UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

TELCOM VENTURES LLC,

Plaintiff,

v.

APPLE, INC.,

Defendant.

Case No. 1:24-cv-23837-JEM

JURY TRIAL DEMANDED

PLAINTIFF TELCOM VENTURES LLC'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT APPLE, INC.'S MOTION TO DISMISS UNDER FED. R. CIV. P. 12(B)(6)

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Exhibit	Document
A	'411 Patent, Notice of Allowance (June 23, 2016)
B	'411 Patent, Applicant Arguments/Remarks Made in an Amendment (April 6, 2016)
C	'172 Patent, Notice of Allowance
D	'756 Patent, Notice of Allowance
E	Chart Comparing Independent Claims with Purported Representative Claim

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RESPONSE TO APPLE'S REQUEST FOR HEARING

As explained herein, Telcom believes that Apple's motion raises a non-meritorious attack on the facial sufficiency of the Complaint and the Asserted Patents that should be summarily denied, particularly at this stage of the proceedings. Telcom further submits that, if the motion is not denied outright at this stage, its resolution should be deferred until after a hearing for the purpose of construing the scope and meaning of the Asserted Claims, which itself should occur after sufficient discovery has been conducted.

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MEMORANDUM OF LAW IN OPPOSITION

I. INTRODUCTION

This patent infringement case involves eight Asserted Patents[1] containing 118 total claims, each of which Plaintiff Telcom Ventures LLC ("Telcom") asserts against Defendant Apple, Inc. ("Apple"). Even though the Patent Act dictates that "[e]ach claim of a patent . . . shall be presumed valid independently of the validity of other claims," 35 U.S.C. § 282, Apple's early motion to dismiss improperly lumps all the claims together and asks this Court to declare them all invalid and, accordingly, to wholesale dismiss Telcom's lawsuit before it has even begun. The Court should deny the motion.

In general terms, the claims of the Asserted Patents—filed in 2008, before the proliferation of smartphones, and before Apple released its accused "Apple Pay" functionality[2]—concern improved smartphones and methods of using them for performing financial transactions. The devices and methods require sensing physiological data (or a physiological parameter) and using proximity criteria in connection with executing the transactions, such as transactions performed using Apple Pay on iPhone smartphones. The inventions allow smartphones to go beyond the then-typical functions by enabling financial payment functions, but only when certain conditions or criteria are met, such as detecting proximity criteria and taking action responsive to a "value" of a physiological parameter sensed by the smartphone through a sensor. '411 Patent, 1:25-34. Each of the Asserted Claims refines the inventions in various ways according to specific claim terms. None of the claims, however, are directed to an abstract idea, and all contain inventive concepts, thus

[1] The Asserted Patents are U.S. Patent Nos. 9,462,411, 9,832,708, 10,219,199, 10,674,432, 11,770,756, 11,924,743, 11,937,172, and 12,028,793. Each is referred to herein using the last three digits in the patent number, for example, "the '411 Patent." All eight patents are available in the record. *See* Compl. (Dkt. No. 1), Exs. A-H.

[2] Apple first announced the inclusion of Apple Pay functionality into its smartphones in 2014. *See, e.g.*, Adrianne Jeffries, *Apple Pay allows you to pay at the counter with your iPhone 6*, The Verge (Sept. 9, 2014), https://www.theverge.com/2014/9/9/6084211/apple-pay-iphone-6-nfc-mobile-payment.

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foreclosing Apple's requested relief. For example, the claims do not merely "decid[e] whether to transmit data based on collecting and assessing information as criteria," as Apple contends. Mot. (Dkt. No. 28) at 1. Instead, they provide a "specific, technological means . . . that in turn provide a technological improvement," making them patent eligible. *Contour IP Holding LLC v. GoPro, Inc.*, 113 F.4th 1373, 1379 (Fed. Cir. 2024).

As explained below, Apple's motion should be denied for at least three reasons. *First*, the issue of patent eligibility under 35 U.S.C. § 101 is not ripe. There are factual disputes (where, at this stage, all facts and reasonable inferences must be construed in favor of Telcom) and there are claim construction disputes (which must be resolved before analyzing the claims for eligibility). *Second*, on the merits, Apple has failed to prove that the Asserted Claims are directed to patent-ineligible subject matter. Apple argues that the claims are "abstract," which is an exception to the rule governing patent-eligible subject matter. But Apple's arguments delve into the oft-decried pitfall of "describing the claims at such a high level of abstraction and untethered from the language of the claims" that it "all but ensures that the exceptions to § 101 swallow the rule." *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). Moreover, even if Apple could prove the claims to be abstract, the claims nonetheless contain inventive concepts that confirm their eligibility. *Third*, Apple's motion improperly relies on just one claim of one patent—claim 1 of the '411 Patent—arguing that the claim is representative of all Asserted Claims across all eight Asserted Patents. But Apple can advance this argument only by ignoring (1) the material differences among the independent claims; (2) the plain language of the dependent claims; and (3) the well-known general rule that "claims in one patent will not represent claims in another patent because patents must contain distinct inventions." *PPS Data, LLC v. Jack Henry & Assocs.*, 404 F. Supp. 3d 1021, 1031 (E.D. Tex. 2019). For each of these reasons, or any of them, the Court should deny Apple's motion.

