

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

Q TECHNOLOGIES,
INC.,
Plaintiff

v.

WALMART, INC.,
Defendant

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6:21-CV-00779-ADA

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Walmart, Inc.’s (“Walmart’s”) Motion for Summary Judgment of Patent Ineligibility under 35 U.S.C. § 101 (Dkt. 117), Plaintiff Q Technologies, Inc.’s (“Q Tech’s”) Response (Dkt. 125), and Walmart’s Reply (Dkt. 143). Walmart asserts Claims 1 and 10 of U.S. Patent No. 9,635,108 (the ’108 Patent), Claims 14 and 16 of U.S. Patent No. 10,567,473 (the ’473 Patent), and Claims 1, 3, 4, and 14 of U.S. Patent No. 10,594,774 (the ’774 Patent) (collectively, the Asserted Claims) are patent ineligible. The Court heard the parties’ arguments during the final pretrial conference held on January 30, 2024, orally granted Walmart’s Motion during the hearing, and canceled the jury trial for this action. Dkts. 198, 199. Consistent with the Court’s oral ruling, the Court **GRANTS** Walmart’s Motion for the reasons set forth below.

I. BACKGROUND

The ’108 Patent was filed on January 23, 2015 and issued on April 25, 2017. The ’473 and ’774 Patents are continuations of the ’108 Patent and share a common specification with the ’108 Patent. The ’108 Patent discloses systems and methods for sharing content using unique identifiers. ’108 Patent, Abstract. The specification discloses a server and a plurality of clients connected to a network. *Id.* Figure 2 is representative of the disclosed method for sharing content.

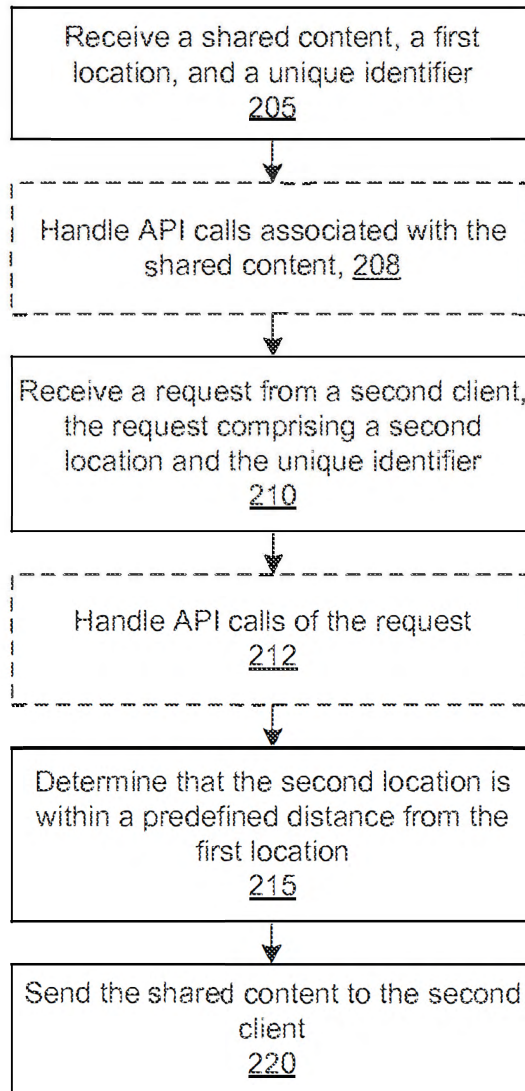


FIG. 2A

The specification discloses that “handling API calls” in steps 208 and 212 are optional. *Id.* at 4:67-5:2.

Claim 1 of the '108 Patent provides:

1. A method for sharing content, comprising:
 - a server, configured to communicate to a first and second client;
 - receiving, at a server, from a first client, a shared content, and a unique identifier generated by a computer application running on the first client or server, for the shared content;
 - wherein the unique identifier comprises one of: a QR code, bar code, RFID tag, hexadecimal number, alphanumeric key, ASCII key, or UNICODE string;
 - receiving, at the second client, the unique identifier, from the first client;
 - wherein the second client receives the unique identifier via: Bluetooth, Bluetooth Low Energy, NFC, Barcode or QR code scan, RFID tag scan, or communication from a first user of the first client to a second user of the second client;
 - determining, at the server, that the second client is within a predefined distance from the first client by receiving location information from the first or second client;
 - [w]herein the server determines that the first client is within a predefined distance from the second via: Bluetooth proximity, Bluetooth Low Energy proximity, NFC, Barcode or QR code scan, Ultrasonic sound, IP address triangulation of the clients, RFID scan, communication from a first user of the first client to a second user of the second client, or by determining that the location of the first client is within the same area as the location of the second client;
 - notifying, the second client of the shared content responsive to the determination;
 - receiving, at the server, a request from a second client, the request comprising the unique identifier
 - determining, at the server, that the unique identifier is associated with the shared content; and
 - sending the shared content to the second client responsive to that determination.

