GEOFFREY M. GODFREY (SBN 228735)
godfrey.geoff@dorsey.com
DORSEY & WHITNEY LLP
Columbia Center
701 Fifth Avenue, Suite 6100
Seattle, WA 98104-7043
Telephone: (206) 903-8800
Facsimile: (206) 903-8820

Counsel for Defendant
Hall Enterprises, Inc. d/b/a
Logistics Planning Services

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHIPPING & TRANSIT LLC,

Plaintiff,

v.

HALL ENTERPRISES, INC. d/b/a LOGISTICS PLANNING SERVICES,

Defendant.

Case No. 2:16-cv-06535-AG-AFM

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS (FRCP 12(C)) AND ENTRY OF JUDGMENT

Judge: Hon. Andrew J. Guilford
Date: December 5, 2016
Time: 10:00 a.m.
Courtroom: 10D

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I. INTRODUCTION

Plaintiff Shipping & Transit LLC ("S&T") is a notorious patent assertion entity whose business model involves filing hundreds of patent infringement lawsuits to extract nuisance value settlements. The patents asserted in this case have been asserted in more than 650 other cases. Yet no court has had an opportunity to judge the validity of S&T's patents. S&T avoids such judgment by promptly settling or voluntarily dismissing its complaints whenever challenged.[1]

The claims of S&T's patents are invalid as a matter of law under 35 U.S.C. § 101 because they are directed to an abstract idea—monitoring and reporting the location of a vehicle—and contain nothing to transform that abstract idea into a patent-eligible application. Patent law does not protect abstract ideas, even when implemented using generic computers or through conventional processing steps. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l.*, 134 S. Ct. 2347 (2014). Applying this fundamental principle of patent law, several other courts have invalidated claims comparable to those in S&T's patents. The same result is warranted here.

Defendant Hall Enterprises, Inc. d/b/a Logistics Planning Services ("LPS") is a family owned business based in Woodbury, Minnesota. LPS moves for judgment on the pleadings and entry of judgment in its favor under Fed. R. Civ. P. 12(c). LPS brings this motion under Rule 12(c), after the pleadings have closed, to preserve its ability to seek attorney fees should S&T abandon its claims to avoid judgment on the merits, as it has done in prior cases. For the reasons below, LPS respectfully requests that its motion be granted.

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[1] *See, e.g.*, 2:16-cv-03962 (C.D. Cal.), Dkt. 19, 22, 25; 2:16-cv-03834 (C.D. Cal.), Dkt. 18, 19, 21; 2:16-cv-03836 (C.D. Cal.), Dkt. 14, 18, 19, 21; 9:16-cv-81039 (S.D. Fla.), Dkt. 12, 19-21, 24. "[A] court may take judicial notice of 'matters of public record' without converting a motion to dismiss into a motion for summary judgment." *Belodoff v. Netlist, Inc.*, No. 07-cv-677, 2008 U.S. Dist. LEXIS 45289, at *8 (C.D. Cal. May 30, 2008) (quoting *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001)); *see also* Fed. R. Evid. 201.

II. BACKGROUND

S&T's Complaint alleges three counts of direct infringement under 35 U.S.C. § 271(a). Dkt. 1 ¶¶ 18-29. The Complaint alleges that LPS directly infringes Claim 14 of U.S. Patent No. 6,763,299 ("'299 Patent"), Claims 10-12 of U.S. Patent No. 6,415,207 ("'207 Patent"), and Claim 19 of U.S. Patent No. 6,904,359 ("'359 Patent") (collectively, the "Asserted Claims") by "making, using, offering for sale and/or selling" its Transportation Management System. *Id.* ¶¶ 16, 18-29. All of the Asserted Claims are method claims.

S&T's patents are directed to the idea of tracking vehicles and notifying customers (e.g., those waiting for a delivery or waiting for a bus) regarding the location of the vehicles.

The '207 Patent issued on July 2, 2002, and is titled "System and Method for Automatically Providing Vehicle Status Information." Dkt.1, Ex. C. The '207 Patent generally concerns "a system and method for automatically providing a user with vehicle status information related to a particular vehicle or a particular set of vehicles." *Id.* at 1:62-65.

The '299 Patent issued on July 13, 2004, and is titled "Notification Systems and Methods With Notifications Based Upon Prior Stop Locations." Dkt.1, Ex. B. The '299 Patent generally concerns "maintaining a delivery list having a plurality of stop locations, monitoring travel data associated with a vehicle in relation to the delivery list, and for, when the vehicle approaches, is at, or leaves a stop location, sending a communication to a party associated with a subsequent stop location to notify the party of impending arrival at the subsequent stop location." *Id.* at 2:64-3:2.

