IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ETISON LLC d/b/a CLICKFUNNELS, Plaintiff, v. HIGHLEVEL INC., Defendant.	)	C.A. No. 24-502-CFC **JURY TRIAL DEMANDED**

OPENING BRIEF IN SUPPORT OF HIGHLEVEL INC.'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM PURSUANT TO FED. R. CIV. P. 12(b)(6)

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Dated: July 29, 2024

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I. INTRODUCTION AND NATURE AND STAGE OF THE PROCEEDINGS

Plaintiff Etison LLC d/b/a ClickFunnels ("ClickFunnels") alleges that Defendant HighLevel, Inc. infringes U.S. Patent Nos. 10,846,357 ("#357 patent") and 11,361,047 ("#047 patent") (collectively, the "Asserted Patents"). D.I. 19. The Asserted Patents claim nothing more than routine computer implementation of a user's input directed to generating a website, which is not patentable subject matter.

ClickFunnels filed this action on April 22, 2024, Highlevel filed a Motion to Dismiss on June 18, 2024, and ClickFunnels filed an Amended Complaint on July 1, 2024. The parties agreed to extend HighLevel's time to respond to the Amended Complaint until July 29, 2024. *See* D.I. 20. HighLevel moves again to dismiss this action under Rule 12(b)(6) of the Federal Rules of Civil Procedure because all claims of the Asserted Patents are invalid under 35 U.S.C. § 101.

II. SUMMARY OF ARGUMENT

The concept of filtering information based on certain criteria has long been a well-known form of organizing human activity. The Asserted Patents perform the well-known practice of filtering information based on human user inputs, in the context of generating a website using routine computer functions. The Supreme Court decision in *Alice v. CLS Bank*, 573 U.S. 208, 222 (2014), and cases thereafter make clear that claims—analogous to the ones here—which take an abstract idea and merely "apply it on a computer" are not afforded patent protection under 35

U.S.C. § 101. *See, e.g.*, *IBM Corp. v. Zillow Grp., Inc.*, 50 F.4th 1371, 1381-83 (Fed. Cir. 2022) (holding claims for displaying layered map data based on user selection to be patent-ineligible).

Here, the claims are directed to the abstract idea of filtering information based on a computer providing options to a human user for the user to then select an input in a simple back-and-forth exchange of information between the user and the computer to generate an online website. Indeed, the claims require the back-and-forth of "providing" and then "receiving" user preferences in four separate instances. Moreover, the claims lack any inventive concept to transform these abstract claims into patent-eligible subject matter. Accordingly, the claims are invalid under § 101 and this suit should be dismissed under Rule 12(b)(6).

III. STATEMENT OF THE FACTS

The Asserted Patents are entitled "Website creation system for creating websites having at least one series of directional webpages and related methods." The #047 patent is a continuation of the #357 patent, and they share a common specification.[1]

[1] Except for a paragraph in the #047 patent specification explaining it is a continuation of the #357 patent, the specifications of the Asserted Patents are identical. D.I. 19 ¶11. In this motion, all citations to the #357 patent specification (D.I. 1-1A) are to excerpts that also appear in the #047 patent specification (D.I. 1-1C).

A. The #357 Patent Claims

The #357 patent has 20 claims—three independent claims and seventeen dependent claims. ClickFunnels asserts "at least Claim 1" against HighLevel but does not identify any other claims in its Amended Complaint. D.I. 19 ¶48. Independent claim 1 recites:

> 1. A method, comprising:
>
> ***providing***, to a user for display on a client device, via a website creation system, a user dashboard comprising a selectable option to create a website;
>
> ***receiving*** a selection of the selectable option to create a website;
>
> in response to receiving the selection of the selectable option to create a website, ***providing***, to the user for display on the client device, a plurality of website types for selection;
>
> ***receiving*** a selection of a website type of the plurality of website types,
>
> wherein each website type of the plurality of website types comprises a series of directional webpages configured to cause an end user interaction with a website,
>
> wherein the series of directional webpages of each website type of the plurality of websites types comprises a unique plurality of sequential webpages configured to be provided sequentially one after another;
>
> in response to receiving the selection of a website type of the plurality of website types, ***providing***, to the user for display on the client device, a plurality of website templates for selection, the plurality of website templates being particular to the selected website type;
>
> ***receiving*** a selection of a website template of the plurality of website templates and the series of directional webpages of the selected website type;
>
> in response to receiving the selection of a website template, ***generating*** and launching a generic website based on the selected website type and selected website template and ***providing***, to the user for display on the client device, a website editor graphical user interface, the website editor