II. BACKGROUND

Telcom's Complaint alleges that Apple's iPhones (and methods of using them) infringe at

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least claim 1 of the eight Asserted Patents. *See* Compl. (Dkt. No. 1) ¶¶ 63, 74, 85, 96, 107, 118, 129, 140. The Complaint alleges that each Asserted Patent "claims patent-eligible subject matter," *see id.* at 4-8, and includes as exhibits copies of each Asserted Patent (*see id.*, Exs. A-H) as well as exemplary claim charts outlining Apple's infringement (*see id.*, Exs. I-P).

The claims of the Asserted Patents are directed to specific improved wireless mobile devices, and methods for using them, by performing functions (such as financial transactions) under certain conditions or criteria (such as proximity criteria and physiological parameters). *E.g.*, '411 Patent, cl. 1. The specific improvements solve one of the problems highlighted in the specification[3] where wireless mobile devices "were typically configured to be capable of performing a predetermined number of functions independent of its location, Time-of-Day (ToD), velocity, acceleration, temperature, sensing of a signal, etc." *Id.*, 1:46-49. The specification explains that it would be "desirable to have a mobile wireless device act as a 'wallet' (over and above other functions) only when it is time to pay for an item and not act as a wallet when there is no need to do so." *Id.*, 1:24-27. Doing so "enable[s] adaptively one or more modes/functions of a device based upon having satisfied . . . a proximity condition/criterion." *Id.*, 1:31-34.

The various claims across the eight Asserted Patents specify the precise scope of the subject matter claimed. For example, the '199 Patent, '432 Patent, '756 Patent, '743 Patent, '172 Patent, and '793 Patent include claims limiting the enabled function on the wireless mobile device to a wallet function. *E.g.*, '432 Patent, cl. 1; '756 Patent, cl. 11; '743 Patent, cl. 1; '172 Patent, cl. 1; '793 Patent, cl. 1. These claims and others delineate the enabled function into a two-step process of enabling the function at the smartphone followed by using the enabled functionality to perform a financial transaction. As another example, certain claims of the '411 Patent and the '708 Patent recite a proximity criterion and/or distances for satisfying the proximity criterion. *E.g.*, '411 Patent, cls. 2, 4; '708 Patent, cls. 1-5, 9-19. As a further example, certain claims of the '708 Patent, '432

[3] Each of the Asserted Patents has the same written description in the specification.

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Patent, '756 Patent, '743 Patent, and '172 Patent recite using user- or device-based parameters such as identities or physiological data as criteria. *E.g.*, '708 Patent, cls. 6-8, '432 Patent, cl. 4, '793 Patent, cl. 1. A number of Asserted Claims recite using components in base stations, wireless networks, short-range links and signals, communication protocols, and licensed/unlicensed frequencies in particular arrangements. *E.g.*, '708 Patent, cl. 16; '199 Patent, cl. 1; '432 Patent, cl. 1; '743 Patent, cl. 1; '172 Patent, cl. 1; '793 Patent, cl. 1; '756 Patent, cls. 17-18.

III. APPLICABLE LEGAL STANDARDS

"To survive a motion to dismiss [under Rule 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This pleading standard "does not require 'detailed factual allegations'" and "is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556).

Under 35 U.S.C. § 101, anyone who "invents or discovers any new and useful process, machine, manufacture, or composition of matter, or new and useful improvement thereof, may obtain a patent." Certain subject matter, such as laws of nature, natural phenomena, and abstract ideas, are "an important implicit exception" and are not patentable. *Alice Corp. Pty. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014). "[H]owever, too broad an interpretation of this exclusionary principle could eviscerate patent law. For all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012).

To determine whether patent claims are directed to patent-eligible subject matter, courts apply the two-step framework set forth in *Alice*. *Id.* at 217. "Under *Alice* step one, we consider whether the claims at issue are directed to, in this case, an abstract idea. . . . If we conclude that the claims are directed to patent ineligible subject matter, the inquiry continues to *Alice* step two, where we ask whether the claims recite something 'significantly more' than an abstract idea itself."

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Contour IP, 113 F.4th at 1378-79 (quoting *Alice*, 573 U.S. at 217-18).

Although in certain cases courts may determine patent eligibility at the Rule 12(b)(6) stage, "[t]his is true only when there are no factual allegations that, taken as true, prevent resolving the eligibility question as a matter of law." *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1125 (Fed. Cir. 2018). "[T]he district court must construe all facts and draw all reasonable inferences in favor of [Telcom], the non-moving party." *CardioNet, LLC v. InfoBionic, Inc.*, 955 F.3d 1358, 1371 (Fed. Cir. 2020). And where there are claim construction disputes, "either the court must proceed by adopting the non-moving party's constructions . . . or the court must resolve the disputes to whatever extent is needed to conduct the § 101 analysis." *Aatrix*, 882 F.3d at 1125.

