMAP US, INC., NEARMAP
AUSTRALIA PTY LTD, and NEARMAP
LTD

Defendant.

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS
BASED ON UNPATENTABILITY
UNDER 35 U.S.C. § 101**

Case No. 2:21-cv-00283-TS-DAO

The Honorable Ted Stewart

Magistrate Judge Daphne A. Oberg

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I. INTRODUCTION

Nearmap’s motion to dismiss (Dkt. 284) should be denied. In granting EagleView’s motion for leave to amend its complaint to assert the U.S. Patent No. 10,671,648 (“the ’648 patent”), the Court already considered and rejected—at least at the pleadings stage—Nearmap’s argument that the claims of the ’648 patent are ineligible under 35 U.S.C. § 101. Despite there being no change in the record since this Court previously addressed the issue (e.g., no claim construction, discovery, or any other development), Nearmap asks this Court to reconsider its previous ruling. This Court should decline Nearmap’s request.

The Court’s prior decision is correct on the merits. Nearmap’s arguments ignore both the allegations of the Complaint and the plain language of the claims, which describe specific methods for aggregating and retrieving information about a geographic point on Earth while accounting for different geographic identifiers and changes in information over time. Contrary to Nearmap’s insistence, the claims of the ’648 patent are not directed towards an “abstract idea.” Properly analyzed, the claims of the ’648 patent require components that “operate in an unconventional manner to achieve an improvement in computer functionality” and therefore both contain an inventive concept and are not directed to an abstract idea. *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1300-01 (Fed. Cir. 2016). At minimum, the question of whether various features recited by the claims are inventive or merely conventional raises factual issues that preclude a determination at this stage.

Any one of those three reasons—that this Court has already ruled on Nearmap’s argument, that the claims are not abstract, or that factual issues preclude resolution at this stage—warrants denial of Nearmap’s motion.

II. BACKGROUND

The '648 patent is directed to “improved systems for aggregating and retrieving information about a geographic point on earth, accounting for different geographic identifiers and changes in information over time.” Am. Compl. ¶ 56. Traditionally, property attributes such as title information, geographic characteristics, insurance policies, and building and utility information were stored in different locations, and data was tracked based on different identifiers such as parcels, lots, townships, cities, zip codes, and school districts. *Id.* at 1:16-20; Am. Compl. ¶ 56. This conventional approach presented several drawbacks, including that identifiers could change such that they represent different points on the earth at different times. '648 patent at 1:29-44. The '648 patent solves these problems.

Specifically, independent claims 1, 12, and 18 of the '648 patent require that data be aggregated according to time periods such that data items include “time identifiers” that are “indicative of a time history.” Each independent claim then requires that such data be retrievable by a user query that incorporates both time information and a geographic location. Independent claims 9 and 12 separately require that data be retrieved pursuant to both the geographic location and an indication of a time history entered by the user. Unlike in the prior art systems described by the '648 patent, including prior art computer-based systems such as “Zillow” and “Google Maps” ('648 patent at 1:25-28), the information returned by the system of the '648 patent will not be out of date, and all available information will be returned, regardless of changes in how locations are identified in various property-related records.

III. LEGAL STANDARD

A patent is presumed valid absent clear and convincing evidence to the contrary. *Cellspin Soft v. Fitbit, Inc.*, 927 F.3d 1306, 1319 (Fed. Cir. 2019); *see also* 35 U.S.C. § 282(a) (“The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity.”). This presumption reflects the fact that “the Patent and Trademark Office has already examined whether the patent satisfies the prerequisites for issuance of a patent, including § 101.”¹ *Cellspin*, 927 F.3d at 1319 (quotation omitted).

