

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Interactive Wearables, LLC,

Plaintiff,

v.

Polar Electro Oy and Polar Electro Inc.,

Defendants.

Case No. 2:19-cv-03084 (JMA) (GRB)

**DEFENDANTS' MEMORANDUM IN SUPPORT
OF THEIR MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

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I. INTRODUCTION

Interactive Wearables (“IW”) attempts to monopolize the abstract idea of providing information related to media content.¹ The idea is simple. The patents explain someone might be watching a TV show, find the show enjoyable, and desire to know more about the show – e.g., the name of the show. The patents are directed to the idea of providing that information while the person is watching the show. This is not a new idea; it is something TV Guide has done for decades. The only advancement the patents teach is using generic computer components to implement the abstract idea.

The Supreme Court has articulated a two-step inquiry to determine whether patent claims are ineligible for protection under Section 101. The first step is to determine whether the claims are directed to an abstract idea. If they are, the Court moves to the second step to determine whether the claims contain an inventive concept sufficient to transform the claimed abstract idea into a patent-eligible application. Claims that are directed to an abstract idea and lack a transformative inventive concept are invalid under Section 101. *See Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2353 (2014).

Here, the Asserted Claims recite the abstract idea of providing information related to certain media (e.g., a song or TV show) using a content player that includes generic components used for their common purpose: (1) a receiver to receive information; (2) a processor to process information; (3) memory; (4) a display to display information; and (5) a remote control device to control the player. The Federal Circuit consistently invalidates patent claims like these. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353-54 (Fed. Cir. 2016) (holding that information is intangible and collecting, analyzing, and displaying information is an abstract idea); *West View Res., LLC v. Audi AG*, 685 F. App’x 923 (Fed. Cir. 2017) (“receiving or collecting data queries, analyzing the data query,

¹ IW asserts claim 32 of U.S. Patent No. 9,668,016 (the “’016 Patent”) and claim 32 of U.S. Patent No. 10,264,311 (the “’311 Patent”) (collectively, the “Asserted Claims”) against Polar Electro Oy and Polar Electro Inc. (collectively, “Polar”). IW has stated that the Asserted Claims are merely “exemplary.” DE 11-1. These “exemplary” claims and all of the asserted patents’ claims are directed to the same ineligible subject matter and are invalid as a matter of law, as discussed herein.

retrieving and processing the information . . . and generating a visual or audio response to the initial data query” held to be an abstract idea); *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1344-45 (Fed. Cir. 2018) (“providing information to a person without interfering with the person’s primary activity” held to be an abstract idea).

In the second step of the two-step inquiry, the claims’ recitation of well-known, conventional components – a receiver, a processor, memory, displays – used in their conventional manner, both individually and in combination, does not transform the claimed abstract idea into patentable subject matter. Implementing an abstract idea using conventional components is not an inventive concept sufficient to save the Asserted Claims. *See Elec. Power* 830 F.3d at 1355 (“The claims at issue do not require any nonconventional computer, network, or display components . . . but merely call for performance of the claimed information collection, analysis, and display functions on a set of generic computer components and display devices.”).

Polar appropriately asks this Court to address the issue of patentable subject matter early in this case. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 714-717 (Fed. Cir. 2014) (noting the import of addressing Section 101 early in a case and affirming a Rule 12(b)(6) dismissal). Resolving whether patent claims are directed to unpatentable subject at this stage is “the most efficient and effective tool for clearing the patent thicket,” saves judicial resources, the parties’ resources, and protects the public from “patents that stifle innovation and transgress the public domain.” *Ultramercial*, 772 F.3d at 718-720 (Mayer, J., concurring). The Asserted Claims – and all claims of the asserted patents – are invalid as a matter of law.