"Patent eligibility under 35 U.S.C. § 101 is a question of law, based on underlying factual findings." *Uniloc USA, Inc. v. LG Elecs. USA, Inc.*, 957 F.3d 1303, 1306 (Fed. Cir. 2020); *see also Aatrix*, 882 F.3d at 1128 ("While the ultimate determination of eligibility under § 101 is a question of law, like many legal questions, there can be subsidiary fact questions which must be resolved en route to the ultimate legal determination."). Thus, "plausible factual allegations may preclude dismissing a case under § 101 where, for example, nothing on the record refutes those allegations as a matter of law or justifies dismissal under Rule 12(b)(6)." *Aatrix*, 882 F.3d at 1125 (quoting *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1097 (Fed. Cir. 2016)) (alterations omitted). For example, "[t]he question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact." *Berkheimer v. HP, Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2023).

IV. ARGUMENT

A. The Issue of Subject Matter Eligibility Is Not Ripe for Resolution at This Early Stage.

A motion to dismiss premised on alleged patent ineligibility is appropriate only "when there are no factual allegations that, taken as true, prevent resolving the eligibility question as a

matter of law." *Aatrix*, 882 F.3d at 1125. Telcom's Complaint contains ample factual allegations showing that the Asserted Claims are directed to patent-eligible subject matter. The Complaint identifies specific improvements of the Asserted Claims demonstrating that they cover much more than mere abstract ideas devoid of any inventive concept. For instance, Telcom's claim charts—which are part of the Complaint (*see* Dkt. No. 1, Exs. I-P)—highlight the concrete requirements of claim 1 of each patent, including claim 1 of the '411 Patent (on which Apple's motion focuses). As recited in that claim, a smartphone employs a sensor to sense physiological data. Compl., Ex. A, cl. 1. Also, a "proximity criterion" must be satisfied between the smartphone and an "entity," such as a point-of-sale terminal. *Id*. The smartphone then communicates "responsive to the proximity criterion having been detected as being satisfied and responsive to *a value of the physiological data*." *Id.* (emphasis added). The smartphone also "refrain[s] from communicating . . . *absent said value of the physiological data*." *Id.* (emphasis added). And the refraining from communicating absent the value occurs "even though the proximity criterion is detected as being satisfied." *Id.* Further, the smartphone sends and receives information "*responsive to said value of the physiological data*." *Id.* (emphasis added).

Thus, as shown even by the claim that Apple carefully cherry-picked from among the 118 claims spanning Telcom's eight Asserted Patents, the claims do much more than abstractly decide "whether to transmit data based on collecting and assessing information as criteria," as Apple contends. Mot. at 1, 4, 7. The claims "focus on a specific means or method that improves the relevant technology," making them patent eligible. *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016). The limitations recited in the claims avert any hint of preemption of all processes for performing a financial transaction with a smartphone. The claims require more. As summarized above, claim 1 of the '411 Patent requires a smartphone with a sensor for sensing physiological data; the smartphone communicates responsive to a "value" of the physiological data, and only when a "proximity criterion" is satisfied; and the smartphone sends and receives information responsive to that same "value" of the physiological data. Thus,

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the claims in no way merely "patent[] a result where 'it matters not by what process or machinery the result is accomplished.'" *Id.* at 1312 (quoting *O'Reilly v. Morse*, 56 U.S. 62, 113 (1854)).

The patent specification emphasizes these claim requirements and their advantages:

- The invention beneficially has "a mobile wireless device act as a 'wallet' (over and above other functions) only when it is time to pay for an item and not act as a wallet when there is no need to do so." '411 Patent, 1:24-27.
- The inventions "enable adaptively one or more modes/functions of a device based upon having satisfied . . . a proximity condition/criteria." *Id.*, 1:31-34.
- "The wireless communications device may be configured to repeatedly make a decision based on the comparison of position that was discussed earlier [*i.e.*, proximity criteria], based on *the value of a quantity/parameter*, such as, for example, a value associated with the 'at least one other parameter.'" *Id.*, 7:32-36; *see id.*, 6:4-9 ("The 'at least one other parameter' may, for example, be . . . a physiological state . . . .").

The claims thus require particular hardware and devices, employing a specific "value" of the sensed physiological data (obtained via a sensor on the smartphone). These factual matters, construed in favor of Telcom, mandate denial of Apple's motion. That is particularly true here, at the earliest stage of the case, where discovery has not begun, the parties have exchanged no contentions, and the parties have not initiated the claim construction process. Because "nothing on the record refutes [Telcom's] allegations as a matter of law or justifies dismissal under Rule 12(b)(6)," Apple's motion to dismiss should be denied. *Aatrix*, 882 F.3d at 1125.

