IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

K.MIZRA LLC, Plaintiff, vs. CIENA CORPORATION, Defendant.	Civil No. 1:24-CV-05442-SDG **JURY TRIAL DEMANDED**

CIENA CORPORATION'S
MOTION TO DISMISS THE AMENDED COMPLAINT FOR
LACK OF SUBJECT MATTER ELIGIBILITY UNDER 35 U.S.C. § 101

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I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

The claims of all three Asserted Patents are invalid under 35 U.S.C. § 101. The Asserted Patents merely apply *abstract ideas*—specifically, basic principles to efficiently move items from one point to another—to the environment of conventional computer networks. Despite the multisyllabic jargon in the patent claims, their substance applies the age-old principles of efficient delivery to the context of computer data. The claims are invalid under *Alice Corp. Pty. v. CLS Bank Int'l*, 573 U.S. 208 (2014), and courts often resolve this issue at the pleadings stage.

The Asserted Patents are Abstract. For centuries, people have determined the best routes to move things (people, parcels, postage, data, etc.) from one location to another. In any given circumstance, that determination is based on what the sender (or recipient) deems most important, whether that be choosing the fastest, shortest, safest, or cheapest route. Sometimes it is desirable to package different types of goods in a single package for efficiency or to fill a ship with containers containing all sorts of products. Other times it is desirable to ship goods over one channel, such as a train or one type of wire, and then complete the delivery over another channel, such as a truck or another wire. These abstract principles apply whether moving humans on roads, cargo on rails, or data on wires.

The key steps claimed in the Asserted Patents could just as easily describe the basic work of a delivery company: "receiving," "processing," and "sending" items

across a network ('282 Patent); "selecting…a routing policy" and using a "label" to route an item ('176 Patent); and "identifying information" and then using "stored data that maps application flows" to determine "paths through the…network" ('320 Patent). The Asserted Patents' focus on delivering *computer data*—rather than, for example, cardboard boxes—is irrelevant under *Alice*. The claims are invalid because they merely recite the basic building blocks of a computer network (*e.g.*, "encapsulating…data packet[s]," "unencapsulated packet headers," "psuedowires," "nodes," and "application servers") to apply these abstract principles. *Alice*, 573 U.S. at 222. In short, the claims recite "fundamental communication practice[s]," which are unpatentable abstract ideas. *Adaptive Streaming Inc. v. Netflix, Inc.,* 836 Fed. Appx. 900, 903 (Fed. Cir. 2020) (collecting cases).

Plaintiff's Amendment and New Expert Declaration Confirm Why this Motion Should Be Granted. Patent eligibility turns on the patent itself. Defendant Ciena Corp. ("Ciena") therefore filed a motion asking the Court to adjudge the Asserted Patents invalid and dismiss the original Complaint. Doc. 21. Plaintiff K.Mizra LLC ("Plaintiff") responded by filing an Amended Complaint, Doc. 34 ("Am. Compl."). In an apparent attempt to strengthen its hand in answering this motion, Plaintiff attached an expert declaration, which leaps to the conclusion of validity based on a recitation of the aspirational statements in the patents (the same statements addressed in Ciena's original motion and again below) and a recounting

that the prosecution histories led to granted patents. Neither is a legitimate basis for patent eligibility, as nearly every patent that has been invalidated under Section 101 likewise has a specification with aspirational statements, and every issued patent has a prosecution history concluding that the claims should be allowed. This is why the case law makes clear that a conclusory expert declaration at the pleadings stage is not a free pass around a motion to dismiss.

What is more remarkable here is the absence of any new substantive points from the expert. The declaration has no technical explanation of what the non-abstract invention would be or how any structures are unconventional. Plaintiff's swing-and-miss, even after reading Ciena's original motion, confirms that there is no basis to delay an invalidity ruling on the Asserted Patents.

II. THE RELEVANT LEGAL STANDARDS

A. Section 101 Is Properly Adjudicated via a Rule 12(b)(6) Motion

Under Federal Rule of Civil Procedure 12(b)(6), a claim will be dismissed for failure to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim of relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A complaint that alleges infringement of a patent directed to an abstract idea cannot, as a matter of law, state a plausible claim for relief, irrespective of allegations outside the four corners of the patent. *TAGI Ventures, LLC v. Turner Sports Interactive, Inc.*, No. 1:16-CV-3412-MHC, 2017 WL 3469528, at

*3, *7 (N.D. Ga. Feb. 17, 2017) (quoting *Twombly*, 550 U.S. at 555) ("TAGI has merely dressed up the concept of transmitting, receiving, sorting, and storing data in the guise of a patentable idea").