> graphical user interface comprising a plurality of webpage tabs, each webpage tab of the plurality of webpage tabs representing a webpage of the series of directional webpages;
>
> ***receiving*** at least one indication of a user interaction editing at least one webpage of the series of directional webpages; and
>
> in response to receiving the at least one indication of a user interaction editing at least one webpage of the series of directional webpages, ***editing*** the launched generic website to create a customized website.

#357 patent, claim 1 (emphases added).

Independent claim 12 is a "system" claim, with at least one "non-transitory computer-readable storage medium storing instructions" when executed by a processor causes the system to perform the steps in claim 1. Independent claim 16 is "a non-transitory computer-readable medium storing instructions," with a processor configured to perform the steps in claim 1.

The #357 patent's dependent claims include additional limitations that address media objects or graphical user interface elements on a webpage (claims 2, 9, 11, 13, 15, 17); display additional webpages to a user in a single tab ("split test") (claims 3-5, 18); assign values to guests (claim 4); organize webpages in a certain sequence (claims 6-7, 19-20); restrict website access based on certain user criteria (claims 8-9, 11); or send a communication (claims 10, 14).

B. The #047 Patent Claims

The #047 patent has 20 claims—three independent claims and seventeen

dependent claims. ClickFunnels asserts "at least claim 1" against HighLevel but does not identify any other claims in its Amended Complaint. D.I. 19 ¶56. Claim 1 recites:

> 1. A method, comprising:
>
> ***receiving*** a selection to create a website;
>
> responsive to receiving the selection to create a website, ***providing*** a plurality of website types for selection,
>
> wherein each website type of the plurality of website types comprises a series of directional webpages configured to cause an end user interaction with a website, and
>
> wherein the series of directional webpages of each website type of the plurality of website types comprises a unique plurality of sequential webpages configured to be provided sequentially one after another;
>
> ***receiving*** a selection of a website type of the plurality of website types;
>
> responsive to receiving the selection of a website type of the plurality of website types, ***providing*** a plurality of website templates for selection, the plurality of website templates being particular to the selected website type;
>
> ***receiving*** a selection of a website template of the plurality of website templates; and
>
> in response to receiving the selection of a website template, ***generating*** and ***launching*** a website based on the selected website type and selected website template.

#047 patent, claim 1 (emphases added).

Independent claims 14 and 18 require the same limitations as claim 1 but in system form and "non-transitory computer-readable medium" form, respectively.

Similar to its sister patent, the #047 patent's dependent claims include the same additional limitations that address the design or display of the website or webpage (claims 2-4, 12, 16-17); display additional webpages to a user in a single tab ("split test") (claims 5-8); assign values to guests (claim 7); organize webpages

in a certain sequence (claims 9-10, 15, 19-20); restrict website access based on certain user criteria (claims 11-12); or send a communication (claim 13).

IV. LEGAL STANDARD

A patent-infringement complaint fails to state a plausible claim, and thus can be dismissed on the pleadings pursuant to Rule 12(b)(6), if it asserts a patent that claims ineligible subject matter. *See, e.g.*, *buySAFE, Inc. v. Google Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014). Abstract ideas are not patentable. *Alice*, 573 U.S. at 216. The Supreme Court articulated a two-step test in *Alice* for determining whether the subject matter of a claim is patent-eligible. 573 U.S. at 217-18. Under step one, the court determines whether the claims "are directed to a patent-ineligible concept," such as an abstract idea. *Id.* at 218. This assessment "must focus on the language of the Asserted Claims themselves." *TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1292 (Fed. Cir. 2020). "In cases involving software innovations, [the step one] inquiry often turns on whether the claims focus on specific asserted improvements in computer capabilities or instead on a process or system that qualifies [as] an abstract idea for which computers are invoked merely as a tool." *Id.* at 1293. Purported improvement of "a user's experience while using a computer application is not, without more, sufficient to render the claims" eligible at step one. *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359, 1365 (Fed. Cir. 2020).