The '359 Patent issued on June 7, 2005, and is titled "Notification Systems and Methods With User-Definable Notifications Based Upon Occurance [sic] Of Events." Dkt.1, Ex. A. The '359 Patent generally concerns "a vehicle status reporting system for allowing a user to define when a user will receive a vehicle

status report about the status of a mobile vehicle, in relation to a location, for establishing a communication link between the system and the user, and for delivering the status report during the communication link, the status report indicating occurrence of one or more events." *Id.* at 2:63-3:3.

III. THE ASSERTED CLAIMS ARE INVALID AS A MATTER OF LAW UNDER 35 U.S.C. § 101

Judgment on the pleadings is warranted because all of the Asserted Claims[2] of S&T's patents are invalid as a matter of law under 35 U.S.C. § 101.

A. Legal Standard

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). "Rules 12(b)(6) and 12(c) are substantively identical. . . . For a 12(c) motion, the Court accepts the allegations of the non-moving party as true. . . . If the complaint fails to articulate a legally sufficient claim, the complaint should be dismissed or judgment granted on the pleadings." *Erickson v. Boston Sci. Corp.*, 846 F. Supp. 2d 1085, 1089 (C.D. Cal. 2011) (internal citations omitted).

"Whether a claim is drawn to patent-eligible subject matter under § 101 is a threshold inquiry" and "an issue of law." *In re Bilski*, 545 F.3d 943, 950-51 (Fed. Cir. 2008), *aff'd Bilski v. Kappos*, 130 S. Ct. 3218, 3225 (2010) (describing § 101 as "a threshold test."); *SiRF Tech., Inc. v. Int'l Trade Comm'n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010) ("Whether a claim is drawn to patent-eligible subject matter is an issue of law."). "Addressing 35 U.S.C. § 101 at the outset not only conserves scarce judicial resources and spares litigants the staggering costs associated with discovery and protracted claim construction litigation, it also works to stem the tide of vexatious suits brought by the owners of vague and overbroad business method patents." *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363, 1364 (Fed.

[2] The Asserted Claims are representative of the other claims in the '207, '299, and '359 Patents. All claims of these patents are invalid for the reasons stated below.

Cir. 2015) (Mayer, J. concurring)

For this reason, many district courts have resolved disputes over patentable subject matter on motions to dismiss under Fed. R. Civ. P. 12(b)(6) or on motions for judgment on the pleadings under Fed. R. Civ. P. 12(c). *See, e.g., Callwave Communs., LLC v. AT&T Mobility, LLC*, No. 12-cv-1701, -1704, -1788, 2016 U.S. Dist. LEXIS 125486 (D. Del. Sep. 15, 2016); *Concaten, Inc. v. AmeriTrak Fleet Solutions, LLC*, 131 F. Supp. 3d 1166 (D. Colo. 2015); *Mobile Telecomms. Techs., LLC v. UPS, Inc.*, No. 1:12-cv-3222, 2016 U.S. Dist. LEXIS 39586 (N.D. Ga. Mar. 24, 2016); *MacroPoint, LLC v. FourKites, Inc.*, No. 1:15-cv-1002, 2015 U.S. Dist. LEXIS 151045 (N.D. Ohio Nov. 6, 2015); *Wireless Media Innovations, LLC v. Maher Terminals*, LLC, 100 F. Supp. 3d 405 (D.N.J. 2015); *Eclipse v. McKinley Corp.*, No. 14-cv-154, 2014 U.S. Dist. LEXIS 125395 (C.D. Cal. Sep. 4, 2014). And the Federal Circuit has repeatedly affirmed district court rulings finding patent claims subject-matter-ineligible on the pleadings. *See, e.g., FairWarning IP, LLC v. Iatric Systems, Inc.*, 2016 U.S. App. LEXIS 18313 *16 (Fed. Cir. Oct. 11, 2016) ("We have repeatedly recognized that in many cases it is possible and proper to determine patent eligibility under 35 U.S.C. § 101 on a Rule 12(b)(6) motion."); *Affinity Labs of Texas, LLC v. DirecTV, LLC*, 2016 U.S. App. 17371 (Fed. Cir. Sep. 23, 2016); OIP *Techs.*, 788 F.3d at 1362.