II. FACTUAL BACKGROUND

A. The Disclosed Apparatuses and Methods for Providing Information

IW’s asserted patents disclose nearly identical methods and apparatuses, all of which are directed to the abstract idea of providing information related to media content. The patent introduces

this idea with a common scenario: “As many individuals can attest, oftentimes a song may be playing which the listener desires to know more about . . . the performer who is performing the song, or any other information (i.e. the name of the album on which the song may be featured or found, etc.) so that he or she may purchase a copy of same.”² Similarly, “an individual watching a television talk show may want to learn the name of the show, the subject matter or description of the show, the performers or participants involved in the show, or any other information, which can enable the individual to obtain a copy of the show or program, or learn more about same in order to watch the program at a later time.”³

The patents acknowledge that individuals often get this information before or after the song or television program, but individuals “have come to expect, if not demand, to have information available to them instantaneously.”⁴ The patents purport to solve this problem by “providing information in conjunction with media content.”⁵ The patents emphasize repeatedly that providing information in conjunction with media content is the focus and object of the patents.⁶

In order to enable the display of information, the patents describe using conventional, well-known components such as a receiver, a processor, memory, displays, a content player, and a remote control. The patents undercut any argument that these are technical advancements:

- The information regarding the media content “can be stored on a conventional storage medium” or “any other storage medium.”⁷
- The information provided can be any type of information.⁸

² Docket Entry (“DE”) 1-1, ’016 Patent, col. 1:51-58. For ease, Polar cites to the ’016 Patent specification. The two patent specifications are nearly identical.

³ DE 1-1, ’016 Patent, col. 2:14-20.

⁴ DE 1-1, ’016 Patent, col. 2:37-39.

⁵ DE 1-1, ’016 Patent, col. 2:39-48.

⁶ DE 1-1, ’016 Patent, cols. 5:54-6:67.

⁷ DE 1-1, ’016 Patent, col. 2:56-60; 8:33-38; 14:4-14.

⁸ DE 1-1, ’016 Patent, col. 8:38-40 (“The information provided can include any information, descriptive mater, and/or other subject matter regarding the media content.”)

- There is no limit to what kind of broadcasting system can be utilized.⁹
- The broadcasting system can include a central processing unit, memory, processors, output devices, “and/or any other components or devices, including peripheral devices, for performing any of the functionality described herein.”¹⁰
- The media-playing device can be a CD player, DVD player, record player, computer, PDA, cell phone, watch, wireless device, “or any other suitable device.”¹¹
- Any suitable communication network or system will suffice.¹²
- The display is generic and can be located a number of different locations.¹³
- The patents emphasize that the above components are “merely illustrative” and are “not to be construed to be limitations.”¹⁴

The patents do not require the use of a unique system architecture, require or teach the use of unconventional components, or require or teach a unique combination of components. Instead, the patents teach that by using conventional components, providing information can be done while enjoying the media.

⁹ DE 1-1, '016 Patent, col. 3:40-44; 10:56-58.

¹⁰ DE 1-1, '016 Patent, col. 11:49-12:1.

¹¹ DE 1-1, '016 Patent, col. 3:47-55 (“Any number of media-playing devices can be utilized in conjunction with the apparatus of the present invention.”); 9:12-21 (“The media-playing device can be, or can include . . . any other suitable playing device.”); 14:35-45 (“and/or any other device for receiving the radio broadcast or transmission”); 18:47-52.

¹² DE 1-1, '016 Patent, col. 4:5-8 (“The apparatus of the present invention can also operate and/or can be utilized on, over, and/or in conjunction with, any other suitable communication network or system.”)

¹³ DE 1-1, '016 Patent, col. 13:12-24.

¹⁴ DE 1-1, '016 Patent, col. 21:60-67.

B. The Claimed Content Player

IW asserts claims 32 of both asserted patents. The claims are very similar and both are directed to the abstract idea of providing information related to media content to a user, with the minor differences highlighted below.

