

EX1031

**In The United States District Court
For The Middle District of North Carolina
No. 1:24-cv-00314**

Fullthrottle Technologies, LLC,	)	
	)	
Plaintiff,	)	
	)	Fullthrottle's Opposition
v.	)	to Rocket Media's Motion
	)	to Dismiss the First
	)	Amended Complaint
Rocket Media, LLC	)	
(d/b/a "Launch Labs"),	)	
	)	
Defendant.	)	
	)	
	)	
	)	

This 27th day of September 2024

/s/Michael J. Bonella

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STATUTES

35 U.S.C. § 101	11, 12, 14, 15
35 U.S.C. § 282	10, 11

I. Concise Statement of the Nature of the Case

Plaintiff FullThrottle, LLC ("fullthrottle.ai") and Defendant Rocket Media, LLC ("Launch Labs") directly compete with software platforms to improve website owners' technical abilities to interact with their customers. The United States Patent & Trademark Office ("USPTO") issued three Patents to fullthrottle.ai that cover technical features that support fullthrottle.ai's platform. Launch Labs is unfairly competing with fullthrottle.ai by using fullthrottle.ai's patented technology. Fullthrottle.ai provided a detailed one hundred and sixteen page First Amended Complaint ("FAC") with twenty-four exhibits and an analysis of Launch Labs infringement including citations to Launch Labs publicly available computer code.

Faced with having to answer for its infringement, Launch Labs moved under Fed. R. Civ. P. 12(b)(6) to dismiss fullthrottle.ai's FAC. Launch Labs asks the Court for the extreme relief of invalidating all three fullthrottle.ai patents for claiming ineligible subject matter under 35 U.S.C. § 101. But the Court should deny Launch Labs' motion because Launch Labs raises claim construction issues that cannot be resolved on a Rule 12 motion and improperly asks

this Court to discredit well-pled facts. If, however, the Court considers the substance of Launch Labs' arguments, those arguments also fail because the asserted patents do not claim abstract ideas and claim a technical improvement worthy of patent protection.

II. Concise Statements of the Facts

A. The Parties

Fullthrottle.ai was founded in 2017 and is an award winning, data-powered artificial intelligence (AI) company that helps consumers connect with retailers and educational institutions without third-party cookies.¹ Fullthrottle.ai's platform is known as Shoppersuite.² Launch Labs competes with fullthroottle.ai for the software services sales under the trade name Ignite.³

B. The Technical Background/Problem

Fullthrottle.ai's FAC details facts with specific support. Computer cookies are technical.⁴ Cookies are data bits comprising multiple characters that can be thousands of characters long.⁵ Computers generate cookies for many

¹ Doc. #24, ¶ 22.

² Doc. #24, ¶ 48.

³ Doc. #24, ¶ 72.

⁴ Doc. #24, ¶ 10.

⁵ Doc. #24, ¶ 10.

technical applications including user authentication, website security, and session management.⁶

“Third-party cookies” are computer cookies that are managed and tracked by websites other than the website that a user is visiting.⁷ According to Launch Labs, “third-party cookies form the backbone of online display” and are “crucial for business to stay compliant and competitive.”⁸

A worldwide technical problem was recognized when governments and companies started banning third-party cookies due to privacy concerns.⁹ With third-party cookies restricted, website owners had no technical way to identify a user, each time the user visits the same web page, the number of times a user visits a web page, or to determine that it was the same user accessing the internet from different devices (e.g., a laptop and a mobile phone).¹⁰ The technical problem included how to develop new software that facilitates web site user-website host interaction while still meeting certain technical constraints (e.g., being persistent across multiple internet browsing sessions), while

⁶ Doc. #24, ¶ 10.

⁷ Doc. #24, ¶ 13.

⁸ Doc. #24, Ex. H at p. 3.

⁹ Doc. #24, ¶ 19.

¹⁰ Doc. #24, ¶ 21.

meeting the privacy concerns associated with third-party cookies and not slowing the internet user's browsing experience.¹¹

Both Apple and Google recognized this problem as explained in FAC Exhibits D-F.¹² In addition, Launch Labs itself recognized the problem stating that the elimination of third-party cookies is causing the "digital landscape" to "undergo[] a seismic shift" and this "change will impact everyone."¹³ In fact, Launch Labs' entire business is directed to solving this technical problem.¹⁴

C. The Fullthrottle.ai Patents

The USPTO issued U.S. Patent Nos. 11,556,947 (" '947 Patent"), 11,823,219 (" '219 patent"), and 12,051,083 (" '083 Patent") (collectively "Patents") to fullthrottle.ai.¹⁵ Each of fullthrottle.ai's Patents are related and have a common description.¹⁶ Fullthrottle.ai cites to the '947 Patent's description. Figure 5 is helpful to focus on for purposes of

¹¹ Doc. #24, ¶ 21.

¹² Doc. #24, ¶ 19, FAC Exs. D-F.

¹³ Doc. #24, ¶ 19, FAC Exs. G-H.