The motion should also be denied because claim construction has not occurred. As the Federal Circuit has explained, "[t]he application of eligibility standards depends on what is claimed—that is, on the meaning of the claims—and thus requires the court to interpret the claims." *UTTO Inc. v. Metrotech Corp.*, 119 F.4th 984, 993 (Fed. Cir. 2024). This Court has denied a Section 101 motion to dismiss because claim construction was needed, and the Court should rule likewise here. *See IMX, Inc. v. E-Loan, Inc.*, 2010 WL 11505065, at *1 (S.D. Fla. Mar. 3, 2010)

(denying a motion to dismiss under Section 101 because "[w]hether [the Asserted Claims] satisf[y] Section 101 is a question that will depend on the parties' competing constructions of the claim[s]") (quoting *In re Bilski*, 545 F.3d 943, 951 (Fed. Cir. 1999)).

Claim construction, while typically a question of law, often includes underlying factual questions, which must be construed in favor of Telcom as the non-moving party. *CardioNet*, 955 F.3d at 1371; *see Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 841-42 (2015) ("[A] factual finding may be close to dispositive of the ultimate legal question of the proper meaning of the term in the context of the patent."). This Court should thus construe the claims before assessing patent eligibility. One example of a claim construction dispute is evident from Apple's motion itself. Many of the Asserted Claims recite steps or functions in a particular order, using the word "then" to separate the steps or functions.[4] Apple contends in its motion that the claimed order is not relevant because the specification notes that certain "embodiments contemplated within the scope of the claims are not necessarily limited to a particular order or necessarily include every step described in [a specification embodiment] and may further include additional steps as may be obvious to one of ordinarily skilled in the art." Mot. at 16 (quoting '411 Patent at 11:23-29). But the converse of Apple's argument is that if a particular order is required, as Telcom contends, that order would confirm an inventive concept that forecloses Apple's theory of ineligibility. That question, like the parties' other claim-construction disputes (to be identified and addressed under the eventual schedule for the case) must be addressed before resolving subject matter eligibility of the Asserted Claims. *See IMX*, 2010 WL 11505065, at *1.

B. The Claims Are Directed To Patent-Eligible Subject Matter.

Aside from the procedural deficiency, on the merits Apple has not met its high burden of proving ineligibility by clear and convincing evidence. Each of the Asserted Claims is entitled to a presumption of validity, and Apple has failed to prove that the limitations of the Asserted Claims

[4] *See, e.g.*, '199 Patent, cls. 7, 17; '743 Patent, cls. 1, 3, 7, 8, 10, 14; '172 Patent, cls. 1, 2, 9, 10; '793 Patent, cls. 1, 5. Many of these are independent claims.

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are directed to patent-ineligible subject matter as a matter of law. *See Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 95 (2011). As described below, the Asserted Claims are patent eligible under both steps of the *Alice* inquiry. The claims provide tangible improvements to smartphones, and methods for using them, by enabling and disabling the performance of certain functions (*i.e.*, a payment) in response to ordered conditions and criteria (*e.g.*, proximity criteria and physiological parameters). Such improvements technically improve smartphones for making payments under certain focused conditions, as multiple USPTO Examiners recognized during prosecution of these patents. *See, e.g.*, Ex. A at 10 (agreeing with the applicant that a wireless mobile device capable of Near-Field Communications and sensing a value of the physiological data associated with a living organism using a smartphone-based sensor is an improvement over the prior art) (citing Ex. B at 2); Ex. C at 7-8 (stating that the closest prior art of record does not teach (1) the smartphone's receipt of an authorization when enabling the wallet function and (2) requiring a proximity condition and other parameter (*e.g.*, a physiological data criterion) to be satisfied when executing a financial transaction); Ex. D at 8 (recognizing the patentable nature of authorizing a transaction in response "to a value that is determined by the device," "enabling [by] the device a number of functions," and "disabling by the device a function of the device").[5]

i. *Alice* Step One: The Asserted Claims Are Not Directed to Abstract Ideas.

The Asserted Claims are directed to patent-eligible subject matter—not abstract ideas—at least because "the focus of the claims is on [a] specific asserted improvement" to smartphones and methods for using them, and not "a process that qualifies as an 'abstract idea' for which computers are invoked merely as a tool." *Enfish*, 822 F.3d at 1335-36. The claims embody improvements in the functioning of smartphones, not an abstract idea implemented with conventional computer

[5] Courts may take judicial notice of a patent's prosecution history, which is part of the patent's intrinsic record, when considering a motion to dismiss. *See Data Health Partners, Inc. v. Teladoc Health, Inc.*, 2024 WL 2271847, at *2 (D. Del. May 20, 2024); *U.S. Rubber Recycling, Inc. v. Ecore Int'l*, 2011 WL 13127548, at *2 (C.D. Cal. July 8, 2011) (quoting *Standard Havens Prods., Inc. v. Gencor Indus., Inc.*, 897 F.2d 511, 514 n.3 (Fed. Cir. 1990)).

components. The Federal Circuit has routinely ruled that claims directed to "a specific means or method that improves the relevant technology" are patent eligible. *Contour IP*, 113 F.4th at 1379; *CardioNet*, 955 F.3d at 1368 (quoting *McRO*, 837 F.3d at 1314); *Enfish*, 822 F.3d at 1336; *see also Mobile Equity Corp. v. Walmart Inc.*, 2022 WL 7587565, at *7 (E.D. Tex. Sept. 8, 2022).