In *Alice*, the Supreme Court applied a two-step framework for determining patent-eligibility, previously articulated in *Mayo Collaborative Services v. Prometheus Laboratories., Inc.*, 132 S. Ct. 1289 (2012):

> First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, "what else is there in the claims before us?" To answer that question, we consider the elements of each claim both individually and as an ordered combination to determine whether the additional elements transform the nature of the claim into a patent-eligible application. We have described step two of this analysis as a search for 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 ineligible concept itself.

Alice, 134 S. Ct. at 2355 (internal quotations and citations omitted).

The Court did not endorse a specific approach for evaluating whether a claimed invention is directed to a patent-ineligible abstract idea for the first step of the *Alice/Mayo* framework. Instead, the Court compared the claims at issue to those it had previously evaluated for claiming ineligible subject matter and found that it "follows from our prior cases, and *Bilski* in particular, that the claims at issue here are directed to an abstract idea." *Alice*, 134 S. Ct. at 2356.

For the second step of the *Alice/Mayo* framework, the Court explained that, to survive a patentability challenge "a claim that recites an abstract idea must include 'additional features' to ensure 'that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].'" *Id.* at 2357 (citation omitted). Thus, "appending conventional steps, specified at a high level of generality [is] not 'enough' to supply an 'inventive concept.'" *Id.* (citation omitted).

B. The Asserted Claims Are Drawn To Abstract Ideas

The first step of the *Alice/Mayo* framework is to determine whether the claims at issue are drawn to an abstract idea. There is no "definitive rule to determine what constitutes an 'abstract idea,'" rather "it [is] sufficient to compare claims at issue to those claims already found to be directed to an abstract idea in previous cases." *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016). As discussed below, all of the Asserted Claims are drawn to abstract ideas for similar reasons for which the claims at issue in *Alice* and in many other recent cases were found abstract.

The Asserted Claims here are very similar to invalidated Claim 41 of U.S. Patent No. 7,119,716 (the "Eclipse Patent"). The Eclipse Patent is highly relevant because it is owned by a related entity whose inventor and prosecuting attorney is the same attorney who drafted S&T's patents. Furthermore, the Eclipse Patent

claims very similar ideas as S&T's patents. Specifically, it claims "monitoring travel data associated with a mobile thing" and "initiating a [] notification... based upon the relationship of the mobile thing to a location." *See Eclipse IP LLC v. McKinley Equip. Corp.*, 2014 U.S. Dist. LEXIS 125395, at *26-28 (C.D. Cal. Sept. 4, 2014). In *Eclipse*, the court invalidated the claim as being directed to an abstract idea, noting that it is akin to a "hotel calling the room to let a guest know that the bags have not yet arrived, and then calling again once they have. Or that the car is now at the valet stand. . . . [T]he fact that the claim calls for this to be done 'in connection with a computer-based notification system' is irrelevant." *Id.* The Asserted Claims here, like those in *Eclipse*, should be invalidated under *Alice* for the same reason.

The '299 Patent. The claims of the '299 Patent are directed to the abstract idea of monitoring and reporting the location of a vehicle. Claim 14 of the '299 Patent, which is asserted against LPS, recites:

> 14. A method, comprising the steps of:
> **[a]** maintaining delivery information identifying a plurality of stop locations;
> **[b]** monitoring travel data associated with a vehicle in relation to the delivery information;
> **[c]** when the vehicle approaches, is at, or leaves a stop location:
> **[c1]** determining a subsequent stop location in the delivery information;
> **[c2]** determining user defined preferences data associated with the stop location, the user defined preferences data including a time period for the vehicle to reach the subsequent stop that corresponds to when the party wishes to receive the communication; and
> **[c3]** sending a communication to a party associated with the subsequent stop location in accordance with the user defined preferences data to notify the party of impending arrival at the subsequent stop location.

'299 Patent at 36:12-29.

Like claim 41 of the Eclipse Patent, the claims of the '299 Patent are directed to an abstract idea of sweeping scope—one that would preempt the activities of everyone from taxi dispatchers to warehouse delivery coordinators to bike messengers to hotel bellboys. Viewing, for example, Claim 14 of the '299 Patent using the hotel analogy from *Eclipse*, a hotel bellboy could: **[a]** write down the list of rooms he needs to deliver luggage to; **[b]** travel on his route, crossing off the rooms as he reaches them; **[c1]** as he leaves a room, look at the next room on the list and **[c2]** see if and when the next room wants a warning call before he arrives (*e.g.*, when the bellboy is three doors away, when the bellboy is five minutes away, when the bellboy is on the same floor as the guest, etc.); and **[c3]** give the next room a call to say he's almost arrived.

