IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ALLIANCE LAUNDRY SYSTEMS LLC,	)	
	)	
Plaintiff,	)	C. A. No.: 24-733-MN
	)	
v.	)	**JURY TRIAL DEMANDED**
	)	
PAYRANGE INC.,	)	
	)	
Defendant.	)	

ALLIANCE LAUNDRY SYSTEMS LLC'S OPENING BRIEF IN SUPPORT OF ITS PARTIAL MOTION TO DISMISS PAYRANGE'S AMENDED COUNTERCLAIMS

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Plaintiff Alliance Laundry Systems LLC ("Alliance") respectfully submits this memorandum in support of its partial motion to dismiss Defendant PayRange Inc.'s ("PayRange") Counterclaims I-III on the bases that: the asserted claims of U.S. Patent Nos. 11,972,423 ("the '423 Patent"), 11,966,920 ("the '920 Patent"), and 11,481,772 ("the '772 Patent") fail to claim eligible subject matter pursuant to 35 U.S.C. § 101.[1]

I. NATURE AND STAGE OF THE PROCEEDINGS

Alliance filed its Complaint on June 20, 2024, seeking a declaratory judgment that Alliance does not infringe certain claims of the PayRange patents identified in pre-suit correspondence: the '423 Patent, the '920 Patent, and the '772 Patent (the "DJ Patents"). *See* D.I. 1. PayRange subsequently filed its Answer and Counterclaims, asserting infringement of claim 1 of the DJ Patents and U.S. Patent No. 10,891,608 ("the '608 Patent") (collectively, with the DJ patents, the "Asserted Patents"). *See* D.I. 11.

Alliance then filed a Motion to Dismiss PayRange's Counterclaims asserting that the asserted claims of the DJ Patents are invalid under 35 U.S.C. § 101 and that PayRange had failed to state a claim for the '608 Patent. D.I. 14. In lieu of a response to the Motion, PayRange filed an Amended Answer and Counterclaims, asserting infringement of claims 1, 4, 9, 10, 12-15, 17, and 19-20 of the '920 patent, claims 1, 3, 4, 6, 8-15, 17, 19, and 20 of the '423 patent, claim 11 of the '772 patent, and claims 1, 2, 5, 6-8, 11-13, and 17-19 of the '608 patent. D.I. 18.

PayRange has twice avoided a ruling on subject matter ineligibility of claim 11 of the '772

[1] Due to page constraints, Alliance is not challenging Count IV, PayRange's claim of infringement of the '608 Patent, at this time, although Alliance maintains that this patent is also invalid. Alliance is also not filing an Answer to Count IV because the filing of this Motion tolls the period for answering the entirety of the Counterclaims and default would be improper. *See, e.g.*, *Unbound Partners Ltd. P'ship v. Invoy Holdings Inc.*, 251 A.3d 1016, 1028 (Del. Super. Ct. 2021); 5B Wright and Miller, Fed. Prac. & Proc. Civ. § 1346 (3d ed.).

Patent by dismissing its suit before an adjudication. First, KioSoft Technologies, LLC ("KioSoft") filed a petition for post-grant review challenging all claims of the '772 patent as ineligible under 35 U.S.C. § 101. *KioSoft Techs., LLC v. PayRange Inc.*, PTAB-PGR2023-00042 (PTAB, Jul. 25, 2023) ("the '772 PGR"). Before the PTAB could reach an institution decision, PayRange voluntarily cancelled most of the claims of the '772 Patent, including claim 1. *See* D.I. 1, Ex. 5. Notably, the '772 PGR was filed shortly after the PTAB issued its final written decision in a PGR on U.S. Patent No. 10,891,614 ("the '614 Patent"), a parent patent to the '772 Patent. In the '614 Patent PGR, the PTAB found most claims, including claim 1, patent-ineligible. *See* D.I. 1, Ex. 4, *KioSoft Techs, LLC v. PayRange Inc.*, PTAB-PGR2021-00093 (PTAB, June 10, 2021) ("the '614 PGR"). Claim 1 of the '614 Patent is materially identical to claim 1 of the '772 Patent. *See* D.I. 1 at ¶ 27; *see also* Declaration of Sarah Waidelich ("Decl."), Ex. C at 4-9.

PayRange and the '772 Patent family also have history in this Court. While the dispute with KioSoft was ongoing, PayRange asserted the '772 Patent against CSC ServiceWorks, Inc. ("CSC") in this Court. *See PayRange Inc. v. CSC ServiceWorks, Inc.*, C.A. No. 23-278-MN, D.I. 1. CSC also challenged the '772 Patent under 35 U.S.C. § 101 by filing motions to dismiss under Rule 12. *See id.* at D.I. 8; D.I. 14; D.I. 79. Before this Court ruled, PayRange cancelled most claims of the '772 Patent in the PGR. *See* D.I. 1, Ex. 5. On April 17, 2024, CSC filed its second motion to dismiss asserting that claim 11 of the '772 Patent claims patent-ineligible subject matter. *See PayRange*, C.A. No. 23-278-MN, D.I. 79. One week after that motion was filed, and before this Court ruled, PayRange voluntarily dismissed the suit against CSC with prejudice. *Id.* at D.I. 82.

