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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EVOLUTION MALTA LIMITED, EVOLUTION GAMING MALTA LIMITED, EVOLUTION GAMING LIMITED, SIA EVOLUTION LATVIA, and UPLAY1, Plaintiffs, v. LIGHT & WONDER, INC. f/k/a SCIENTIFIC GAMES CORP. and LNW GAMING, INC. f/k/a SG GAMING, INC., Defendants.	Case No. 2:24-cv-00993-CDS-NJK **DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT [ECF NO. 125] PURSUANT TO RULE 12(b)(6)**

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I. INTRODUCTION

Earlier this year, the Court dismissed the patent counts of Evolution's original complaint, holding that all three asserted patents "are invalid under *Alice*" and expressing "doubt that Evolution can amend around this problem." ECF No. 76 ("Order") at 15, 16 n.8. Evolution's Second Amended Complaint reasserts those patents and adds two more. The original three patents modify the rules of roulette: randomly selecting one or more roulette positions and increasing the payouts for those positions. The two new patents implement existing wagering games online using a combination of electronic and physical random number generators (like a roulette wheel and ball or cards). All five are directed to wagering games. All five are invalid under *Alice*.

The two-step *Alice* test considers (1) whether claims are directed to an abstract idea, and (2) if so, whether there is nevertheless an inventive concept that could be patent eligible. At *Alice* step 1, all five patents are directed to wagering games, which the Federal Circuit has repeatedly classified as an abstract idea. The small tweaks the patents make to change the rules of these wagering games or to implement them online do not make that idea any less abstract. At *Alice* step 2, all five patents recite generic hardware components and generic gambling mechanisms (like a roulette wheel and ball, cards, or dice) to implement the abstract ideas. But such generic, off-the-shelf components are not inventive. Nor is implementing a process fully or partially online. The patents do not disclose any innovative technology or algorithms. All they disclose are generic implementations of wagering. Thus, the Court should dismiss all five patents under *Alice*.

The Court has already dismissed the original three patents once under *Alice.* The Court's prior ruling stressed that the claims are stated "merely [as] results, and not means to achieve the results." *Id.* at 11. The three patents "lack the specificity necessary to show how [the claimed] components provide a concrete solution to the problem addressed by the patent," *id.* at 15, and the purported technological improvements—randomly selecting one or more roulette positions and increasing the payouts for those positions, ECF No. 1 ("Compl.") ¶¶44–45, 69–70, 96–97—are "described and claimed too generically." Order at 15. Those findings do not depend on the pleadings; they flow from the intrinsic record. "No amendment to a complaint can alter what a

patent itself states." *Sanderling Mgmt. Ltd. v. Snap Inc.*, 65 F.4th 698, 706 (Fed. Cir. 2023). Evolution's SAC does not change the *Alice* analysis.

The two new patents in Evolution's SAC fare no better as they likewise claim ineligible material. They claim a hybrid combination of online and physical gambling. Like the original patents, the new ones describe each element in results-oriented terms. And the new patents fail for an additional reason: implementing all or part of a process on the Internet is not patent eligible.

All five patents say what they say—and what they say is fatal under *Alice*.

II. BACKGROUND

A. The Asserted Patents

1. *The Haushalter Patents*. Evolution asserts three patents that list Todd Haushalter as the inventor: 10,629,024 (the "'024"), 11,011,014 (the "'014"), and 11,756,371 (the "'371") (collectively, the "Haushalter Patents"). ECF No. 125 ("SAC"). The '024 claims priority to a provisional application filed February 5, 2018. The '014 is a continuation of the '024, and the '371 is a continuation of the '014. Each is titled "Systems, Methods, and Media for Implementing Internet-Based Wagering." *See* SAC Ex. 1 (the '024), Ex. 3 (the '014), Ex. 5 (the '371).

The Haushalter Patents share a common specification and purportedly disclose "[s]ystems, methods, and media for implementing internet-based wager[ing]." '014 at 1:31–32. The Haushalter Patents concern wagering on the century-old game of roulette, and all of the described embodiments use three core components—a roulette wheel, a ball, and a hardware processor.

To play roulette, a dealer spins the wheel one direction and directs the ball to spin around the wheel in the opposite direction. *Id.* at 3:3–6. The ball eventually falls into a position on the wheel associated with a number. *Id.* at 3:6–8. If the player has placed a bet on that number, the player is paid a sum. If not, the bet amount belongs to the house.

In the purported invention, the wheel and ball perform their conventional roles while the hardware processor—which may be "any suitable" processor for "controlling . . . a general-purpose computer," (*id.* at 6:32–48)—acts as the dealer. The processor accepts player bets associated with specific number(s) on the roulette wheel (*id.* at 8:19–28), determines whether the ball and wheel have been spun (*id.* at 8:29–30), determines whether the ball has landed on a player's selected

number (*id.* at 8:40–41), and, if so, determines and indicates the playout amount (*id.* at 8:36–39, 8:42–43). In short, the claimed processor applies the rules of roulette.

The Haushalter Patents also require that the same generic processor randomly identify a number on the roulette wheel before the ball falls into position on the wheel. *Id.* at 8:31–35. If this randomly identified number matches the number on which a player has placed a bet, and if the ball lands on that number on the roulette wheel, the player receives an increased payout. *Id.* at 5:15–32. This randomly identified number is essentially a "multiplier" and is no different from countless others known by 2018 that increase a player's payout.

As Evolution previously conceded, *see* Order at 8 n.6, Claim 1 of the '014 is representative:

> A system for wagering, comprising:
> a roulette wheel;
> a ball configured to be used in the roulette wheel;
> at least one hardware processor collectively configured to:
> generate a first graphical user interface for presentation on a first player device of a first player;
> generate a second graphical user interface for presentation on a second player device of a second player;
> receive first bet information for a first bet on a spin of the roulette wheel via the first graphical user interface, the first bet information corresponding to only a single first position on the roulette wheel;
> receive second bet information for a second bet on the spin of the roulette wheel via the second graphical user interface, the second bet information corresponding to only a single second position on the roulette wheel that is different from the single first position;
> determine that the roulette wheel and the ball have been spun for the spin of the roulette wheel;
> *randomly select a first selected position on the roulette wheel for the spin of the roulette wheel prior to the ball falling into an outcome position on the roulette wheel*, wherein the first selected position is the same as the single first position;
> *determine a first payout for the first single position and a second payout for the single second position for the spin of the roulette wheel, wherein the first payout is higher than the second payout;*
> determine that the ball has fallen in the single first position for the spin of the roulette wheel; and
> indicate that the first player is to be paid at the first payout for the spin of the roulette wheel.

'014 at 8:11–43 (emphases added indicating the purported innovation).

The claims use generic components (wheel, ball, processor) to perform steps specified in broad, results-oriented language, including at the alleged point of novelty (*e.g.*, "*determine a first payout*"). No new hardware or software for implementing the functional claim language is described in the Haushalter Patents (much less required by their claims). And the alleged innovation of increasing the payout for a randomly selected position is an entrepreneurial tweak to conventional roulette rules, not a technical advancement worthy of patent protection.

2. *The Merati Patents*. After it filed the Complaint, Evolution acquired Uplay1, apparently to assert two new patents in this litigation. *See* ECF No. 89 at 3–4. Those two new patents, which Evolution asserts in the SAC, list Bruce Merati as the inventor: 9,905,074 (the "'074") and 11,783,663 (the "'663") (together, the "Merati Patents"). *See* SAC Exs. 7, 9. The '074 is titled "Hybrid Gaming System, Apparatus and Method." The '663 is titled "Live Roulette Hybrid Gaming System and Method." "The '663 patent specification includes all of the '074 patent's specification plus four additional figures and corresponding description . . . ." SAC ¶107.

The Merati Patents concern wagering online. They purport to disclose a "system and method of providing gaming services to game players located remotely from one another." '074 at 1:21–24; '663 at 1:30–32. They acknowledge this is not a new concept: "[g]ambling over the Internet has gained widespread popularity all over the world." '074 at 1:28–44; '663 at 1:36–53.

The purported innovation of the Merati Patents is to provide players with a gaming system that permits remote play but "also instill[s] a greater degree of trust in players than present day systems." '074 at 1:63–67; '663 at 2:4–8. Evolution claims that the Merati Patents "recite specific systems and processes that enable a new and improved system for providing computerized gaming over a network," combining physically and electronically generated game values, to increase player trust. SAC ¶¶ 133–134. In other words—a hybrid game, but no new games or technologies.

The Merati Patents purport to disclose a server comprising a communication interface and a processor (including a memory for storing instructions), which are used to "combine[] physical gaming values produced at a location with electronical game values generated by a server" to permit players to gamble online.'074 at 2:6–48; '663 at 2:14–52. The physical gaming values are generated

by cards, roulette, or "any other mechanical device capable of generating real, random information" like lottery balls. '074 at 5:18–50; '663 at 5:35–67.

Claim 1 of the '074 patent below is representative of all Merati Patent claims.