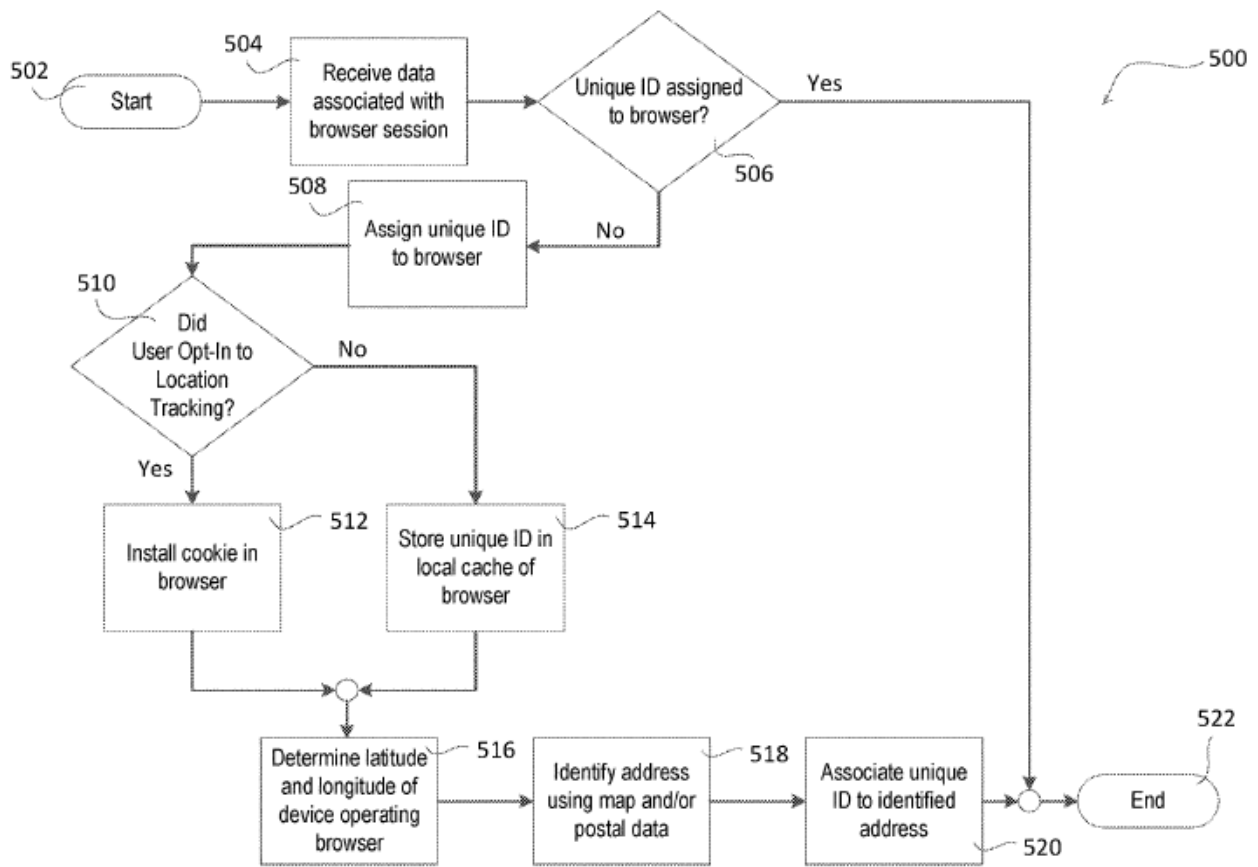
¹⁴ Doc. #24, ¶¶ 72-90, FAC Exs. G-H, K-R.

¹⁵ Doc. #24, Exs. A-C.

¹⁶ Doc. #24, Exs. A-C.

this motion. Figure 5 describes computer processing in a flow chart.¹⁷

Fullthrottle.ai Patent Figure 5



At 504, a computing device receives browsing session data from a user such as “anonymous data (e.g., data that includes no personally identifiable information associated with the user).”¹⁸ Examples of such anonymous data are time, date, webpage URL, browser type, language, IP address, and

¹⁷ Doc. #24, Ex. A at 11:35-44.

¹⁸ Doc. #24, Ex. A at 11:41-43; 11:50-51.

location.¹⁹ After receipt of the anonymous data, the computing device determines at 506 whether there is a "unique identifier that is associated with the user."²⁰ The Patents describe that this determination may be made by determining whether the computing device data base has a unique identifier assigned to the anonymous data (e.g., "location data").²¹ As will be appreciated by the further description below, if there is an assigned unique identifier in the database, this means that the computing system stored the unique identifier in the user's browser cache after determining that the user had opted out of location tracking/third-party cookies.

Alternatively or additionally, the computing device may determine that there is a "tracker (e.g., cookie)" installed in the browser application on the user computing device and a unique identifier associated with that "tracker (e.g., cookie)" from visiting another website.²² The "tracker (e.g., cookie)" may have been installed when a user opted-in to location tracking when visiting a third-party site.²³ The

¹⁹ Doc. #24, Ex. A at 11:52-54.

²⁰ Doc. #24, Ex. A at 11:8-11.

²¹ Doc. #24, Ex. A at 12:14-17.

²² Doc. #24, Ex. A at 12:18-23.

²³ Doc. #24, Ex. A at 12:23-27.

"tracker (e.g., cookie)" is a third-party cookie because the tracker cookie permits tracking the user.

At 508, if the computing device determines that no unique identifier has been assigned based on the browsing session data, the computing device generates a unique identifier for that user.²⁴

The computing device determines at 510 whether the user opted-in to location tracking.²⁵ If the user opted-in to location tracking, there is a "tracker (e.g., cookie)" in the browser application."²⁶ The tracker (e.g. cookie) may be in the HTTP header sent from the user to the computing device.²⁷ If there is no "tracker (e.g., cookie)" in the browser application, the computing device stores the generated unique identifier in the user's local cache.²⁸ The assigned unique identifier stored in the local browser cache enables the computing device to recognize return visits by the user when using the same browsing application.²⁹ This respects privacy

²⁴ Doc. #24, Ex. A at 12:23-27.