II. LEGAL STANDARD

A. Motion for Summary Judgment

“Summary judgment must be granted when, drawing all reasonable inferences in favor of the non-movant, there is no genuine issue as to any material fact.” *Billups-Rothenberg, Inc. v. Associated Reg'l & Univ. Pathologists, Inc.*, 642 F.3d 1031, 1036 (Fed. Cir. 2011); Fed. R. Civ. P. 56(a). “Under 35 U.S.C. § 282, a patent is presumed valid and one challenging its validity bears the burden of proving invalidity by clear and convincing evidence.” *Innovative Scuba Concepts, Inc. v. Feder Indus., Inc.*, 26 F.3d 1112, 1115 (Fed. Cir. 1994). When “clear and convincing” evidence requirement applies, the trial judge’s summary judgment inquiry as to whether a genuine issue exists will be whether the evidence presented is such that a jury applying that evidentiary standard could reasonably find for either the plaintiff or the defendant.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *see also Eli Lilly & Co. v Barr Lab’ys, Inc.*, 251 F.3d 955, 962 (Fed. Cir. 2001) (“[A] moving party seeking to invalidate a patent at summary judgment must submit such clear and convincing evidence of invalidity so that no reasonable jury could find otherwise.”). In determining whether a genuine issue of material fact exists, the court views the evidence in the light most favorable to the nonmoving party and resolves all doubts in its favor. *Eli Lilly & Co.*, 251 F.3d at 962.

B. Patent Eligibility under 35 U.S.C. § 101

Section 101 of the Patent Act defines the subject matter eligible for patent protection: “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” 35 U.S.C. § 101. However, courts have long recognized that laws of nature, natural phenomena, and abstract ideas are not patentable under § 101 because they are “the basic

tools of scientific and technological work.” *Alice Corp. Pty. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (citations omitted).

In *Alice*, the Supreme Court articulated a two-step framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. *Id.* at 217. In *Alice* step one, the court must “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* In doing so, the court must be careful not to over generalize the invention because “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Id.* (quoting *Mayo Collaborative Servs. v. Prometheus Lab’ys, Inc.*, 566 U.S. 66, 71 (2012)). Instead, “the claims are considered in their entirety to ascertain whether their character as a whole is directed to excluded subject matter.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (citation omitted). If the claims are not directed to one of those patent-ineligible concepts, the inquiry ends. If the claims are directed to one of those patent-ineligible concepts, then the inquiry proceeds to step two of the *Alice* framework.

In *Alice* step two, the court considers whether the claims contain an “inventive concept” sufficient to “transform the nature of the claim into a patent-eligible application.” *Alice*, 573 U.S. at 217–18 (quotation omitted). In doing so, the court considers “the elements of each claim both individually and ‘as an ordered combination’” to determine whether they are “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.” *Id.* (quoting *Mayo*, 566 U.S. at 72–73). *Alice* step two is satisfied when the claim limitations “involve more than performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1367 (Fed. Cir. 2018) (quoting *Alice*, 573 U.S. at 225 and *Content Extraction & Transmission LLC v. Wells*

Fargo Bank, Nat'l Ass'n, 776 F.3d 1343, 1347–48 (Fed. Cir. 2014)). However, to recite an inventive concept, a patent must do more than recite an abstract idea “while adding the words ‘apply it.’” *Alice*, 573 U.S. at 221 (quoting *Mayo*, 566 U.S. at 72). “[S]imply appending conventional steps, specified at a high level of generality, to laws of nature, natural phenomena, and abstract ideas cannot make those laws, phenomena, and ideas patentable.” *Mayo*, 566 U.S. at 82. Likewise, “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 573 U.S. at 223.