The '016 Patent, Claim 32	The '311 Patent, Claim 32
<p>A content player comprising:</p> <ul style="list-style-type: none"> a receiver configured to receive content and together with the content information associated with the content, a processor coupled to the receiver and configured to process the content and the information associated with the content, memory coupled to the processor, a first display coupled to the processor, and playing device equipment coupled to the processor and configured to provide the content to a user of the content player, the playing device equipment comprising an audio player; wherein the content player is a wearable content player configured to be controlled by a wireless remote control device comprising a second display, the wireless remote control device being configured to receive commands directing operations of the wearable content player, and wherein the wireless remote control device is configured to provide to the user at least a portion of the information associated with the content. 	<p>A content player comprising:</p> <ul style="list-style-type: none"> a receiver configured to receive content and together with the content information associated with the content; a processor coupled to the receiver and configured to process the content and the information associated with the content; memory coupled to the processor; and playing device equipment coupled to the processor and configured to provide the content to a user of the content player, the playing device equipment comprising a video player; wherein the content player is a wearable content player configured to be controlled by a wireless remote control device comprising a remote control display, the wireless remote control device being configured to receive commands directing operations of the wearable content player, and wherein the wireless remote control device is configured to provide to the user at least a portion of the information associated with the content.

The Asserted Claims implement the abstract idea by reciting a content player that comprises conventional components used conventionally: (1) a receiver to receive information; (2) a processor to process information; (3) memory; (4) a display; and (5) a wireless remote control device.

IW only asserts these two claims in its complaint, but in a later filing, states that these are “exemplary” asserted claims.¹⁵ Regardless, all of the patents’ claims are directed to the same abstract idea. For example, unasserted claim 21 of the ’016 Patent and its dependent claims are directed to the same abstract idea but drafted as a method claim, with dependent claims that add limitations such as content being transmitted with content as a header file (claim 22), the content being compressed (claims 24-26), wireless transmission (claim 25), cellular network transmission (claim 26), and an input device coupled to the processor (claim 28).¹⁶

These claims are directed to the abstract idea of providing a user with information that relates to media content. This is true for all the other unasserted independent claims and their dependent claims.¹⁷ All of the patents’ claims recite utilizing conventional components and networks, such as a receiver, a processor, a memory, displays, an input, a cellular network, and so forth. There is nothing unconventional about the components or networks; the patents are explicit about this.¹⁸

Neither the Asserted Claims nor the patents’ specifications purport to use these conventional components in any new or inventive way, and the patents do not purport to have invented any new or improved technological process. For instance, as the claim language indicates, the receiver is configured to receive content; the processor is configured to process content; memory is coupled to a processor. And as discussed above, the specification is clear that the claimed components are commonplace. Any kind of broadcasting system can be used¹⁹; the media-playing device can be *any*

¹⁵ DE 11-1.

¹⁶ DE 1-1, ’016 Patent, cols. 24-25.

¹⁷ DE 1-1, ’016 Patent, cols. 22-26; DE 1-2, ’311 patent, cols. 22-26.

¹⁸ *See e.g.*, DE 1-1, ’016 Patent, col. 3:47-55 (“Any number of media-playing devices can be utilized in conjunction with the apparatus of the present invention.”); 9:12-21 (“The media-playing device can be, or can include . . . any other suitable playing device.”); 14:35-45 (“and/or any other device for receiving the radio broadcast or transmission”); 18:47-52.

¹⁸ DE 1-1, ’016 Patent, col. 4:5-8 (“The apparatus of the present invention can also operate and/or can be utilized on, over, and/or in conjunction with, any other suitable communication network or system.”)

¹⁹ DE 1-1, ’016 Patent, col. 3:40-44; 10:56-58.

device, including everyday devices like a DVD player, cell phone, or watch²⁰; any suitable communication network or system will work.²¹

III. APPLICABLE LAW

The Patent Statute defines patentable subject matter as “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.”²² Despite the seeming breadth of that text, the Supreme Court has recognized an “important implicit exception: Laws of nature, natural phenomena and abstract ideas are not patentable.” *Alice*, 134 S. Ct. at 2354. These exceptions are not patentable because they are basic tools of invention and innovation that are free for all to use. *Bilski v. Kappos*, 561 U.S. 593, 602 (2010).