²⁵ Doc. #24, Ex. A at 12:39-41.

²⁶ Doc. #24, Ex. A at 12:45-46.

²⁷ Doc. #24, Ex. A at 12:45-46.

²⁸ Doc. #24, Ex. A at 13:11-14.

²⁹ Doc. #24, Ex. A at 13:14-16.

because only the system assigning the unique identifier knows that the unique identifier is correlated to the user.

The computing device determines the user's latitude and longitude from the browsing session data (516). At step 518, the computing device determines a physical address (e.g., postal address) for the browsing session by correlating the browsing session location data with information (e.g., map information) using an automated programming interface (API).³⁰ The computing device associates the unique identifier to the physical address (520).³¹ Described above is a technical invention that is common to the three Patents and can be applied in various contexts (e.g., generating user profiles, see Figures 6, 15, and 16).

D. The Asserted Claims

Fullthrottle.ai currently asserts: '947 Patent claims 1 and 11, '219 Patent claims 1-3/19-21; and, '083 Patent claims 1 and 11.³² Claims 1 and 11 of the '947 patent claim the described technical features, applied in the context of generating a user profile. Claims 3 and 21 of the '219 patent apply the described technical features in the context of

³⁰ Doc. #24, Ex. A at 13:50-60.

³¹ Doc. #24, Ex. A at 14:14-25.

³² Doc. #24, ¶¶ 145, 154, 163.

campaign data. Claims 1 and 11 of the '083 patent apply the technical features in the context of campaign data and associating a user with a household. Claims 1-2/19-20 of the '219 patent claim some, but not all of the described features.

III. Legal Standards

A. Motion to Dismiss Standards

To defeat Launch Labs' Rule 12 motion, fullthrottle.ai need only plead enough facts, accepted as true, to state a plausible claim for relief.³³ Fullthrottle.ai's claim is plausible if it pleads sufficient facts allowing the court to infer Launch Labs' liability for the alleged misconduct.³⁴ Although a complaint need not be detailed, the factual allegations need only raise the "right to relief above the speculative level."³⁵ The court must accept fullthrottle.ai's factual allegations as true, and view those facts in the light most favorable to fullthrottle.ai.³⁶

B. Patents are Presumed Valid

Launch Labs does not address its burden or the presumption of validity. By statute, each patent claim is

³³ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

³⁴ *Id.*

³⁵ *Bell Atl. Corp.* 550 U.S. at 570.

³⁶ *Iqbal*, 556 U.S. at 678.

presumed valid.³⁷ The presumption of validity applies to Launch Labs' patent eligibility challenges.³⁸ Because of this presumption, the clear and convincing heightened standard applies to invalidity challenges including Launch Lab's § 101 defenses.³⁹ This standard requires an "abiding conviction that the truth of the factual contentions are highly probable."⁴⁰

Launch Labs incorrectly suggests that the presumption of validity does not apply, arguing that fullthrottle.ai's reference to the presumption of validity in the Complaint is "misplaced," a patent examiner's consideration does not "shield" claims from review, and courts owe no deference to an examiner's eligibility determination.⁴¹ However, Launch Labs' citations only clarify that a party can challenge a

³⁷ 35 U.S.C. § 282.

³⁸ *Astellas Pharma, Inc. v. Sandoz Inc.*, Nos. 2023-2032, 2023-2063, 2023-2089, 2024 U.S. App. LEXIS 23669, *13 (Fed. Cir. Sep. 18, 2024) (reversing § 101 invalidity determination because validity presumption applies "equally to all grounds of invalidity, including eligibility"); see also *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1319 (Fed. Cir. 2019).

³⁹ 35 U.S.C. § 282; *Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 95, 111 (2011).

⁴⁰ *Impax Labs, Inc. v. Lannett Holdings Inc.*, 893 F.3d 1372, 1378 (Fed. Cir. 2018); *United States v. Hall*, 664 F.3d 456, 461-462 (4th Cir. 2012).

⁴¹ Doc. #25, p. 31-32, citing Doc. #25, ¶ 40.

patent's validity under § 101 and that courts are not bound by USPTO decisions.⁴²

C. Patent Eligible Subject Matter Under Section 101

35 U.S.C. § 101 allows patents for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." This excludes "[l]aws of nature, natural phenomena, and abstract ideas are not patentable."⁴³ Determining whether a claim covers ineligible subject matter under § 101 involves the two-step *Alice* test.⁴⁴

1. Alice Step One: Abstract Idea Test

At step one of the *Alice* analysis, it is necessary to "determine whether a patent claim is directed to an unpatentable law of nature, natural phenomen[on], or abstract

⁴² *Beteiro LLC v. Draftkings, Inc.*, 104 4th 1350, 1362 (Fed. Cir. 2024) (stating that an Examiner's decision does not "shield" claims from Article III review); *Sanderling Mgmt. Ltd. v. Snap Inc.*, 65 F.4th 698, 705 (Fed. Cir. 2023) (holding there was no indication that district court erred by failing to presume patent valid and district court was not bound to defer to an examiner's factual finding); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362 (Fed. Cir. 2015) (stating that appellate review of a § 101 decision is de novo).