II. SUMMARY OF THE ARGUMENT

Alliance moves under Federal Rule of Civil Procedure 12(b)(6) to dismiss PayRange's Counterclaims I–III because the asserted claims of the DJ Patents are invalid under 35 U.S.C. § 101. As to Counterclaim III, claim 11 of the '772 Patent is materially identical to claim 1 of the

’614 Patent, which the PTAB has already found ineligible. Claim 11 also adds nothing material over claim 1 of the ’772 Patent, which PayRange voluntarily disclaimed prior to the PTAB’s decision on Section 101. Claim 11 should be finally determined as invalid under Section 101.

As to Counterclaims I and II, the ’920 and ’423 Patents issued in April 2024, and therefore no party has had an opportunity to challenge them. But claim 1 of the ’920 Patent is materially identical to claim 11 of the ’772 Patent. *See* Decl., Ex. A. And claim 1 of the ’423 patent is broader than claim 1 of the ’772 Patent, which PayRange disclaimed in the face of an eligibility challenge. *See id.*, Ex. B. The asserted claims of the ’423 and ’920 Patents should also be found ineligible.

III. STATEMENT OF FACTS

The Asserted Patents share a common specification and claim priority to the same provisional patent application, filed on December 18, 2013. *See* D.I. 18, Exs. E, G, H, I. The common specification explains that vending, or automatic retailing machines “have been around for thousands of years.” *See, e.g., id.* at Ex. E, 1:45-46. The common specification further explains that vending machines are “one type of ‘payment accepting unit,’” which is described as “equipment that requires payment for the dispensing of products and/or services.” *Id.* at 1:54-58. The specification identifies other types of payment accepting units including “parking meters, toll booths, laundromat washers and dryers, arcade games, kiosks, photo booths, …[and] transit ticket dispensing machines[.]” *Id.* at 1:58-65. The specification concedes that “[m]obile payment [the subject of the asserted claims] is a logical extension” of pre-existing payment accepting units that required insertion of coins, bills, or cards. *Id.* at 2:10-12 (emphasis added).

The DJ Patents share a common title: “Method and System for Presenting Representations of Payment Accepting Unit Events.” The claims of the DJ Patents recite using a mobile device to select a payment accepting unit and exchange information with the payment accepting unit to transact payment. Claim 1 of the ’772 Patent, upon which claim 11 depends, recites:

Limitation	Text of Claim
1.a	**1.** A method of presenting representations of payment accepting unit events, comprising:
1.b	at a mobile device with one or more processors, memory, one or more output devices including a display, and one or more radio transceivers:
1.c	identifying one or more payment accepting units in proximity to the mobile device that are available to accept payment from a mobile payment application executing on the mobile device, the identifying based at least in part on an identifier corresponding to the one or more payment accepting units, wherein the one or more payment accepting units are payment operated machines that accept payment for dispensing of products and/or services;
1.d	displaying a user interface of the mobile payment application on the display of the mobile device, the user interface being configured to display a visual indication of the one or more payment accepting units and accept user input to (i) receive selection by a user of the mobile device of an available payment accepting unit of the one or more payment accepting units and (ii) trigger payment by the mobile payment application for a transaction initiated by the user of the mobile device with the available payment accepting unit of the one or more payment accepting units;
1.e	establishing via the one or more radio transceivers a wireless communication path including the mobile device and the available payment accepting unit of the one or more payment accepting units; after establishing the wireless communication path, enabling user interaction with the user interface of the mobile payment application to complete the transaction;
1.f	exchanging information with the available payment accepting unit via the one or more radio transceivers, in conjunction with the transaction; and
1.g	after exchanging the information, displaying, on the display, an updated user interface of the mobile payment application to the user of the mobile device.

Claim 11 depends from claim 1 and adds the following limitations:

Limitation	Text of Claim
11.a	The method of claim 1, wherein the user interface of the mobile payment application, after establishing the wireless communication path, includes:
11.b	a visual representation of the available payment accepting unit;
11.c	an indication of a prepared balance; and
11.d	an affordance that when slid, indicates the initiation of the transaction; wherein the affordance is slid in response to receiving a user input of swipe on the affordance displayed on the display of the mobile device.

The ’423 Patent and the ’920 Patent are continuations of the ’772 Patent. *See* D.I. 18, Exs. E, G, H. The asserted claims of the ’423 Patent are nearly identical to the corresponding, now-disclaimed claims of the ’772 Patent; in fact, the asserted claims of the ’423 Patent are actually

broader than the corresponding disclaimed claims of the ’772 Patent. Independent claims 13 and 15 of the ’423 Patent are nearly identical to claim 1 of the ’423 Patent, except claim 13 is applied to a mobile device and claim 15 is applied to a non-transitory computer readable storage medium.

Claim 1 of the ’920 patent is nearly identical to claim 11 of the ’772 Patent; in fact, claim 1 of the ’920 Patent is broader than claim 11 of the ’772 Patent. Claims 13 and 15 of the ’920 patent are identical to claim 1 of the ’920 patent, except claim 13 is applied to a mobile device and claim 15 is applied to a non-transitory computer readable storage medium. Differences between the asserted claims of the ’920 and the ’423 Patent, and the corresponding ’772 Patent claims, are shown in redline in the attached Exhibits A and B to the Declaration of Sarah Waidelich. *See also* D.I. 18, Exs. E, G, H. Differences between claim 1 and claims 13 and 15 of the ’920 Patent and the ’423 Patent, respectively, are shown in redline in the attached Exhibits D and E.