> A server for providing a game to online game players over a network that utilizes physical gaming values produced at a location with electronic[] game values generated by the server, comprising:
>
> a communication interface for receiving one or more electronic indications of the physical game values over the network from the location for use in playing the game, and for providing one or more of the electronic game values to an online game player of the online game players over the network;
>
> a memory for storing processor-executable instructions; and
>
> a processor coupled to the communication interface and the memory for executing the processor-executable instructions that causes the server to;
>
> receive, by the processor via the communication interface, the one or more electronic indications of the physical game values;
>
> generate, by the processor via the communication interface, one or more electronic game values for use in playing the game;
>
> provide the one or more electronic game values to an online game player of the online game players over the network;
>
> provide, by the processor via the communication interface, the one or more electronic representations of the physical game values to the online game player over the network; and
>
> determine, by the processor, a final game result based on at least the one or more electronic representations and the one or more electronic game values.

'074 at 48:20–50.

The claims use generic components (communication interface and processor) to perform steps specified in results-oriented language, including at the alleged points of novelty. The claims do not require or describe any new hardware or software. The alleged innovation of combining physical and electronic game values is a tweak to conventional gambling rules that typically rely on one or the other—not a technical advancement worthy of patent protection.

B. Procedural History

Evolution originally alleged infringement of the Haushalter Patents and claims for trade secret misappropriation. *See* ECF No. 1("Compl.") L&W moved to dismiss the Haushalter Patent claims under 35 U.S.C. § 101.[1] The Court agreed that they are "invalid under *Alice*" and granted

[1] L&W's motion also showed that Evolution's trade secret counts are subject to arbitration or time

L&W's motion. Order at 15; *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014). The Court did "not address the merits of whether two of the patent claims are time barred." Order at 15 n.7.

The Court granted Evolution leave to amend but said, "[c]onsidering the plain language of the claims in the patent, the Court has some doubt that Evolution can amend around this problem." *Id.* at 15–16 & n.8. In April, Evolution filed its first amended complaint and reasserted the Haushalter Patents. ECF No. 85 ("FAC"). Evolution also sought leave to amend further. ECF No. 89. On June 30, 2025, the Court granted Evolution's motion for leave, and Evolution filed the SAC. ECF No. 124, 125. The SAC asserts both the Haushalter Patents and the Merati Patents.

L&W now moves again to dismiss the patent-related counts in the SAC.[2] Counts III, IV, and V concern the Haushalter Patents, which have not changed and remain "invalid under *Alice*." Order at 15. Counts VI and VII concern the Merati Patents—those likewise do not constitute patent-eligible subject matter and are thus invalid under 35 U.S.C. § 101 and *Alice*.

C. The SAC's Allegations Regarding the Haushalter and Merati Patents

1. The SAC Re-Packages The Same Section 101 Allegations That The Court Already Considered And Rejected For The Haushalter Patents

In its original complaint, Evolution relied on three conclusory sets of allegations (Compl. ¶¶44–45, 69–70, 96–97) to contend that the claims overcome *Alice*. Evolution argued that the patents' random selection of one or more positions and increased payouts for those positions "significantly improved existing technology [ ] for a roulette game" and pronounced—without any support—that these features were "neither well-known, routine, nor conventional." *Id.*

Notwithstanding the Court's prior ruling—which squarely rejected Evolution's contention that the mere recitation of random-number selection and increased payouts amounted to a technological advance (Order at 14–15)—the SAC repeats the same refrain. *See, e.g.*, SAC ¶¶83–84, 87–88, 100. Yet, as before, Evolution points to no claim language reciting ***how*** the claimed processor allegedly accomplishes those functions and leaves unchallenged the Court's observation

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barred. ECF 34 at 14–22. On January 31, 2025, the Court asked L&W to refile those arguments as a separate motion. ECF 72. That motion remains fully briefed and pending. *See* ECF 74, 78, 79.

[2] The Court has not denied as moot L&W's motion to dismiss the FAC. This motion addresses the same issues as to the Haushalter Patents but also addresses the Merati Patents (added in the SAC).

that the random selection and increased payout limitations are framed in purely functional, results-oriented terms and therefore do not provide a technological advance. Order at 14–15.

2. The SAC's New Section 101 Allegations For The Haushalter Patents Cannot Rewrite The Plain Language Of The Claims

The SAC includes roughly twenty pages of attorney argument asserting that the Haushalter Patent claims are patent-eligible. The SAC identifies new alleged technological improvements and seeks to walk back Evolution's previous concessions regarding the representativeness of claim 1 of the '014. But Evolution is bound by its prior concession. *See, e.g.*, *Maxon, LLC v. Funai Corp., Inc.*, 255 F. Supp. 3d 711, 716 (N.D. Ill. 2017), *aff'd*, 726 F. App'x 797, 800 (Fed. Cir. 2018) (patentee "forfeit[ed] the point" when it did not respond to defendant's argument that certain claims were representative for the Section 101 analysis).

Evolution's "new" allegations regarding the Haushalter Patents are summarized below.

SAC Additions	What Was Pled (or Conceded) in Complaint	What the SAC Still Lacks
Allegation that "ensuring . . . random selection" takes place "before the ball has fallen in a position" is a technological improvement (SAC ¶83, Errata at 1)	Evolution argued that the patents "improved existing technology" via the claimed random position selection (Compl. ¶¶44–45, 69–70, 96–97), which the Court rejected (Order at 9–15).	Any factual allegations that the claims recite ***how*** the purported "random selection before ball lands" feature is achieved, any non-conclusory allegations that this feature is not well-known, routine, and conventional, and any factual allegations as to why this feature is not a necessary part of the abstract idea itself, such that it cannot supply an inventive concept
Allegation that multiplayer participation via electronic player devices is a technological improvement (SAC ¶¶83, 91)	Evolution did not previously argue that the claimed use of first and second graphical user interfaces (GUIs) for receiving bets is a technological improvement.	Any factual allegations that the claims recite ***how*** multiplayer participation is achieved, any non-conclusory allegations that this feature is not well-known, routine, and conventional, and any factual allegations as to why this feature is not a necessary part of the abstract idea itself
Allegation that the claims enable remote gameplay, another purported technological improvement (SAC ¶¶84, 90)	Evolution did not previously argue that the claims enabled remote gameplay, nor that this is an alleged technological improvement.	Any factual allegations that the claims recite features for enabling remote gameplay, and any non-conclusory allegations that this feature is not well-known, routine, and conventional

SAC Additions	What Was Pled (or Conceded) in Complaint	What the SAC Still Lacks
Allegations that the claims provide "specific technological software improvements" (SAC ¶¶59, 75, 83, 84, 87, 99, 100)	Evolution argued that the patents "improved existing technology" but did not identify any technology that was improved. ECF No. 66 at 2–6.	Any factual allegations that the claims recite algorithms or any other concrete software architectures for achieving the functions recited in the claims
Assertion that certain dependent claims recite "additional . . . technological improvements," *e.g.*, randomly selecting a second position (SAC ¶¶93–95)	Evolution previously conceded that the dependent claims "relate to the same abstract idea" as Claim 1 of the '014 patent and any additional limitations "do not save the Asserted Patents." Order at 8 n.6.	Any factual allegations that the claims recite ***how*** the various dependent-level claim features are achieved, and any non-conclusory allegations that these features are not well-known, routine, and conventional.

3. The SAC's Section 101 Allegations For The Merati Patents Likewise Reveal The Merati Claims Are Not Patent-Eligible

The SAC addresses the alleged innovation of the Merati Patents in ¶¶103–118 and ¶¶132–135. Evolution claims that before these patents, "no one had devised a system or method for playing hybrid casino games using game values generated by both traditional mechanical equipment and electronic equipment as described and claimed in the '074 and '663 patents." *Id.* ¶103. But Evolution does not even attempt to argue that these elements are new to either electronic or physical gambling techniques. Instead, the alleged innovation is combining them.

Thus, the "new and improved system" claimed by the Merati Patents merely recites the use of generic computing components, such as servers, networks, processors, and communication interfaces, to implement conventional gaming practices. *Id.* ¶¶108–109, 133–135. The Merati Patents do not describe specific implementations of a novel concept, but instead recite well known functions, such as receiving data, generating random numbers, and transmitting information. *Id.*

III. THE ASSERTED PATENTS ARE INVALID UNDER 35 U.S.C. § 101

Despite the attorney argument and unsupported assertions of technological improvements that pervade the SAC, the focus of the Section 101 inquiry is the text of the claims.

The Haushalter Patent claims still recite the game of roulette using its well-known, conventional components—a ball and a wheel. The Merati Patent claims recite conventional

wagering games like poker and roulette. Both sets of claims rely on generic components like a communication interface and a processor to perform basic tasks, specified at a functional, results-oriented level (*e.g.*, "determine a payout" or "final game result"). '014 at 6:32–48; '074 at 48:48.

Claims based on wagering games are directed to ineligible abstract ideas. *In re Smith*, 815 F.3d 816, 818 (Fed. Cir. 2016). Implementing abstract ideas online or with generic components is not inventive. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354–55 (Fed. Cir. 2016) (rejecting use of "a set of generic computer components"); *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 766–67 (Fed. Cir. 2019) (rejecting use of network to control electric supply).

Here, the asserted claims are directed to the abstract idea of online wagering using generic components and no explicit description of how to achieve the desired results. Evolution still fails to explain why the claims of the Haushalter or Merati Patents are patent-eligible subject matter under § 101. The Court should dismiss all the patent claims under *Alice*.