⁴³ *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012)).

⁴⁴ *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 217-218 (2014).

idea.”⁴⁵ To determine whether a patent claim is directed to an abstract idea, *Alice* step 1 asks what the patent asserts to be the focus of the claimed invention for the problem that was allegedly solved.⁴⁶ This analysis “focus[es] on the claims, not the specification,” because unclaimed features are irrelevant to the *Alice* analysis.”⁴⁷

2. *Alice* Step Two: Something More

If it is determined at step one of the *Alice* analysis that the claims are directed to unpatentable subject matter, the next step is to “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.”⁴⁸ *Alice* step 2 is satisfied when the claims are directed to “more than the performance of ‘well-understood, routine, conventional’ activity.”⁴⁹ The question of what was “well-understood,

⁴⁵ *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1258 (Fed. Cir. 2017).

⁴⁶ *Koninklijke KPN N.V. v. Gemalto M2M GmbH*, 942 F.3d 1143, 1150 (Fed. Cir. 2019).

⁴⁷ *Packet Intelligence LLC v. NetScout Sys.*, 965 F.3d 1299, 1318 (Fed. Cir. 2020).

⁴⁸ *Cosmokey Sols. GMBH & Co. KG v. Duo Sec. LLC*, 15 F.4th 1091, 1097 (Fed. Cir. 2021).

⁴⁹ *Cellspin*, 927 F.3d at 1315.

routine, or conventional” is a factual one.⁵⁰ Therefore, where there is a dispute on this issue, a court cannot resolve that issue when considering a Rule 12 motion.⁵¹

D. Resolving Patent Eligibility on a Rule 12 Motion

The Federal Circuit has cautioned courts that “patent eligibility may be resolved at the Rule 12 stage only if there are no plausible factual disputes when drawing all reasonable inferences from the intrinsic and Rule 12 record in favor of the nonmovant, fullthrottle.ai.”⁵² Further, where there are claim construction disputes that impact the 101 analysis, Courts routinely deny Rule 12 § 101 motions, as premature, so that the Court has the benefit of a fully developed record to aid the Court in understanding the issues.⁵³

⁵⁰ *Coop. Entm't, Inc. v. Kollektive Tech., Inc.*, 50 F.4th 127, 130 (Fed. Cir. 2022).

⁵¹ *Id.*

⁵² *Id.* (reversing grant of Rule 12 motion and finding claims had a technical improvement or there were at least factual issues).

⁵³ *Jaguar Land Rover Ltd. v. Bentley Motors Ltd.*, 388 F.3d 665, 682 (E.D. Va. 2019) (denying motion to dismiss in part because of factual issues on *Alice* prong 2); *Semafone Ltd. v. PCI Pal, Inc.*, No. 3:21-cv-486, 2022 U.S. Dist. LEXIS 110072, at *11-*13 (W.D.N.C. June 21, 2022) (denying § 101 Rule 12 motion where ruling on the abstract idea prong was premature and required a more developed record and there were factual issues under *Alice* prong 2); *Eyetalk 365, LLC v. Bird Home Automation, LLC*, No. 3:16-cv-00680 -FDW-DCK, 2017 U.S. Dist. LEXIS 12393, at *3 (W.D.N.C. Jan. 30, 2017) (denying Rule 12

IV. Argument: Launch Labs Motion Should be Denied

Launch Labs motion should be denied, at minimum, because there are claim construction and factual issues that cannot be resolved on a Rule 12 motion. But if the Court were to consider the substantive issues, Launch Labs' motion should be denied because the claims are not abstract and claim a protectable technical improvement.

A. Launch Labs' Motion Should be Rejected Because Launch Labs Raises Claim Construction and Factual Disputes

Launch Labs motion should be denied, at minimum, for raising claim construction issues and factual disputes that cannot be resolved on a Rule 12 motion.

1. Launch Labs Improperly Raises Claim Construction

Launch Labs raised claim construction issues regarding the claims' scope that impacts the § 101 analysis. Because Launch Labs prematurely asserts claim construction on a Rule 12 motion, before the Court has considered claim

motion as premature because the inquiry is fact-intensive, claim construction was needed, and a full record was needed); *InVue Security Prods. v. Mobile Tech., Inc.*, No. 3:15-cv-00610, 2016 U.S. Dist. LEXIS 50371, at * 10 (W.D.N.C. April 14, 2016) (denying Rule 12 motion as premature and permitting discovery and further briefing to aid the Court as to the "nature and functioning" of the patents-in-suit and to resolve claim construction issues).

construction, Launch Labs motion should be denied.⁵⁴

Launch Labs makes the following claim construction assertions: (i) "nothing in the claims precludes the use of third-party cookies (the admitted prior art) to perform the claimed functions," (ii) the "claims are not limited to a specific technique," (iii) the claims "cover using cookies or any process sufficient to achieve the desired result" and (iv) the claims cover "any solution" including "conventional" cookies.⁵⁵ Based on these assertions, Launch Labs argues that the claims are abstract and lack a technical improvement.⁵⁶ These assertions regarding claim scope raise claim construction issues that cannot be resolved at this preliminary stage.

Launch Labs raises claim construction issues. First, the asserted claims other than claims 1 and 2 of the '219 patent state: "determining whether the user opted-in to our out of location tracking, based on whether a location tracker is installed on the computing device." The "location tracker" is properly construed as the third-party tracking cookie described in the patent specification ("tracker (e.g.,

⁵⁴ See *supra* § III.D & n. 53 citing cases.