IV. LEGAL STANDARD: PATENT ELIGIBILITY UNDER 35 U.S.C. § 101

Patent eligibility under 35 U.S.C. § 101 is a question of law that may be determined on a Rule 12(b)(6) motion. *See, e.g.*, *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1373 (Fed. Cir. 2016). In ruling on a Rule 12(b)(6) motion, the Court must accept all well-pleaded factual allegations as true. *See Mayer v. Belichick*, 605 F.3d 223, 229 (3d Cir. 2010). However, a court need not accept as true allegations that contradict matters subject to judicial notice, “such as the claims and the patent specification.” *Yu v. Apple Inc.*, 1 F.4th 1040, 1046 (Fed. Cir. 2021).

Courts apply a two-step test for determining whether a patent claims ineligible subject matter. *See Alice Corp. Pty. Ltd. v. CLS Bank Intern.*, 573 U.S. 208, 217 (2014). At step 1, “the claims are considered in their entirety to ascertain whether their character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015). Courts look to 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 process and machinery." *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1371 (Fed. Cir. 2017).

If the claims are directed to a patent-ineligible concept, the second step of the test requires examination of the claim to determine whether it contains an inventive concept "sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Alice*, 573 U.S. at 221. This inventive concept must do more than simply recite "well-understood, routine, conventional activity[.]" *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 82 (2012).

V. ARGUMENT

A. Claim 11 of the '772 Patent is Ineligible for Patenting as a Matter of Law

PayRange fails to state a claim for relief as to Counterclaim Count III because claim 11 of the '772 Patent is directed to an abstract idea and lacks an inventive concept.

1. Step One: Claim 11 of the '772 Patent is Directed to an Abstract Idea

Claim 11 of the '772 Patent is directed to the abstract idea of displaying information to enable a commercial transaction with a merchant. As the '772 Patent readily acknowledges, humans have facilitated such transactions "for thousands of years." *See* D.I. 18, Ex. E at 1:45-53.

Claim 11 is similar to claim 1 in *In re AuthWallet, LLC*, No. 2022-1842, 2023 WL 3330298 (Fed. Cir. May 10, 2023), which the Federal Circuit found was directed to an ineligible abstract idea. *Id.* at *3 The claim at issue there was directed to a computer-implemented method for making a purchase in which customers apply "stored value items" (such as coupons) to the purchase. *Id.* at *1. The claim comprised the following steps: (1) receive an authorization request from one of a plurality of possible points of purchase, (2) identify one or more stored items to apply to the transaction, (3) transmit a transaction indication to the user's mobile device, where the indication includes information about the stored item, (4) the user indicates whether the stored value item should be applied, (5) apply stored value item, and (6) provide updated payment amount to user.

See id. at *1. AuthWallet argued that the claims were eligible because they provided a security protocol for authorizing transactions through an intermediary service. *See id.* The Federal Circuit rejected this argument and found that the claim was directed to a "longstanding commercial practice." *Id.* at *3. It further held that, even if the claims include this feature, they were directed to an abstract idea because they recite generic steps and results. *Id.* at *4.

Claim 11 of the '772 Patent is similarly directed to the longstanding commercial practice of displaying information to enable a commercial transaction from a merchant, which the Federal Circuit has repeatedly found is an abstract idea. *See, e.g.*, *cxLoyalty, Inc. v. Maritz Holdings Inc.*, 986 F.3d 1367, 1376-77 (Fed. Cir. 2021) (facilitating transaction via user interface); *Smart*, 873 F.3d at 1371 (method for paying fare with a credit card); *Universal Secure Registry LLC v. Apple Inc.*, 10 F.4th 1342, 1349 (Fed. Cir. 2021) (enabling transaction using time-varying code).

Further, claim 11 is "not directed to a combined order of specific rules that improve any technological process[.]" *See Smart*, 873 F.3d at 1372. Claim 1, from which claim 11 depends, recites the following results-oriented steps: (1) identify a payment accepting unit (limitation 1.c), (2) display a user interface that triggers payment in response to user selection (1.d), (3) establish wireless communication between mobile device and payment accepting unit (1.e), (4) transmit information from mobile device to payment accepting unit (1.f), and (5) display an updated user interface on mobile device (1.g). Dependent claim 11 recites the following additional results-oriented steps: (1) the user interface displays a prepared balance (11.c), (2) the user triggers payment by "sliding" an "affordance" (11.d).