Patent eligibility is a threshold legal issue. *Bilski v. Kappos*, 561 U.S. 593, 602 (2010). The Federal Circuit thus approves of addressing patent eligibility at the Rule 12(b)(6) stage, *see Voter Verified, Inc. v. Election Sys. & Software LLC,* 887 F.3d 1376, 1384 (Fed. Cir. 2018), as this district has recognized. *PerDiemCo LLC v. NexTraq LLC*, 720 F. Supp. 3d 1365, 1371 (N.D. Ga. 2024) ("The Section 101 inquiry is an issue of law and properly raised and decided on a motion to dismiss").

In deciding motions to dismiss, a court is "not obliged to accept [expert opinions] as true." *See Athena Diagnostics, Inc. v. Mayo Collaborative Servs*., LLC, 915 F.3d 743, 756 (Fed. Cir. 2019); *see also Int'l Bus. Machines Corp. v. Zillow Grp., Inc*., 50 F.4th 1371, 1383 (Fed. Cir. 2022) (invalidating patent despite expert declaration). Patent eligibility tuns on the "patent itself," and an expert declaration attached to a complaint should be given little weight because it does not "form[] the legal basis for [the] cause of action." *Marble Voip Partners, LLC v. Zoom Comm'n., Inc*. 670 F. Supp. 3d. 1213, 1221 (D. Kan. 2023) (expert testimony did not "qualify as the sort of material a court would be permitted to consider when ruling a Rule 12(b)(6) motion to dismiss."); *SecureNet Sols. Grp., LLC v. Arrow Elecs., Inc*., No. 22-CV-01254-KLM, 2023 WL 3821214, at *10 (D. Colo. June 5, 2023) ("For the

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same reasons cited by the *Marble* court, the Court here finds that the expert declarations attached to Plaintiff's Complaint . . . should be disregarded.").

B. Courts Use a Two-Step Framework to Apply Section 101

Abstract ideas, along with laws of nature and naturally occurring phenomena, are not eligible for patent protection, as they are "basic tools of scientific and technological work." *Mayo Collaborative Servs. v. Prometheus Labs., Inc*., 566 U.S. 66, 77-78 (2012). *Alice* sets forth a two-step framework. 573 U.S. at 217.

First, the Court determines whether the claims are directed to an abstract idea. *Id*. The question is "whether the claims . . . focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery." *McRO, Inc. v. Bandai Namco Games Am. Inc*., 837 F.3d 1299, 1314 (Fed. Cir. 2016). A claim that "fails to provide any specific or concrete means for achieving [a] desired result" is a claim drawn to an abstract idea. *Voip-Pal.Com, Inc. v. Apple Inc*., 411 F. Supp. 3d 926, 963 (N.D. Cal. 2019), aff'd, 828 F. App'x 717 (Fed. Cir. 2020); *Am. Axle & Mfg., Inc. v. Neapco Holds. LLC*, 967 F.3d 1285, 1302 (Fed. Cir. 2020) ("claim itself…must go beyond stating a functional result."); *Elec. Power Grp., LLC v. Alstom S.A*., 830 F.3d 1350, 1356 (Fed. Cir. 2016) (noting "critical difference between patenting a particular concrete solution to a problem and attempting to

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patent the abstract idea of a solution to the problem in general.").[1]

Second, the Court determines whether the claims contain "an 'inventive concept'—*i.e.*, an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [abstract idea] itself." *Alice*, 573 U.S. at 217-18. To do so, the claim must "involve more than performance of well-understood, routine, and conventional activities previously known to the industry.'" *Berkheimer v. HP, Inc.*, 881 F.3d 1360, 1367 (Fed. Cir. 2018). Importantly, the "abstract idea itself cannot supply the inventive concept." *Trading Techs. Int'l, Inc. v. IBG LLC*, 921 F.3d 1084, 1093 (Fed. Cir. 2019). Nor can this step be satisfied by a second abstract idea: "the combination of two abstract ideas does not render an abstract idea less abstract." *Broadband iTV, Inc. v. Amazon.com, Inc.,* 113 F.4th 1359, 1368 (Fed. Cir. 2024).

C. The Use of Representative Claims Is Appropriate

"In a § 101 analysis, courts may evaluate representative claims," to determine whether a patent is drawn to patentable subject matter, rather than each claim

[1] *Realtime Data LLC v. Array Networks Inc*., 2023 WL 4924814, at *8 (Fed. Cir. Aug. 2, 2023) (claim must have "the specificity required to transform the claim from one claiming only a result to one claiming a way of achieving it."); *Koninklijke KPN N.V. v. Gemalto M2M GmbH*, 942 F.3d 1143, 1152 (Fed. Cir. 2019) ("result-oriented generality" is abstract for lacking "sufficient recitation of *how* the purported invention[s]" accomplish the results.); *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1337 (Fed. Cir. 2017) ("method for routing information using result-based functional language" abstract).