The Federal Circuit's recent decision in *Contour IP* is particularly instructive. There, the court explained that while the claimed point-of-view camera recorded data streams and wirelessly transferred them to another device, it did so by recording both low-and high-quality data streams in parallel and transferring the low-quality data stream to a remote device. *Contour IP*, 113 F.4th at 1379. The claimed device allowed the user to "remotely view and adjust the desired recording in real time, with the elimination of bandwidth limitations on wireless data transfer." *Id*. In criticizing the district court for having oversimplified the claims—precisely what Apple invites this Court to do here—the Federal Circuit reiterated that "we must avoid describing the claims at a high level of abstraction, divorced from the claim language itself." *Id*. at 1380 (citing *Enfish*, 822 F.3d at 1337). The Federal Circuit ruled that the claims were "directed to a technological solution to a technological problem," not an abstract idea, and therefore reversed the district court. *Id*.

This Court can and should reach the same conclusion. As in *Contour IP*, here the Asserted Claims are directed to a technological solution to a technical problem. Also, just as the Federal Circuit cautioned against in *Contour IP*, here Apple has oversimplified the claims, contending that they cover all manners of "controlling whether to transmit data based on collecting and assessing information as criteria." Mot. at 1. Not so. The Asserted Claims recite improved smartphones and methods for using them that adaptively enable and disable functions based on the ordered use of proximity criteria and physiological parameters sensed by a sensor on the smartphone. With the claimed invention, smartphones enable functions *only* when certain conditions or criteria (such as proximity criteria and a suitable "value" of physiological data) are met, and many claims require the steps or functions to be performed in a particular order using specified components. The inventions improve the security and functionality of mobile payment systems on smartphones.

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Apple's broad characterization of the Asserted Claims as being purportedly "directed to the abstract idea of controlling whether to transmit data based on collecting and assessing information as criteria," *see id.* at 4, 7, ignores the specific claim language. It is axiomatic that any statement of a purported "abstract idea" must be tethered to the claim language and must track the claim language to correctly capture what the patent asserts to be the focus of the claimed advance over the prior art. *See Enfish*, 822 F.3d at 1337. By oversimplifying and avoiding the actual claim language, Apple impermissibly ignores the specific technological improvements recited in the claims. *See CardioNet*, 955 F.3d at 1371.

The case law Apple cites is readily distinguishable and serve only to emphasize the patent-eligible nature of the Asserted Claims. For example, in *Electric Power Group, LLC v. Alstom S.A.*, the Federal Circuit affirmed the abstract nature of claims directed to "collecting information, analyzing it, and displaying certain results of the collection and analysis," as opposed to reciting "any particular assertedly inventive technology for performing those functions." 830 F.3d 1350, 1354 (Fed. Cir. 2016). Similarly, the claims in *Universal Secure Registry LLC v. Apple Inc.* merely combined conventional authentication techniques and "simply recite[d] conventional actions in a generic way." 10 F.4th 1342, 1349 (Fed. Cir. 2021) ("*USR*"). And the Federal Circuit in *Prism Technologies LLC v. T-Mobile USA, Inc.* ruled that the claims were directed to an abstract idea of "providing restricted access to resources" by "merely recit[ing] a host of elements that are indisputably generic computer components." 696 F. App'x 1014, 1017 (Fed. Cir. 2017). Likewise, in *Smartflash LLC v. Apple Inc.*, the Federal Circuit held that the claims covered "Internet activity" and did not include "a specific asserted improvement in computer capabilities," rendering them patent ineligible. 680 F. App'x 977, 982, 984 (Fed. Cir. 2017).

By comparison, here the Asserted Claims do not merely decide whether to transmit data based on collecting and assessing information, as Apple argues. Mot. at 1, 4, 7. Instead, the claims require a specific smartphone (or method) that uses proximity criteria and a value of physiological data, sensed by a sensor, for sending and receiving information to a device (such as a point-of-sale

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terminal) "responsive to said value of the physiological data" that was sensed by the sensor. '411 Patent, cl. 1. The sum total covers specific *improvements* in smartphones (and associated methods) not available through conventional technologies. For example, the claimed technology "overrides the routine and conventional sequence of events" by enabling functions—*e.g.*, wallet transactions—when desired and disabling functions when undesired, which turns on satisfying the proximity criteria and physiological data sensed by the smartphone's sensor. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1258 (Fed. Cir. 2014). These technological improvements satisfy *Alice* step one, unlike the situations in Apple's cited cases. In fact, the Federal Circuit distinguished two of Apple's cited cases—*Prism* and *USR*—in analyzing claims directed to "a specific improvement to authentication that increases security, prevents unauthorized access by a third party, is easily implemented, and can advantageously be carried out with mobile devices of low complexity." *Cosmokey Sols. GmbH & Co. KG v. Duo Sec. LLC*, 15 F.4th 1091, 1098 (Fed. Cir. 2021). The Federal Circuit stated that the claims—like Telcom's claims here—"can constitute 'a non-abstract computer-functionality improvement if done by a specific technique that departs from earlier approaches to solve a specific computer problem." *See id*. at 1099.