Claims 1 and 11 do not speak to specific technical problems or solutions to perform these generic steps and results. *See, e.g.*, *Smart*, 873 F.3d at 1372; *Intell. Ventures I LLC v. Erie Indemnity Co.*, 850 F.3d 1315, 1328 ("The claims are not focused on <u>how</u> usage of XML tags

alters the database in a way that leads to an improvement in the technology") (original emphasis). Rather, the steps are performed using generic, well-known technology. *See, e.g.*, *id.* The claimed mobile device is defined generically as a "user's personal mobile device" including "smart phones, tablets or laptop computers…or other technology known or yet to be discovered." D.I. 18, Ex. E at 8:59-9:26. The accompanying software application "include[s] any software program(s) capable of implementing the features described[.]" *See id.* The payment accepting unit is "equipment that requires payment for the dispensing of any product and/or service," including "vending machines, parking meters, toll booths, laundromat washers and dryers…and other known or yet to be discovered payment accepting units." *Id.* at 9:27-34. The claimed wireless communication is performed using "any wired or wireless technology that could be used to communicate a small distance" such as "Bluetooth" or "radio frequency identification." *Id.* at 9:39-10:16.

The user interface is also generically described as a display on a mobile device comprising a touch screen. *Id.* at 36:12-17. *See Int'l Bus. Machs. Corp. v. Zillow Grp., Inc.*, 50 F.4th 1371, 1380 (Fed. Cir. 2022) (displaying information on a "generic display device is abstract absent a 'specific improvement to the way computers [or other technologies] operate.'"). Further, the claimed "slide" or "swipe" function is described as inherent to the user's mobile device[2]. *See* D.I. 18, Ex. E at 7:9-14, 36:33-44; *see GREE, Inc. v. Supercell Oy*, 855 Fed. App'x 740, 742-43 (Fed. Cir. 2021) (user interface not inventive when "described without specificity at a generic level").

In summary, claim 11 recites no more than a generic mobile device and application that transmits, receives, and displays machine and transaction information using known transmission protocols, and thus broadly covers the abstract idea of displaying information to enable a

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[2] PayRange is attempting to read the "slide" feature even more generically by asserting the doctrine of equivalents. *See* D.I. 18, Ex. L at 13 (asserting that a "button performs substantially the same function in substantially the same way" as the "slide" limitation).

commercial transaction from a merchant. *See, e.g.*, *cxLoyalty*, 986 F.3d at 1376-77; *In re AuthWallet*, 2023 WL 3330298, at *3.

PayRange alleges that a "significant advantage" of the '772 Patent is the "the capability to display one or more multiple [sic] payment accepting units…in proximity to a mobile device," such that a user may "select one of many different machines based on proximity and availability[.]" *See* D.I. 18, ¶ 59 (emphasis added). But claim 11 does not require the display of multiple payment accepting units. It only requires display of "one or more payment accepting units." *Id.* at Ex. E (emphasis added); *see also Diogenes Ltd. v. DraftKings, Inc.*, 623 F. Supp. 3d 423, 433 (D. Del. 2022) ("The Court need not…accept as true bald assertions, unsupported conclusions or unwarranted inferences."). Consequently, PayRange cannot rely on this supposed advantage to demonstrate subject matter eligibility. *See Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, 967 F.3d 1285, 1293 (Fed. Cir. 2020), *cert. denied*, No. 20-891, 142 S. Ct. 2901 (2022) ("features that are not claimed are irrelevant").

PayRange also alleges that this purported "solution" is absent from the prior art. D.I. 18 at ¶ 59. But "'novelty'…is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories." *Brit. Telecomms. PLC v. IAC/InterActiveCorp*, 381 F. Supp. 3d 293, 316 (D. Del. 2019), *aff'd*, 813 F. App'x 584 (Fed. Cir. 2020). PayRange also alleges, without support, that the information provided in claim 11 was not previously "easily accessible to users." D.I. 18, ¶ 60; *see Diogenes*, 623 F. Supp. 3d at 433. But this information (i.e., the available merchant, the customer's balance, and the transaction) is necessarily exchanged during any commercial transaction. *See* D.I. 18, ¶ 60; *see also cxLoyalty*, 986 F.3d at 1377 ("Humans have long intermediated these very transactions by collecting and relaying the very same information."). Displaying this information on a conventional mobile device does not change the fact that this

claim is directed to an abstract idea. *See id.*

2. Step Two: Claim 11 of the '772 Patent Fails to Recite an Inventive Concept

Claim 11 fails step 2 because the claim elements, when viewed individually and as an ordered combination, fail to recite "an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Alice*, 573 U.S. at 221. As discussed above, claim 11 recites the use of conventional and generic devices for requesting, transmitting, and displaying information using known, standard technology. *See, e.g.*, *cxLoyalty*, 986 F.3d at 1377.

PayRange alleges that claim 11 is unconventional because it allows a user to use their mobile device to select one of many machines based on proximity and availability. *See* D.I. 18, ¶ 59. But, as discussed above, this allegation improperly relies on unclaimed features. *See Am. Axle & Mfg.*, 967 F.3d at 1293. In addition, claim 11 does not describe any improvement to the functionality of the mobile device that "allows" a user to make these selections. *See Int'l Bus.*, 50 F.4th at 1379 ("the district court need not accept a patent owner's conclusory allegations of inventiveness."). Claim 11 merely describes facilitating a transaction using a generic mobile device and interface. *See, e.g.*, D.I. 18, Ex. E, 8:59-9:26; *Innovation Sciences, LLC v. Amazon.com, Inc.*, 778 F. App'x 859, 864 (Fed. Cir. 2019) ("There is no inventive concept in the claim's use of a generic payment server to perform well-understood, routine, and conventional activities.").