A. Legal Standard

35 U.S.C. § 101 defines patent-eligible subject matter as "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." "Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice*, 573 U.S. at 216 (quoting *Ass'n of Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

Under *Alice*'s two-step framework governing the eligibility inquiry, a court must first determine whether the invention is directed to an abstract idea. *Id.* at 217–18. If so, the court then determines whether the claim elements recite an "inventive concept" sufficient to transform the abstract idea into patent-eligible subject matter. *Id.* Comparing the claims at issue to claims previously invalidated under Section 101 is a common approach approved by the Federal Circuit. *Teliax Tech. LLC v. Affinity Network, Inc.*, 636 F. Supp. 3d 1199, 1207 (D. Nev. 2022) (Silva, J.).

"Whether a patent is eligible under § 101 is a question of law that may be determined at the dismissal stage." *NEXRF Corp. v. Playtika Ltd.*, 547 F. Supp. 3d 977, 986 (D. Nev. 2021), *aff'd*, No. 2021-2147, 2022 WL 1513310, at *1 (Fed. Cir. May 13, 2022); *see also Teliax*, 636 F. Supp. 3d at 1206; *Scibetta v. Slingo, Inc.*, No. CV 16-8175, 2018 WL 466224, at *9 (D.N.J. Jan. 17, 2018). Early resolution conserves court and party resources and "protects the public by

expeditiously removing the barriers to innovation created by vague and overbroad patents." *In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157, 1165 (Fed. Cir. 2018) (Mayer, J., concurring).

B. *Alice* Step One – Claims Directed To Wagering Games Are Abstract Ideas

At *Alice* step one, the court assesses whether the claims are directed to an abstract idea such as "fundamental economic practice[s] long prevalent in our system of commerce" or "longstanding commercial practice[s]." *Alice*, 573 U.S. at 219–20 (citation omitted); *Intell. Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1313 (Fed. Cir. 2016). Two lines of Federal Circuit precedent govern here and hold: claims directed to wagering games (like roulette) and claims directed to adapting existing processes to the Internet constitute abstract ideas.

First, courts routinely hold that claims to wagering games constitute abstract ideas. The Federal Circuit has considered an applicant's attempt to patent "a wagering game utilizing real or virtual standard playing cards." *In re Smith*, 815 F.3d at 817. The representative claim recited "[a] method of conducting a wagering game" comprising the steps of a dealer shuffling cards, accepting a wager from a player, dealing cards, and assessing the value of the cards. *Id.* at 817–18. But the United States Patent and Trademark Office ("USPTO") rejected the claims as unpatentable subject matter and the Federal Circuit affirmed. *Id.* at 820. At *Alice* step one, the Federal Circuit found the claims were abstract because they were "directed to rules for conducting a wagering game" and thus "a method of exchanging and resolving financial obligations based on probabilities." *Id.* at 818–19. This was a "'fundamental economic practice[]' found abstract by the Supreme Court." *Id.* at 818 (citing *Alice*, 573 U.S. at 219).

The Federal Circuit reached the same conclusion in *In re Marco Guldenaar*. The representative claim recited "a method of playing a dice game" comprising the steps of providing a set of dice with various die markings, placing a wager that one of the die markings would appear face up, rolling the dice, and paying out if the selected die marking appeared face up. 911 F.3d at 1159. The Federal Circuit analogized the claims to those in *In re Smith* and held that they were "directed to a method of conducting a wagering game, with the probabilities based on dice rather than on cards" which was abstract under *Alice*. *Id.* at 1160.

Similarly, in *Planet Bingo, LLC v. VKGS LLC*, 576 F. App'x 1005 (Fed. Cir. 2014), the Federal Circuit affirmed a district court's finding that claims for "managing a game of Bingo" were abstract because they were "similar to the kind of 'organizing human activity' at issue in *Alice*." *Id.* at 1008. And the Federal Circuit recently held that claims for "exchanging information concerning a bet and allowing or disallowing the bet based on where the user is located" were abstract. *Beteiro, LLC v. DraftKings Inc.*, 104 F.4th 1350, 1354 (Fed. Cir. 2024).

Courts in this District agree.[3] In *NEXRF Corp.*, Chief Judge Du held that claims for "remotely playing a slot machine on a server" addressed an abstract idea and were not patentable. 547 F. Supp. 3d at 987. In *Konami Gaming, Inc. v. High 5 Games, LLC*, Judge Boulware held that claims for the "slot machine game rules" addressed an abstract idea. No. 14-cv-01483, 2018 WL 1020120, at *19 (D. Nev. Feb. 22, 2018), *aff'd*, 756 F. App'x 994 (Fed. Cir. 2019).

Second, courts regularly hold that implementing an existing concept "using generic computers" and "the particular technical environment of the Internet" is still an abstract idea. *Symantec*, 838 F.3d at 1314. In *Symantec*, the Federal Circuit determined that an email filtering system was directed to an abstract idea because "it was long-prevalent practice for people" to sort their mail and discard some without opening it. 838 F.3d at 1314. *See also Trinity Info Media, LLC v. Covalent, Inc.*, 72 F.4th 1355, 1362 (Fed. Cir. 2023) (polling is abstract, even when implemented with "processors configured to perform operations with web servers, a database, and a match aggregator"); *In re Sturgeon*, 839 F. App'x 517, 519 (Fed. Cir. 2021) (the process of flower arrangement is abstract, even when implemented in a computer program).

Similarly, the Federal Circuit rejected a budgeting system as abstract even though it included a networking element. *Intell. Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1367–68 (Fed. Cir. 2015). The system notified a user if transactions exceeded a spending limit. *Id.*

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[3] Other courts have likewise recognized that wagering games are unpatentable abstract ideas. *See Scibetta*, 2018 WL 466224, at *10 ("patents directed towards a wagering game using at least one standard deck of cards" are directed to an ineligible abstract idea); *Game Play Network, Inc. v. Potent Sys., Inc.*, C.A. No. CV 23-323, 2024 WL 3226214, at *7 (D. Del. June 28, 2024) (invalidating "gambling patents" because they were "directed to the rules of a wagering game, which is itself abstract"); Final Written Dec. at 27–28, *Bally Gaming, Inc. v. New Vision Gaming & Dev., Inc.*, No. CBM2018-00006 (P.T.A.B. June 19, 2019), Paper No. 47 (claims reciting rules for playing a wagering game were abstract and invalid under § 101), *aff'd*, *New Vision Gaming & Dev., Inc. v. LNW Gaming, Inc.*, No. 20-01400 2024 WL 164906 (Fed. Cir. Jan. 16, 2024).

The claim was abstract because it merely combined budgeting with a communication medium. *Id. See also ChargePoint*, 920 F.3d at 766–67 (controlling electricity over network is abstract); *Bot M8 LLC v. Sony Corp. of Am.*, 465 F. Supp. 3d 1013, 1021–22 (N.D. Cal. 2020), *aff'd in relevant part*, 4 F.4th 1342, 1358 (Fed. Cir. 2021) (using a server to connect and calibrate gaming machines to make them more "enjoyable" is abstract).

1. The Haushalter Patents' Wagering Games Are Not Patent Eligible

In granting L&W's first motion to dismiss, the Court correctly concluded at *Alice* step one that "the '014 patent is directed to an abstract idea." Order at 11. The Court explained that patents "'directed toward rules for conducting a wagering game' compare to other 'fundamental economic practice[s]' found abstract by the Supreme Court." *Id.* at 10–11 (quoting *In re Smith*, 815 F.3d at 818–19). The Court recognized that, like the claims of these other cases, "Evolution's 'method for a roulette game' is, at its core, a method of exchanging and resolving financial obligations based on probabilities." *Id.* at 11 (citing *Planet Bingo*, 576 F. App'x at 1007–08; *NEXRF*, 547 F. Supp. 3d at 988). As further support, the Court also recognized Evolution's concession that the steps of the Haushalter Patents can be carried out using existing computers. *Id.* at 10–11.

The Court likewise recognized the functional, results-oriented nature of the claims. It rejected Evolution's argument that the Haushalter Patents are directed to "a patentable, technological improvement" over existing roulette games. *Id.* at 11. As the Court recognized, the claims themselves do not "explain how any of the purported technological improvements work." *Id.* (quoting *NEXRF Corp.*, 547 F. Supp. 3d at 988). "Without explanation as to ***how*** the graphical [user interfaces] or payouts are determined, these statements are merely results, and not means to achieve the results." *Id.* (citing *Bot M8*, 465 F. Supp. 3d at 1021 (emphasis original)). The Court also stated that "Claim 1 of the '014 patent will serve as the Representative Claim 1 for the purposes of this action," citing L&W's showing of representativeness (ECF No. 34 at 19), and Evolution's failure to contest it. Order at 8.

The SAC offers no basis for the Court to reach a different conclusion. ¶¶83–84, 87–88, 100. The new allegations in the SAC—summarized in Section II.C.2 above—do not cure the fundamental defect that the claims are directed to the abstract idea of playing roulette.

2. Evolution's Changed Allegations in the SAC Undermine The Haushalter Patents' Purported Improvement Of Random Selection

Evolution's FAC asserted that the alleged technological improvements of the Asserted Patents include "ensuring that the random selection of positions for multipliers takes place after the roulette wheel and ball have been spun, but before the ball has fallen in a position." FAC ¶76; *see also id.* ¶¶70, 77. The very next day, Evolution walked this statement back in errata, which it incorporated into the SAC. Now, instead of asserting that the Asserted Patents' random position selection occurs "*after the spinning of the wheel and ball*, but before the ball lands on a position" (emphasis added), Evolution alleges that it need only occur sometime "before the ball lands." SAC ¶¶77, 83, 84. In one move, Evolution weakened the central "technological improvement."