A. Deciding Patent Eligibility is Appropriate Now

IW’s Asserted Claims – and all of the asserted patents’ claims – are invalid as a matter of law and the complaint, therefore, fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Whether a claim recites patent-ineligible subject matter is a question of law. *In re Bilski*, 545 F.3d 943, 951 (Fed. Cir. 2008). This determination is a threshold inquiry that is properly decided on the pleadings. *See Ultramercial*, 772 F.3d at 717.

The Federal Circuit and district courts have made clear that Section 101 patent eligibility may be, and regularly is, decided at the pleadings stage, without claim construction. *See, e.g., Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Canada (U.S.)*, 687 F.3d 1266, 1273-74 (Fed. Cir. 2012) (explaining the Federal Circuit “perceive[s] no flaw in the notion that claim construction is not an inviolable prerequisite to a validity determination under § 101”); *Content Extraction and Transmission*

²⁰ DE 1-1, ’016 Patent, col. 3:47-55 (“Any number of media-playing devices can be utilized in conjunction with the apparatus of the present invention.”); 9:12-21 (“The media-playing device can be, or can include . . . any other suitable playing device.”); 14:35-45 (“and/or any other device for receiving the radio broadcast or transmission”); 18:47-52.

²¹ DE 1-1, ’016 Patent, col. 4:5-8 (“The apparatus of the present invention can also operate and/or can be utilized on, over, and/or in conjunction with, any other suitable communication network or system.”)

²² 35 U.S.C. § 101.

LLC v. Wells Fargo Bank, Nat. Ass'n, 776 F.3d 1343, 1349 (Fed. Cir. 2014) (finding patents directed to unpatentable subject matter even if claims were construed in the manner most favorable to patent owner). Deciding the patent eligibility of the Asserted Claims is appropriate now.

B. Invalidity of the Asserted Claims Does Not Require Claim-by-Claim Analysis

An extended claim-by-claim analysis is not necessary where multiple claims are “substantially similar and linked to the same abstract idea.” *Content Extraction*, 776 F.3d at 1348; *see also Alice*, 134 S.Ct. at 2359 (finding a single method claim “representative” of all claims across four patents). Here, the Asserted Claims “contain only minor differences in terminology [and] require performance of the same basic process” and, therefore, “should rise or fall together.” *Accenture Glob. Servs.*, 728 F.3d at 1344 (citations omitted); *see also Planet Bingo, LLC v. VKGS LLC*, 576 Fed.Appx. 1005, 1007 (Fed. Cir. 2014) (“The system claims recite the same basic process as the method claims, and the dependent claims recite only slight variations of the independent claims”). Because the Asserted Claims – and all the patents’ claims – “suffer from the same infirmity, [they] need not be considered further.” *Ultramercial*, 772 F.3d at 712.

C. The Two-Part Test for Patent-Eligible Subject Matter

The Supreme Court in *Alice* reaffirmed the two-step process to determine whether claims recite patent-eligible subject matter. *Alice*, 134 S. Ct. at 2355. The first step is to determine whether the claims at issue are directed to a patent-ineligible concept, such as an abstract idea. *Id.* If the claims recite an abstract idea, the Court proceeds to the second step to determine if there are additional claim elements that introduce an inventive aspect to the claims sufficient to elevate them to patent-eligible subject matter. *Alice*, 134 S. Ct. at 2355.

1. Step One: Are the Asserted Claims Directed to a Patent-Ineligible Abstract Idea?

In assessing the first step, the Supreme Court has repeatedly held that analyzing information by

steps that people go through in their minds are essentially mental processes and fall within the abstract-idea category. In *Alice*, the Supreme Court held that computerization of maintaining escrow accounts is not patentable subject matter. 134 S. Ct. 2347 (2014). In *Bilski v. Kappos*, the Supreme Court held that the ordinary activity of hedging losses is not patentable. 130 S. Ct. 3218, 3229-30 (2010).