Next, Apple argues that the Asserted Claims are analogous "to longstanding 'real-world' ('brick and mortar') activities." Mot. at 11. But this argument also falls flat. The claims do more than "simply use a [smartphone] as a tool to automate conventional activity." *CardioNet*, 995 F.3d at 1370 (quoting *McRO*, 837 F.3d at 1314). Apple argues that "it was long a standard practice in retail stores that a customer must be at the point-of-sale (i.e. within proximity of the card reader) and present photo identification (in a similar vein to what Telcom's asserts as physiological data) before he or she could make a credit card purchase." Mot. at 11. Similarly, Apple likens the proximity condition in the claims to simply confirming whether the device is in proximity to a point-of-sale terminal or other location. *Id*. at 12 (citing *Beteiro, LLC v. DraftKings Inc.*, 104 F.4th 1350 (Fed. Cir. 2024)). But as described above, the claims do not merely apply "longstanding economic activity" to a smartphone (*id.*), nor may such a factual determination be credited to Apple

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at the motion to dismiss stage. *See Coop. Entm't, Inc. v. Kollective Tech., Inc.*, 50 F.4th 127, 130 (Fed. Cir. 2022) ("[P]atent eligibility may be resolved at the Rule 12 stage only if there are no plausible factual disputes after drawing all reasonable inferences from the intrinsic record and Rule 12 record in favor of the non-movant.").

Lastly, Apple argues that the claims employ result-focused functional language. But Apple is wrong. The claims are not "directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery." *See* Mot. at 12 (quoting *Apple Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016)). Apple once again avoids the actual claim language, instead isolating terms like "sensing," "detecting," "selectively communicating," "refraining from communicating," and "selectively sending information," and arguing that these words are result-oriented and do not describe "how" to perform the inventions. *Id.* at 5, 13, 15. Apple's oversimplification conspicuously avoids the actual technological improvements recited in the claims, as described earlier. *See CardioNet*, 955 F.3d at 1371 (warning against oversimplification of claim language). Apple's oversimplified view should be rejected.

Courts—including this Court—have regularly found that claims directed to methods and improvements in mobile payment transactions are subject-matter eligible. *See, e.g.*, *Payrange, Inc. v. Kiosoft Techs., LLC*, 676 F. Supp. 3d 1266, 1281 (S.D. Fla. 2023) ("The '296 patent is not merely taking the abstract 'task of a customer detecting a nearby merchant (vending machine) from which the customer can purchase goods,' it is providing a technological improvement in the way that payments can be processed. The Court finds that the '296 patent is not directed to an abstract idea."); *Mobile Equity*, 2022 WL 7587565, at *7 ("[T]he Court finds that the asserted claims are directed to reversing the conventional transaction flow thus allowing a customer's mobile device to initiate a mobile payment transaction. This is a specific improvement in payment network functionality."); *SCVNGR, Inc. v. DailyGobble, Inc.*, 238 F. Supp. 3d 263, 268 (D.R.I. 2017) (holding that because the "claims actually improve upon the functionality of payment processing," they are patent eligible). In sum, the Asserted Claims are directed to specific improvements in

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smartphones, not abstract ideas. Accordingly, the claims satisfy *Alice* step one.

ii. *Alice* Step Two: The Asserted Claims Recite an Inventive Concept That Is Significantly More Than Any Alleged Abstract Idea.

Because the Asserted Claims pass step one of the *Alice* inquiry, analyzing step two is not necessary. *See, e.g.*, *Contour IP*, 113 F.4th at 1380-81 ("We need not proceed to the second step of the *Alice* inquiry."). But even were this Court to find the claims directed to an abstract idea, Apple's motion should still be denied because the claims are eligible under step two. The claims recite an "inventive concept" that provides "significantly more" than any alleged abstract idea and transforms it into a patent-eligible application. *Alice*, 573 U.S. at 217-18. That is particularly true here, at the pleading stage, where all reasonable factual inferences must be viewed in the light most favorable to Telcom. And to be sure, "[w]hether the claim elements or the claimed combination are well-understood, routine, [and] conventional is a question of fact." *Aatrix*, 882 F.3d at 1128.

The second step of *Alice* is satisfied when the claims involve more than "well-understood, routine, [and] conventional activit[ies] previously known to the industry." *Alice*, 573 U.S. at 225 (quoting *Mayo*, 566 U.S. at 73). This second step is often described as "a search for an inventive concept." *Id.* at 217-18 (quoting *Mayo*, 566 U.S. at 72-73). An inventive concept "may arise in one or more of the individual claim limitations or in the ordered combination of the limitations." *Bascom Glob. Internet Servs. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016). Here, as described above, the inventive concepts are present in both the individual limitations and in their ordered combination. While Apple hyper-focuses on whether certain individual parts of the Asserted Claims were known in the art (*e.g.*, smartphones, smartphone-based sensors, and air interfaces), "[t]he mere fact that something is disclosed in a piece of prior art, for example, does not mean it was well-understood, routine, and conventional." *Berkheimer*, 881 F.3d at 1369. For example, Apple has provided no evidence that it was well-understood, routine, or conventional to use proximity criteria and a value of physiological data sensed by a sensor to enable certain functions on a smartphone when desired and to disable those functions when not desired (let alone

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to do so in the same ordered combination of steps and functions claimed in Telcom's patents).