In any case, Evolution's allegation that randomly selecting a roulette position before the ball drops is a technological improvement (SAC ¶¶77, 83, 84) cannot save the claims. Nothing in the SAC supports the assertion that this feature is an improvement of any kind, much less a technological one. *See id.* Moreover, this feature is specified at a functional, results-oriented level. Representative claim 1 of the '014 illustrates the problem precisely: the claim instructs a generic hardware processor to "randomly select a first selected position on the roulette wheel for the spin of the roulette wheel prior to the ball falling into an outcome position." '014 at 8:31–33. That language is quintessentially results-oriented. It supplies no algorithm, no sequence of concrete processing steps, and no hardware architecture capable of performing the claimed random position selection prior to the ball landing. In other words, the claim recites the desired ***result***—random position selection before the ball lands—but is wholly silent as to ***how*** to achieve it. Merely reciting a result is not a technological improvement. *Beteiro*, 104 F.4th at 1356, 1359 (claims "drafted using largely (if not entirely) result-focused functional language, containing no specificity about how the purported invention achieves those results" are invalid under *Alice*).

The Court has already considered Evolution's argument about the "random selection" feature, rejecting it as "described and claimed too generically." Order at 15 (citing *Affinity Labs of Tex., LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1271 (Fed. Cir. 2016)). The Court's determination is consistent with prior cases which have repeatedly rejected claims framed in this functional, black-box manner. In *Two-Way Media Ltd. v. Comcast Cable Communications, LLC*, the Federal Circuit

explained that claims drafted with "result-based functional language" that do "not sufficiently describe how to achieve [the claimed] results in a non-abstract way" cannot survive § 101. 874 F.3d 1329, 1337–38 (Fed. Cir. 2017). Likewise, claims describing "a process of gathering and analyzing information of a specified content, then displaying the results," are "directed to an abstract idea." *Elec. Power Grp.*, 830 F.3d at 1354. Such claims are invalid, and "the essentially result-focused, functional character of [such] claim language has been a frequent feature of claims held ineligible under § 101." *Id.* at 1356.

Evolution's alleged technological improvement of "ensuring that the random selection of positions for multipliers takes place before the ball has fallen in a position" falls squarely within that forbidden category; reciting this as a result without specifying how to do it. SAC ¶83. As in *Two-Way Media* and *Electric Power Group*, that is not a technological improvement.

3. The Generic "Two-GUI" Limitation In The Haushalter Patents—Showing The Same Screen Twice—Is No Technological Improvement

The SAC asserts that another alleged technological improvement of the Haushalter Patents is "multiplayer participation through electronic player devices." SAC ¶83. To be sure, some of the asserted claims recite, in purely functional terms, "generat[ing] a first graphical user interface for presentation on a first player device of a first player" and "generat[ing] a second graphical user interface for presentation on a second player device of a second player." '014 at 8:15–18. But these limitations do not describe any new GUI technology, any particular data structures, or any concrete implementation details. They are simply instructions to display the same betting screen twice. Merely "displaying information" is "well-understood, routine, [and] conventional" and therefore does not overcome *Alice*. *Trading Techs. Int'l, Inc. v. IBG LLC*, 921 F.3d 1084, 1093 (Fed. Cir. 2019). Further, the SAC fails to provide any factual support for its assertion that the use of the betting screens provides a technological improvement over the prior art. *See* SAC ¶83.

Nor does the bare recital of two GUIs—as opposed to one—save the claims. The claims speak only in results-oriented language: the processor must "generate" the first GUI, "generate" the second GUI, and "receive" bet information through each. The claims do not describe any technical architecture for managing multiple concurrent interfaces, synchronizing data between them, or resolving latency, security, or bandwidth issues that might arise in a genuine multiplayer

system. In other words, the claims recite desired results, but do not explain how to achieve those results, which is insufficient under *Alice*. *Bot M8*, 465 F. Supp. 3d at 1023, 1028 (invalidating claims under § 101 that "only instruct[] a game operator to present new jackpot opportunities" without explaining how to do so).

4. The Purported "Remote Play" Is Absent From The Haushalter Patent Claims And Cannot Supply A Technological Improvement

Yet another purported technological improvement alleged in the SAC involves playing roulette "from a remote location." SAC ¶84; *see also id.* ¶90 ("The Asserted Patents thus provide technological solutions . . . that achieve improved systems and processes for playing the claimed new roulette game in remote . . . gaming environments."). Evolution provides no support for its assertion that remote gaming is a technological improvement (*see id.*), and, importantly, remote game play appears nowhere in the claim language. Representative claim 1 of the '014 recites three conventional components: a roulette wheel, a ball, and "at least one hardware processor." '014 at 8:11–14. The processor is said to spin the wheel and ball, receive player bets, "randomly select" a number, determine where the ball lands, and compute appropriate payouts. *Id.* at 8:29–43. Neither claim 1 of the '014 nor any other claim says ***anything*** about networks, servers, the Internet, or any other infrastructure that might plausibly constitute a technological advance for enabling remote roulette play.

Evolution cannot rely on unclaimed subject matter—whether described in the specification or in the SAC—to survive *Alice*. Controlling precedent makes this clear. "The § 101 inquiry must focus on the language of the [a]sserted [c]laims themselves." *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016). A court cannot "import details from the specification if those details are not claimed." *Packet Intell. LLC v. NetScout Sys., Inc.*, 965 F.3d 1299, 1318 (Fed. Cir. 2020) (Reyna, J., concurring-in-part and dissenting-in-part) (quoting *ChargePoint*, 920 F.3d at 769). *See also Two-Way Media*, 874 F.3d at 1338–39 (holding that the claim—not specification—must supply an inventive concept); *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013) ("[T]he level of detail in the specification does not transform a claim reciting only an abstract concept into a patent-eligible system or method."); *Voip-Pal.Com, Inc. v. Apple Inc.*, 375 F. Supp. 3d 1110, 1145 (N.D. Cal. 2019), *aff'd sub nom.*

Voip-Pal.com, Inc. v. Twitter, Inc., 798 F. App'x 644 (Fed. Cir. 2020) ("Here, however, attorney argument in the complaint cannot save the claims because the purported improvements have not been captured in the claim language.").

Relatedly, Evolution argues that the claims address two supposed "problems": (1) players historically had to travel to a casino to experience roulette, and (2) Internet-based, computer-generated roulette interfaces allegedly "do not replicate in any way a real environment like is present in a casino." SAC ¶90. But again, the claims do not address remote or Internet-based gaming. They therefore do not speak to (much less ***solve***) the alleged problems of having to travel to a casino or else experience Internet-based gaming that does not replicate a casino environment.

Because the alleged remote-participation features (SAC ¶¶84, 90) are not recited in the claims, such features cannot establish eligibility. *Synopsys*, 839 F.3d at 1152 ("Our analysis focuses, as it must, on the Asserted Claims. Those claims are directed to an abstract mental process and contain no inventive concept. The claims are therefore invalid under 35 U.S.C. § 101.").

5. Evolution's Newly Minted "Software-Improvement" Theory Fails Because The Haushalter Patents Recite Only Results-Oriented, Functional Steps That Do Not Advance Any Technology

Evolution's original complaint alleged—without elaboration—that the Haushalter Patents "improve[] existing technology for a roulette game." *See, e.g.*, Compl. ¶¶44, 69, 96. Evolution now characterizes the patents as claiming "specific technological software improvements" and "innovative software." SAC ¶¶59, 83–84, 87–88, 99–100. But the claims never disclose, let alone claim, any concrete software architecture or specific algorithmic technique.[4] They merely state the desired results in functional terms. "Claims of this nature are almost always found to be ineligible for patenting under Section 101." *Beteiro*, 104 F.4th at 1356; *see also IBM Corp. v. Zillow Grp., Inc.*, 50 F.4th 1371, 1378 (Fed. Cir. 2022) (claims that "describ[e] required functions . . . without explaining how to accomplish any of the tasks" are invalid).

[4] The SAC repeatedly refers to "specific technological software improvements." SAC at ¶¶59, 83, 87, 100. To the extent Evolution is referring to collections of functionally-claimed steps as allegedly providing algorithms—which they do not—those steps improve no technology: the hardware processor runs no faster than it did before, and the roulette wheel and ball operate as they always have. As explained herein, the alleged inventiveness of the claims over the prior art is insufficient to survive *Alice*. *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1170 (Fed. Cir. 2018) (advances in the realm of abstract ideas, "no matter how groundbreaking the advance," are not protected).