To determine Section 101 eligibility, courts “apply the two-step analytical framework” set forth in *Alice Corp. Pty. v. CLS Bank Int’l*, 573 U.S. 208 (2014). *Adasa Inc. v. Avery Dennison Corp.*, 55 F.4th 900, 908 (Fed. Cir. 2022). In Step One, the Court determines whether each claim is directed to a patent ineligible concept, such as an abstract idea. *Id.* “If the focus of the claim is a specific and concrete technological advance, for example an improvement to a technological process or in the underlying operation of a machine,” then the inquiry ends and the claim is eligible. *Id.* To make this determination, courts “ask[] what the patent asserts to be the focus of the claimed advance over the prior art.” *TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1293 (Fed. Cir. 2020). In doing so, courts “must be careful to avoid oversimplifying the claims by looking at them generally and failing to account for the specific requirements of the claims.” *Id.* (quotation omitted). “[A]n invention is not rendered ineligible for patent simply because it involves an abstract concept.” *Alice*, 573 U.S. at 217.

¹ The claims of the ’648 patent all issued well after the Supreme Court’s landmark decision in *Alice Corp. Pty. v. CLS Bank Int’l*, 573 U.S. 208 (2014), and after the U.S. Patent & Trademark Office issued its currently operative guidance on subject matter eligibility, *see* USPTO, “Subject matter eligibility,” <https://www.uspto.gov/patents/laws/examination-policy/subject-matter-eligibility>.

Only if the Court determines that the claims are directed to an abstract idea does the analysis proceed to Step Two. *Id.* at 221. Step Two “is a search for an inventive concept—*i.e.*, an element or combination of elements that is sufficient to ensure that the patent amounts to significantly more” than the abstract idea itself. *Weisner v. Google LLC*, 51 F.4th 1073, 1081 (Fed. Cir. 2022). In computer implemented inventions, this means that “the computer must perform more than well-understood, routine, conventional activities previously known to the industry.” *CosmoKey Sols. GmbH & Co. KG v. Duo Sec. LLC*, 15 F.4th 1091, 1097 (Fed. Cir. 2021).

“[W]hether a claim recites patent eligible subject matter is a question of law which may contain underlying facts.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018). For example, at Alice Step Two, “whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact” that “must be proven by clear and convincing evidence.” *Id.* At the Rule 12(b)(6) stage, a patent may be determined ineligible only “when there are no factual allegations that, taken as true, prevent resolving the eligibility question as a matter of law.” *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1125 (Fed. Cir. 2018). Where “nothing on the record refutes those allegations as a matter of law,” the 12(b)(6) motion may properly be denied. *Id.*

IV. ARGUMENT

A. Nothing Has Changed Since the Court Last Rejected Nearmap’s Argument.

This Court already considered and rejected substantially the same argument, on the same record, that Nearmap presents here when it evaluated and granted-in-part Plaintiffs’ request for leave to amend the complaint. Dkt. 267. Nearmap’s motion, which is essentially a request to

reconsider that prior decision, is therefore unwarranted. “[A] motion for reconsideration is appropriate where the court has misapprehended the facts, a party’s position, or the controlling law.” *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). “It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing.” *Id.*

In opposing Plaintiffs’ request for leave to amend the complaint, Nearmap argued that “the claims of the ’648 Patent are directed to the abstract idea of aggregating and retrieving information about a geographic point on earth, accounting for different geographic identifiers and changes in information over time.” Dkt. 175 at 10. Nearmap also argued, as it does here, that the claims of the ’648 patent “lack any inventive concept.” *Id.* Nearmap now alleges that the ’648 patent is directed towards “retrieving stored information about a location based on the associated geographic point on earth and time” (Dkt. 284 at 7), which is merely the same characterization but with an even greater degree of improper oversimplification. *See TecSec*, 978 F.3d at 1293 (warning against “oversimplifying the claims by looking at them generally and failing to account for the specific requirements of the claims”). In granting Plaintiffs’ motion for leave to amend the complaint, the Court explicitly noted and rejected Nearmap’s Section 101-based arguments. Dkt. 267 at 8.