Notably, Claim 14 does not recite the use of any particular technology to perform the steps of the claimed method. Even the other 155 claims of the '299 Patent, which are not asserted against LPS, do not recite the use of any particular technology other than a general purpose computer or database or "signal." These claims are merely abstract ideas.

The '207 Patent. The claims of the '207 Patent are directed to the same abstract idea, and even more broadly to the idea of using information about one thing to look up information about another, albeit limited to the fields of people and vehicles. Claims 10-12 of the '207 Patent, which are asserted against LPS, recite:

> 10. A method for monitoring and reporting status of vehicles, comprising the steps of:
>
> **[a]** maintaining status information associated with a vehicle, said status information indicative of a current proximity of said vehicle;
>
> **[b]** communicating with a remote communication device;
>
> **[c]** receiving caller identification information automatically transmitted in said communicating step;
>
> **[d]** utilizing said caller identification information to automatically search for and locate a set of said status information;

> **[e]** automatically retrieving said set of status information based on said searching for and locating step; and
>
> **[f]** transmitting said retrieved set of status information to said remote communication device.
>
> 11. The method of claim 10, wherein said caller identification information is a telephone number.
>
> 12. The method of claim 10, wherein said caller identification information is an e-mail address.

'207 Patent at 8:60-9:11.

The method of Claims 10-12 is not directed to any particular hardware or software. Indeed, no new hardware, software, or other computer technology is disclosed or claimed anywhere in the '207 Patent.

Returning to the hotel analogy from Eclipse, a hotel employee could: **[a]** keep handwritten notes regarding the hotel's airport shuttle service, including guest reservations and vehicle locations; **[b]** receive a call or email from a guest inquiring about her airport shuttle reservation; **[c]** see the guest's phone number (*e.g.*, on caller ID) or email address; **[d]** use the guest's phone number or email address to look up her reservation; **[e]** retrieve from the notes the location of the relevant airport shuttle; and **[f]** tell the guest when her airport shuttle will arrive. Other than the limitation that some of these tasks are carried out "automatically," there is little more to Claims 10-12 than what hotel employees have done for decades.

The "automatically" limitation in these claims adds nothing of technological substance to save them from being abstract ideas. The '207 Patent does not pretend to have invented anything other than being able to do it "automatically." It states that "having to provide either the operator or the computer with information identifying which vehicle is of interest to the user is time consuming and burdensome." '207 Patent at 1:47-49. The solution given by the patent is little more than to say, "do it automatically!" This is no different than the invalid

Eclipse Patent, which similarly claimed the idea to let someone know "the car is now at the valet stand," but automatically. *Eclipse*, 2014 U.S. Dist. LEXIS 125395, at *28.

The '359 Patent. The claims of the '359 Patent are directed to the abstract idea of monitoring and reporting the location of a vehicle. Claim 19 of the '359 Patent, which is asserted against LPS, recites:

> 19. A method for implementation in connection with a notification system, comprising the steps of:
>
> **[a]** (a) permitting a user to predefine one or more events that will cause creation and communication of a notification relating to the status of a mobile vehicle in relation to a location, by the following steps:
>
> **[a1]** (1) permitting the user to electronically communicate during a first communication link with the notification system from a user communications device that is remote from the notification system and the vehicle whose travel is being monitored, the notification system being located remotely from the vehicle;
>
> **[a2]** (2) receiving at the notification system during the first communication link an identification of the one or more events relating to the status of the vehicle, wherein the one or more events comprises at least one of the following: distance information specified by the user that is indicative of a distance between the vehicle and the location, location information specified by the user that is indicative of a location or region that the vehicle achieves during travel, time information specified by the user that is indicative of a time for travel of the vehicle to the location, or a number of one or more stops that the vehicle accomplishes prior to arriving at the location;
>
> **[b]** (b) initiating a second communication link from the host computer sytem [sic] to a remote communications device to be notified of the status of the mobile vehicle in relation to the location, when appropriate, based upon occurrence of the predefined one or more events by the vehicle during the travel.

'359 Patent at *Inter Partes Reexamination Certificate*, 1:66-2:29.

The method of Claim 19 involves using a generic computer to notify a user regarding the location of a vehicle. Claim 19 requires using a computer to perform

a routine notification process that is performed daily without a computer by numerous businesses that call their customers to report when delivery or service vehicles will arrive. Using the hotel analogy, a hotel employee could: **[a, a1, a2]** receive a request from a guest to be notified when the guest's airport shuttle arrives at the hotel; and **[b]** call the guest when her airport shuttle arrives at the hotel. The '359 Patent does not disclose or claim any new hardware, software, or other computer technology for performing this routine process. Nor are any of the Asserted Claims directed to an improvement in the way computers operate.