Each step that Evolution suggests is "software improvement" merely states what is to be achieved, not how to achieve it:

- "randomly select[ing] a first selected position on the roulette wheel for the spin of the roulette wheel prior to the ball falling into a position on the roulette wheel, wherein the first selected position is the same as the first position" (¶87);
- "determin[ing] a first payout for first position and a second payout for the second position for the spin of the roulette wheel, wherein the first payout is higher than the second payout" (id.);
- "indicating that the first player is to be paid at the first payout for the spin of the roulette wheel" (id.);
- "generating, using at least one hardware processor, a first graphical user interface for presentation on a first player device of a first player" (¶92);
- "generating, using the at least one hardware processor, a second graphical user interface for presentation on a second player device of a second player" (id.);
- "randomly select[ing] a second selected position on the roulette wheel; and determin[ing] a payout for the second selected position that is different than the payout for the single first position" (¶93);
- "randomly or pseudo-randomly select[ing] a second selected position of the plurality of positions on the roulette wheel to have a second increased payout for the spin of the roulette wheel" (¶94);
- "presenting a 'first graphical user interface [that] includes a roulette board' and highlighting the first selected position on the board in response to the first selected position being randomly selected" (¶95);
- "caus[ing] the ball and the roulette wheel to automatically spin" (id.); and
- "clos[ing] bets when the roulette wheel and the ball are determined to have been spun" (id.).

Each of these steps is claimed at the highest level of abstraction. The Haushalter Patents do not describe algorithms for any of these steps, much less unique algorithms which might qualify for patent protection. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 721 (Fed. Cir. 2014) (Mayer, J., concurring). Instead, the Haushalter Patents describe the opposite of specific algorithms—*e.g.*, "randomly select[ing] one or more of the roulette wheel numbers" in "*any suitable manner*," and "determin[ing] the increased payouts for the numbers selected," where "[*a*]*ny suitable payouts can be used*." '014 at 4:58–61, 5:15–17 (emphasis added). Such "result-focused, functional . . . claim language" improves no technology. *Elec. Power Grp.*, 830 F.3d at 1356.

Because Evolution cannot point to any algorithm or architectural innovation, it tries to re-label a gambling idea—randomly selecting one or more positions for increased payouts—as a

technological breakthrough. That gambit is foreclosed: "[I]n assessing patent eligibility, advances in non-technical disciplines," such as gaming, "simply do not count." *Ultramercial*, 772 F.3d at 721 (Mayer, J., concurring); *Solutran, Inc. v. Elavon, Inc.*, 931 F.3d 1161, 1166 (Fed. Cir. 2019). Evolution's claimed "software" steps do not enhance processor performance, improve data handling, or solve a computer problem. They merely apply well-known computer functionality to execute a business-logic tweak to "enhance the 'player's experience'" and drive profits. ECF No. 53 at 9 (quoting '024 at 4:56–5:30). Such economic or psychological benefits may be laudable from a marketing perspective, but they are legally irrelevant to a patent-eligibility analysis.

In short, the Haushalter Patents still claim nothing more than the abstract idea of playing a modified roulette game using conventional computer components. Dressing up that idea in the language of "software improvements" cannot save the claims.

6. The Merati Patent Claims Are Not Patent Eligible

The Merati Patent claims are abstract not only because they are directed to wagering games (like the Haushalter Patents) but also because they merely combine online and in-person wagering.

The Merati Patents generically recite using a computer to implement the basic steps of a wagering game with a physical element (*e.g.*, cards, roulette) to generate a random number. The claims cite a communication interface and a processor to "provid[e] gaming services to game players located remotely from one another," through system claims ('074 at 1:22–24 & claims 1–10; '663 at 1:30–32 & claims 4–6) and method claims ('074 at 1:22–24 & claims 11–20; '663 at 1:30–32 & claims 1–3). This concept is not patent eligible. As the authorities above explain, claims on "wagering" are directed to abstract ideas—"method[s] of exchanging and resolving financial obligations based on probabilities." *See In re Smith*, 815 F.3d at 818–19; *In re Marco Guldenaar*, 911 F.3d at 1160; *see also Alice*, 573 U.S. at 219 ("method of exchanging financial obligations" directed to an abstract idea). Using a communication interface and processor to perform the wagering game does not make it any less abstract. *See Trinity Info.*, 72 F.4th at 1362 (polling is abstract, even when implemented with "processors configured to perform operations with web servers, a database, and a match aggregator"); *Capital One*, 79 F.3d at 1367 (budgeting is abstract,

even when implemented with notifications over the Internet); *ChargePoint*, 920 F.3d at 766–70 (turning electricity on and off is abstract, even if done using network communications).

In claim 1 of the ’074, which is representative of the Merati Patents’ claims, *see* Section III.E.2 below, the processor performs the following functions: receive one or more electronic indications of physical game values (’074 at 48:35–37); generate one or more electronic game values for use in playing the game (*id.* at 48:38–40); provide the electronic game values and electronic representations of physical game values to an online game player (*id.* at 48:41–47); and determine a final game result based on the values (*id.* at 48:48–50). These functions are described at a highly generic level because they constitute the basic steps of playing *any* wagering game: certain values are generated, communicated to the player, and the values determine the final result (*e.g.*, whether a player gets a payout) based on the rules of the wagering game—an abstract idea. Claims directed to playing generic wagering games are no less abstract than those directed to playing blackjack (*In re Smith*), rolling dice (*In re Marco Guldenaar*), playing bingo (*Planet Bingo*), card games (*Scibetta*), slots (*NEXRF Corp.*), or roulette (as this Court held in February). These wagering games are “fundamental economic practice[s] long prevalent in our system of commerce.” *Alice*, 573 U.S. at 219. They are all abstract, including when implemented using a computer that combines physical and electronic game values.

7. The SAC Is Replete With Case Law And Attorney Argument That Has No Bearing On The Claims Of The Asserted Patents

“[Evolution’s] attorney arguments in the amended complaint do not create a factual dispute precluding disposition of the instant case on a Rule 12 motion.” *Orcinus Holdings, LLC v. Synchronoss Techs., Inc.*, 379 F. Supp. 3d 857, 882 (N.D. Cal. 2019), *aff’d sub nom. Dropbox, Inc. v. Synchronoss Techs., Inc.*, 815 F. App’x 529 (Fed. Cir. 2020); *see also Sanderling*, 65 F.4th at 706 (“No amendment to a complaint can alter what a patent itself states.”).

Nevertheless, in a desperate effort to establish patentability, Evolution takes case law and attorney argument that was the backbone of its failed opposition to L&W’s original motion to dismiss (*see* ECF No. 53) and styles it as twenty pages of “facts.” SAC ¶¶59–135. This approach has no relevance to the inquiry, *see Orcinus Holdings*, 379 F. Supp. 3d at 882, and has no bearing on the claims, which are the focal point of the Section 101 analysis. *Synopsys*, 839 F.3d at 1149

§ 101 inquiry must focus on the language of the Asserted Claims themselves."); *Accenture*, 728 F.3d at 1345 ("[T]he important inquiry for a § 101 analysis is to look to the claim.").

The Section 101 inquiry focuses on the claims. The Haushalter Patent claims have not changed since the Court found them "invalid under *Alice*." Order at 15. Nothing Evolution says now changes the Court's conclusion that its results-oriented claims do not explain ***how*** to achieve any of the claimed functions, meaning they are not patent-eligible subject matter. *Id.* At 11 ("Without explanation as to ***how*** the graphical [user interfaces] or payouts are determined, these statements are merely results, and not means to achieve the results."); *id.* At 14 ("Like the *NEXRF Corp.* challenged patent, the features described in claim 1 of the '014 patent are described and claimed generically because they describe ***what*** they can do and not ***how*** they can do it."). The Court's reasoning applies equally to the Merati Patent claims, which are similarly results-oriented.

Moreover, most of the case law and attorney argument that Evolution has incorporated into its SAC is duplicative of what Evolution included in its opposition to L&W's original motion to dismiss, and which the Court already considered and rejected. *Compare* ECF 53 at 7 (citing to (1) *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016); (2) *EcoServices, LLC v. Certified Aviation Servs., LLC*, 830 F. App'x 634 (Fed. Cir. 2020); and (3) *Contour IP Holding LLC v. GoPro, Inc.*, 113 F.4th 1373 (Fed. Cir. 2024)) *with* SAC ¶68 (citing same); *compare* ECF 53 at 8 (citing to (1) *Skillz Platform Inc. v. AviaGames Inc.*, No. 21-cv-02436, 2022 WL 783338 (N.D. Cal. Mar. 14, 2022); (2) *Vetnos, LLC v. Sideprize, LLC*, No. 23-cv-02746, 2024 WL 3843015 (N.D. Ga. July 9, 2024); and (3) *CG Tech. Dev., LLC v. Bwin.party (USA), Inc.*, No. 16-cv-00871-RCJ-VCF, 2016 WL 6089696 (D. Nev. Oct. 18, 2016)) *with* SAC ¶¶72–74 (citing same). Incorporating these legal arguments into a SAC rather than an opposition brief cannot change the Court's conclusion that the Haushalter Patents are "invalid under *Alice*," Order at 15, nor □re-empt a conclusion from this Court that the Merati Patents are likewise invalid under *Alice*. *See Sanderling*, 65 F.4th at 706; *Orcinus Holdings*, 379 F. Supp. 3d at 882.[5]

[5] The SAC (¶¶74, 86 argues that the asserted claims in the Haushalter Patents cannot be performed in the human mind, like those of *CG Tech*. But humans have long been randomly selecting numbers, *e.g.*, by rolling dice or picking numbers out of a hat, and determining a payout is simply math. Both are textbook examples of abstract ideas. *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) ("Adding one abstract idea (math) to another abstract idea . . . does not render

The SAC (¶¶85, 101, 118, 125) argues that the claims of the patents are not broadly preemptive, allegedly like those of *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1259 (Fed. Cir. 2014). But controlling authority holds that preemption is not a standalone test for eligibility, and that claims directed to abstract ideas remain ineligible even if they do not preempt ***all*** applications of the abstract idea. *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1098 (Fed. Cir. 2016) ("[W]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.") (citation omitted); *see also Voip-Pal.Com, Inc. v. Apple Inc.*, 411 F. Supp. 3d 926, 972 (N.D. Cal. 2019), *aff'd*, 828 F. App'x 717 (Fed. Cir. 2020) ("[A] claim is not excused from the need to make an inventive contribution on top of the underlying abstract idea simply because its application of the abstract idea is narrow.").