In any event, "[t]he inventive concept inquiry requires more than recognizing that each element, by itself, was known in the art." *Bascom*, 827 F.3d at 1350. For computer technology, an inventive concept may exist in claims that "recite a specific, discrete implementation of [an] abstract idea," where the "particular arrangement of elements is a technical improvement over prior art [methods]." *Id*. at 1351. Here, as in *Bascom*, the claims as a whole represent "nonconventional and non-generic arrangement[s]" for adaptively enabling functions on a mobile device when desired *in response* to certain proximity criteria and a value of physiological data sensed by a sensor, all of which constitute "technical improvements" to conventional wireless mobile devices. *Id*. The claimed functionality was far from conventional, routine, or well understood in 2008, and Apple has not proved otherwise. Plus, at the motion to dismiss stage, such factual questions must be construed favorable to Telcom. *Aatrix*, 882 F.3d at 1124.

The Federal Circuit's decision in *Cellspin Soft, Inc. v. Fitbit, Inc.* is relevant to this question. 927 F.3d 1306, 1318 (Fed. Cir. 2019). The district court found that claims directed to "[a] method for acquiring and transferring data from a Bluetooth enabled data capture device to one or more web services via a Bluetooth enabled mobile" lacked an inventive concept. *Id.* The Federal Circuit disagreed, holding that "implementing a well-known technique with particular devices in a specific combination . . . can be inventive." *Id*. at 1318 (citations omitted). The Federal Circuit also noted that the court erred by rejecting CellSpin's allegations of inventiveness and not accepting them as true at the pleadings stage. *Cellspin*, 927 F.3d at 1315; *see Aatrix*, 882 F.3d at 1126 ("[P]atentees who adequately allege their claims contain inventive concepts survive a § 101 eligibility analysis under Rule 12(b)(6).").

Here, Apple's motion attacks the Asserted Claims as allegedly using only components that were known in the art. Apple spends much of its analysis cherry-picking components of the allegedly representative claim and arguing that the individual components were conventional. *See* Mot. at 16 ("Thus, taken *individually*, the elements of the Representative Claim lack an inventive

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concept.") (emphasis added). However, the prior-art status of components of an invention in no way shuts the door on patent eligibility. It is the specific combination of devices and techniques that must be evaluated for inventiveness. *Cellspin*, 927 F.3d at 1318. Nowhere does Apple address the specific combination of elements when analyzing the Asserted Claims.

The Court should also reject Apple's argument that the ordered combination does not provide an inventive concept. Apple is wrong that "the specification refutes the notion that the order adds an inventive concept." Mot. at 16. The specification makes clear that the communication modes are adaptively enabled *in response to* the proximity criteria and the value of the physiological data being satisfied, and that the steps and functions are described in a certain order. *See, e.g.*, '411 Patent, at 1:6-11, 1:29-34, 11:23-24. Even if Apple's argument were factually correct, it is the claims—not the specification—that control. *CardioNet*, 955 F.3d at 1368 (courts must "consider the patent's written description, as it informs [the] understanding of the claims") (citing *Chamberlain Grp., Inc. v. Techtronic Indus. Co.*, 935 F.3d 341, 1346 (Fed. Cir. 2019)). As shown earlier, many claims expressly recite an order, and the others do so by implication. The claims are therefore far from conventional, routine, or well understood, and thus they satisfy step two of the *Alice* inquiry.

C. Claim 1 of the '411 Patent Is Not Representative.

Claim 1 of the '411 Patent is not representative of the 118 claims across the eight Asserted Patents, each of which covers a separate invention. "In general, claims in one patent will not represent claims in another patent because patents must contain distinct inventions." *PPS Data*, 404 F. Supp. 3d at 1031; *see* 35 U.S.C. § 282 ("Each claim of a patent . . . shall be presumed valid independently of the validity of other claims.").

That said, "a district court 'may treat a claim as representative in certain situations.'" *Mobile Acuity Ltd. v. Blippar Ltd.*, 110 F.4th 1280, 1290 (Fed. Cir. 2024) (quoting *Berkheimer*, 881 F.3d at 1365). The patent challenger bears the initial burden to make a prima facie showing that the group of claims are "'substantially similar and linked to the same' ineligible concept." *Id.*

(quoting *Cleveland Clinic Found. v. True Health Diagnostics LLC*, 859 F.3d 1352, 1360 (Fed. Cir. 2017)). The patent owner may then "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.* Here, Apple has failed to make a prima facie showing that the Asserted Claims are "'substantially similar and linked to the same' ineligible concept." *Id.* (quoting *Cleveland Clinic*, 859 F.3d at 1360). Apple alleges that claim 1 of the '411 Patent is representative of *all* claims of *all* eight Asserted Patents. Mot. at 16-17. But Apple compares claim 1 of the '411 Patent (a method claim) only to another method claim in the other Asserted Patents, never even trying to show any correlation with any device claim or any dependent claim. *See id.*, Ex. I.