⁵⁵ Doc. #25, pp. 32-33.

⁵⁶ Doc. #25, pp. 10-20 & 32-33.

cookie)"). If the third-party cookie is not present (e.g., in the local browser cache), an assigned unique identifier is sent to the user's "local browser cache."

Second, claims 1 and 2 of the '219 patent recite "upon determining that the user opted-out of location tracking" which is properly construed to mean "upon determining that the user opted-out of location tracking by the lack of a ("tracker (e.g., cookie)")."

Third, a "unique identifier" is not just any identifier as Launch Labs asserts. Rather, the claimed "unique identifier" is properly construed as unique to the user and whose correlation to the user is known by the assignor.

Fourth, "determining that the user has not been assigned a unique identifier" is properly construed to mean a "unique identifier" that was not previously assigned when it was previously determined that the user had opted out of location tracking.

These claim construction issues render Launch Labs' motion premature because they impact Launch Labs' assertions that, for example, the claims cover any process or solution, do not preclude the use of third-party cookies, cover any identifier, and render the claims well-understood, routine,

and conventional.⁵⁷

The Court has detailed claim construction procedures in Local Rules 103.1-104.5 that include exchanging infringement and invalidity contentions, claim constructions and extrinsic claim construction evidence, and claim construction briefing. Launch Labs cannot use truth by assertion in its Rule 12 motion to circumvent the Court's rules.

2. Launch Labs Improperly Raised Factual Disputes

Launch Labs' motion should further be denied because Launch Labs improperly; (1) demands that the Court not credit fullthrottle.ai's pled factual statements; (2) makes unsupported factual assertions that cannot be accepted in deciding a Rule 12 motion, and (3) at best merely raises a plethora of factual disputes that cannot be resolved on a Rule 12 motion.

Launch Labs asserts that each fullthrottle.ai FAC factual allegations, regarding what were not "routine, well-understood, or conventional" (e.g., Doc. No. 25 spanning ¶¶ 26-39), can be disregarded because every single allegation is "conclusory."⁵⁸ But Launch Labs is incorrect. The FAC

⁵⁷ Doc. #25, pp. 10-20 (asserting what is claimed) and pp. 32-33.

⁵⁸ Doc. #25, p. 32.

statements are supported by the patent and extrinsic evidence, not bare conclusory assertions.

Fullthrottle.ai pled what third-party cookies are and that they were being eliminated due to privacy concerns as recognized by Apple, Google, and Launch Labs.⁵⁹ These well-pled facts show what was "routine, well-understood, and conventional" - third party cookies - and what was not - fullthrottle.ai's patented solution to not using third-party cookies.

Fullthrottle.ai also pled how fullthrottle.ai solved the third-party cookie problem and included specific references to the patent specification.⁶⁰ For example, fullthrottle.ai pled that the solution included: (i) "determining whether the user opted-in to or out of location tracking, based on whether a location tracker is installed on the user computing device;" (ii) sending "upon determining that the user opted-out of location tracking, the unique identifier to the user computing device for storage in a local browser cache; (e.g., Ex. A at 44:5-11)"⁶¹; and (iii) determining when, how to associate, and where to assign the unique identifier(e.g.,

⁵⁹ Doc. #24, ¶¶ 10-21.

⁶⁰ Doc. #24, ¶¶ 26-39.

⁶¹ Doc. #24, ¶ 26.

local browser cache).⁶² The patented solutions provide a faster and more efficient means of retrieving information.⁶³ This was not routine, well-understood or conventional “because this computer functionality was previously accomplished using third-party cookies.”⁶⁴

Additionally, there are countless factual pleadings supported by the third-party Complaint exhibits and the patents.⁶⁵ The Federal Circuit has reversed district courts for failing to credit factual allegations that are plausible in deciding a Rule 12 motion.⁶⁶ Launch Labs cited cases are of no moment because they were about disregarding conclusory assertions that were unsupported by facts not plausibly tied to the problem-solution and/or the patent claims.⁶⁷

⁶² Doc. #24, ¶¶ 26-27.

⁶³ Doc. #24, ¶¶ 26-27.

⁶⁴ Doc. #24, ¶¶ 26-27.

⁶⁵ Doc. #24, ¶¶ 26-39.

⁶⁶ *Coop. Entm't*, 50 F.4th 127 at 132-133, 135 (reversing district court for failing to credit complaint allegations of problem with capacity and content sharing and patent claims were stated to solve those problems and prior art problems with trace routes and pled advances with trace routes).

⁶⁷ *Sanderling Mgmt.*, 65 F.4th at 706 (affirming denial of leave to amend because proposed amendment was conclusory with explaining what the amendment was); *Simio, LLC v. Flex Software Prods., Inc.*, 983 F.3d 1353, 1365 (Fed. Cir. 2020) (holding that conclusory, unexplained allegation about alleged improved functioning was insufficient to warrant amendment to the pleadings).

B. Launch Labs Has Not Shown that the '947 and '083 Claims are Abstract

Notwithstanding the claim construction issues and disputed facts that preclude dismissal under Rule 12, the '947 and '083 patents are not abstract. First, contrary to Launch Labs' suggestion software patent claims are patentable. Second, the Patent claims are not abstract because they focus on "specific asserted improvements in computer capabilities." Launch Labs raises several arguments regarding abstractness, none of which have any merit, because they basically ignore the problem-solution and half of the claim language.