The Federal Circuit also consistently invalidates the types of patent claims asserted here, where patent claims recite providing, monitoring or, displaying information. See *Electric Power*, 830 F.3d at 1353-54 (collecting cases) (holding that information is intangible and collecting, analyzing, and displaying information is an abstract idea); *West View Res., LLC v. Audi AG*, 685 F. App'x 923 (Fed. Cir. 2017) (“receiving or collecting data queries, analyzing the data query, retrieving and processing the information . . . and generating a visual or audio response to the initial data query” held to be an abstract idea); *Interval Licensing LLC* 896 F.3d at 1344-45 (“providing information to a person without interfering with the person’s primary activity” held to be an abstract idea).

In *Electric Power*, the Federal Circuit invalidated both method and system claims directed to “collecting information, analyzing it, and displaying certain results of the collection and analysis” because they merely recited an abstract idea. 830 F.3d at 1353. The Federal Circuit noted that it has “treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract idea category.” *Id.* Looking at claims similar to IW’s Asserted Claims, the Federal Circuit found that “merely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis.” *Id.* at 1354.

Invalid abstract ideas include many different subject matters, including: (1) methods and systems of managing a game of bingo; (2) an apparatus and method of classifying an image and storing

the image; (3) a method and system of tracking financial transactions and presenting that to the user vis-à-vis spending limits (i.e., budgeting); (4) a method of price optimization; (5) methods of collecting data, recognizing certain data within the collected data set, and storing that recognized data in a memory; (6) methods related to rules for a wagering game, using steps of shuffling and dealing cards; and (7) method of providing a vehicle valuation through collection and use of vehicle data.²³

In determining whether claims are directed to an abstract idea, the Federal Circuit has often looked at whether the focus of the claims is on an improvement in computers as tools or, instead, using computer components as tools to perform an abstract idea. *Electric Power*, 830 F.3d at 1354.

2. Step Two: Do the Asserted Claims Recite Additional Elements Sufficient to Transform the Asserted Claims Into Patent-Eligible Subject Matter?

As to the second step, the court “examines the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 134 S. Ct. at 2357. In other words, if a claim recites an abstract idea, it “must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* This step is a search for an “‘inventive concept’” – “‘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.

Reciting generic or conventional components does not transform an abstract idea into patentable subject matter. *Id.* at 2359-60. The Supreme Court in *Alice* held that elements that add nothing beyond their well-known functions do not transform an abstract idea into patent-eligible subject matter. *Id.* (using a computer to obtain data, adjust account balances based on the data, and

²³ See respectively, (1) *Planet Bingo*, 576 Fed.Appx. at 1007-08; (2) *In re TLI Communications LLC Patent Litigation*, 823 F.3d 607, 611 (Fed. Cir. 2016); (3) *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1367 (Fed. Cir. 2015); (4) *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362 (Fed. Cir.), cert. denied, 136 S. Ct. 701, 193 L. Ed. 2d 522 (2015); (5) *Content Extraction*, 776 F.3d at 1347; (6) *In re Smith*, 815 F.3d 816, 817-819 (Fed. Cir. 2016); (7) *Audatex North America, Inc. v. Mitchell Int’l, Inc.*, 703 Fed.Appx. 986, 989 (Fed. Cir. 2017).

issue automated instructions does not transform an abstract idea into a patentable-eligible invention). Similarly, reordering conventional steps does not constitute an inventive concept. *Solutran, Inc. v. Elavon, Inc.*, 931 F.3d 1161, 1169 (Fed. Cir. 2019).