C. *Alice* Step Two – The Asserted Patents All Claim Well-Known Gambling Concepts, None Of Which Are Inventive Alone Or In Combination

Abstract ideas may still be patentable where the claims disclose an inventive concept that transfers the abstract idea into something more. *In re Marco Guldenaar*, 911 F.3d at 1161. But merely appending conventional features to an abstract idea is "not enough for patent eligibility," nor is using "a generic computer operating in conventional ways." *Id.*; *Alice*, 573 U.S. at 225–26.

Century-old wagering rules applied by "any suitable" processor of a "general purpose" computer do not supply inventive concepts. *See In re Marco Guldenaar*, 911 F.3d at 1161 ("For example, a claim calling for a generic computer operating in conventional ways to perform an abstract idea lacks an inventive concept."); *Beteiro*, 104 F.4th at 1357 ("The district court thus concluded that 'claim 2 simply describes a conventional business practice . . . executed . . . by generic computer components' which 'cannot survive [*Alice*] Step 2.' We agree."); *NEXRF Corp.*, 547 F. Supp. 3d at 992 ("[C]laims that do not 'require[] anything other than off-the-shelf, conventional computer, network, and display technology for gathering, sending, and presenting the desired information' are unpatentable."). Generic, off-the-shelf hardware coupled with generic, functionally claimed steps is a far cry from an inventive concept. *Elec. Power Grp.*, 830 F.3d at

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the claim non-abstract."); *Ericsson Inc. v. TCL Commc'n Tech. Holdings Ltd.*, 955 F.3d 1317, 1327 (Fed. Cir. 2020) ("[W]e have repeatedly found unpatentable" processes that can be performed in the human mind). Evolution's *CG Tech.* case confirms this. No. 16-CV-00871, 2016 WL 6089696, at *4 (D. Nev. Oct. 18, 2016). The claims in *CG Tech.* survived because they "require[d] activity outside of one's mind" (*id.*), but the abstract ideas in the claims here do not.

1355 (lacking an inventive concept where claims called for use of "a set of generic computer components") (quoting *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed. Cir. 2016)); *Miller Mendel, Inc. v. City of Anna*, 107 F.4th 1345, 1354 (Fed. Cir. 2024) (noting that "any type" of system memory and "[a]ny such computer storage media" confirm a lack of inventive concept).

Purely functional claim language, without an explanation of how a desired result is achieved, cannot show an inventive concept. *Two-Way Media*, 874 F.3d at 1339; *Elec. Power Grp.*, 830 F.3d at 1356 ("Indeed, the essentially result-focused, functional character of claim language has been a frequent feature of claims held ineligible under § 101, especially in the area of using generic computer and network technology to carry out economic transactions.").

1. The Haushalter Patents Recite Generic, Conventional Elements That Are Not Patent-Eligible Subject Matter

The claimed ball and roulette wheel have been well-known and conventional elements of roulette for over a century. They cannot supply an inventive concept. *See In re Smith*, 815 F.3d at 819 (use of "standard deck" of "physical playing cards" is purely conventional and not inventive).

The Court's February 11, 2025 Order confirmed that the asserted claims in the Haushalter Patents do not contain an inventive concept that would transform the abstract idea into a patent-eligible application. Order at 14–15. Specifically, the Court compared the instant claims to those in *NEXRF Corp.*, whose claims "consisted of 'a combination of generic computer elements performing conventional functions,'" and found that "the features described in Claim 1 of the '014 patent are described and claimed generically because they describe ***what*** they can do and not ***how*** they can do it." *Id.* at 14 (quoting *NEXRF Corp.*, 547 F. Supp. 3d at 989). The Court also disposed of Evolution's argument that "random position selection and advanced payouts are inventive concepts" because "Evolution does not articulate how these advancements were [not] well-known, routine, or conventional," and "[i]nstead, it merely concludes as such." *Id.* The Court likewise noted that random position selection and advanced payout "are described and claimed too generically[,]" meaning they "lack the specificity necessary to show how these components provide a concrete solution to the problem addressed by the patent." *Id.* at 15 (quoting *Affinity Labs*, 838 F.3d at 1271).

The claims of the Haushalter Patents have not changed since the Court's February 11 Order, and nothing compels a different outcome now. For example, the new alleged technological improvements of (i) "ensuring . . . random selection" takes place "before the ball has fallen in a position" (SAC ¶83), and (ii) multiplayer participation via electronic player devices (*id.* ¶83) are parts of the claimed abstract idea and thus cannot supply an inventive concept. *See, e.g.*, *Mobile Acuity Ltd. v. Blippar Ltd.*, 110 F.4th 1280, 1294 (Fed. Cir. 2024); *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018); *Savvy Dog Sys., LLC v. Pa. Coin, LLC*, No. 2023-1073, 2024 WL 1208980, at *3 (Fed. Cir. Mar. 21, 2024).

As another example, in its *Alice* step two argument in the SAC, Evolution once again turns to the Federal Circuit's decision in *Bascom Global*, the same case it relied on in opposing L&W's original motion to dismiss (*see* ECF No. 53 at 14), to suggest that the instant claims are patentable. SAC ¶¶123, 127 (citing 827 F.3d at 1350). But as the Court noted on February 11, Evolution's "reliance on *Bascom Glob. Internet Servs., Inc.*, is unpersuasive because they fail to explain how the finding in *Bascom Glob. Internet Servs., Inc.*, applies to the '014 patent." Order at 14.

In response, the SAC states that while the claims in the Haushalter Patents and those in *Bascom* "include a generic 'hardware processor,'" both sets of claims represent an "inventive application" because they "are a specific, discrete implementation of a new and improved wagering roulette game." SAC ¶127. Per Evolution, these allegedly inventive aspects "include, for example, software steps for using, *e.g.*, a pseudo-random number generator, to randomly select one or more of the roulette wheel numbers, and determine the increased payouts for those randomly selected numbers." *Id.* Even taken as true, these claimed "inventive concepts" still only "describe ***what*** they can do and not ***how*** they can do it." Order at 14. That is fatal to their eligibility.

Evolution then returns to the concepts of "randomly selected position" and "increased payouts," arguing that they are "a novel advancement" over "conventional table roulette games." SAC ¶128. But these are the same alleged "inventive concepts" Evolution identified before in its failed opposition. *See* ECF No. 53 at 12; Order at 14–15. Coupling these non-inventive concepts with a "computerized system or process" (*see* SAC ¶128), which the patents explain is "any suitable hardware processor," ('014 at 6:43–48), only affirms the claims recite "a combination of generic

computer elements performing conventional functions." Order at 14. The claims recite "merely results, and not means to achieve the results." Order at 11. Nothing more.

Evolution also suggests that receipt of "several prestigious awards" is evidence of inventive concepts (*see* SAC ¶129), but that is not sufficient to establish patentability. *See SAP Am.*, 898 F.3d at 1163 ("We may assume that the techniques claimed are '[g]roundbreaking, innovative, or even brilliant,' but that is not enough for eligibility.") (quoting *Myriad*, 569 U.S. at 591); *see also Univ. of Fla. Rsch. Found., Inc. v. Gen. Elec. Co.*, 916 F.3d 1363, 1367 (Fed. Cir. 2019) (invalidating patents under Section 101 because even where the claimed subject matter is "laudable," that "does not render it any less abstract"). And Evolution cites no authority suggesting that the alleged awards and industry praise establishes eligibility under Section 101. *See* SAC ¶¶78, 129; *Angel Techs. Grp., LLC v. Meta Platforms, Inc.*, No. 2022-2100, 2024 WL 4212196 at *6 (Fed. Cir. Sept. 17, 2024) ("Angel is also incorrect that the purported 'industry praise' it references shows an inventive concept."); *Two-Way Media*, 874 F.3d at 1336 (holding that nonobviousness, and therefore secondary considerations, "[do] not bear on whether the claims are directed to patent-eligible subject matter under § 101").

Moreover, Evolution does not explain which *claim elements*, the focal point of the Section 101 inquiry, are the recipients of such praise. It cannot be the ball or roulette wheel, as those have been known for centuries. So that leaves the processor, which is "configured to" perform several steps to execute the game, but as this Court previously recognized, the results-oriented nature of the claims never explains ***how*** to perform these steps. Order at 11, 14. Without an explanation, purely functional claim language does not show an inventive step. *Two-Way Media*, 874 F.3d at 1339; *Elec. Power Grp.*, 830 F.3d at 1356.