1. Software Patent Claims are not Invalid

Launch Labs incorrectly suggests that all software claims are invalid by noting, for example, that claim 1 of the '947 the patent recites computer functionality with a "receiving" step, six "determining" steps, an "assigning" step, a "sending" step, two "identifying" steps, an "associating" step, two "generating" steps, and an "updating" step.⁶⁸ But Launch Labs' suggestion is incorrect. The Federal Circuit has instructed that "software can make non-abstract improvements

⁶⁸ Doc. #25, pp. 9, 11-15.

to technology.”⁶⁹ Moreover, software patents do not claim an abstract idea merely because they use “ing” words describing computer actions. Claiming a software method or any method uses “ing” language. In fact, software claims using “ing” limitations, that were significantly shorter than those asserted by fullthrottle.ai, have been held not to claim an abstract idea.⁷⁰

2. The Patent Claims are not Abstract Because the Focus is on Specific Asserted Improvements in Computer Capabilities

Launch Labs incorrectly argues that the '947 and '083 patents claim abstract ideas. But Launch Labs is wrong because Launch Labs misunderstands the law. The line between abstract ideas and non abstract ideas is whether the claims focus on “specific asserted improvements in computer capabilities” or instead a process that “merely invokes

⁶⁹ *Ancora Techs. v. HTC Am., Inc.*, 908 F.3d 1343, 1347 (Fed. Cir. 2018).

⁷⁰ *TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1294 (Fed. Cir. 2020) (affirming § 101 validity with a claim for “accessing, “selecting,” “labeling,” “reading,” “determining”); *Ancora Techs.*, 908 F.3d at 1345-1346 (reversing grant of § 101 motion where the patent claim claimed four steps of “selecting,” “using,” “verifying,” and “acting”); *Finjan, Inc. v. Blue Coat Sys.*, 879 F.3d 1299, 1306-1308 (Fed. Cir. 2018) (affirming patent eligibility where claimed method had two steps of “receiving” and “linking”).

computers as a tool.”⁷¹ Here, the claims focus on “specific asserted improvements in computer capabilities - solving the “third party cookie” problem.

The FAC outlines with supporting evidence from Apple, Google, and Launch Labs’ own admissions that the elimination of third-party cookies created technical problems.⁷² These problems included: (i) how computers would facilitate interaction between website users and website owners; (ii) “be persistent across multiple browsing sessions, (iii) not slow the user’s internet browsing experience,” (iv) how a website operator would know that a “user visits the same web page, and (v) respecting privacy constraints.”⁷³

Fullthrottle.ai’s patented invention solved this problem and thereby have “specific asserted improvements in computer

⁷¹ *Cosmokey*, 15 F.4th at 1099 (reversing district court’s finding that claims are ineligible under § 101 and holding claims recite an inventive concept through a specific set of ordered software steps that enhance security); *Cellspin*, 927 F.3d at 1319 (finding asserted claims patentable because they “recite a specific, plausibly inventive way of arranging devices and using protocols rather than the general idea of capturing, transferring, and publishing data”); *Ancora Techs.*, 908 F.3d at 1349 (finding claimed improvement in computer functionality claim eligible subject matter); *Finjan*, 879 F.3d at 1303; *Visual Memory*, 867 F.3d at 1261-2 (holding claims patent-eligible where patent claimed an improvement to computer memory systems).

⁷² Doc. #24, ¶ 21.

⁷³ Doc. #24, ¶ 21.

capabilities." For example, fullthrottle.ai's claims recite "determining whether the user opted-in to or out of location tracking, based on whether a location tracker is installed on the user computing device." As explained above, this step determines whether third-party cookies were stored for location tracking. If a third-party cookie is not found, the claims recite "sending" the "unique identifier" for storage in a "local browser cache."

The claims further state that the "unique identifier" is assigned when the computer determines that there was not a previously assigned identifier assigned by the lack of stored location data in the "anonymous data" in a particular "browsing session" and a physical address is associated with the assigned unique identifier.

By doing so, fullthrottle.ai's Patents have "specific asserted improvements in computer capabilities." For example, with the "unique identifier" stored in the user's local browser cache, the user can be identified across multiple browsing sessions. As the unique identifier is only recognizable by the website that generated the identifier, privacy restrictions are satisfied.

Further, the user's internet browsing experience does not slow by storing a unique identifier in the browser cache.⁷⁴ As the FAC explains, by "storing the unique identifier in the local browser cache, the '947 Patent allows for more efficient (e.g., faster) retrieval of the unique identifier, for example, on subsequent visits to a website. Local browser cache is a faster and more efficient means of information retrieval."⁷⁵

3. Launch Labs' Abstractness Arguments have No Merit

Launch Labs asserts that the '947 and '083 claims are abstract based on what the claims "are directed to" allegations, incorrect assertions that the invention is an "abstract idea," improper attempts to analogize the Patents to other cases, and erroneous allegations that the claims only claim "results." Launch Labs fails on all fronts.

(i) Launch Labs' Characterizations of the Claims are Riddled with Legal Error

In its "directed to abstract ideas" argument, Launch Labs incorrectly characterizes the Patents as nothing more than

⁷⁴ *JDS Techs., Inc. v. Exacq Techs.*, No. 15-10387, 2016 U.S. Dist. LEXIS 73622, * 18 (E.D. Mich. 2016) (finding querying and validated a unique identifier not abstract).