If the court determines that the claims are directed to an abstract idea, it

continues to step two to determine if the claim elements disclose "additional features" that constitute an "inventive concept" "sufficient to ensure that the patent in practice amounts to significantly more" than the abstract idea itself. *Alice*, 573 U.S. at 217, 221. The court considers whether these "additional features" are "more than well-understood, routine, conventional activity." *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 79 (2012). In *Alice*, the Supreme Court held that, given the "ubiquity of computers," "the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention." *Id.* at 223. And in the software context, the Federal Circuit specifically determined that merely reciting "data structures" or stating computer functions "without describing how any of those functions are performed" does not transform the abstract concept into a patent-eligible one under step two. *Intell. Ventures I LLC v. Cap. One Fin. Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017); *IBM*, 50 F.4th at 1382.

V. ARGUMENT

The Asserted Patents claim ineligible subject matter and have identical disclosures purporting to "provide a plurality of website types for [user] selection, and in response to receiving a selection of a website type, provide a plurality [of] website templates specific to the selected website type." #357 patent, Abstract.

A. Claim 1 of the #357 Patent Is Representative of All Claims

Claim 1 of the #357 patent is representative of all claims of the Asserted

Patents because it is substantially similar and linked to the core abstract ideas that permeate the Asserted Patents.[2] In the context of patent eligibility, where "the claims are substantially similar and linked to the same [abstract idea], analyzing representative claims is proper." *Cleveland Clinic Found. v. True Health Diagnostics LLC*, 859 F.3d 1352, 1360 (Fed. Cir. 2017).

Claim 1 of the #357 patent does not differ significantly from the other claims in the #357 patent or from the claims of the #047 patent. As explained above, the other independent claims in each patent merely recite the steps performed in claim 1 of their respective patent but in the form of a "system" or "non-transitory computer-readable medium" claim. *See Voter Verified, Inc. v Election Sys. & Software LLC*, 887 F.3d 1376, 1385 (Fed. Cir. 2018) (finding "no distinction" between method and system claims reciting the same concept). Moreover, the Asserted Patents share a common specification, which "is some additional indication of representativeness, because claims must be supported by a written description of the invention in the specification." *BoardActive Corp. v. Foursquare Labs, Inc.*, No. 1:22-cv-00597-JDW, 2023 WL 2587688, at *3 (D. Del. Mar. 21, 2023).

The biggest difference between claim 1 of the two patents is that claim 1 of the #357 patent ties its steps to a "display on the client device." *See, e.g.*, #357 patent,

[2] For the Court's convenience, Exhibit A shows the duplicative nature of the Asserted Patents' claim elements and maps these elements to similar claim elements that the Federal Circuit has held ineligible.

Claim 1. But a simple recitation of a user display (e.g., a computer screen or smartphone display) does not alter the patent-eligibility analysis because the claims are directed to the same abstract idea: filtering information based on a user's mental process in selecting web page templates for the computer to generate a website based on the user's input. And, as explained below, neither claim 1 nor the specification requires anything more than conventional computer components. Because the claims are substantially similar and linked to the same abstract idea, the Court should treat claim 1 of the #357 patent as representative.

B. Representative Claim 1 Is Directed to an Abstract Idea of Filtering Information Based on User Input (*Alice* Step 1)

Representative claim 1 is directed to the abstract idea of "receiving" selections, "providing" information in response to the selections, and "generating and launching a website based on the" selections. #357 patent, Claim 1. Indeed, the claim merely recites a "back-and-forth" between the user and the computer—receiving selections from the user based on provided templates and then providing the user with additional selections, again and again—the end result, a generated website that "merely present[s] the results of abstract processes of collecting and analyzing information." *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016).