PayRange's allegation that this solution is absent in the prior art does not alter this analysis. Claim 11 does not introduce any technical advance or improvement to the technology and therefore it does not amount to "significantly more than a patent upon the [abstract idea] itself." *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1152 (Fed. Cir. 2016); *see also cxLoyalty*, 986 F.3d at 1378 ("[T]he claims solve this purported problem by applying an abstract idea using conventional techniques specified in functional terms and at a high degree of generality.").

PayRange also alleges (without support) that claim 11 is unconventional because the available payment accepting units, prepared balance, and indication of the transaction are shown on an interface on the user's mobile device, rather than the payment accepting unit. D.I. 18 at ¶ 60; *see Int'l Bus.*, 50 F.4th at 1379. But applying an abstract idea to a generic mobile device does not transform a claim into patent-eligible subject matter. *See, e.g.*, *Intell. Ventures I*, 850 F.3d at 1331. That is particularly true here, where the claims do not recite a technological advance in the mobile phone or its user interface. *See id.*

For at least these reasons, claim 11 of the '772 Patent fails both steps of the *Alice*/*Mayo* test and should be finally determined as invalid under 35 U.S.C. § 101.

3. PayRange Should be Collaterally Estopped from Arguing that the Features of the Cancelled '772 Patent Claims are Inventive

The above analysis demonstrates why claim 11 of the '772 Patent is invalid under *Alice/ Mayo*. However, the litigation history of this patent family further supports an invalidity finding because PayRange should be collaterally estopped from re-arguing certain issues it previously lost.

Collateral estoppel applies where, in a first action: an identical issue is decided, the issue was actually litigated, resolution of the issue was essential to a final judgment, and the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue. *Google LLC v. Hammond Dev. Int'l, Inc.*, 54 F.4th 1377, 1381 (Fed. Cir. 2022). The Federal Circuit has held that, when the PTAB issues a final judgment on the validity of a patent claim, collateral estoppel applies to district court actions involving the same or a nearly identical patent claim. *See, e.g.*, *id.*; *Kroy IP Holdings, LLC v. Groupon, Inc.*, No. 17-1405, 2022 WL 17403538, at *4 (D. Del. Dec. 2, 2022). "Complete identity of claims is not required[.]" *Soverain Software LLC v. Victoria's Secret Brand Mgmt., LLC*, 778 F.3d 1311, 1319 (Fed. Cir. 2015). "If the differences [between claims] do not materially alter the question of invalidity, collateral estoppel applies." *Id.*

PayRange alleges that claim 11 is unconventional because it: (1) includes a user interface on a user's mobile device that displays available payment accepting units and (2) allows a user to select a payment accepting unit based on proximity and availability using that user interface. *See* D.I. 18, ¶¶ 59-60. These alleged advantages are purportedly recited by the limitations in cancelled claim 1. *See* limitations 1.c, 1.d. However, claim 1 of the '614 Patent, which is materially identical to claim 1 of the '772 Patent, has already been found patent-ineligible by the PTAB. *See* D.I. 1, Ex. 4, 68. In the '614 PGR, PayRange argued that these same alleged advantages rendered claim 1 patent-eligible. *See id.* at 30-32, 37, 40-43. The PTAB rejected these arguments, finding that they "rest[ed] on the alleged novelty of the abstract idea itself, not a specific limitation *beyond the judicial exception*" and that the limitations are performed using "well-known, routine, and conventional wireless communications." *See id.* at 34-35, 37-40, 42-43 (original emphasis); *see also id.* at 35. Shortly thereafter, PayRange cancelled claim 1 of the '772 Patent. *See* D.I. 1, Ex. 5.

PayRange admitted in its preliminary response in the '772 PGR that claim 1 of the '772 Patent is materially identical to claim 1 of the '614 Patent for collateral estoppel purposes. *See* Decl., Ex. C, PTAB-PGR2023-00042, Paper 6 at 4-9[3]. PayRange also admitted that patentability of that claim was litigated in the '614 PGR and that this issue was essential to the judgment. *See* Decl., Ex. C, 8-9. Furthermore, PayRange had a full and fair opportunity to litigate those issues, and it chose not to file a request for rehearing or appeal the PTAB's decision. *See id.* at 9. Collateral estoppel therefore precludes PayRange from arguing that claim 11 of the '772 Patent is eligible for patenting by virtue of its dependency on cancelled claim 1[4].

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[3] The Board never issued a Final Written Decision in the '772 PGR because the petition was voluntarily terminated as part of a settlement between PayRange and KioSoft. *See* '614 PGR, PTAB-PGR2021-00093, at Paper 9.

[4] The reverse is not true with respect to Alliance's ability to challenge claim 11 of the '772 Patent, at least because Alliance had no opportunity to litigate the issue in the '614 PGR. In addition, the

B. The Asserted Claims of the ’920 and ’423 Patents are Ineligible for Patenting as a Matter of Law

PayRange’s counterclaim fails to state a claim for relief as to Counts I and II because the asserted claims of the ’423 Patent and ’920 Patent recite ineligible subject matter under § 101.