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individually, when "claims are substantially similar and linked to the same abstract idea." *Caselas, LLC v. Verifone, Inc.,* 624 F. Supp. 3d 1328, 1334 (N.D. Ga. 2022). This is particularly appropriate if, for example, "the patentee does not present any meaningful argument for the distinctive significance of any claim limitations not found in the representative claim…." *Game Play Netw., Inc. v. Potent Sys., Inc.*, No. CV 23-32, 2024 WL 3226214, at *6 (D. Del. June 28, 2024).

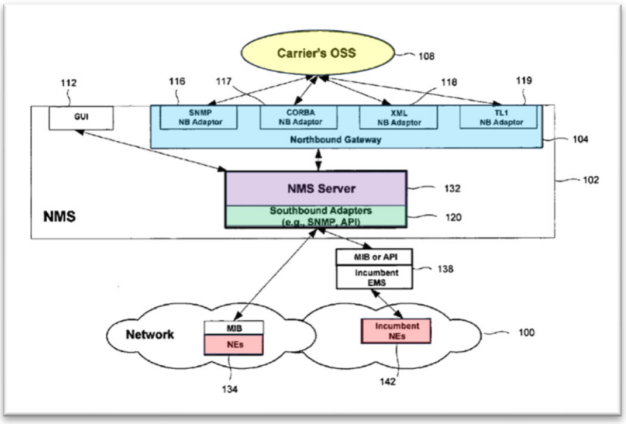
III. Each Asserted Patent Is Invalid Under Section 101

A. U.S. Patent No. 8,782,282 ("the '282 Patent")

1. Background

The '282 Patent was filed in December 2003 and is entitled "Network Management System." '282 Patent, Doc. 1-1. It starts with the commonsense observation that communication between components of computer networks can be facilitated by a management system, an observation that is equally applicable to deliveries over highways. In this manner, the patent explains that "[n]etwork management systems (NMS) facilitate the exchange of information" between network components. *Id.* at 1:11-12. Just like the problem created by an overused highway system, the specification explains that the increased use of computer networks required more efficient methods of navigation because "networks [were] grow[ing] in size" and generating "thousands of events." *Id.* at 1:17-18.

Figure 1 (reproduced at right and highlighted) illustrates the computer environment of the patent. The top of Figure 1 refers to a "Carrier's OSS" (yellow). A "Carrier" is a company (like Verizon or AT&T) that provides communications services over their networks. An "OSS" is an "Operations Support System," which is a generic term for a group of computer programs that oversee communications networks. The Carrier's OSS (yellow) is then connected to a Network Management System (or "NMS") server (purple). The NMS server is connected to the individual "network elements" (e.g. routers/switches) (red) in the computer network. *Id.* at 1:11-13.



Neither the specification nor the claims describe new hardware or software algorithms of the NMS to manage the elements of a network, nor does it purport to have invented NMS's. Unsurprisingly, the patent's NMS "use[s] various [Java] protocols" (4:31-33) that perform "typical" functions (5:24-29, 6:4-6). According to the specification, the NMS is an intermediary between the OSS and the network elements. The specification even uses generic directional nomenclature, referencing a "northbound (NB) gateway" (blue) to help transfer information in the top of the network (*id.* at 2:12-17), and "southbound (SB) adapter[s]" (green) that exchange

information in the bottom of the network (*id.* at 2:26-30). In the patent, the NMS acts like a central dispatcher routing a shipment to the north or south, with the adapters and gateway converting between communication formats.

2. The Claims of the '282 Patent Are Invalid

Independent claim 1 of the '282 Patent is representative, and it is also the exemplary claim in the Amended Complaint. *See, e.g.,* Am. Compl. ¶¶ 26, 70. It is reproduced below with the Amended Complaint's bracketed reference labels:

> **1. [Preamble]** A method, comprising:
>
> **[1A]** *receiving*, at a first application server instance selected from a plurality of application server instances based on a load balancing process, first adapter processed information from a first adapter, wherein the first adapter processed information comprises event information received by the first adapter from a network element and processed by the first adapter based on a first communication protocol;
>
> **[1B]** *processing*, by the first application server instance, the first adapter processed information based on an event management service to produce application processed information;
>
> **[1C]** *sending*, by the first application server instance, the application processed information to a gateway device, wherein the gateway device is one of a plurality of gateway devices respectively associated with the plurality of application server instances and is configured to transfer the application processed information to a second adapter of a plurality of second adapters configured to process the application processed information based on a second communication protocol to produce second adapter processed information and transfer the second adapter processed information to an operation support system device; and
>
> **[1D]** in response to determining that the first application server instance has become disabled, *facilitating establishing an association* between the first adapter and a second application server instance of the plurality of application server instances and between the gateway device and the second application server instance.