Instead, at step two, a patent claim may survive if it improves “the functioning of the computer itself” or effects “an improvement in any other technology or technical field.” *Id.* This necessitates that “merely electing information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from §101 undergirds the information-based category of abstract ideas.” *Electric Power*, 830 F.3d at 1353. And “merely requiring the selection and manipulation of information—to provide a ‘humanly comprehensible’ amount of information useful for users—by itself does not transform the otherwise-abstract processes of information collection and analysis.” *Id.*

It does not matter in this analysis whether the patent claims are allegedly novel and non-obvious. The Federal Circuit has explained “that merely reciting an abstract idea by itself in a claim – even if the idea is novel and non-obvious – is not enough to save it from ineligibility.” *Id.* at 6 (citing *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“[A] claim for a *new* abstract idea is still an abstract idea.”)).

IV. ARGUMENT

The Asserted Claims are directed to the idea of providing information related to media content. This is an abstract idea in line with other abstract ideas that have been invalidated. *See Electric Power*, 830 F.3d at 1353-54 (collecting cases) (holding that information is intangible and that collecting, analyzing, and displaying information is an abstract idea).

Listening to or viewing media and obtaining information regarding that media is not something that is new. The patents acknowledge this fact.²⁴ For instance, people have read a hard copy TV Guide while watching a television show in order to obtain relevant information since TV Guide published its first magazine in 1953. The difference between the idea of looking at a TV Guide and what the patents claim is the implementation of the idea while utilizing generic components.

In *Electric Power*, the Federal Circuit concluded that adding “off-the-shelf, conventional computer, network, and display technology for gathering, sending, and presenting the desired information . . . [is] insufficient to pass the test of an inventive concept in the application of an abstract idea.” 830 F.3d at 1355 (citations omitted); *see also Alice*, 573 U.S. at 221-22 (generic computer implementation fails to transform abstract idea into a patent-eligible invention).

IW’s patents do not teach – or claim to teach – the use of unique components or conventional components used in a unique fashion. The patents, instead, explicitly teach utilizing conventional components to provide information to a media consumer. This cannot transform the abstract idea of providing information into patentable subject matter, and IW’s Asserted Claims are invalid.

A. The Asserted Claims Are Invalid for Claiming Patent-Ineligible Subject Matter

1. Step One: The Asserted Claims Recite an Abstract Idea

The claims recite a content player that comprises conventional components used conventionally: (1) a receiver to receive information; (2) a processor to process information; (3) memory; (4) a display to display information; and (5) a remote control device to control. These functions are directly in line with the purpose of the patents: to “provide radio broadcasts or television broadcasts along with information regarding the content of the respective broadcast.”²⁵

²⁴ DE 1-1, '016 Patent, cols. 1:51-2:43.

²⁵ DE 1-1, '016 Patent, cols. 2:38-43.

The claimed abstract idea of providing information about content to a user is analogous to abstract ideas that the Supreme Court and Federal Circuit consistently find to be patent-ineligible. Any combination of collecting, analyzing, and displaying information is an abstract idea. In *Electric Power*, the Federal Circuit looked at claims related to “gathering and analyzing information of a specified content, then displaying the results.” 830 F.3d at 1353-54. The court found the claims to be abstract, noting that information is intangible and the court has “recognized that merely presenting the results of abstract processes of collecting and analyzing information . . . as abstract as an ancillary part of such collection and analysis.” *Id.*

In *Interval Licensing*, the Federal Circuit invalidated patent claims directed to “providing information to a person without interfering with the person’s primary activity.” 896 F.3d at 1344-46. The court reasoned that “the act of providing someone an additional set of information without disrupting the ongoing provision of an initial set of information is an abstract idea.” *Id.* at 1344. The Federal Circuit compared the idea to a television station’s use of a breaking news ticker across the bottom of a screen or passing a note to a person who is in the middle of a meeting. *Id.* Like the claimed abstract here, both patents claim the idea of providing information to a person.