Lastly, Evolution points to the prosecution history as evidence that the alleged inventive concepts were not well-understood, routine, or conventional. SAC ¶130. It argues that the "claimed innovation of randomly selecting positions on [a roulette] wheel to receive increased payouts" enabled it to overcome the Yee prior art reference. *Id.* First, the Court has already rejected this argument: "Last, Evolution's argument that the random position selection and advanced payouts are inventive concepts also fails because these features set forth in the claim are described and

claimed too generically. Stated otherwise, they 'lack the specificity necessary to show how these components provide a concrete solution to the problem addressed by the patent.'" Order at 15 (quoting *Affinity Labs*, 838 F.3d at 1271). And second, it is not "enough for subject-matter eligibility that claimed techniques be novel and nonobvious in light of prior art, passing muster under 35 U.S.C. §§ 102 and 103." *SAP Am.*, 898 F.3d at 1163.

"The claims of the patents say what they say." *Wireless Discovery LLC v. Coffee Meets Bagel, Inc.*, 654 F. Supp. 3d 347, 359 (D. Del. 2023), *aff'd*, No. 2023-1583, 2024 WL 3336774 (Fed. Cir. July 9, 2024). Evolution's SAC does "not change the Court's § 101 analysis." *Id.*

2. The Merati Patents Recite Generic, Conventional Elements That Are Not Patent-Eligible Subject Matter

Evolution argues the Merati Patents are "directed to specific advancements" because their "novel hybrid systems and methods improve traditional games by incorporating electronic and network capabilities." SAC ¶¶103, 106. But neither the claimed electronics (the processor) nor the claimed network capabilities (the communication interface) supply an inventive concept. And since merely implementing a process on the Internet is not patent-eligible, neither are these claims.

First, the processor described in the Merati Patents—as in the Haushalter Patents—merely describes the steps for wagering games, claimed in a functional, results-oriented manner. *See* '074 at 48:35–37 ("receive . . . the one or more electronic indications of the physical game values"); *id.* at 48:38–40 ("generate . . . one or more electronic game values"); *id.* at 48:41–47 ("provide the one or more electronic game values . . . [and] the one or more electronic representations of the physical game values to the online game player"); *id.* at 48–50 ("determine . . . a final game result"). Every element of the claim, from the processor to the tasks, is well-known and cannot supply an inventive concept under *Alice*.

These are routine tasks performed by a generic, off-the-shelf processor. *See* '074 at 9:10–12 ("Processor 200 is typically a general purpose processor, such as any one of a number of Pentium® class microprocessors manufactured by Intel Corporation of Santa Clara, Calif."). And the processor's tasks—such as generating "electronic game values" and determining a final result—are non-inventive. *See id.* at 5:15–17 ("The electronic source, in general, *comprises any device able to generate random numbers electronically*."); *id.* at 11:38–41 ("The game may comprise . . .

roulette, or *virtually any other game, typically games of chance*."). Instead, these elements would be present in virtually any online electronic game. Such generic hardware and generic, functionally claimed steps are *not* inventive concepts. *See NEXRF Corp.*, 547 F. Supp. 3d at 992; *Beteiro*, 104 F.4th at 1357; *In re Marco Guldenaar*, 911 F.3d at 1161; *Elec. Power Grp.*, 830 F.3d at 1355; *Miller Mendel*, 107 F.4th at 1354 (noting that "any type" of system memory and "[a]ny such computer storage" confirm a lack of inventive concept). The processor thus cannot supply inventive concepts.

Moreover, all the functions referenced above are claimed in terms of the results the processor should be programmed to achieve—as a final result. But nowhere do the Merati Patents explain ***how*** the processor is to do any of these things. Instead, the specification says that virtually any pre-existing technology will suffice for each element. This does not suffice for an inventive concept. *See Elec. Power Grp.*, 830 F.3d at 1355–56; *Two-Way Media*, 874 F.3d at 1339; *Bot M8*, 465 F. Supp. 3d at 1021.

Second, the communication interface described in the Merati Patents is likewise generic. The Merati Patents do not state ***how*** the system converts the physical game values to electronic representations or how it receives or sends information to game players, only that it does so. *See* '074 at 5:61–67 ("Detector 106 *comprises any electronic or optical device* that captures events generated by a real-world, actual source and converts them into electronic signals," such as cameras, microphones, manual entry, etc.); *id.* at 8:53–56 ("Throughout this specification, reference to communication network 116 is *a reference to communication networks in general*"). The communication interface thus cannot supply the inventive concept. *See, e.g.*, *Trading Techs.*, 921 F.3d at 1093 (displaying information "is [a] well-understood, routine, conventional activity"); *ChargePoint*, 920 F.3d at 774 (implementing a well-understood activity online is not inventive).

Evolution tries to argue the Merati Patents innovate by solving the problem of trust in online gaming, thereby improving the experience. SAC ¶¶ 114–116, 133–134. To that end, the Merati Patents disclose "physical game values" because players supposedly do not trust electronic random number generation. '074 at 1:55–67. But the use of "physical game values" is so generic that it claims to cover every wagering game known in the United States. *See id.* at 5:23–30 ("Mechanical

device 104 acts as a real source of generating random values, *comprises virtually any mechanical device capable of generating real, random values*"). Indeed, the Merati Patents seem intent on ***not*** providing instructions on how to generate a physical game value but instead refer the reader to any number of pre-existing games and their rules. *See id.* at 5:33–41 ("Examples of mechanical device 104 include a deck of traditional or non-traditional playing cards, one or more die or dice, a cage with a plurality of uniquely-identifiable objects, a roulette wheel and ball, a receptacle having a plurality of uniquely-identifiable representations, such as raffle tickets, business cards, lottery tickets, or simply uniquely-identifiable pieces of paper, a robot, or *any other mechanical device capable of generating real, random information*."). There is no innovation in the processor or communication interface, leaving only ineligible concepts.

In sum, the Merati Patents simply use well-known components to carry out existing wagering games online. No technology is improved. The generic processor runs the same as before; the random number generator operates as usual; communications interfaces pass along information in the same way; and the physical means of generating random numbers (through traditional wagering techniques) remain the same. Combining these conventional ideas together is simply an application of the abstract idea of wagering, so the combination itself cannot be the inventive concept. *See BSG Tech*, 899 F.3d at 1290–91 ("If a claim's only 'inventive concept' is the application of an abstract idea using conventional and well-understood techniques, the claim has not been transformed into a patent-eligible application of an abstract idea."); *ChargePoint*, 920 F.3d at 769, 774 (implementing well-understood activity online is not inventive); *Teliax*, 636 F. Supp. 3d at 1214–15; *Savvy Dog*, 2024 WL 1208980 at *3; *Trading Techs.*, 921 F.3d at 1093 ("The abstract idea itself cannot supply the inventive concept, 'no matter how groundbreaking the advance.'") (quoting *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1171 (Fed. Cir. 2018)).

If implementing all of a process to a network or computers is not patent-eligible, then surely implementing part of the process on the Internet and part of it physically—which is all the Merati Patents do—is likewise not patent-eligible. Thus, the Merati Patents fail *Alice* step two.

D. The Dependent Claims Recite Only Conventional, Non-Inventive Elements In Furtherance Of The Abstract Idea

1. The Haushalter Patent Dependent Claims Fail Under *Alice*

L&W explained in its original motion to dismiss (*see* ECF No.34 at 11–13) and Evolution conceded (*see* Order at 8 n.6) that the dependent claims in the Haushalter Patents recite only conventional, non-inventive elements in furtherance of the abstract idea of playing roulette. Nothing about these claims has changed. The Court should ignore Evolution's contrary argument.

In its SAC, Evolution attempts to cast the dependent claims as "additional features and technological improvements" that make them different from "traditional roulette," and thus allegedly patent-eligible. SAC ¶¶93–95. Evolution points to the steps of (1) "randomly select[ing] a second selected position on the roulette wheel; and determin[ing] a payout for the second selected position that is different than the payout for the single first position," (2) "randomly or pseudo-randomly select[ing] a second selected position," (3) "caus[ing] the ball and the roulette wheel to automatically spin," and (4) "clos[ing] bets when the roulette wheel and the ball are determined to have been spun." *Id.* But Evolution does not try to explain how these features are technological improvements. The processor merely executes the abstract idea of playing roulette.

Evolution also points to a wheel sensor and first graphical user interface that includes a roulette board as alleged "technological improvements." *Id.* at ¶95. But the Federal Circuit has already held that GUIs alone are not inventive (*see Trading Techs.*, 921 F.3d at 1093), and Evolution cannot credibly maintain that a "wheel sensor," which "can be implemented in any suitable manner," such as a camera ('014 at 3:11–16), renders the abstract idea patentable. *See In re Marco Guldenaar*, 911 F.3d at 1161 ("[A] claim calling for a generic computer operating in conventional ways to perform an abstract idea lacks an inventive concept."). Merely appending a generic camera to determine that the roulette wheel and ball have been spun is exactly the sort of "apply it with a computer" drafting that Supreme Court precedent deems insufficient. *Alice*, 573 U.S. at 223. Nothing in the claims explains how the camera detects spin state, how the data are processed, or how the processor discerns that the spin has begun.