Thus, Nearmap’s motion inappropriately asks the Court to “revisit issues already addressed.” *Servants of Paraclete*, 204 F.3d at 1012. Nearmap does not even acknowledge that the Court has already considered this issue, much less argue that the Court “misapprehended the

facts, a party's position, or the controlling law" such that reconsideration would be appropriate.²

Id. Moreover, there has been no development of the record since Nearmap last made its Section 101 argument. Nearmap has failed to meet the burden of a Section 101 challenge at the pleadings stage, and the Court should decline Nearmap's continued efforts to reopen the issue. *See also* Dkt. 50 at 8 (denying Nearmap's pleadings-stage challenge as to two other EagleView patents).

Accordingly, for the foregoing reasons, the Court should deny the motion as an improper request for reconsideration and need not reach the merits.

B. The '648 Patent Is Not Directed To An Abstract Idea

Even if the Court were to consider the merits, the motion should be denied. To begin with, Nearmap has not met its burden to show that the claims of the '648 patent are abstract at *Alice* Step One. Nearmap's Step One argument asks the Court to ignore the factual allegations in the complaint, which are to be taken as true when reviewing a Rule 12(b)(6) motion to dismiss. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). For example, the Amended Complaint alleges at Paragraph 56:

[T]he claims of the '648 Patent recite improved systems for aggregating and retrieving information about a geographic point on earth, accounting for different geographic identifiers and changes in information over time. For example, property attributes such as title information, geographic characteristics, insurance policies in force, and building and utility information were traditionally stored in different locations, and data was tracked based on different identifiers such as parcels, lots, townships, cities, zip codes, and school districts. *See* '648 Patent, 1:16-44. The technological solution of the '648 Patent aggregates these records with appropriate geographic location and time identifiers to provide a time history

² Although "the Court retains the ability to reconsider any non-final order" even if it previously decided the same issues, *Mod. Font Applications LLC v. Peak Rest. Partners, LLC*, No. 2:19-CV-221 TS, 2020 WL 5370948, at *2 (D. Utah Sept. 8, 2020), Nearmap has presented no good reason to do so here.

of a particular geographic point on earth, and enables retrieving data items through a query that is specific in geographic location and time.

Nearmap incorrectly argues in response to these allegations that “[n]one of the claims recite aggregating data with geographic location and time identifiers” and “[t]he allegations include no software system, no computer database, not even a general computer.” Dkt. 284 at 17-18. Even a cursory review of the claims shows this is not the case. As just one example, claim 1 requires, among other things, **“storing a plurality of data items in a data aggregation system...wherein at least a portion of the plurality of data items ... are further associated with one or more time identifiers including one or more time or time periods, indicative of a time history of an associated data item regarding the associated geographic point on earth”** as well as **“receiving, by at least one processor, a query.”** The claims are, on their face, directed to the technological improvement alleged in the complaint, and not to an abstract idea.

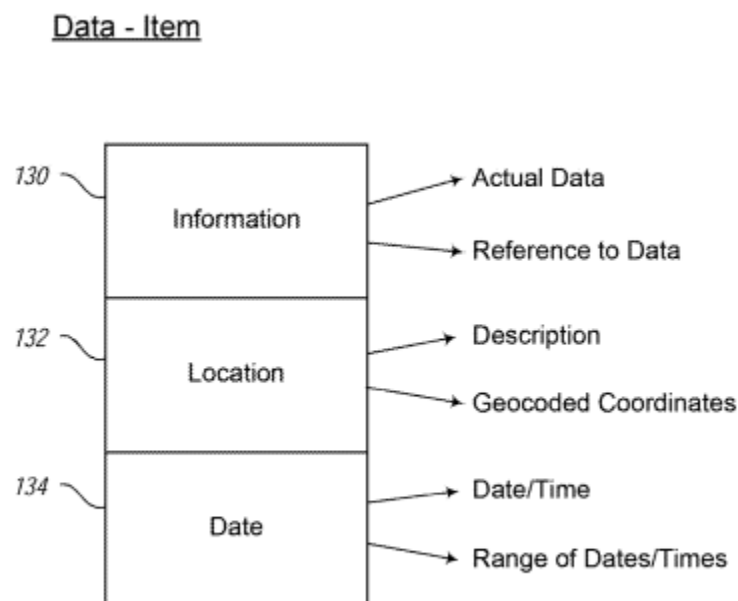
Nearmap’s assertion that the claims of the ’648 patent could be performed manually (Dkt. 284 at 12, 18) is similarly flawed. The ’648 patent specifically identifies and differentiates the invention from prior art processes that could be performed both manually and electronically. For example, the ’648 patent describes prior methods of searching for information at a records office or on the Internet:

Description of the Related Art

Information about property and the attributes of property, such as title information, geographic characteristics, insurance policies in force, and building and utility information, is usually publically [*sic*] available, but is stored by different entities in different locations using different formats. Some of the information is found by identifying an address or other number that identifies a real estate parcel and then contacting the record keeper of the type of information desired, such as a county records office, about the parcel number or address of the property. In some instances, information of interest may be more quickly found

by using the Internet or an aggregator such as Zillow™ or Google Maps™ to access information about the property.

'648 patent at 1:14-28. To improve on these prior art electronic systems, the '648 patent claims an improved database that aggregates the records with appropriate geographic location and time identifiers to provide a time history of a particular geographic point on earth, and enables retrieving data items through a query that is specific in geographic location and time. The specific data format used by the improved database, as recited in the claims, is shown in Figure 2 of the patent reproduced below.



'648 patent, Fig. 2.

Accordingly, “the plain focus of the claims is on an improvement to computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016). Indeed, the

claims for the '648 patent, which recite an exact type of database,³ are similar to those found patentable by the Federal Circuit in *Enfish*. See also *Intellectual Ventures II LLC v. FedEx Corp.*, No. 2:16-CV-00980, 2018 WL 7823098, at*4 (E.D. Tex. May 10, 2018) (upholding claim “directed to a process whereby the information ... is packaged into a specific, multi-layer data structure in order to improve upon the existing technology”); *Nazomi Commc’ns, Inc. v. Samsung Telecomms., Inc.*, No. C-10-05545, 2012 WL 967968, at *2, *4 (N.D. Cal. Mar. 21, 2012) (upholding claims directed to a data structure with a novel “resolution data field”). In *Enfish*, the claims recited a “data storage and retrieval system” in which the rows and columns of a “logical table” each contained a specific identification number. 822 F.3d at 1336. After construing the claims to require “rendering the table self referential” (*id.*), the Federal Circuit held that the claims at issue “were not directed to an abstract idea” because “the self-referential table recited in the claims on appeal is a **specific type of data structure** designed to improve the way a computer stores and retrieves data in memory.” *Id.* at 1339 (emphasis added). That the claims were not directed to an abstract idea was confirmed by the specification’s disparagement of conventional databases in the prior art. *Id.* Similarly, the '648 patent criticizes conventional ways of storing property records and claims an improved data structure and database that organizes information in a specific, unconventional manner that provides a “time history” data associated with a geographic point on earth.

³ Nearmap admits as much, stating that the claims recite “what type of data is stored, what type of identifier is associated with that data, what type of queries are received, what data is retrieved, and what data is outputted.” MTD at 11.

In *Enfish*, the Federal Circuit found that the district court erred by “describing the claims at ... a high level of abstraction and untethered from the language of the claims.” *Id.* at 1337. The claims found eligible in *Enfish* were erroneously described by the district court as “directed to the abstract idea of storing, organizing, and retrieving memory in a logical table.” Nearmap makes the same mistake, describing the claims of the ’648 patent as “storing data, receiving a query for the data, retrieving data matching the query, and outputting that retrieved data” without any reference to the specific structure required in the claims.⁴ Dkt 284 at 16.

Because the claims of the ’648 patent, like those in *Enfish*, are directed towards an improvement to computer functionality itself, reciting a specific database structure, they are not directed towards an abstract idea. Thus, Nearmap’s motion should be denied at *Alice* Step One.