1. Claim 1 of the ’423 and ’920 Patents is Representative of the Other Asserted Claims

For purposes of this analysis, claim 1 of the ’423 Patent and claim 1 of the ’920 Patent are representative of the other asserted claims of the respective patents. The independent claims in both patents recite substantially the same limitations, but are presented in the forms of a method (claim 1), apparatus, i.e., mobile device (claim 13), and non-transitory computer storage readable medium (claim 15). *See* Decl., Exs. D, E. Further, the asserted “dependent claims merely add generic components and limitations that are conventional and uninventive.” *Ficep Corp. v. Peddinghaus Corp.*, 587 F. Supp. 3d 115, 120 (D. Del. Feb. 28, 2022); *see* Decl., Exs. A, B. The Court should therefore treat claim 1 of the ’423 Patent and claim 1 of the ’920 Patent as representative of the other asserted claims of the respective patents.[5] *See, e.g.*, *Voter Verified, Inc. v. Election Sys. & Software LLC*, 887 F.3d 1376, 1385 (Fed. Cir. 2018) (“While these claims encompass both methods and systems, we find there to be no distinction between them for § 101 purposes, as they simply recite the same concept.”); *Ficep*, 587 F. Supp. 3d at 120 (“A court may treat a claim as representative where all claims are ‘substantially similar and linked to the same abstract idea.’”).

2. Claim 1 of the ’423 Patent is Similar to, but Broader Than, Claim 1 of

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Board did not address eligibility of claim 11 of the ’614 Patent on the merits. It found that KioSoft failed to articulate why the additional claim 11 limitations were ineligible. *See* D.I. 1, Ex. 4 at 47.

[5] Should the Court have any reservations about treating these claims as representative, Alliance would appreciate an opportunity to file a supplemental brief (or, if appropriate, a Rule 12(c) motion) addressing any other asserted claims.

the ’772 Patent

Claim 1 of the ’423 Patent is largely identical to (disclaimed) claim 1 of the ’772 Patent, except that claim 1 of the ’423 Patent is broader in that it removes from limitation 1.d the requirement that the user interface accept user input “to (i) receive selection by a user of the mobile device of an available payment accepting unit of the one or more payment accepting units and (ii) trigger payment by the mobile payment application for a transaction initiated by the user of the mobile device.” *See* Decl., Ex. B (redline comparison). Because claim 1 of the ’423 Patent is broader than disclaimed claim 1 of the ’772 Patent, all of the foregoing arguments apply.[6] *See supra* §§ V.A.; D.I. 1, Ex. 4, 68; *id.*, Ex. 5; Decl., Ex. C at 4-9.

Claim 1 of the ’423 Patent is also broader than claim 11 of the ’772 Patent because it does not include the limitations of the dependent claim. *See* ’772 Patent, limitations 11.a-11.d; *see also* Ex. B. Claim 1 of the ’423 Patent therefore recites even less about the generic and conventional technology being applied to the abstract idea of displaying information to facilitate a commercial transaction on a machine. *See Smart*, 873 F.3d at 1374-75.

PayRange’s counterclaim cites to the prosecution history, where the patent examiner concluded that claim 1 is patent eligible because certain limitations were purportedly not found in the prior art. D.I. 18, ¶¶ 43-47; *See also* Decl., Ex. I at 3-4. This finding—and PayRange’s reliance on it—is legally incorrect. The Federal Circuit has repeatedly held that “a claim for a new abstract idea is still an abstract idea,” even where the subject matter may arguably be novel or nonobvious.

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[6] Claim 1 of the ’423 Patent is also broader than Claim 1 of the ’614 Patent, which was finally adjudged as invalid by the PTAB. *See* Decl., Ex. G (redline comparison). As shown in this comparison, Claim 1 of the ’423 Patent lacks the “receiving” and “triggering” requirements of the ’614 Patent, and otherwise largely substitutes the materially identical “connection” for “communication path” and “payment operated machine” or “payment accepting unit” for “vending machine.”

See, e.g., *Mobile Acuity Ltd. v. Blippar Ltd.*, 110 F.4th 1280, 1294 (Fed. Cir. 2024); *Brit. Telecomms.*, 381 F. Supp. 3d at 316 (subject matter ineligible even where patent office recognized invention as an improvement over the prior art); *see also Beteiro, LLC v. DraftKings Inc.*, 104 F.4th 1350, 1359 (Fed. Cir. 2024) ("a patent examiner's consideration of Section 101 issues does not 'in any way shield the patent's claims from Article III review for patent eligibility.'").

The examiner's conclusion that the claims in combination "effect an improvement to another technology or technical field" was also based on an incorrect understanding of the law. *See* D.I. 18, ¶ 44; Decl., Ex. I at 3-4. The claims merely invoke conventional and generic devices for requesting, transmitting, and displaying information using known, standard technology. "[P]atent law does not protect such claims, without more, no matter how groundbreaking the advance." *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1170 (Fed. Cir. 2018).

PayRange also alleges that the '423 Patent solves a technological challenge by identifying payment accepting units based on their proximity to the user's mobile device. D.I. 18 at ¶ 46. This argument is again erroneously based on the alleged novelty of the process, which is not the test for patent eligibility. *See, e.g.*, *Intell. Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1315 (Fed. Cir. 2016) (novelty "is of *no relevance* in determining whether the subject matter" is patent eligible) (original emphasis). In addition, claim 1 of the '423 patent does not propose a solution to overcome this purported technical problem. *See, e.g.*, *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1097 (Fed. Cir. 2016). At most, claim 1 requires that this process be performed on a generic mobile phone. *See* D.I. 18, Ex. H at 8:63-9:30. "But after *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible." *FairWarning*, 839 F.3d at 1097.