The patent contains one other independent claim (claim 3) with substantially

identical limitations, and 20 dependent claims that add trivial steps such as "converting . . . a protocol specific message" (claim 4) or "collecting, recording, or publishing the event information" (claim 7) that do not change the claim's nature.

a. Representative Claim 1 Fails the First Step of *Alice*

The '282 Patent recites the abstract idea of *receiving* data [1A], *processing* the data using a parameter [1B], and *retransmitting* the processed data [1C].[2]

Element **[1A]**. The "receiving" step recites the *location* of where the data is received ("at a first application server") and the *type of information* that is received ("event information received from the first adapter from a network element and processed by the first adapter based on a first communications protocol"). But limiting the performance of an abstract idea to a specific location or specific type of data does not satisfy Section 101. *Affinity Labs of Tex. v. DIRECTV, LLC*, 838 F.3d 1253, 1259 (Fed. Cir. 2016) ("merely limiting the field of use of the abstract idea to

[2] *See, e.g., Hawk Tech. Sys., LLC v. Castle Retail, LLC*, 60 F.4th 1349, 1353, 1357 (Fed. Cir. 2023) (claims to receiving, converting, storing, and transmitting digital signals deemed abstract); *Miller Mendel, Inc. v. City of Anna*, 107 F.4th 1345, 1352 (Fed. Cir. 2022) ("the claims are directed to receiving, storing, transmitting, determining, selecting, and generating information, which place them in the 'familiar class of claims directed to a patent-ineligible concept'"); *Prism Tech's LLC v. T-Mobile USA, Inc*., 696 F. App'x 1014, 1016-17 (Fed. Cir. 2017) (claims to "receiving" client computer identity data, "authenticating" identity data, "authorizing" client computer, and "permitting access" to the client computer was directed to the abstract idea of "providing restricted access to resources"); *Elec. Power*, 830 F.3d at 1351-53 ("collecting information, analyzing it, and displaying certain results of the collection and analysis" deemed abstract).

a particular existing technological environment does not render the claims any less abstract."). Nor does the conversion/adaptation from a "first communication protocol" change the abstract nature of the claim. *Hawk Tech.*, 60 F.4th at 1357 ("converting information from one format to another ... is an abstract idea"); *Adaptive Streaming Inc.*, 836 F. App'x at 903 ("fundamental communication practice of format conversion … is an abstract idea"). Nor is the recitation that the "server instance" be "selected ... based on a load balancing process" anything but abstract. This language does not specify new software or hardware for *how* to balance load, but merely recites the result—a hallmark of abstraction. *Elec. Power,* 830 F.3d at 1355-56 ("essentially result-focused, functional character of claim language has been a frequent feature of claims held ineligible under §101.").

Element **[1B]**. This step specifies where to process the received data (at "the first application server") and then states that processing is done "based on an event management service." Using a conventional processing structure (an application server) or reciting an open-ended basis ("based on an event management service") merely claims "a result or effect that itself is the abstract idea and merely invokes generic processes and machinery." *Two-Way Media*, 874 F.3d at 1337.

Element **[1C]**. This step states *where* to send data: to "a gateway device" that is "configured to transfer the application processed data to a second adapter." Sending data to a specific location does not make the claim any less abstract,

however. For a thing to be "sent," that thing must be sent *somewhere.* A recitation that the *somewhere* is a particular location is still abstract. *Intellectual Ventures I LLC v. Cap. One Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017) ("Although these data structures add a degree of particularity to the claims, the underlying concept embodied by the limitations merely encompasses the abstract idea itself…"). An adapter is a generic component, and it does not transform the claim. *Hawk Tech.,* 60 F.4th at 1357; *Adaptive Streaming*, 836 F. App'x at 903.

Element **[1D]**. The final step of the claim—"in response to determining that the first application server has become disabled, facilitating establishing an association between the first adapter and a second application server instance and between the gateway device and the second application server instance"—describes a final step that is untethered from the other steps. It states that when one thing becomes disabled ("the first application server"), then *something else* takes its place. The tongue-twisting language of that *something else* ("facilitating establishing an association") is "essentially result-focused, functional" language. It does not describe *how* to determine if the server is disabled, nor *how* to facilitate the recited association. *Elec. Power*, 830 F.3d at 1355. Moreover, this final step is just a post-solution activity, *i.e.*, taking an unrelated step after data has been received, processed, and sent. The idea of using a different computer after one fails is like using a different truck to deliver the mail after one has a flat tire. *Mayo*, 566 U.S. at

82 ("[P]ost-solution activity" that is purely "conventional or obvious" "can[not] transform an unpatentable principle into a patentable process.").