The Asserted Claims of S&T's patents are comparable not only to the claims invalidated in *Eclipse* but also to claims invalidated in other cases. Indeed, several courts have evaluated claims involving requesting and receiving location information and have determined that such claims are directed to patent-ineligible abstract ideas. Representative examples of such claims are provided in Exhibit A.

The District of Delaware discussed examples of comparable invalid claims in a recent opinion granting a motion for judgment on the pleadings:

> ***Requesting and receiving location information is an abstract idea***, and adding a vaguely defined intermediary that selectively forwards requests and returns responses does not make the underlying abstract idea any more concrete. ***Indeed, Courts have routinely found that similar claims are directed to abstract ideas***. . . . For example, ***in Concaten, the claims at issue were directed toward a method of communicating the location of snow maintenance vehicles*** to a server over a wireless network, processing the information to provide both a map displaying such location and an instruction for the vehicle operator, and sending the map and instruction over the wireless network back to the vehicles. *See Concaten*, 131 F. Supp. 3d at 1170. The Court held that these claims were an abstract idea "drawn to the concept of receiving, processing, and transmitting data." *Id.* at 1174. Likewise, ***in Wireless Media, the claims were directed to systems and methods for monitoring and recording container location and load status*** at a container-receiving facility. *See Wireless Media*, 100 F. Supp. 3d at 408-09. The court held that the claims were "directed to the same abstract idea: monitoring locations, movement, and load

> status of shipping containers within a container receiving yard, and storing, reporting and communicating this information in various forms through generic computer functions." *Id.* at 413. ***The claims involved Concaten and Wireless Media were related to providing location information within specific environments, but courts still found the claims invalid.*** The asserted claims here are considerably broader. Claim 14 simply recites basic steps involved in requesting and receiving location information through an intermediary.

Callwave, 2016 U.S. Dist. LEXIS 125486, at *12-14 (emphasis added) (discussing *Concaten, Inc. v. AmeriTrak Fleet Solutions, LLC*, 131 F. Supp. 3d 1166 (D. Colo. 2015) and *Wireless Media Innovations, LLC v. Maher Terminals*, LLC, 100 F. Supp. 3d 405 (D.N.J. 2015)).

Additional examples of comparable invalid claims are discussed in recent opinions from the Northern District of Ohio and the Northern District of Georgia. *See MacroPoint*, 2015 U.S. Dist. LEXIS 151045, at *8 ("Here, ***the claim discloses nothing more than a process for tracking freight***, including monitoring, locating, and communicating regarding the location of the freight. ***These ideas are all abstract in and of themselves***.") (emphasis added); *Mobile Telecomms.*, 2016 U.S. Dist. LEXIS 39586, at *12-13 ("The method described by the patent has, at its core, one animating goal: notifying customers that their package is late, or that it has arrived. But business practices designed to advise customers of the status of delivery of their goods have existed at least for several decades, if not longer. . . . ***The fact that Mtel has automated the process of delivery notification in a particular way does not, under the circumstances of this case, render the ultimate idea behind its patent different or unique in substance from the general idea itself***.") (emphasis added), *reconsideration denied*, 1:12-cv-3222, Dkt. 171 (N.D. Ga. Oct. 21, 2016).

All of the Asserted Claims in this case are drawn to patent-ineligible abstract ideas for similar reasons.

C. Nothing In The Asserted Claims Transforms The Abstract Ideas Into Patent-Eligible Applications

The second step of the *Alice/Mayo* framework requires determining whether the claims contain an inventive concept sufficient to transform the abstract idea into a patent-eligible invention. Here, nothing in the Asserted Claims transforms the abstract ideas into patent-eligible applications.

The second step of the *Alice/Mayo* framework cannot be satisfied by reciting the use of generic computers to perform conventional steps. In *Alice*, the Court expressly rejected the petitioner's argument that implementation with a computer was sufficient for eligibility. *Id.* at 2359. The Court found the claim inadequate in part because "each step does no more than require a generic computer to perform generic computer functions" and because "[v]iewed as a whole, petitioner's method claims simply recite the concept of intermediated settlement as performed by a generic computer." *Id.* The Federal Circuit has consistently found that conventional implementation—including the use of generic computers—cannot transform an otherwise patent-ineligible abstract idea into a patent-eligible invention. *See, e.g.*, *FairWarning IP*, 2016 U.S. App. LEXIS 18313, at *12-16; *Affinity Labs*, 2016 U.S. App. 17371, at *20-29; *OIP Techs.*, 788 F.3d at 1363; *Accenture Global Servs. v. Guidewire Software Inc.*, 728 F.3d 1336, 1342, 1345 (Fed. Cir. 2013).