That's all claim 1 does—it gathers selection criteria, presents it to a user, then based on the user's selections, displays the result. The specificity of certain data

structures—i.e., "website types," "directional webpages," "sequential webpages," and "website templates"—does not make the abstract idea any less abstract. Rather, these limitations further encompass the abstract idea of filtering information based on a user's selection and input. *See Cap. One Fin.*, 850 F.3d at 1341 ("Although these data structures add a degree of particularity to the claims, the underlying concept…merely encompasses the abstract idea itself of organizing, displaying, and manipulating data of particular documents."); *CyberFone Sys., LLC v. Lexmark Int'l, Inc.*, 137 F. Supp. 3d 648, 659 (D. Del. 2015) (holding claims "entering and processing data in response to questions on forms or templates" are abstract).

Nor does claim 1 require any inventive technology to perform its claimed steps. There is nothing within the claim limitations that "focus on specified asserted computer capabilities." *TecSec*, 978 F.3d at 1293. Of course, "merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas." *Elec. Power Grp.*, 830 F.3d at 1355. Although ClickFunnels may argue that the claims are directed toward automating the creation of a website design based on user engagement, any purported increase in efficiencies through such automation "does not become patent-eligible simply through computer implementation." *See DiStefano Pat. Tr. III, LLC v. LinkedIn Corp.*, 346 F. Supp. 3d 616, 624 (D. Del.

2018), *aff'd*, 784 F. App'x 785 (Fed. Cir. 2019) (holding claims "creating a reciprocal agreement between two websites in order to market the first website at the second website" are abstract). Claim 1 therefore is directed to an abstract idea using a computer as a tool.

Federal Circuit authority, which has "previously held other patent claims ineligible for reciting similar abstract concepts that merely collect, classify, or otherwise filter data" supports this conclusion. *Intell. Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1327 (Fed. Cir. 2017). Claim 1 is closely analogous to ineligible claims in *IBM*, where the Federal Circuit held that "*identifying*, *analyzing*, and *presenting* certain data to a user" were abstract ideas. 50 F.4th at 1378 (emphases added). So too are the claims in the Asserted Patents. Claim 1 *identifies* data (the website type or template selected by the user), *analyzes* data (finds the plurality of website types or templates meeting the user's selection criteria), and *presents* data (generates and launches a website based on the selections). Claim 1 is abstract for the same reasons—"[i]dentifying, analyzing, and presenting certain data to a user is not an improvement to computing." *Id.*; *see In re Killian*, 45 F.4th 1373, 1380 (Fed. Cir. 2022).

Courts in this District have likewise found claims "offering more meaningful information to an individual based on his own preferences" were abstract. *Sound View Innovations, LLC v. Facebook, Inc.*, 204 F. Supp. 3d 655, 662 (D. Del. 2016);

see, e.g., *IPA Techs., Inc. v. Amazon.com, Inc.*, 307 F. Supp. 3d 356, 367 (D. Del. 2018) (holding claim "transmitting electronic data to a user in response to" a user request is abstract).

Moreover, filtering information—here, the user's selections—is a "well-established human activity" predating computers. "The concept of data collection, recognition, and storage is undisputedly well-known. Indeed, humans have always performed these functions." *Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014). For example, bankers "reviewed checks, recognized relevant data..., and stored that information in their records." *Id.* Or a librarian organized and classified books by "certain identifiable tags, e.g., title, author." *Voter Verified*, 887 F.3d at 1384; *Erie*, 850 F.3d at 1327. Thus, claim 1 recites an abstract idea under step one.

C. The Claims Fail to Recite an Inventive Concept (*Alice* Step 2)

The claims also fail at step two. The limitations of claim 1, both individually and as an ordered combination, do nothing more than use conventional computer components and practices. As explained above, receiving instructions (e.g., a selection) from the user and transmitting that information (filtering and generating a website) are conventional and routine computer functions. It is not enough under step two to merely describe functions of the abstract idea.

1. Representative Claim 1 Does Not Contain An Inventive Concept

Representative claim 1 does not contain an inventive concept because, as the specification acknowledges, website creation was well-known. #357 patent, 1:14-29. Despite reciting "website types," "directional webpages," "sequential webpages," and "website templates," these data structures "although technical sounding" are generic data types—webpages or web objects—that have not been alleged to be inventive. *Cap. One Fin.*, 850 F.3d at 1342. ClickFunnels did not invent webpages, and use of these data structures was a conventional activity. There is nothing "more" in the claim limitations as they otherwise recite conventional computer components.