With this in mind, the Federal Circuit reiterated that “information is intangible” and a claim directed to acquiring, organizing, and displaying information “is an abstract idea, not an improvement in how computers and networks carry out their basic functions. *Id.* at 1344-45. *See also Ultramercial*, 772 F.3d at 715 (holding claims directed to “showing an advertisement before delivering free content” to be an invalid abstract idea); *Intellectual Ventures I*, 792 F.3d at 1370 (holding claims directed to customizing information and presenting it to users based on particular characteristics to be an invalid abstract idea); *SAP American Inc. v. Investpic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (holding claims directed to “selecting certain information, analyzing it using mathematical techniques, and

reporting or displaying the results of the analysis” to be an invalid abstract idea); *Reese v. Sprint Nextel Corp.*, 774 Fed.Appx. 656, 660-662 (Fed. Cir. 2019) (holding apparatus and method claims directed to “receiving and displaying (indicating) information (an incoming call from a private number) [] fall into a familiar class of claims directed to abstract ideas”).

Even if IW were to claim that its patents teach that information is provided more quickly or efficiently, the Federal Circuit has reiterated that this does not save the patents. *See e.g., In re Morinville*, 767 Fed.Appx. 964, 968 (Fed. Cir. 2019) (“computer-based efficiency does not save an otherwise abstract method”); *see also Intellectual*, 792 F.3d at 1367 (“the improved speed or efficiency inherent with applying the abstract idea on a computer” cannot save an abstract idea).

The Asserted Claims here are directed to providing a user with information related to media content – an abstract idea – and not directed to an improvement in how computers or networks function. The asserted claims are no less abstract than the claims that the Supreme Court and Federal Circuit consistently find to be invalid. The only purported advancement is providing information to a user while he or she enjoys content. This fails. The Asserted Claims, and all claims of the asserted patents, are directed to the abstract idea of providing information related to media content.

2. Step Two: The Asserted Claims Do Not Recite Inventive Concepts that Transform the Recited Abstract Idea Into Patent-Eligible Subject Matter

To qualify as patent-eligible subject matter, a claim must recite “significantly more” than the abstract idea, for example by “improv[ing] an existing technological process,” and not merely by “implement[ing] [the idea] on a computer.” *See Alice*, 134 S. Ct. at 2355-58. Incorporating computer hardware or generic devices does not render an abstract idea patent-eligible. *Id.* And the inventive concept cannot be the abstract idea itself. *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 774-75 (Fed. Cir. 2019) (appellant “points to the ability to operate charging stations remotely as solving a

problem in the field. This, again, merely mirrors the abstract idea itself and thus cannot supply an inventive concept.”)

Here, the Asserted Claims recite using conventional components conventionally. As described in Section II, the patents themselves undercut any argument that they teach using non-conventional components. Neither the Asserted Claims nor the patent specifications claim that the components are unconventional or arranged in an unconventional manner that could constitute a technical advancement. Instead, the components are arranged in the exact manner one would expect to provide information to a person enjoying content – e.g., memory being coupled to a processor. As the Federal Circuit has recognized consistently, “instructing one to ‘apply’ an abstract idea and reciting no more than generic computer elements performing generic computer tasks does not make an abstract idea patent-eligible.” *Intellectual Ventures I*, 792 F.3d at 1368.

In *Electric Power*, the court found that “selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas.” *Electric Power*, 830 F.3d at 1355. Like the claims in *Electric Power*, IW’s Asserted Claims “do not even require a new source or type of information, or new techniques for analyzing it As a result, they do not require an arguably inventive set of components or methods . . . or invoke any assertedly inventive programming.” *Id.*

The Federal Circuit went on to find that “nothing in the claims, understood in light of the specification, requires anything other than off-the-shelf, conventional computer, network, and display technology . . . [or] contains any suggestion that the displays needed for that purpose are anything but readily available. We have repeatedly held that such invocations of computers and networks that are not even arguably inventive are ‘insufficient to pass the rest of an inventive concept in the application’

of an abstract idea.” *Id.* (collecting cases); *see also Ultramercial*, 772 F.3d at 715 (“additional features must be more than well-understood, routine, conventional activity”). Like in *Electric Power*, the Asserted Claims require nothing other than off-the-shelf, conventional computer, network, and display technology, as the patents themselves explain.