PayRange also alleges that the following combination of elements were unconventional:

(1) identifying available payment accepting units based on an identifier, (2) displaying the available payment accepting units, and (3) completing a wireless transaction after establishing a wireless communication. D.I. 18, ¶ 47. But these steps, individually and in combination, are abstract. *See Brit. Telecomms.*, 381 F. Supp. 3d at 315-16. And the '423 patent does not offer a solution to a problem in the mobile device, payment accepting unit, or wireless communication. *See* D.I. 18, Ex. H at 8:63-10:20 (describing generic mobile devices, payment accepting units, and methods of wireless communication); *cxLoyalty*, 986 F.3d at 1378.

3. Claim 1 of the '920 Patent is Similar to, but Broader Than, Claim 11 of the '772 Patent

Claim 1 of the '920 Patent is nearly identical to claim 11 of the '772 Patent, except that it is broader: (1) the claim does not require that the payment accepting unit be identified based on proximity to a mobile device; (2) the payment accepting unit can be identified based on an "identifier <u>or location</u>" (limitation 1.b); (3) it removes the same requirement from limitation 1.c as the '423 Patent; (4) it requires an indication of "a balance," rather than a "<u>prepared</u> balance" (limitation 11.c); and (5) it includes "an affordance that, <u>in response to a user input</u>, indicates <u>completion</u> of the transaction," rather than "an affordance that <u>when slid</u>, indicates the <u>initiation</u> of the transaction" (limitation 11.d). *See* Decl., Ex. A.

None of these differences alter the Section 101 analysis. In fact, these differences specify even less about the generic and conventional technology being applied to the abstract idea. *See Smart*, 873 F.3d at 1374-75. As a result, the same arguments raised above with regard to the '772 Patent apply equally to claim 1 of the '920 Patent.

PayRange's counterclaim cites to the prosecution history, where the patent examiner concluded that claim 1 is patent eligible because certain limitations were purportedly not found in the prior art. D.I. 18, ¶¶ 25-30; *see also* Decl., Ex. H at 3-4. For the same reasons discussed for the

’423 Patent, this finding—and PayRange’s reliance on it—is legally incorrect. *See supra* § V.B.2. The examiner’s conclusion that the claims in combination “effect an improvement to another technology or technical field” was likewise incorrect because the claims merely invoke conventional and generic devices for requesting, transmitting, and displaying information. *See, e.g.*, *SAP Am.*, 898 F.3d at 1170.

PayRange also alleges that claim 1 of the ’920 Patent is unconventional because it “us[es] a mobile device to identify a payment accepting unit based on an identifier or location” and because it uses a mobile device “as the primary interface for the transaction.” D.I. 18 at ¶¶ 28, 29. These arguments are incorrectly based on the alleged novelty of the process, which is not relevant here. *See supra* § V.B.2. In addition, claim 1 of the ’920 patent does recite any technological advance related to the mobile device or user interface; instead, it only requires that payment accepting units be identified using a generic mobile phone and generic wireless communication technology. *See* D.I. 18, Ex. G at 8:63-10:20*; see, e.g.*, *FairWarning*, 839 F.3d at 1097. The claims do not improve the mobile phone, interface, or wireless technology; they apply an abstract idea using conventional techniques and generic technology. *See, e.g.*, *cxLoyalty*, 986 F.3d at 1378.

PayRange additionally alleges that claim 1 of the ’920 patent is patent eligible because it enables a mobile device to interact with “specific payment accepting units within proximity to the end-user.” *Id.*, ¶ 28. But claim 1 of the ’920 patent does not require that the payment accepting unit by identified based on its proximity. *See* D.I. 18, Ex. G, claim 1; *Diogenes*, 623 F. Supp. 3d at 433. Even if this limitation were recited, it would not convert claim 1 into an inventive concept for the same reasons discussed with regard to claim 1 of the ’423 patent. *See supra* § V.B.2.

PayRange additionally alleges that claim 1 is unconventional because it claims a “notification and display system” not present in the cited prior art. D.I. 18 at ¶ 30. Again, this

argument is incorrectly based on the alleged novelty of the process. *See supra* § V.B.2. Further, claim 1 of the ’920 patent does not “speak to specific or technical problems and solutions but rather recite[s] generic steps and results.” *In re AuthWallet*, 2023 WL 3330298, at *4. “The addition of another abstract idea does not render the claims non-abstract.” *Id.*

PayRange also alleges that the following combination of elements were unconventional: (1) identifying available payment accepting units based on an identifier or location, (2) displaying the available payment accepting units with an indication of a balance, and (3) an affordance that is responsive to a user input after establishing the wireless communication path. D.I. 18, ¶ 31. These steps, individually and in combination, are abstract for the same reasons as claim 1 of the ’423 patent. *See supra* § V.B.2. In addition, these steps merely recite steps that are characteristic in any commercial transaction (i.e., identifying merchants, identifying the customer’s balance, and requiring user interaction to affect a transaction). *See cxLoyalty*, 986 F.3d at 1377 (“Humans have long intermediated these very transactions by collecting and relaying the very same information.”). Furthermore, claim 1 recites that this abstract idea is implemented using conventional components and generic mobile devices. *See, e.g.*, *Intell. Ventures I*, 850 F.3d at 1325 (“[R]eceiving transmitted data…and displaying it to a user merely implicates purely conventional activities that are the ‘most basic functions of a computer.’”). It is clear that these steps are performed using generic functions and components because neither the claims nor the specification provide useful guidance as to how these purported functions are achieved. *See, e.g.*, *cxLoyalty*, 986 F.3d at 1378.