“While the ultimate determination of eligibility under § 101 is a question of law, like many legal questions, there can be subsidiary fact questions which must be resolved en route to the ultimate legal determination.” *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1128 (Fed. Cir. 2018). As such, “[t]he question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact” that must be “proven by clear and convincing evidence.” *Berkheimer*, 881 F.3d at 1368. Additionally, specific improvements described in a patent specification, “to the extent they are captured in the claims, [may] create a factual dispute regarding whether the invention describes well-understood, routine, and conventional activities.” *Id.* at 1369. However, “[w]hen there is no genuine issue of material fact regarding whether the claim element or claimed combination is well-understood, routine, conventional to a skilled artisan in the relevant field, [patent eligibility] can be decided on summary judgment as a matter of law.” *Id.* at 1368.

III. DISCUSSION

A. Representative Claim

Walmart asserts Claim 1 of the '108 Patent is representative of all Asserted Claims for purposes of its motion. Dkt. 117 at 5. Q Tech responds that the '473 and '774 Patents include an additional limitation requiring “a specific app configured to access shared content.” Dkt. 125 at 17. Q Tech,

however, does not present “any meaningful argument for the distinctive significance” of the additional app limitation of the ’473 and ’774 Patents. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1352 (Fed. Cir. 2016). Instead, Q Tech consistently argues the Asserted Claims together. Accordingly, the Court treats Claim 1 of the ’108 Patent as representative. *See Content Extraction*, 776 F.3d at 1348 (treating claim as representative where other claims were “substantially similar and linked to the same abstract idea”).

B. Alice Step One

Walmart contends the Asserted Claims are directed to the abstract idea of “sharing content using a unique identifier.” Dkt. 117 at 10. Walmart compares the asserted claims to the claims in *Secure Mail Solutions LLC v. Universal Wilde, Inc.*, 873 F.3d 905, 907 (Fed. Cir. 2017), which involve affixing identifiers to mail objects. Dkt. 117 at 15. Walmart alleges that the asserted claims “are simply actions and tasks regularly performed by human minds, pen and paper, and early computing systems” and analogizes the claims to the Dewey Decimal system used by libraries to identify and classify books. *Id.* at 11-12. Walmart analogizes the claims to a librarian (first client) creating a Dewey Decimal identifier (unique identifier) associated with a book (shared content). The librarian provides the Dewey Decimal identifier to a library patron (second client) and the library patron obtains the book associated with the identifier (sending the shared content to the second client). *Id.* at 12.

In response, Q Tech argues the claims originate from a technical field and focus on problems specifically arising in computer networks, such as privacy and security, and Q Tech argues the claims improve computer functionality, such as providing a unique flow of information. Dkt. 125 at 7-19. Q Tech compares the claims to *Amdocs (Israel) Ltd. v. Opennet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016) in which the claims were tied to a specific structure and narrowly drawn not to preempt all implementations. Dkt. 125 at 14. Q Tech also relies on the testimony of

its experts who opine that a person of ordinary skill would not understand the claims to be directed to an abstract idea. *Id.* at 17-19.

The Court agrees with Walmart that the claims are directed to the abstract idea of sharing content using a unique identifier. “To determine what a claim is directed to at step one, we look to the focus of the claimed advance.” *Am. Axle v. Neapco*, 967 F.3d 1285, 1292 (Fed. Cir. 2020) (quotations and citations omitted). The focus of representative Claim 1 of the ’108 Patent is: 1) receiving shared content and a unique identifier from a first user; 2) sharing the unique identifier with a second user that is within a predefined distance of the first user; and 3) sending the shared content to the second user in response to a request for that shared content using the unique identifier. These functions are “mental processes” that can be performed by humans with pencil and paper, which is “a telltale sign of abstraction.” *PersonalWeb Techs. LLC v. Google LLC*, 8 F.4th 1310, 1316 (Fed. Cir. 2021). Consistent with Walmart’s argument, the focus of the claims strongly mirrors the Dewey Decimal system used by libraries long before the claimed invention. Dkt. 117 at 11-12. The claims perform these functions in a computer environment and use computer-based identifiers (such as QR codes) and proximity determinations (such as near field communications), but that does not “transfigure an idea out of the realm of abstraction.” *PersonalWeb*, 8 F.4th at 1316.