Even the specific ordered combination of steps fails to offer a unique solution to a technological problem. The specification describes problems faced by website owners that the purported invention alleges to solve—e.g., hiring multiple companies to develop different parts of the website or having limited website personalization. #357 patent, 1:21-34. But nothing in claim 1 explains how to overcome those problems. In fact, the claim limitations provide a result-oriented solution—generating a website—"with insufficient detail for how a computer accomplishes it." *Cap. One Fin.*, 850 F.3d at 1342; *CyberFone*, 137 F. Supp. 3d at 659-60.

For an ordered combination of limitations to transform an abstract idea, the

solution must "improve the performance of the computer system itself," making the computer "more dynamic and efficient." *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350-51 (Fed. Cir. 2016) (internal quotation marks omitted). The Asserted Patents do not claim to do so. While the specification suggests that the alleged invention solves the purported problem of having to use multiple vendors to market a website or overcomes the problems of limited personalization associated with "cookie cutter" websites, #357 patent, 1:14-34, these attributions do nothing to "improve the performance of the computer system itself." *BASCOM*, 827 F.3d at 1351. If anything, the specification further supports that personalized website creation was well-known. *See AI Visualize, Inc. v. Nuance Commc'ns, Inc.*, 97 F.4th 1371, 1380 (Fed. Cir. 2024) (finding the specification's discussion that virtual views existed at time of invention "undermines" patentee's argument that creation of virtual views transforms claims into patent-eligible subject matter).

Even if the Asserted Patents purport to streamline website creation or allow for more attractive websites, they merely attempt to solve a conventional problem (using multiple vendors or having less attractive websites) with a conventional solution (presenting a website after filtering information through a generic computer based on user input). *See Intell. Ventures I LLC v. Cap. One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) ("[M]erely adding computer functionality to increase

the speed or efficiency of the process does not confer patent eligibility on an otherwise abstract idea."). There is no alleged improvement to computer technology or other inventive concept in representative claim 1.

Despite its alleged benefits, 357 patent, 3:24-33, the specification does not explain how the invention operates any differently than a generic computer-network system. For example, Figure 1 "illustrates a schematic representation of an environment within which a website creation system can operate." *Id.* at 2:27-29.

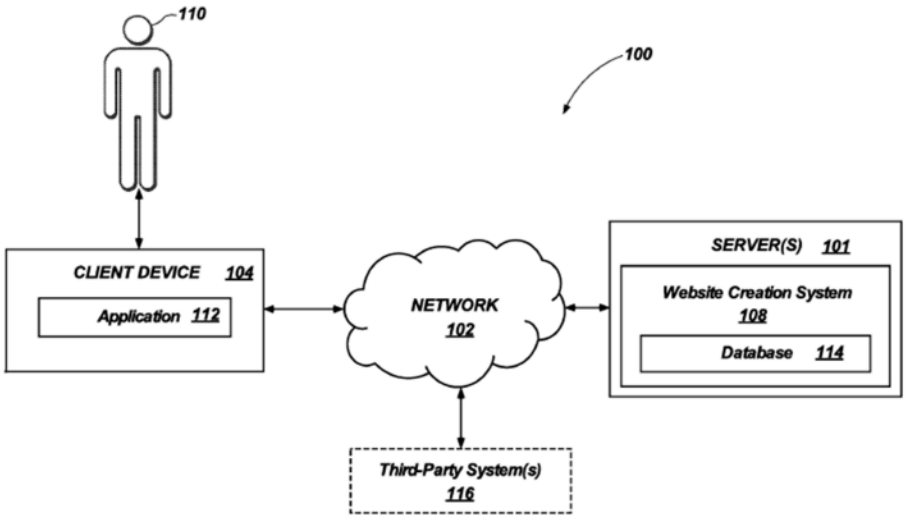

FIG. 1

Id., Figure 1. This computer-network environment shows that a website creation system sits on a server that connects to the client device through a network—i.e., a conventional computer-network configuration. There is nothing in the claims beyond conventional systems and practices; therefore, the abstract claims are patent-ineligible because they fail under step two of *Alice*.