Even for the handful of claims actually addressed, Apple sidesteps the substantive differences between the claims that undermine its argument of substantial similarity. For example, Apple ignores the impact of the required order of steps in many independent claims (that include recitations of "then" within the claims). *See, e.g.*, '743 Patent, cl. 1; '172 Patent, cl. 1. Several of the independent claims are drawn specifically to performing financial transactions, while the purported representative claim is not so limited. *Compare* '411 Patent, cl. 1 *with* '432 Patent, cl. 1; '756 Patent, cl. 11; '743 Patent, cl. 1; '172 Patent, cl. 1; '793 Patent, cl. 1. These independent claims, unlike the allegedly representative claim, also divide the process of performing a financial transaction into two parts: (1) receiving an authorization to enable a wallet/mobile payment function, and (2) performing a financial transaction. *See id.* Still further, claim 16 of the '708 Patent and claim 1 of the '199 Patent exclude the entity from providing the communications service via a second air interface (*e.g.*, a cellular data network or WiFi) to the wireless mobile device—a limitation not present in claim 1 of the '411 Patent. *Compare* '411 Patent, cl. 1 *with* '708 Patent, cl. 16; '199 Patent, cl. 1. Certain independent claims add other features such as licensed and unlicensed frequencies and particular communication protocols. *Compare* '411 Patent, cl. 1 *with* '708 Patent, cl. 16; '199 Patent, cl. 1; '743 Patent, cl. 1; '172 Patent, cl. 1; '793 Patent, cl. 1.

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Apple's Exhibit I does not save its representativeness analysis. As in the motion, Apple's Exhibit I conflates claim language having distinct differences. As an example, in comparing the '411 Patent to the '172 Patent, using yellow highlighting, Apple conflates the "selectively sending information" limitation of the '411 Patent to several limitations of the '172 Patent that require "transmitting," "receiving," "performing," and "paying" responsive to very specific requests for authorizations as laid out in the claims. Mot. Ex. I at 8. Apple does not even try to justify its improper comparison. Apple's "analysis" does nothing to establish representativeness.

These are just examples of the many differences among the claims—differences that have distinctive significance. Exhibit E (attached) refutes Apple's arguments, highlighting key differences among the independent claims. As shown in Exhibit E, the scope of the claims vary, confirming the maxim that each is a separate invention. *See Comark Commc'ns, Inc. v. Harris Corp.*, 156 F.3d 1182, 1187 (Fed. Cir. 1998) (noting the "presumption that each claim in a patent has a different scope"); *Tyco Healthcare Grp. LP v. Applied Med. Res. Corp.*, 2009 WL 5842062, at *3 (E.D. Tex. Mar. 20, 2009) ("Each claim in a patent defines a separate invention, and has a different scope."). Apple's bold attempt to short-circuit the required claim-by-claim analysis—by proclaiming just one of the 118 claims as allegedly "representative" of the other 117 claims—should be rejected.

Apple's analysis also fails to compare *any* of the dependent claims to the purported representative claim. Apple instead makes a conclusory assertion that the dependent claims cover abstract ideas because their additional limitations "do not render an otherwise abstract concept any less abstract." Mot. at 18 (quoting *Intell. Ventures I LLC v. Cap. One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017)). But that is at best only half the inquiry. For representativeness, the claims must be substantially similar to the purported representative claim. Apple has failed to show this.

For these reasons, the eligibility of claim 1 of the '411 Patent cannot fairly be treated as representative of, much less decisive of, the eligibility of all claims across all eight patents. *See id.* Accordingly, Apple's motion should be denied.

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D. At Minimum Telcom Should Be Permitted to File an Amended Complaint.

Telcom believes "the sources properly considered on a motion to dismiss, such as the complaint [including its exhibits], the patent[s], and materials subject to judicial notice" are enough to demonstrate that Apple's motion should be denied. *Aatrix*, 882 F.3d at 1128. But should the Court be inclined to grant Apple's motion, Telcom respectfully requests leave to file an amended Complaint to cure any perceived defects in the pleaded allegations. *See id.* at 1126 ("A district court should freely give leave to amend a complaint 'when justice so requires.'" (citing *Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1340 (11th Cir. 2014)).

V. CONCLUSION

For the reasons shown, the Court should deny Apple's Motion to Dismiss, which is both premature and substantively deficient. At minimum, should the Court be inclined to grant any part of Apple's requested relief, Telcom respectfully requests an opportunity to cure any perceived defects by filing an amended Complaint.

Dated: December 11, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 11, 2024, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing.

Dated: December 11, 2024

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