The dependent claims merely limit the abstract idea and do not themselves contain inventive concepts that confer patentability. *Content Extraction & Transmission LLC v. Wells Fargo Bank,*

N.A., 776 F.3d 1343, 1349 (Fed. Cir. 2014) ("Thus, while these claims may have a narrower scope than the representative claims, no claim contains an 'inventive concept' that transforms the corresponding claim into a patent-eligible application of the otherwise ineligible abstract idea.").

2. The Merati Patent Dependent Claims Fail Under *Alice*

The Merati Patents' dependent claims relate to the same abstract idea—using a communication interface and processor for online gaming. The dependent claims use conventional elements and the same generic processor to execute the abstract idea. They do not save the Merati Patents. *TS Pats. LLC v. Yahoo! Inc.*, 279 F. Supp. 3d 968, 983 (N.D. Cal. 2017) ("[M]inor variations [ ] do not shift the *Alice* analysis."), *aff'd*, 731 F. App'x 978, 979 (Fed. Cir. 2018).

The additional language in the other claims fails to satisfy the patentability requirement.

- Some of the claims simply describe a specific means of obtaining physical values—these are simply other conventional means of executing the same abstract idea. See '074 claims 2, 12 (using playing cards); id. claims 3, 13 (using bingo balls).
- Some of the claims describe specific wagering rules—but they still rely on a generic processor or conventional components for the abstract idea. See '074 claims 6, 16 (blackjack); id. claims 7, 17 (Texas Hold 'Em); '663 claims 1, 4 (roulette).
- Some of the claims cite the ability for the server to generate and communicate the request for a physical game value—another example of a generic processor executing the abstract idea. See '074 claims 4, 14.
- Some of the claims state that the processor will determine the final game result for a live or online player based on the electronic or physical game values or both, but do not state how the processor will do so—another example of a generic processor executing an abstract idea. See '074 claims 5, 8, 10, 15, 18, 20.
- Some of the claims address providing information to online or remote game players—examples of a generic processor executing an abstract idea. See '074 claims 9, 10, 19, 20; '663 claims 2, 3, 5, 6.

For each claim, the additional language fails to satisfy the patentability requirement because it claims conventional components, a generic processor, or both, to perform an abstract idea. None of the Merati Patent dependent claims contains the required "inventive concept" that would transform their abstract ideas into eligible material. *Content Extraction*, 776 F.3d at 1349.

E. Representative Claims In The Haushalter And Merati Patents

A representative claim analysis is appropriate where all claims are "substantially similar"; *i.e.*, "they recite little more than the same abstract idea." *Id.* at 1348. As the patent challenger, L&W has the "initial burden to make a prima facie showing that the group of claims are 'substantially

similar and linked to the same' ineligible concept." *Mobile Acuity*, 110 F.4th at 1290 (quoting *Cleveland Clinic Found. v. True Health Diagnostics LLC*, 859 F.3d 1352, 1360 (Fed. Cir. 2017)). Once L&W has done so, "the burden shifts to [Evolution] to present non-frivolous arguments as to why the eligibility of the identified representative claim cannot fairly be treated as decisive of the eligibility of all claims in the group." *Id.*

1. Claim 1 Of The '014 Is Representative Of The Haushalter Patents

In its Order finding the Haushalter Patents "invalid under *Alice*," the Court confirmed that Claim 1 of the '014 is representative. Order at 8 ("Evolution does not respond to this assertion and therefore has conceded that Claim 1 of the '014 patent is representative.").

Evolution cannot relitigate what it already conceded. *See Aevoe Corp. v. AE Tech. Co.*, No. 12-c-v00053-GMN-NJK, 2013 U.S. Dist. LEXIS 58665, at *3 n.1 (D. Nev. Apr. 23, 2013) (finding that failure to respond to an argument results in acquiescence); *Maxon*, 255 F. Supp. 3d at 716 (patentee "forfeit[ed] the point" where it did not respond to defendant's argument that certain claims were representative of all claims for the Section 101 analysis). But even if it could, the SAC's conclusory assertions that each claim is unique and must be analyzed independently (*e.g.*, SAC ¶¶81, 107), do not comport with applicable law.

Here, L&W has met its initial burden. Claim 1 of the '014 recites a *system* claiming: a ball, roulette wheel, and hardware processor. '014 at 8:11–43. Claim 9, a *method* using the same. *Id.* at 9:7–46. And claim 17, a *non-transitory computer-readable medium* reciting the same method as claim 9. *Id.* at 10:4–35. The remaining Haushalter Patents (the '024 and '371) are no different. *See* '024 patent at 8:9–36 (system claim 1); *id.* at 8:62–9:24 (method claim 8); *id.* at 9:46–10:24 (non-transitory medium claim 15); '371 patent at 8:15–36 (system claim 1); *id.* at 9:11–31 (method claim 11); *id.* at 10:1–19 (non-transitory medium claim 21).

All independent claims across the Haushalter Patents claim the same three components—a ball, a roulette wheel, and a processor—directed to a system, method, or medium "for wagering." Further, there is no meaningful distinction between any of the system, method, or medium claims. Each relies on the same components—ball, wheel, and processor—to play roulette. *See Planet Bingo*, 576 F. App'x at 1007 ("[W]e agree with the district court that there is no meaningful

distinction between the method and system claims or between the independent and dependent claims. The system claims recite the same basic process as the method claims, and the dependent claims recite only slight variations of the independent claims.") (internal citation omitted). And as explained above, the generic, results-oriented dependent claims that rely on the same generic processor do not change the calculus. As explained in L&W's original motion (ECF No. 34), claim 1 of the '014 is representative of all claims. *See* Order at 8.

Evolution fails to rebut this. In its SAC, Evolution now attempts to manufacture a dispute, arguing that "Evolution has accused PowerX of infringing the '371 patent, but not the '024 and '014 patents" because "the '014 and '024 patents include different limitations that are distinct from what is claimed in the '371 patent." *See* SAC ¶¶81, 107, 166, 189, 213. But nowhere does Evolution address the central inquiry underlying representativeness—whether any limitation not found in claim 1 of the '014 would have a material impact vis-à-vis Section 101. *Mobile Acuity*, 110 F.4th at 1290; *see also Data Scape Ltd. v. W. Digital Corp.*, No. SA CV 18-2285-DOC (KESx), 2019 WL 4145245, at *4 (C.D. Cal. May 17, 2019), *aff'd*, 816 F. App'x 461, 464 (Fed. Cir. 2020). Moreover, whatever products Evolution has decided to accuse of infringing any given patent are simply irrelevant to the question of representativeness. Evolution has not met its burden to make non-frivolous arguments in opposition to L&W's representative claim showing.

2. Claim 1 Of The '074 Is Representative Of The Merati Patents

Claim 1 of the '014 claims a system with a communication interface and a processor (including a memory that can store instruction for the processor). Claim 11 is a method claim that likewise recites a communication interface and a processor. The independent claims of the '663 do the same. *See* '663 at 51:54–52:13 (method claim 1); *id.* at 52:23–43 (system claim 4). All independent claims across the Merati Patents claim the same components—a communication interface and a processor—incorporated into "a system and method of providing gaming services to game players located remotely from one another." '074 at 1:22–24; '663 at 1:30–32.

There is no meaningful distinction between the system claims (independent claim 1 of the '074 and claim 4 of the '663) and the method claims (independent claim 11 of the '074 patent and claim 1 of the '663). Evolution alleges that no claim is representative, SAC ¶¶236, 254, but as with

the Haushalter Patents, Evolution does not explain how any of the claim distinctions matter to the § 101 analysis for the Merati Patents. Each recites the same generic components: the communication interface and a processor. There is thus no need to independently assess each claim's fitness for patentability under § 101. *See Planet Bingo*, 576 F. App'x at 1007.

F. Compliance with Local Patent Rule 1-4(c)

"A party moving to dismiss one or more claims as patent-ineligible under § 101 must demonstrate in its motion, if appropriate, that there is no factual issue, claim construction or otherwise, that the court need determine before deciding dismissal under 35 U.S.C. § 101." *Id.*

The claims of the Haushalter Patents have already once been declared "invalid under *Alice*." Order at 15. Nothing about those claims has changed since the Court's Order. The three components that form the backbone of each claim—ball, roulette wheel, and processor—are conventional components with unambiguous meanings, and the claimed results-oriented functions are the same as they were on February 11. Likewise, the Merati Patents rely on conventional components with readily understandable meanings: a processor and communications interface. The claimed functions in the Merati Patents are specified at the results-oriented level and readily discernible. The facts relating to the Merati Patents are in the specification and are not in dispute.

Dismissal on § 101 is appropriate at this stage and will conserve resources. *See In re Marco Guldenaar*, 911 F.3d at 1165 (Mayer, J., concurring); *Teliax*, 636 F. Supp. 3d at 1206.

IV. CONCLUSION

For the foregoing reasons, the Asserted Patents recite patent-ineligible subject matter under 35 U.S.C. § 101, and this Court should dismiss Counts III, IV, V, VI, and VII with prejudice.

DATED: August 8, 2025

By: ***/s/ Philip R. Erwin***

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of August, 2025, I caused a true and correct copy of the foregoing **Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint [ECF No. 125] Pursuant to Rule 12(b)(6)** to be served via the United States District Court CM/ECF system on all parties or persons requiring notice.

/s/ **Philip R. Erwin**
An employee of Campbell & Williams