The Amended Complaint asserts the legal conclusion that "[t]he '282 Patent is directed to improvements to computer network technology." Am. Compl. ¶¶ 24-25. Plaintiff thus seeks to plead itself into alignment with the body of caselaw where patents have survived Section 101 challenges. The main supporting allegation, however, is the equally conclusory statement that the patent describes "a network management system that is robust, scalable, and capable of efficiently handling a growing network." *Id*. (quoting 1:23-25). Plaintiff's addition of a string of functional adjectives ("robust, scalable, and capable of efficiently handling…") to a conventional component (a "network management system") does not satisfy *Alice*. Worse, those aspirations are not even claimed. *Implicit LLC v. Home Depot U.S.A., Inc.*, 676 F. Supp. 3d 1312, 1322 (N.D. Ga. 2023). The claims recite only a "load balancing process", which in the specification is just a high-level idea/outcome for a conventional computer environment ("such as selecting the lightest loaded server"). Far from answering the "how" question, the '282 Patent says the reader *already knows how* to do this: "any load balancing algorithm that is appropriate" can be used. 8:53-54. Plaintiff's expert declaration then parrots these allegations, framing them as "[his] opinion," but adding no technical basis. Doc. 34-4, ¶¶ 33, 35.

b. Representative Claim 1 Fails the Second Step of *Alice*

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The '282 Patent describes implementing the claimed invention using generic components and existing hardware and software.[3] The specification describes the invention's components in aspirational terms (that communications somehow will be faster and more efficient), which is a telltale sign of patent ineligibility at the second step. *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359, 1365 (Fed. Cir. 2020) ("[G]eneric speed and efficiency improvements inherent in applying the use of a computer to any task ... [are] not an improvement in the functioning of the computer itself."); *Secured Mail Sols. LLC v. Universal Wilde, Inc.,* 873 F.3d 905, 910 (Fed. Cir. 2017) (using an abstract idea "to make a process more efficient…does not necessarily render an abstract idea less abstract.").

Likewise, the patent specification describes the network management system (the NMS) functionally as merely "a system responsible for managing a network." 2:38-40. It then states that "[a] carrier may operate a OSS over the NMS to manage the entire network to provide services through the growing network." *Id.* at 2:46-48. Other components are also described in such open-ended, aspirational terms, *e.g.*, the "NB gateway…processes and distributes information *appropriately* to adapters." *Id.* at 4:23-25. This is like saying the way to fly to Mars in a fuel-efficient manner is

[3] The components are generic and functionally claimed, regardless of whether they are interspersed in long phrases. *See, e.g.,* [1C] ("the gateway device is one of a plurality of gateway devices respectively associated with the plurality of application server instances and is configured to transfer the application processed information to a second adapter of a plurality of second adapters.")

to have a rocket with the *appropriate* mechanisms to be fuel efficient. That is a goal, not an invention.

The Amended Complaint asserts that parts of elements [1A], [1C], and [1D] "were not well-understood, routine, or conventional" because "the examiner allowed claim 1." Am. Compl. ¶¶ 30, 31. That argument would undo all case law under Section 101 for a simple reason: *all* patents are issued by a patent examiner who allowed the claims because the examiner concluded (by definition) that the prior art does not sufficiently teach or disclose the recited limitations of the claims. This type of "block quote of the examiner's reasons for allowance over prior art" is immaterial to patent eligibility. *Symbology Innovations, LLC v. Dexcom, Inc.*, 742 F. Supp. 3d 702, 713 (E.D. Tex. 2024). Nor did the examiner reference Section 101; reference to novelty and non-obviousness outcomes are distinct from Section 101. *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016); *SAP v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018). Likewise, the silence in the declaration from Plaintiff's expert—*i.e.*, his failure to identify any specific, unconventional structure in these claims, much less how or why such a structure would be regarded as unconventional—is deafening.

B. U.S. Patent No. 9,485,176 ("the '176 Patent")

1. Background

The '176 Patent also applies basic concepts of route-planning to the

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conventional structures of a computer network. The patent uses an additional term—"pseudowire"—that also was conventional. The specification confirms that psuedowires were so conventional that they had been standardized: "MPLS Psuedowire[s] [are] defined in IETF PWE3 WG." '176 Patent (Doc. 1-2) 4:15-17.[4] The '176 Patent claims priority to an application filed in August 2007 and is entitled "Global IP-Based Service Oriented Network Architecture" (shortened to "GIBSON"). It describes a "service facilitation architecture." *Id.* at 3:3-4.

The '176 specification reads like a map that coordinates dispatches for deliveries. It states that its "service facilitation architecture" will be "built above some network protocols but maps downward to other technologies." *Id.* at 3:3-6. The architecture thus "create[s]…service relationships" between existing network pieces, and it merely describes information flowing across the network. *Id.* at 3:7-8. The specification recites generic network components combined with techno-sounding verbs, *e.g.*, "*interface[*ing] with a provider's management plane for service discovery and mapping, and *leverage[ing]* standard-based MPLS Psuedowire techniques to *interface with* network routers and switches" *Id.* at 3:18-20.