⁷⁵ Doc. #24, ¶ 29.

"targeted advertising," "tailoring of content," and directed to the abstract ideas of "generating targeted ads."⁷⁶ Similarly, in its "advance over the prior art" argument, Launch Labs improperly takes each claim and rewrites it as just "collecting," "analyzing," and "storing" information, and asserts that those functions are necessarily abstract.⁷⁷

Launch Labs is incorrect because it ignores the entire technical problem-solution described above.⁷⁸ Rather, Launch Labs just focuses on the back half of the claims.⁷⁹ But this is improper because the Federal Circuit has instructed courts not to oversimplify the claims and not to ignore claim language.⁸⁰

⁷⁶ Doc. #25, p. 2, 9, 10-16.

⁷⁷ Doc. #25, p. 20.

⁷⁸ *TecSec*, 978 F.3d at 1278, 1294 (explaining that invention characterization is "crucial" to the abstract idea analysis).

⁷⁹ *Id.* (rejecting argument to characterize the invention by disregarding claim elements).

⁸⁰ *Diamond v. Diehr*, 450 U.S. 175, 189 n.12 (1981) (cautioning that overgeneralizing claims can make every claim unpatenable); *Realtime Data LLC v. Reduxio Sys.*, 831 F. App'x 492 (Fed. Cir. 2020) (finding court erred as it "overgeneralized, or oversimplified, the claims"); *McRO, Inc. v. Bandai Namco Games America, Inc.*, 837 F.3d 1299, 1313 (Fed. Cir. 2016) (explaining that courts "must be careful to avoid oversimplifying the claims . . . and failing to account for the specific requirements of the claims").

**(ii) Launch Labs' Comparisons to Other Cases
Ignores the Claims and the Entire body
of Case Law**

Launch Labs argument that the '947 and '083 Patents are analogous to other patents that were invalidated incorrectly ignores the plethora of cases upholding similar patents and improperly characterizes the Patents to shoehorn them to be on all fours with other cases.

For example, Launch Labs relies heavily on the unpublished *Bridge & Post, Inc. v. Verizon Comms., Inc.* opinion⁸¹ and the district court decision.⁸² But there are key distinctions. Launch Labs focuses on claim 1 of the '594 patent, which claimed "receiving" a request and "retrieving" an "identifier. In *Bridge*, there was also a '747 patent that claimed "creating" a unique identifier.⁸³ As the District Court explained, the '594 patent "uses" an identifier and the '747 patent enables advertisers to use that identifier.⁸⁴ In contrast, here, the claims require "determining whether the user opted-in or out of location tracking based on whether a

⁸¹ *Bridge & Post, Inc. v. Verizon Comms., Inc.*, 778 F. App'x 882 (Fed. Cir. 2019).

⁸² *Bridge & Post, Inc. v. Verizon Comms., Inc.*, 319 F. Supp. 3d 818 (E.D. Va. 2018).

⁸³ *Bridge*, 778 Fed. Appx. at 886-887.

⁸⁴ *Bridge*, 319 F. Supp. 3d at 820.

location tracker is installed on a computing device" to determine that there is no third-party tracking cookie, assigning a unique identifier and saving that unique identifier in browser cache based on the use of "anonymous data." The limited similarity between some claim limitations does not render the Patents invalid when there are key distinctions. Launch Labs' other "analogous" cases are not even close to the asserted Patents.⁸⁵

(iii) Launch Labs Incorrectly Alleges that the Claims are not Specific Enough

Launch Labs argues that the '947 and '083 claims are not specific enough, claim results, and do not claim a specific method.⁸⁶ Launch Labs is incorrect. Launch Labs incorrectly

⁸⁵ *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359, 1361 (Fed. Cir. 2020) (claiming a remote server/receiver for storing identified advertising); *In re Morsa*, 809 F. App'x 913, 915 (Fed. Cir. 2020) (claiming selecting one of two advertisements); *Affinity Labs, LLC v. Amazon.com, Inc.*, 838 F.3d 1266, 1267-1268 (Fed. Cir. 2016) (claiming a library for delivering to a user); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1740 (Fed. Cir. 2016) (claiming directed to a power grid); *Validity, Inc. v. Project Bordeaux, Inc.*, No. 23-365, 2023 U.S. Dist. LEXIS 169690, *4-*5 (D. Del. Sep. 22, 2023) (claiming monitoring email); *Geoscope Techs. PTE Ltd. v. Google LLC*, 692 F. Supp. 3d 566, 573 (E.D. Va. 2023) (claiming determining mobile device location).

⁸⁶ Doc. #25, pp. 18-19.

asserts that using an "ing" word in a software claim renders it abstract, which as described above, is just wrong.

Rather, the Patents claim a specific step-by-step solution. The Patents claim "determining whether the user opted-in or out of location tracking based on whether a location tracker is installed on a computing device" based on the anonymous data in the local browser cache. This determines whether there is a third-party cookie. If the user opted-out and there is no third-party cookie, then an assigned unique identifier is sent to the user's local browser cache. Moreover, the unique identifier is only assigned, if there is no previously assigned unique identifier in the browsing session anonymous data, as indicated by the lack of stored location data. The correlation between the unique identifier and the user is known to the assigner. Further, the unique identifier is assigned a physical address by determining the latitude and longitude in one of two ways based on opting in or out of location tracking. Thus, the claims have a particular set of concrete steps and are not just results or abstract functions. As described above,

courts have found methods having just two or four “ing” computing steps not to be abstract.⁸⁷

C. The '219 Patent

Claim 3/21 of the '219 patent are similar to the '947 and '083 claims and the above discussion applies similarly to claim 3. Claims 1-2/19-20 of the '219 patent are broader, but each include the limitation regarding determining whether the user opted-in or out of location tracking. Therefore, the arguments above apply similarly to claims 1-2 except for the limitations that are only found in claim 3.