The Court finds Q Tech’s arguments unpersuasive. Q Tech identifies four problems and three solutions that allegedly show that the claims are direct to “a technological solution to a problem unique to computer networking,” and thus not abstract. Dkt. 125 at 7-15 (citing *DDR Holdings LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014)). Although Q Tech does not identify which of the three alleged solutions solves which of the four alleged problems, the Court will attempt to match the problems with solutions.

First, Q Tech apparently identifies “URLs were open to all” and “lack of security” as two problems that were allegedly solved by a “secure, closed architecture.” Dkt. 125 at 11-12. There is

nothing in the claims, however, that requires a secure, closed architecture. *See Am. Axl*, 967 F.3d at 1293 (“[W]e have repeatedly held that features that are not claimed are irrelevant as to step 1 or step 2 of the *Mayo/Alice* analysis.”). Claim 1 recites “a server, configured to communicate to a first and second client,” but the claim does not preclude the server from communicating with other clients or servers. *See also* ’108 Patent at 4:48-50 (“server 104 *may* ... be configured to communicate with a first client 102 and a second client 106”) (emphasis added). Indeed, the specification expressly contemplates multiple first and second clients. *Id.* at 15:41-43. Q Tech’s reliance on statements in the prosecution history, including that “it is not an outside party which creates the content” is not sufficient. Dkt. 125 at 11-12 & n.15. The prosecution statements are not a clear and unambiguous disclaimer that would limit the claims to a closed system. Even if the statements were a disclaimer, Q Tech should have raised the issue during claim construction. Because Q Tech failed to do so, it forfeited that argument. Claim 1’s mere recitation of a server configured to communicate with two clients is insufficient to establish that the claims are directed to a closed system.

Nor do the claims include anything to suggest the invention was directed at solving a security problem. Q Tech asserts that the patent discloses using a URL as an identifier, and further alleges that URLs were not private or secure. *Id.* at 8-9. Q Tech fails to explain, however, how the claimed types of identifiers, such as QR codes and bar codes, are more secure than a URL. At least some of the alternatively claimed identifiers, e.g., QR codes, can be used in the same manner as URL codes. For example, some restaurants provide QR codes to access menus. Such QR codes are neither private nor secure and often direct a customer to a website.

Second, Q Tech identifies the “inability to share without exchanging personal information” as a problem solved by the claimed invention. *Id.* at 10. Q Tech alleges that URL sharing services require personal information. *Id.* Q Tech does not identify how the claimed invention solves this problem, but presumably Q Tech is alleging that recited alternative types of unique identifiers (such as QR codes and

bar codes) can be shared without exchanging personal information. There is nothing in the patent, however, to support Q Tech's position that using a URL requires exchanging personal information. Further, Q Tech's argument conflates services that provide identifiers with the identifiers. Q Tech provides no evidence of a technical distinction between URLs and the claimed identifiers (such as QR codes and bar codes) that dictates whether personal information is required to be shared when using one identifier versus another. Again, to the extent Q Tech is arguing for narrowed constructions of the recited identifiers, Q Tech should have raised those arguments during claim construction.

Third, Q Tech identifies the "inability to communicate certain types of digital content in peer-to-peer fashion" as a problem solved by "sharing [a] limited set of information between co-located devices" and a "unique flow of information." *Id.* at 10-14. Again, there is nothing in the patent to support Q Tech's argument that exchanging types of digital content was a problem solved the claimed invention. For example, the background section of the patent discusses the use of a URL as an identifier. '108 Patent 1:15-20. Conventional systems using a URL have the ability to "communicate certain types of digital content in peer-to-peer fashion" by using the URL code, which is an example of "sharing [a] limited set of information between co-located devices." There is nothing in the patent to suggest the claimed identifiers (such as QR codes and bar codes) solve the problem in a materially different way.

With respect to the alleged "unique flow of information," Q Tech relies on its expert Dr. Akl. But Dr. Akl's opinions that the claimed invention involves a "unique flow of information" are based on characteristics that are not required by the claims. Dr. Akl's opinions are based, at least partially, on the claimed invention being a "closed system" that "keep[s] information private" and excludes "public" identifiers. *See, e.g.*, Dkt. 200-1 at ¶¶ 135-136. As discussed above, the claims do not support those limitations. The claims recite a server connected to two clients and include no limitations related to privacy. Dr. Akl's opinion also does not support the conclusion that a client-server system was unconventional at the time the patents were filed. Likewise, there was nothing unconventional about one

client storing data on a server that is later accessed by a second client, which Q Tech refers to as a “tripartite composition.” *See* Dkt. 117-4 at ¶¶152-57.