After observing that network components should be "interfaced" and

[4] The IETF defines a pseudowire (PW) as "a mechanism that emulates the essential attributes of a telecommunications service...over a [packet switched network] .... The required functions of PWs include encapsulating service-specific bit streams, cells, or PDUs arriving at an ingress port and carrying them across an IP path or MPLS tunnel." https://datatracker.ietf.org/doc/html/rfc3985 (pub. 3/05; last visited 2/3/25).

"leveraged," the specification leaps to the same goal as the '282 Patent: efficiently handle large amounts of data from multiple sources. *Id.* at 3:23-25. These relationships—*i.e.*, basic maps of data flows—are described in the high-level flow diagrams of Figures 1B, 1C, and 1D of the '176 Patent. These functions—receiving data, classifying data, and performing operations on data based on a policy—are basic computing functions. *Content Extraction & Trans. LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (invalidating patent on "collecting," "recognizing," and "storing that recognized data"). Likewise, the specification's description of the "features" of this "architecture" is aspirational and detail-free: an "open interface," being "[f]low type agnostic," and "provid[ing] consistent edge-to-edge per-flow forwarding behavior." *Id.* at 3:31-46. None of this provides a technological solution in the claims. *Implicit LLC*, 676 F. Supp. 3d at 1322.

2. The Claims of the '176 Patent Are Invalid

Plaintiff uses claim 9 as an exemplary claim, and it is representative:

> **9. [Preamble]** A system, comprising:
>
> a processor, coupled to a memory that stores instructions, that executes or facilitates execution of the instructions to at least:
>
> **[9A]** *encapsulate* a data packet, received by a first node device of a first network associated with a first service provider entity, with a pseudowire label determined based on an application flow identified by an application header of the data packet; and
>
> **[9B]** *select*, based on the application flow, a routing policy from a set of application-specific routing policies defined for the first network, wherein the routing policy instructs that the data packet is to traverse at least a second network, comprising a second node device and associated with a second

> service provider entity, in transit to a third network comprising a third node device and associated with a third service provider entity.

The patent contains two other substantively identical independent claims (1 and 18),[5] plus 17 dependent claims that add trivial elements such as defining "the first and third network [as] associated with respective different network technologies" (claim 4) or "determining that the data packet satisfies a business policy" (claim 5).

a. Representative Claim 9 Fails the First Step of *Alice*

The '176 Patent claims "encapsulat[ing]" a data packet "with a psuedowire label based on an application flow", and then "select[ing], based on the application flow, a routing policy" where to send the data. The claim is focused on an intangible "application flow" that is used to create "labels" for various packets. In substance, the claim recites *labelling* a package ("encapsulating…with a pseudowire label) and then *sending* that package using different routes ("select...a routing policy"). This is like labelling some packages for air mail and others for standard delivery.

The Federal Circuit does not equate the recitation of these basic types of computer functions with claims that improve the function of a computer in a concrete way. For example, in *Dropbox, Inc. v. Synchronoss Techs., Inc.*, the Federal Circuit

[5] The Amended Complaint's shift from claim 1 (a method claim) to claim 9 (a system claim) does not cure the §101 defect. *See Alice*, 134 S. Ct. at 2351 (finding "the system claims [we]re no different from the method claims in substance" and "[t]his Court has long 'warn[ed] … against' interpreting § 101 'in ways that make patent eligibility depend simply on draftsman's art'" (quoting *Mayo*, 132 S. Ct. at 1294)).

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found patent claims that performed data backups by "[f]ormatting data, tagging data, transmitting data, and retrieving data" to be abstract. 815 Fed. Appx. 529, 537 (Fed. Cir. 2020) (internal citations omitted); *see also Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1315 (Fed. Cir. 2019) (claims not "directed to improving Internet-incapable data capture devices" because "[t]he asserted claims are drawn to the idea of capturing and transmitting data from one device to another."). Again, the additional verbiage in the '176 Patent does not save it.

Element **[9A]**. This element recites *encapsulating* a "data packet," but a data packet is the basic component that traverses any packet-based network (like the Internet). This claim element merely recites that the encapsulation is done "by a first node of a first device," *i.e.*, an open-ended reference to a node that can perform the basic function of encapsulation. *See* '176 Patent 4:42-45. Element [9A] then states, in functional terms, that a "node" is associated with a "network" that is in turn associated with a "service provider entity." There is no new hardware or software. The claim then says to look at "an application header of the data packet" to apply a label. This claim is like the claim invalidated in *Adaptive Streaming*, which included "a broadcasting server coupled to [a] processor" and a "transcoding module" for creating transcoded data "from the first into multiple compressed output video signals having respective second compression formats based at least in part on the parameters." 836 Fed. Appx. at 901-02. Like *Adaptive Streaming*, looking at an

application flow or performing the claim at a first node narrows the claim, but it does not make it any less abstract. *Id*. at 903. Likewise, the silence of Plaintiff's expert tacitly conceded that the computer components here are each conventional.