4. Collateral Estoppel Precludes PayRange from Arguing that The Asserted Claims of the ’423 and ’920 Patents Recite Patent Eligible Subject Matter

PayRange alleges that advantages of claims 1 of the ’423 and ’920 Patents include the capability to: (1) use a mobile phone as the user interface, (2) display a visual indication of the payment accepting unit, (3) complete a transaction after establishing a wireless communication,

and (4) identify an available payment accepting unit in proximity to a mobile device based on an identifier, or, with regard to the '920 Patent, based on a location or identifier. D.I. 18, ¶¶ 26-31, 44-47. But these elements are materially identical to the corresponding elements that PayRange argued rendered claim 1 of the '614 Patent eligible in the '614 PGR. Decl., Exs. F, G; D.I. 1, Ex. 4 at 24, 28, 30-32, 36-37, 38-43. In fact, claim 1 of the '423 patent is broader than the '614 Patent. *See, e.g.*, *Kroy*, 2022 WL 17403538, at *7 ("[W]here the claim found invalid by the PTAB…is narrower in scope than the Newly Asserted Claim, that must mean that the broader Newly Asserted Claim is similarly invalid."). The PTAB already determined that these elements do not provide an inventive concept, in combination or separately. *See* D.I. 1, Ex. 4 at 25-28, 30-32, 35-43.

As discussed above, the PTAB considered (and rejected) PayRange's arguments that the capability to use a mobile phone as the user interface, display a visual indication of the payment accepting unit, and identify an available payment accepting unit in proximity to a mobile device rendered claim 1 of the '614 Patent eligible. *See* D.I. 1, Ex. 4 at 24, 30-32, 35-43. In that same proceeding, PayRange also argued that the capability to complete a transaction after establishing a wireless connection rendered the claim patent-eligible. *See id.*, Ex. 4 at 28, 41. The PTAB rejected this argument, finding that the additional limitation was "the computerized version of the abstract idea" and was implemented using existing technology. *See id.* at 29-30, 35. PayRange should be estopped from repeating these first three arguments here. *See Google*, 54 F.4th at 1382.

In addition, as to the fourth point, the corresponding limitation in claim 1 of the '423 Patent recites "identifying one or more payment accepting units in proximity to the mobile device…based at least in part on an identifier corresponding to the one or more payment accepting units." *See* Decl., Ex. B; D.I. 18, Ex. H. This is broader than the corresponding limitation in the '614 Patent, which at least provided some specificity as to the "identifier" (i.e. "predefined radio messages").

See Decl., Ex. G, limitation 1.c. As discussed, this limitation is performed using well-known, routine, and conventional technology. *See supra* § V.A.1.-2. Thus, while the exact words used in these limitations are different, the patentability analysis as to claim 1 of the '614 Patent and claim 1 of the '423 Patent remains the same. *See, e.g.*, *Google*, 54 F. 4th at 1381. Because the issues of patentability of claim 1 of the '423 Patent and claim 1 of the '614 Patent are identical, and the other elements of collateral estoppel have been established (*see supra* § V.A.3.), PayRange should be precluded from arguing that claim 1 of the '423 Patent comprises an inventive concept.

That claim 1 of the '920 Patent allows the payment accepting unit to be identified based on "an identifier <u>or location</u>" does not change this analysis because the limitation is broader than the corresponding limitation in the '614 Patent, and is still performed using well-known, routine, and conventional technology. *See* Decl., Ex. F. PayRange should therefore be precluded from arguing that claim 1 of the '920 Patent contains patent-eligible subject matter by virtue of limitations that are materially identical to claim 1 of the '614 Patent. *See, e.g.*, *Kroy*, 2022 WL 17403538, at *7.

PayRange additionally argues that claim 1 of the '920 Patent is unconventional because it claims a notification and display system not present in the cited prior art. PayRange raised this argument with respect to the corresponding claim elements of the '614 Patent in '614 PGR. *See* D.I. 1, Ex. 4 at 33-35; *see also* Ex. F, limitations 1.f, 1.g. The PTAB rejected this argument, finding that these claim elements did not constitute a technological improvement. D.I. 1, Ex. 4 at 34. PayRange should therefore be precluded from making this same argument with regard to claim 1 of the '920 Patent. *See, e.g.*, *Kroy*, 2022 WL 17403538, at *7.

VI. CONCLUSION

Alliance requests that this Court dismiss Counterclaims I-III from PayRange's Amended Answer and Counterclaims because the asserted claims of the DJ Patents are all directed to ineligible subject matter under 35 U.S.C. § 101 (Counts I-III).

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