D. Launch Labs Has Not Shown there are no Factual Issues on Alice Prong 2

Launch Labs' arguments on *Alice* prong 2 should be denied outright as merely raising factual issues as to what was “routine, conventional, and well-understood” for the reasons described above.⁸⁸ Launch Labs argument that the Patents lack a technical improvement and there are no factual issues as a matter of law about what was “routine, conventional, and well-understood” makes little sense because Launch Labs recognized the technical problem and built its Ignite software platform to solve the problem and even established an entire business

⁸⁷ See *supra* § IV.B.1. and n. 70 citing cases.

⁸⁸ See *supra* § III.D and n. 53 citing cases.

around that technical improvement.⁸⁹ Launch Labs certainly doesn't market itself as having a software platform that is "routine, conventional, and well-understood." Faced with insurmountable fact issues, Launch Labs makes a series of self-serving factual mischaracterizations. None of those arguments overcome the disputed factual issues.

1. Launch Labs Incorrectly Asserts that no Claim has an Inventive Concept or an Advance in Technology

First, Launch Labs incorrectly asserts that there is no "specific technical solution."⁹⁰ That is incorrect for the reasons described above. To the extent that Launch Labs disagrees, Launch Labs raises disputed factual issues.⁹¹

Secondly, Launch Labs asserts that the claims are not for hardware and then asserts that the "software elements recited in the claims are similarly conventional" (e.g., a browser, a URL etc..).⁹² But Launch Labs' argument makes no sense. Software is a series of steps for a computer to accomplish a task, not an email, etc Thus, Launch

⁸⁹ Doc. #24, Exs. G-H, K-P.

⁹⁰ Doc. #25, p. 25.

⁹¹ See *supra* § III.D and n. 53 citing cases.

⁹² Doc. #25, pp. 27-28.

Labs' argument is that a software claim is invalid for being software, which is contrary to law.⁹³

Third, Launch Labs makes a series of arguments that improperly attempt to collapse the claim into one limitation. For example, Launch Labs argues one claim element is just "organizing" information.⁹⁴ This is not true because the patent does more than "organize" data as described above. Similarly, and in contradiction to its assertion that the claim just "organizes" data, Launch Labs incorrectly asserts that the "only allegedly technical limitations" relate to determining a location and assigning a unique identifier.⁹⁵ Launch Labs is again improperly abstracting the claims by alleging that a limitation in isolation is not and ignoring the remainder of the claim and the "ordered combination."⁹⁶ Almost every patent is a combination of known elements - new materials are made up of known substances. Under Launch Labs' logic, there would be no patents.

Fourth, Launch Labs makes a factual assertion that the '594 patent in the *Bridge* case "solved the same problem."

⁹³ See *supra* § IV.B.1 and n. 70 citing cases.

⁹⁴ Doc. #25, p. 32.

⁹⁵ Doc. #25, pp. 29-30.

⁹⁶ See *supra* nn. 48, 70, 71 citing cases.

That is a factual assertion about what the '594 patent teaches.⁹⁷ The '594 patent is not of record. What the '594 patent teaches relative to the Patent claims are factual issues decided based on expert testimony and are not appropriate for resolution here. Contrary to Launch Labs' suggestion, claiming the use of a unique identifier is not unpatentable.⁹⁸ In any event, Launch Labs' assertions just create factual disputes.

Fifth, Launch Labs argued that some claim limitations can allegedly be performed by a human.⁹⁹ This allegation is of no importance because Launch Labs tacitly admits by its silence that most of the claim cannot be performed by a human. Whether one or two limitations can be performed by a human does not render the entire claim invalid.¹⁰⁰

⁹⁷ *C R Bard Inc. v. Angiodynamics, Inc.*, 979 F.3d 1372, 1384 (Fed. Cir. 2020) (reversing ineligibility determination because there is no record evidence that the claimed "step was routinely conducted in the prior art").

⁹⁸ See *supra* n. 74.

⁹⁹ Doc. #25, p. 27.

¹⁰⁰ *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014) (finding claim patentable and explaining that that "claim" encompassed a process that did was pervasive in human activity).

V. Conclusion

Fullthrottle.ai requests that Launch Labs' motion be denied.

Dated: September 27, 2024

/s/ Michael J. Bonella

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Certificate of Word Count

The undersigned hereby certifies that this brief, excluding those parts exempted by LR 7.3(d)(1), complies with the word limitation of LR 7.3(d)(1), because it contains 6207 words according to the word count function on counsel's word-processing software.

This the 27th day of September, 2024.

FLASTER GREENBERG P.C.

/s/ Michael J. Bonella
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Certificate of Service

I, Michael J. Bonella, hereby certify that on this 27th day of September 2024, a copy of fullthrottle.ai's Opposition to Launch Labs Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6) was electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all counsel of record.

/s/ Michael J. Bonella