Moreover, the claims never recite *how* to use any particular application header to determine an application flow, nor *how* to then use that determination with pseudowires. The claim is written in results-oriented functional language directed to the outcome. "[A] claim must have the specificity required to transform the claim from one claiming only a result to one claiming a way of achieving it." *Realtime Data*, 2023 WL 4924814, at *8; *Redwood*, 738 F. Supp. 3d at 518-521 (claim abstract because it lacked solution for making and carrying out the "determination").

Element **[9B]**. The second element is directed to *selecting* a routing policy, which then provides a generic route. It makes no difference that the route traverses a "first network," "a second network," and "a third network"—because that is no different than saying a dispatcher selects a route on highways that traverse three states. The reference to "second" and "third" "service provider entity," and to "nodes," likewise adds nothing concrete to the claims. The claims never define technical details for the types of network traversed, or any new hardware or software with inventive interfaces that improve how networks interact. §II.A; *Realtime Data*, 2023 WL 4924814, at *8; *Redwood*, 738 F. Supp. 3d at 518-521. Instead, the claim leaves out the technical details of exactly *how* to select the routing policy.

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The Amended Complaint again adds conclusory allegations that the patent "is directed to improvements to computer network technology." Am. Compl. ¶ 39. It alleges that "wireless traffic may travel through multiple networks" making it hard to "guarantee a Quality of Service (QoS) traffic delivery," *id*., but that "[t]he disclosed GIBSON architecture provides a specific, technological solution to a technical problem" by encapsulating data packets based on application headers. *Id*. at ¶ 41. The only claimed solution, however, is to classify the data. The Complaint references the use of "layer 4 and above" headers and making selections "independent of underlying network transport tunneling," but those are unclaimed. *Id.* at ¶¶ 41, 43. Even then, they would be at most, a combination of abstract ideas.

b. Representative Claim 9 Fails the Second Step of *Alice*

The '176 Patent lacks a non-abstract inventive concept. The specification confirms that the "concept" of the invention is not new hardware, new software, or even new technical details. Instead, it focuses on "the definition of [a] business policy interfacing between the management-plane and network nodes." '176 Patent 7:43-45. As discussed above, the patent uses existing, conventional hardware and software to do this. Likewise, the idea of a "business policy" is abstract and unclaimed. It is irrelevant that "[i]nstead of looking through Layer 1 or Layer 2 headers as IETF PWE3 WG defines Psuedowires, GIBSON Psuedowires search through application headers to identify data flows." *Id.* at 6:9-12. Looking through

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data is still an abstract idea. *SAP*, 898 F.3d at 1170. And reciting the examiner's reasons for allowance does not move the needle. *See* Am. Compl. ¶¶ 44-45.

C. U.S. Patent No. 10,735,320 ("the '320 Patent")

1. Background

The '320 Patent has the same inventors as the '176 Patent and applies the same concepts of route-planning to the conventional structures of a computer network, using industry-standard pseudowires. The '320 Patent categorizes data as being part of a given "application flow", decides how to route the flow, and then routes it. The patent's thrust is thus sorting communications using conventional computer elements: psuedowires. It admits that "MPLS networks use Psuedowires to map…traffic flows into virtual circuits." *Id*. at 1:33-35.

The problem addressed by the patent is that "[s]ince existing MPLS networks only allow …connections to be mapped to Psuedowires in one-to-one mapping, the system typically cannot guarantee QoS [quality of service] for individual applications." *Id.* at 1:46-49. The patent proposes another abstraction to bridge this gap: "Application Wires," which are "the emulation of a virtual circuit or transparent wire for transferring one or multiple application flows." *Id.* at 3:17-19. The patent says that an Application Wire is *not* an actual wire or circuit, but rather a concept for "map[ping] one or more application flows into Psuedowires." *Id.* at 3:19-21. This concept is open-ended: "A number of mapping schemes are possible, such as one-

to-one mapping, a distributed mapping where an application flow is mapped to multiple Psuedowires, or an aggregated mapping where multiple flows are mapped to a single Psuedowire." *Id.* at 4:31-35. "The mapping scheme for each application flow is selected based at least in part on the bandwidth and traffic requirement associated with the application." *Id.* at 4:39-41. The routing scheme is selected based on the need in a given situation ("the bandwidth and traffic requirement associated with the application," *id.* at 4:39-41)—just like a tractor trailer needs to use a different route than a delivery van. Minus its jargon, the '320 Patent speaks in the functional language of identifying, mapping, and routing data.