2. ClickFunnels' Amended Complaint Does Not Supply An Inventive Concept

ClickFunnels' attempt to address step 2 in its Amended Complaint by identifying purported advantages of the Asserted Patents fails for the simple reasons that these alleged advantages are not covered by the claims, are not supported by the specification, and/or do not rise to the level of an inventive concept. As is the case here, not just "any allegation about inventiveness, wholly divorced from the claims or the specification, defeats a motion to dismiss…." *See Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1317 (Fed. Cir. 2019); *Dropbox, Inc. v. Sychronoss Techs, Inc.*, 815 F. App'x 529, 533 (Fed. Cir. 2020) ("The patent has to describe how to solve the problem in a manner that encompasses something more than the 'principle in the abstract.'…And, that solution has to be evident from the claims."). ClickFunnels argues that two "general aspects" of the Asserted Patents—website creation and end user experience with websites created using the alleged invention—offer advantages, yet none of the conclusory advantages stem from limitations of claim 1 nor provide an inventive concept. D.I. 19 ¶25.

First, regarding website creation, Claim 1 is devoid of any mention of ClickFunnels' newfound, yet conclusory allegations of purported advantages in saving "computing power, computing time, and data transmission bandwidth." D.I. 19 ¶¶31-34. Simply put, Claim 1 makes no mention of static pages or local caching (let alone any supposed advantages associated therewith). The specification is

likewise silent. *See generally* #357 patent. Moreover, these alleged advantages lack an inventive concept because static pages represent a generic data type, and local caching is nothing more than a well-known and conventional method of data processing. *See Cap. One Fin.*, 850 F.3d at 1342. The lack of description of how static pages or local caching are performed further confirms their generic nature, and that ClickFunnels invented neither of them. *IBM*, 50 F.4th at 1382. At bottom, ClickFunnel's purported advantages are conclusory in nature, and equate to conventional computer practices using generic computer components.

Similarly, regarding end-user experience with created websites, Claim 1 is silent. ClickFunnels' allegation that using "response actions" "enable[s] automation of tasks resulting in the technical advantage of reduced computing time and use of computer resources" is simply absent from the Asserted Patents. D.I. 19 ¶38; #357 patent, 3:57-4:6. Claim 1 discusses end users only once—"wherein each website type of the plurality of website types comprises a series of directional webpages configured to cause an end user interaction with a website." #357 patent, 35:63-65. But "an end user interaction" is different from the alleged "response actions," which are explicitly performed by the computer in *response* to the end user interaction. *Id.* at 3:57-4:6.

Further still, "response actions" cannot provide an inventive concept. ClickFunnels contends that "[b]y using 'response actions'…the claimed inventions

employ sets of specific, ordered rules that enable automation of tasks….” D.I. 19 ¶38. Even if true, that is still not enough. Dismissal is appropriate where the alleged improvements do not “improve the performance of the computer system itself,” *BASCOM*, 827 F.3d at 1351, but merely automates “traditional systems and methods” of identifying and collecting end user information, drafting a communication, and sending a communication. D.I. 19 ¶¶37-38, 40. As ClickFunnels concedes, “using traditional systems and methods, analytics would have to be run on a customer-by-customer basis to identify customers with products in their virtual ‘shopping carts,’ identify those products, determine the customer’s email address, create an email…, and send the email….” *Id.* “The ability to run a more efficient advertising campaign, even if novel, and even if aided by conventional computers, is an advance ‘entirely in the realm of abstract ideas,’ which we have repeatedly held to be ineligible.” *Bridge & Post, Inc. v. Verizon Commc’ns., Inc.*, 2019 WL 2896449, at *9 (Fed. Cir. 2019) (quoting *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018)); *Chewy, Inc. v. IBM*, 94 F.4th 1354, 1366 (Fed. Cir. 2024) (“[I]mprov[ing]…specificity and relevancy of online advertisements…‘is at most an improvement to the abstract concept of targeted advertising….’”); *BoardActive*, 2023 WL 2587688, at *4 (finding “an interface and administrative controls” do not transform the abstract idea of “targeted marketing”). Thus, these purported “response actions”—which are not claimed—merely add

computer functionality to increase the efficiency of a well-known process without transforming the abstract concept. *See Intell. Ventures I*, 792 F.3d at 1370.