Here, the Asserted Claims are the quintessential example of implementing an abstract idea using generic computer components. The patents do not solve any technological problems and they specifically rely on commercially available hardware and software to execute the claimed methods. As shown above, Claim 19 of the '359 patent recites using a generic "computer system" to send predefined notifications regarding a vehicle's location. Claim 14 of the '299 Patent and Claims 10-12 of the '207 Patent do not recite any specific technology for performing the claimed functionality. The Asserted Claims are not directed to any

specific and inventive implementation but to a ***concept*** that may be implemented with a wide variety of entirely conventional equipment.

The patents' specifications describe the technology used to accomplish the abstract ideas in the broadest terms. *See*, *e.g.*, '207 Patent at 4:7-65 & Fig. 2 (describing system using generic terms such as "interface," "display," "input device," "disk," "database," and "system manager"); 7:34-38 ("***Any*** device capable of establishing communication with the interface [] and of automatically transmitting caller I.D. information to the interface [] should be suitable for implementing the user interface [] of the present invention.") (emphasis added); '299 Patent at 35:16-19 ("[A]ll 'means' and 'logic' elements are intended to include ***any structure, material, or design for accomplishing the functionality*** recited in connection with the corresponding element.") (emphasis added).

The patents' specifications acknowledge that these generically described technologies were conventional and known before the alleged inventions. *See, e.g.*, '207 Patent at 3:14-15 ("may be a telephone, a pager, a modem, or other suitable communication device"); 6:22 ("conventional telephone devices"); 4:54 ("comprises one or more conventional processing elements"); '359 Patent at 8:67-9:4 ("each VCU 12 comprises a microprocessor controller 16, preferably a model MC68HC705CSP microprocessor controller that is manufactured by and commercially available from the Motorola Corporation, USA."); 9:8-12 ("Examples of suitable wireless communication devices include a mobile telephone (e.g., cellular) and a transceiver (having both a transmitter and a receiver) operating at a suitable electromagnetic frequency range, perhaps the radio frequency (RF) range."); 10:49-52 ("The positioning system 25 could be GPS (global positioning system), the LORAN positioning system, the GLONASS positioning system (USSR version of GPS), or some other suitable position tracking system."); 12:33-34 ("The BSCU 14 may be implemented using any conventional computer with suitable processing capabilities.").

The patents at issue disclose nothing more than an idea, and then attempt to claim all possible ways of achieving it, without claiming any specific and inventive means to implement the abstract idea. This is explicitly disallowed by *Alice*. 134 S. Ct. at 2355 ("The 'abstract ideas' category embodies the longstanding rule that an idea of itself is not patentable.") (internal quotations omitted). As the Federal Circuit's case law makes clear, the addition of a generic computer or other conventional technology does not transform an abstract idea into a patent-eligible application. *See, e.g., Elec. Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016) ("Nothing in the claims, understood in light of the specification, requires anything other than off-the-shelf, conventional computer, network, and display technology . . . . We have repeatedly held that such invocations of computers and networks that are not even arguably inventive are insufficient to pass the test of an inventive concept in the application of an abstract idea.") (internal quotation marks omitted). Consequently, the Asserted Claims fail to satisfy the second step of the *Alice/Mayo* framework for patent-eligibility.

IV. CONCLUSION

For the above reasons, all of the Asserted Claims are invalid as a matter of law under 35 U.S.C. §101. Lack of patentable subject matter is not something that can be fixed by amending the complaint. Accordingly, LPS respectfully requests that the Court grant its motion and enter judgment in favor of LPS and against S&T on all claims.

Dated: November 2, 2016

Respectfully submitted,

By: /s/ Geoffrey M. Godfrey

Geoffrey M. Godfrey (SBN 228735)
godfrey.geoff@dorsey.com
DORSEY & WHITNEY LLP
Columbia Center
701 Fifth Avenue, Suite 6100
Seattle, WA 98104-7043
Telephone: (206) 903-8800
Facsimile: (206) 903-8820

Counsel for Defendant
Hall Enterprises, Inc. d/b/a
Logistics Planning Services