The asserted patents’ purported advancement is providing information to a person while he or she enjoys content, as opposed to before or after the content is complete. This is not an inventive concept. *See In re Morinville*, 767 Fed.Appx. at 968 (“computer-based efficiency does not save an otherwise abstract method”); *Intellectual Ventures I*, 792 F.3d at 1367 (“claiming the improved speed or efficiency inherent with applying the abstract idea on a computer” does not save an abstract idea).²⁶ Nothing in the patents even suggest that the generic components function in an unconventional manner – whether by themselves or in combination with each other – or employ specific programming to constitute inventive concepts.

Instead, as discussed above in detail, the patents teach using the most generic components. *See Two-Way Media v. Comcast Cable Communications*, 874 F.3d 1329, 1341 (Fed. Cir. 2017) (“the claim uses a conventional ordering of steps . . . with conventional technology to achieve its desired result”).

IW attempts to cut off Polar’s § 101 argument by including two paragraphs in its complaint that argue the patents “are not directed to abstract ideas.”²⁷ But these conclusory paragraphs cannot save IW’s patents because the patents do not identify an inventive concept. The patents instead teach utilizing generic, well-known components for their well-known purpose. Conclusory allegations in a complaint are not enough. *See Yanbin Yu v. Apple Inc.*, 392 F. Supp. 3d 1138 (N.D. Cal. 2019) (“To be sure, a patentee cannot avoid dismissal for ineligible claims purely on the basis of conclusory or

²⁶ The issue of performing functions more quickly has been discussed both at step 1 and step 2 of the *Alice* inquiry, depending on how the patent owner defends its patent. Regardless of when speed or efficiency is discussed, it does not save a patent directed to ineligible subject matter.

²⁷ *See* DE 1 at ¶¶ 17, 18.

generalized statements, and fanciful or exaggerated allegations that later prove to be unsupported may lead to fee shifting or other sanctions.”); *Ameranth, Inc. v. Domino’s Pizza, LLC*, No. 2019-1141, 2019 WL 5681315, at *6-7 (Fed. Cir. Nov. 1, 2019) (finding expert declarations containing general statements regarding inventiveness to be irrelevant).

IW also attempts to avoid dismissal by stating that its claimed inventions “represent specific improvements over the prior art and existing systems and methods.”²⁸ But this, again, fails. IW is conflating the § 101 inquiry with §§ 102 and 103, which look to prior art. Overcoming prior art does not save patents at § 101. *See e.g. Synopsys*, 839 F.3d at 1151 (“[A] claim for a *new* abstract idea is still an abstract idea.”); *Ameranth, Inc.*, 2019 WL at *6-7 (“In any event, groundbreaking, innovative, or even brilliant discovery does not itself satisfy the § 101 inquiry.”)

Unfortunately for IW, it is stuck with its patents – i.e., patents directed to providing information to a user (an abstract idea) without any inventive concept. Both the Supreme Court’s and Federal Circuit’s case law affirm this. As a result, the Asserted Claims are invalid as being directed to patent-ineligible subject matter.

V. CONCLUSION

For the foregoing reasons, Polar respectfully requests that the Court find the Asserted Claims to be directed to patent-ineligible subject matter and invalid pursuant to 35 U.S.C. § 101.

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Respectfully submitted,

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²⁸ *Id.* at ¶18.

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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2019 I served the above paper entitled **Defendants' Memorandum in Support of its Motion to Dismiss** on opposing counsel of record pursuant to the Court's rules regarding a "bundled" filing. Defendants will file with the Clerk of Court using the CM/ECF system the "bundled" filing upon completion of briefing, which will send notification of such filing via electronic mail to all counsel of record.

/s/ Anthony J. Fuga