"Even taking as true all facts as alleged, [ClickFunnels] has not identified any elements of any claims that amount to 'significantly more' than the abstract idea to which the claims are directed." *Realtime Data LLC v. Array Networks Inc.*, 537 F. Supp. 3d 591, 605 (D. Del.), *adhered to*, 556 F. Supp. 3d 424 (D. Del. 2021), *aff'd*, No. 2021-2251, 2023 WL 4924814 (Fed. Cir. Aug. 2, 2023). ClickFunnels' Amended Complaint merely "recite[s] legal conclusions, quotations from the patents, and conclusory allegations that the patents contain inventive features. None of the cited paragraphs identify an inventive feature that is distinct from one of the claimed abstract ideas." *Id.*

3. No Other Claims Contain An Inventive Concept

Beyond claim 1, there is nothing in the other claims that provides an inventive concept. First, independent claims 12 and 16 of the #357 patent fail step two because they merely recite the same non-inventive steps performed on a "system" or "processor." *See Alice*, 573 U.S. at 226 ("[T]he system claims are no different from the method claims in substance.").

Similarly, the dependent claims of the #357 patent fail to supply an inventive concept. Most of the dependent claims include technology that either was already well-known in the art or that the Federal Circuit has determined was insufficient to

overcome step two.[3] For example, claims 2-3, 5, 13, 15, and 17-18 relate to media objects or graphical user interface elements on a webpage, which are routine and conventional, as discussed above. *Cap. One Bank*, 792 F.3d at 1370 (finding "interactive interface limitation is a generic computer element"). Claim 4 assigns values to guests, but as explained above, classification is routine and conventional. *See Chewy*, 94 F.4th at 1368 (finding assigning session values to a user not to be an inventive concept). Claims 6-7 and 19-20 require webpages ordered in a specific sequence, but as explained above, this type of "marketing" or "enticement" is abstract and is not inventive. *Bridge & Post*, 2019 WL 2896449, at *9. Claims 8-9 and 11 further limit website access or require certain user input to continue, but these restrictions describe conventional computer functionality and cannot supply an inventive concept. *See also Prism Techs. LLC v. T-Mobile USA, Inc.*, 2017 WL 2705338, at *2 (Fed. Cir. 2017) (finding that restricting access using generic computer components was not "an inventive concept"). Similarly, claims 10 and 14 include sending a communication or email—i.e., generic computer functionality. *See Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329 (Fed. Cir. 2017). At most, claims 13 and 14 merely automate traditional systems and methods of sending a communication in response to an event.

[3] The dependent claims of the #047 patent do not provide an inventive concept for the same reasons.

The claims of the #047 patent fare no better. Unlike claim 1 of the #357 patent, claim 1 of the #047 patent does not require "providing, to the user for display on the client device," but otherwise it contains the same or similar claim limitations. Thus, claim 1 of the #047 patent does not offer any additional features to overcome step two. The same holds true for the dependent claims in the #047 patent. At bottom, "[n]othing in the claims, understood in light of the specification, requires anything other than off-the-shelf, conventional computer, network, and display technology for gathering, sending, and presenting the desired information." *Elec. Power Grp.*, 830 F.3d at 1355.

Moreover, ClickFunnels has not alleged any facts that when taken as true prevent the Court from resolving patent-eligibility at this point. Nor can it. The Court is not obligated to accept as true "bald assertions," and in this case, no assertion of an inventive concept would be supported by the intrinsic evidence. *DiStefano*, 346 F.Supp.3d at 620, 626 (quoting *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997)) (granting motion to dismiss where claims allegedly "resolve[d] technical problems related to a streamlined process for developing web pages" were not supported by "complaint, in the specification, or in the claims"). Because the claims of the Asserted Patents are abstract and lack any inventive concept, HighLevel respectfully requests the Court grant its motion to dismiss *with prejudice*.