C. The ’648 Patent Recites Inventive Concepts

Because the claims are not directed to an abstract idea, the Court need not reach *Alice* Step Two. Nonetheless, the Step Two analysis confirms the ’648 patent is patent eligible, because the claims “amount to significantly more” than the alleged (but incorrect) abstract idea of (in Nearmap’s words) “retrieving stored information about a location based on its associated geographic point on earth and time.” See *Weisner*, 51 F.4th at 1086. Specifically, the system claimed by the ’648 patent can “provide a time history of a particular geographic point on earth.” Am. Compl. ¶ 56. Going far beyond the prior art’s identification of an “address or other number that identifies a real estate parcel,” the ’648 claims enable access to the history of those parcel

⁴ Contrary to Nearmap’s argument (Dkt. 284 at 13), a claim that recites a specific data structure, like that found patentable in *Enfish*, is not the same as simply limiting the content being stored. In fact, the ’648 patent specifically distinguishes the invention from simply retrieving property information (*i.e.*, a type of information akin to “hardcopy documents” or “audiovisual data”) from a database. See ’648 patent at 1:14-28.

numbers themselves. ’648 patent at 1:20:25, 4:37-45 (“However, each individual geographic point on the earth has a **specific history of the parcel associated with it**, for example its change of zoning status, which parcels it fell within, who owned it, any permitted improvement, insurance coverage and claims, to whom it was bought and sold, and so on. Therefore, by associating information with one or more geocoded locations on earth, information can be accurately obtained concerning a particular geographic area over **any time period.**” (emphasis added)). Unlike the prior art, the invention of the ’648 patent also allows queries independent of a parcel’s address and any associated changes over time. *Id.* at 4:17-20 (“One of the advantages of tracking data associated with a geographic point on the earth is the **continuity of location description** over time.” (emphasis added)). Moreover, information about a parcel, or even multiple parcels over time associated with the same point, can be aggregated into a single system to be queried. *Id.* at 2:25-29 (“One benefit to the embodiments described herein is that a user can input a query about a location on earth and receive, **from a single database** and single server, all activities and information associated with that location, sorted by date and type of activity/information.” (emphasis added)). These features of the claimed invention reflect inventive concepts and confirm that the claims amount to more than the alleged abstract idea of retrieving information.

At Step Two, Nearmap both attacks the claims for being implemented on standard computer hardware and reiterates its oversimplification of the claims. However, as to the former, inventive concepts are not limited to hardware improvements. *See Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016) (“We have found software-related patents eligible under both steps of the test Alice sets out.”). And, as to the latter, similar

claims have been shown to have an inventive concept once the specific context of the claims is considered. *See Weisner*, 51 F.4th at 1086 (“[The claim] plausibly captures an inventive concept in the form of a specific technique for using physical location history data to improve computerized search result.”).

In *Weisner*, the Federal Circuit analyzed “search queries targeting a geographic area.” *Id.* at 1087. Based on the patent owner’s allegations in the complaint that the claimed implementation was an inventive concept that improves computerized search results, the Federal Circuit “preclude[d] an ineligibility determination at the pleadings stage.” *Id.* Specifically, the claims in *Weisner* required “searching a location history database” for entries corresponding to an individual’s location history, and then “conducting the geographically targeted search” within that target area. *Id.* The claims of the ’648 patent are similarly inventive, using queries of a property’s “time history” to allow a specific history of the parcel, including any past separately identified parcels, to be returned. This Court should similarly hold that a finding of ineligibility at the pleadings stage is therefore precluded and deny Nearmap’s motion.

D. Nearmap Has Not Met Its Burden For Dismissal At The 12(b)(6) Stage

Nearmap has failed to meet its evidentiary burden to show that the asserted claims lack an inventive concept because it cannot show that the claim language implements generic features. *See Bascom*, 827 F.3d at 1350 (“[A]n inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.”). In *BASCOM*, the Federal Circuit explained that the “limited record” before it did not demonstrate that the claim software method “ha[d] been conventional or generic.” *Id.*

Similar considerations apply here. As to the “time history” feature discussed above, all claims of the ’648 patent require this, but Nearmap fails to address **at all** whether storing or querying a time history is “conventional or generic.” Other features of the claims are also ignored in Nearmap’s motion. For example, claim 9⁵ requires receiving a “polygon” as a query to the search mechanism. This feature is shown in Figure 1 of the ’648 patent:

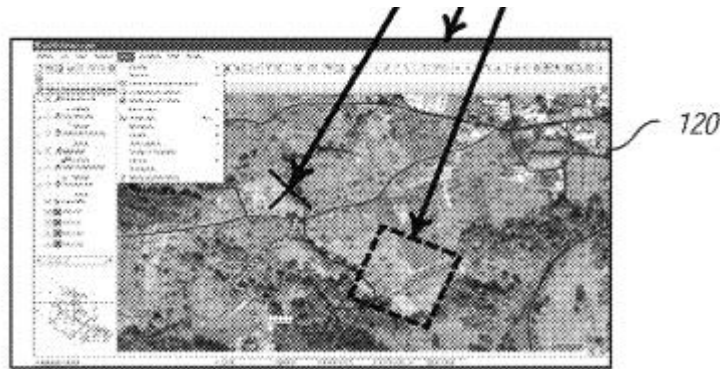


Fig. 1 (excerpt); *see also* 12:68-13-3 (“An area within the map may be selected by, for example, a drawing tool provided through the user interface 120 which allows a user to draw polygons or various other shapes”). Absent any evidence at all, Nearmap would have the court declare that this method of querying a database is “conventional” and “generic.” This is not proper given the presumption of validity that patents are entitled to, and the court should allow fact and expert discovery into these claims to proceed. *See Cellspin*, 927 F.3d at 1318 (“[F]actual disputes about whether an aspect of the claims is inventive may preclude dismissal at the pleadings stage under § 101.”); *see also InnovaPort LLC v. IKEA N. Am. Servs. LLC*, No. 21-cv-0789, 2022 WL

⁵ A similar limitation also likely applies to claim 12 (“means for receiving a query”), which is clearly subject to claim construction determined by 35 U.S.C. § 112 (f) (“An element in a claim for a combination may be expressed as a means or step ... such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.”).

3139230, *3 (E.D. Wis. Aug. 5, 2022) (denying motion to dismiss because movant failed to meet its burden “to show there are no plausible allegations that [plaintiff’s] patent claims include inventive concepts”).

Because the claims of the ’648 patent recite multiple features that Nearmap has not shown were conventional or generic, factual issues preclude a finding at this stage that the claims are ineligible under Section 101. Thus, for this additional reason, Nearmap’s motion should be denied.

V. CONCLUSION

For the foregoing reasons, EagleView respectfully requests that the Court deny Nearmap’s motion to dismiss.

Dated: May 16, 2023.

Respectfully submitted,

/s/ Juliette P. White

Juliette P. White
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Telephone: 801.532.1234
Fax: 801.536.6111
JWhite@parsonsbehle.com
ecf@parsonsbehle.com

L. Kieran Kieckhefer
SHEARMAN & STERLING LLP
535 Mission Street, 25th Floor
San Francisco, CA 94105
Telephone: 415.616.1100
Fax: 415.616.1339
kieran.kieckhefer@shearman.com

Lillian J. Mao

SHEARMAN & STERLING LLP
1460 El Camino Real, 2nd Floor
Menlo Park, CA 94025
Telephone: 650.838.3600
Fax: 650.838.3699
lillian.mao@shearman.com

Eric S. Lucas
SHEARMAN & STERLING LLP
599 Lexington Ave.
New York, NY 10022
Telephone: 212.838.4955
Fax: 646.848.4955
eric.lucas@shearman.com

*Attorneys for Plaintiffs Eagle View
Technologies, Inc. and Pictometry
International Corp.*

CERTIFICATE OF SERVICE

I hereby certify that, on May 16, 2023, I caused to be electronically filed and served the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS BASED ON UNPATENTABILITY UNDER 35 U.S.C. § 101** with the Clerk of the Court using the Court's electronic filing system, which sent notification of such filing to all attorneys listed on the docket.

/s/ Juliette P. White

Juliette P. White
Attorney for Plaintiffs