2. The Claims of the '320 Patent Are Invalid

The Amended Complaint cites independent claim 8 of the '320 Patent as an exemplary claim, and that claim is representative:

> **8. [Preamble]** A device comprising:
> a processor; and a memory that stores instructions executable by the processor to:
> **[8A]** identify information associated with an application flow based on one or more unencapsulated packet headers of the application flow or based on an ingress data stream that includes the application flow;
> **[8B]** in response to identifying the information, and based on stored data that maps application flows with psuedowires, determine a plurality of pseudowires corresponding to paths through the MPLS network, wherein the stored data indicates, for a sending device application, a distributed mapping of the application flow via at least one of the plurality of psuedowires; and
> **[8C]** communicate data related to the sending device application via at least one of the plurality of pseudowires.

The '320 Patent has two other independent claims (1 and 15) that are substantively

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identical to claim 8, plus 17 dependent claims that merely add aspirational features like an "application wire configured to communicate particular data" (claim 2) or "virtually coupl[ing]…a particular device and particular application" (claim 5).

a. Representative Claim 8 Fails the First Step of *Alice*

Like the '282 and '176 Patents, the '320 Patent is directed to "identifying information" and then, based on the identified information, "determining…paths" through a network. The claims compare the identified data with "stored data that maps application flows" to routes. The '320 Patent is thus drawn to the abstract idea of identifying, mapping, and routing data. Again, the extra words add nothing.

Element **[8A]**. This element identifies information that is somehow "associated with an application flow", *i.e.*, information about a communication. Likewise, "unencapsulated packet headers" and "ingress data stream[s]" are other types of data, not hardware or software. This is like saying a postman should determine information about the type of mail to deliver by looking at the mail.

Element **[8B]**. This element looks at what "the stored data indicates" to determine a route. Again, this is like delivering mail differently based on its type, and checking a list to find out how different types should be delivered. The claim refers to using "a distributed mapping of the application flow," but does so in functional, results-oriented language. Absent from the claim is a specific hardware or software structure for *how* to use the information (which was identified in [8A])

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to actually segregate application flows into a distribution of pseudowires. §II.A; *Realtime Data*, 2023 WL 4924814, at *8; *Redwood*, 738 F. Supp. 3d at 518-521.

Element **[8C]**. The final element recites the post-solution step of "communicating data related to the sending device application." This describes what to do with the data once the identification and processing is complete, *i.e.*, send it.

The Amended Complaint alleges the patent "is directed to improvements in computer network technology" and that prior solutions were "not scalable or efficient," but concedes the invention is a "mapping scheme" or "data transfer scheme" that looks at how much bandwidth is needed and routes accordingly. Am. Compl. ¶¶ 53-55. Calling an abstract idea a "scheme" does not make it patentable.

b. Representative Claim 8 Fails the Second Step of *Alice*

Rather than describing new hardware or software, the specification discusses generic classifying and organizing of data. *See*, *e.g.*, 5:52-56 ("In some embodiments, a database of available Psuedowires is searched to find one or more suitable Psuedowires for carrying the application flow."). The criteria is non-technical and common-sensical: "Aggregation is appropriate when, for example, the application flows are similar and have the same priority level." *Id.* at 5:61-63. On the flip side, "a large flow" can be "split into several Psuedowires," *Id.* at 5:65-6:1. This commonsense handling of data is abstract. *SAP*, 898 F.3d at 1170. At best, it relates to results-oriented functional claiming, not a specific technological solution.

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Respectfully submitted,

DUANE MORRIS LLP

/s/ Alice E. Snedeker

Matthew C. Gaudet (GBN 287789)
mcgaudet@duanemorris.com
Alice E. Snedeker (GBN 151066)
aesnedeker@duanemorris.com
Jayla C. Grant (GBN 312669)
jcgrant@duanemorris.com
DUANE MORRIS LLP
1075 Peachtree Street, Suite 1700
Atlanta, Georgia 30309
Telephone: 404.253.6900
Facsimile: 404.253.6901

John Matthew Baird (admitted *pro hac vice*)
jmbaird@duanemorris.com
Paul H. Belnap (admitted *pro hac vice*)
phbelnap@duanemorris.com
Brian H. Pandya (admitted *pro hac vice*)
bhpandya@duanemorris.com
DUANE MORRIS LLP
901 New York Avenue NW
Washington, DC 20001
Telephone: 202.776.7800

Counsel for Defendant
Ciena Corporation

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CERTIFICATES OF COMPLIANCE AND SERVICE

Pursuant to LR 7.1(D), the undersigned counsel certify that the foregoing has been prepared in Times New Roman 14 point, one of the fonts and points approved by the Court in LR 5.1(C). I further certify that on April 14, 2025, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send a copy to all counsel of record.

/s/ Alice E. Snedeker
Alice E. Snedeker

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