VI. CONCLUSION

ClickFunnels' Amended Complaint should be dismissed because the claims of the Asserted Patents are invalid as directed to patent-ineligible subject matter under 35 U.S.C. § 101.

Dated: July 29, 2024

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EXHIBIT A

Claim Mapping Table		
’357 Patent	**’047 Patent**	**Case Law (Abstract Idea)**
1[pre]. A method, comprising:	1[pre]. A method, comprising:	
1[A]. providing, to a user for display on a client device, via a website creation system, a user dashboard comprising a selectable option to create a website;		*Intell. Ventures I LLC v. Cap. One Bank (USA)*, 792 F.3d 1363, 1369–70 (Fed. Cir. 2015) (holding claims directed to “customizing web page content as a function of navigation history and information known about the user” to be abstract).
1[B]. receiving a selection of the selectable option to create a website;	1[A]. receiving a selection to create a website;	*IBM v. Zillow Grp., Inc.*, 50 F.4th 1371, 1378 (Fed. Cir. 2022) (describing claim step where “a user select[s] a portion of that map” and synchronizing the map is abstract).
1[C]. in response to receiving the selection of the selectable option to create a website, providing, to the user for display on the client device, a plurality of website types for selection;	1[B]. responsive to receiving the selection to create a website, providing a plurality of website types for selection,	*Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding “collecting information, analyzing it, and displaying certain results” to be an abstract idea).
1[D]. receiving a selection of a website type of the plurality of website types,	1[E]. receiving a selection of a website type of the plurality of website types;	*IBM*, 50 F.4th at 1378.

1[E]. wherein each website type of the plurality of website types comprises a series of directional webpages configured to cause an end user interaction with a website,	1[C]. wherein each website type of the plurality of website types comprises a series of directional webpages configured to cause an end user interaction with a website, and	*Cap. One Bank*, 792 F.3d at 1369–70.
1[F]. wherein the series of directional webpages of each website type of the plurality of websites types comprises a unique plurality of sequential webpages configured to be provided sequentially one after another;	1[D]. wherein the series of directional webpages of each website type of the plurality of website types comprises a unique plurality of sequential webpages configured to be provided sequentially one after another;	*Chewy, Inc. v. IBM*, 94 F.4th 1354, 1366 (Fed. Cir. 2024) (holding targeted advertisement was an "abstract concept").
1[G]. in response to receiving the selection of a website type of the plurality of website types, providing, to the user for display on the client device, a plurality of website templates for selection, the plurality of website templates being particular to the selected website type;	1[F]. responsive to receiving the selection of a website type of the plurality of website types, providing a plurality of website templates for selection, the plurality of website templates being particular to the selected website type;	*CyberFone Sys., LLC v. Lexmark Int'l, Inc.*, 137 F. Supp. 3d 648, 659 (D. Del. 2015) (holding that claims focused on "entering and processing data in response to questions on forms or templates" were directed to an abstract idea).
1[H]. receiving a selection of a website template of the plurality of website templates and the series of directional webpages of the selected website type;	1[G]. receiving a selection of a website template of the plurality of website templates; and	*IBM*, 50 F.4th at 1378.

1[I]. in response to receiving the selection of a website template, generating and launching a generic website based on the selected website type and selected website template and providing, to the user for display on the client device, a website editor graphical user interface, the website editor graphical user interface comprising a plurality of webpage tabs, each webpage tab of the plurality of webpage tabs representing a webpage of the series of directional webpages;		*Cap. One Bank*, 792 F.3d at 1369–70.
1[J]. receiving at least one indication of a user interaction editing at least one webpage of the series of directional webpages; and		*IBM*, 50 F.4th at 1378.
1[K]. in response to receiving the at least one indication of a user interaction editing at least one webpage of the series of directional webpages, editing the launched generic website to create a customized website.	1[H]. in response to receiving the selection of a website template, generating and launching a website based on the selected website type and selected website template.	*Cap. One Bank*, 792 F.3d at 1369–70.

CERTIFICATION OF COMPLIANCE

The undersigned certifies that the foregoing Opening Brief was prepared in Times New Roman 14-point font, and contains 4,997 words (excluding the caption, title, tables, and signature blocks), which were counted using Microsoft Word's word count feature.

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