Q Tech’s other expert, Dr. Brogioli, compares the claimed invention to prior systems that use physical connections, Bluetooth, text messaging, and email for peer-to-peer communications. Dkt. 200-2 at ¶¶ 338-341. This comparison is not helpful because it compares the claims to disparate and selected implementations. For example, Dr. Brogioli ignores the only type of prior system disclosed in the patent, which uses a URL as an identifier. Dr. Brogioli does not provide any basis to conclude that the claimed invention constitutes an improvement over a client-server architecture using a URL as a unique identifier.

Q Tech’s reliance on *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016) is misplaced. In *Amdocs*, the claims entailed “an unconventional technological solution” that “operate[d] in in an unconventional manner.” *Id.* 1300-31. But here, Q Tech’s arguments that the claimed invention overcome a problem arising in the realm of computer networks are based on limitations not found in the claims or comparisons to disparate systems while ignoring conventional systems that provide the same benefits. While the Court recognizes that Walmart bears the burden to prove ineligibility, the Court finds that Q Tech has not put forth any evidence that would raise an issue of material fact from which to conclude that the claims are directed to anything other than an abstract idea implemented using conventional computer technology.

For the above reasons, the Court finds the asserted claims involve conventional technology like a client-server architecture, associating content with identifiers, and sharing content based on those identifiers. The claimed methods do not overcome a problem arising in computer technology, but rather are directed to abstract ideas that involve conventional processes. Thus, the Court finds that claims are directed to the abstract idea of “sharing content using a unique identifier.” under *Alice* step one. The Court therefore proceeds to the *Alice* step two analysis.

C. *Alice* Step Two

In the *Alice* step two analysis, courts examine whether the claim limitations “involve more than performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” *Berkheimer*, 881 F.3d at 1367. When examining the issue of conventionality, courts must “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.” *SRI Int’l, Inc. v. Cisco Sys., Inc.*, 930 F.3d 1295, 1304 (Fed. Cir. 2019).

Q Tech asserts there is at least a factual issue with respect to *Alice* step two, but Q Tech’s arguments fail because they are not tied to the claims. Q Tech relies on Dr. Akl’s opinion that the claimed invention results in a “changed, but improved, flow of information in a closed content sharing system.” Dkt. 125 at 26 (citing Dkt. 108-34 at ¶ 151). However, as discussed above, the claims are not limited to a closed content sharing system. Q Tech’s reliance on unclaimed limitations is not sufficient to create a genuine issue of material fact. *See Am. Axl*, 967 F.3d at 1293 ([W]e have repeatedly held that features that are not claimed are irrelevant as to step 1 or step 2 of the *Mayo/Alice* analysis.”).

Q Tech reliance on third party testimony also fails because it is based on features of an implemented embodiment of the invention rather than the claims. *See* Dkt. 125 at 28-29. For example, Russell Clark states the application programming interface (API) and the “MONGO DB interface” of an embodiment created a simpler, more transparent, more agile interface. *Id.* Mr. Clark’s lay opinions are not germane because they are not based on the claim language, and there is nothing in the representative claim about an API or a MONGO DB interface.

Finally, Q Tech argues that Walmart’s arguments fail because they are focused on individual claim elements rather than the claims as a whole. *Id.* at 29-31. The Court disagrees. Whether taken individually or as an ordered combination, the claims recite an abstract concept and disclose well understood, routine and conventional activities, identifiers and components, such as servers and clients.

Q Tech's attempts to establish a fact issue improperly rely on elements, characteristics, and alleged solutions that are not found in the claims.

IV. CONCLUSION

For the foregoing reasons, the Court finds Claims 1 and 10 of the '108 Patent, Claims 14 and 16 of the '473 Patent, and Claims 1, 3, 4, and 14 of the '774 Patent are ineligible under 35 U.S.C. § 101. Accordingly, the Court **GRANTS** Walmart's Motion for Summary Judgment of Ineligibility Pursuant to 35 U.S.C. Section 101 (Dkt. 117).

SIGNED this 6th day of March, 2024.


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE