IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MacroPoint, LLC,	)	CASE NO. 1:15cv1002
	)	
Plaintiff,	)	
	)	Judge Patricia A. Gaughan
vs.	)	
	)	
FourKites, Inc.	)	
	)	
Defendant.	)	

DEFENDANT FOURKITES, INC.'S CORRECTED MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AS A MATTER OF LAW

Pursuant to Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendant FourKites, Inc. respectfully moves this Court to dismiss Plaintiff's Complaint on the grounds that this Court lacks personal jurisdiction over Defendant and because the patent at issue is directed to patent-ineligible subject matter. The reasons and law supporting this Motion are more fully set forth in the attached Memorandum in Support, which is incorporated by reference herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing is being filed this 25th day of June, 2015 and is being served upon counsel of record by operation of the Court's electronic filing system.

/s/ Harold E. Farling
One of the Attorneys for Defendant

UNITED STATED DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MacroPoint, LLC, Plaintiff, v. FourKites, Inc., Defendant.	Case No. 1:15cv1002 Judge Patricia A. Gaughan

MEMORANDUM IN SUPPORT OF CORRECTED MOTION TO DISMISS

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INTRODUCTION

This case should be dismissed. As a threshold matter, FourKites, Inc. ("FourKites") is not subject to personal jurisdiction in Ohio. FourKites is a Delaware corporation headquartered in Illinois. It has no facilities or property in Ohio, and is far from "at home" such that it could be susceptible to general jurisdiction. FourKites is also not subject to specific jurisdiction because the activities that MacroPoint, LLC ("MacroPoint") alleges infringe United States Patent No. 8,604,943 ("the '943 patent") occur only in Illinois and not in Ohio. Therefore, the Court has no basis for exercising personal jurisdiction over FourKites.

Additionally, MacroPoint's complaint fails to state a claim because the '943 patent is directed to patent-ineligible subject matter. The '943 patent claims "computer-implemented" methods and systems "for indicating location of freight carried by a vehicle." That is, the '943 patent claims the idea of tracking freight using a computer. The mere idea of tracking freight is not patentable, and the use of a general purpose computer to implement the idea fails to supply the inventive concept necessary to transform this otherwise patent-ineligible idea into something patentable.

Patents like this, which amount to nothing more than stating an idea and saying "apply it" to a computer, are a plague on the economy caused by years of lax standards at the Patent & Trademark Office. Fortunately, the Supreme Court and the Federal Circuit began striking down these improvidently granted patents. District courts, applying these precedents, now regularly declare such patents invalid at the pleading stage, and dismiss cases for infringement under Rule 12(b)(6). The '943 patent is such a patent. The Court should find the '943 patent invalid under 35 U.S.C. § 101 and dismiss MacroPoint's complaint with prejudice.

BACKGROUND

I. FourKites.

FourKites is a supply-chain logistics company founded in Chicago, Illinois. *See* Decl. of Elenjickal at ¶ 3, attached hereto as Exhibit A. From its headquarters in Chicago, FourKites provides logistical tracking data to vendors, shippers, third-party logistics providers, brokers, and asset-based carriers. *Id.* at ¶ 5. FourKites maintains the logistical tracking data and makes it available to its customers by way of computer systems hosted by Amazon Web Services. *Id.* at ¶ 6. Those computer systems are located at datacenters in various locations throughout the United States, none of which are in Ohio. *See id.* at ¶ 7; *see also* Ex. B.

FourKites has at best tenuous connections with Ohio. *Id.* at ¶ 9. All of its employees work either in Chicago or abroad. *Id.* at ¶ 8. FourKites has no employees in Ohio. *Id.* at ¶ 9. FourKites has no current or former customers in Ohio. *Id.* FourKites has no facilities or other equipment in Ohio. *Id.* Although FourKites may provide information about vehicles passing through Ohio, or it may receive information from trucks operated by carriers based in Ohio, FourKites performs the steps involved in obtaining and providing that information from its computer systems hosted by Amazon Web Services, and the information itself is provided to customers in states other than Ohio. *Id.* at ¶ 10.

II. MacroPoint and the ’943 Patent.

MacroPoint markets itself as a provider of a “third party load tracking solution.” Ex. C. MacroPoint claims to have been providing truck tracking since 2009. *Id.* On information and belief, the chief executive officer of MacroPoint is Bennett H. Adelson. Bennett Adelson is also the named inventor of the ’943 patent. *See* Ex. D.

The ’943 patent allegedly describes “[a] system for providing location information of a vehicle includes a communications interface and a correlation logic that correlates location information of a communications device to location of the vehicle.” *Id.* at Abstract. As the ’943 patent recognizes, “conventional systems for monitoring vehicle location” existed before it. *Id.* at 1:37–38.

These already-known systems included sophisticated implementations using technologies such as “radiolocation techniques including triangulation or multilateration methods that are capable of locating devices in a network.” *Id.* at 1:49–51. Such systems were so pervasive (long before the alleged inventor came along) that “various governmental and business organizations have developed rules and guidelines to protect user privacy.” *Id.* at 1:61–63. Indeed, the ’943 patent even incorporated by reference the pre-existing International Association for the Wireless Telecommunications Industry’s Best Practices and Guidelines for Location-Based Services (the “CTIA Guidelines”), which provided industry standards for the proper use of tracking systems, including the claimed features of notice and consent—more than 2 years before the filing date of the ‘943 patent. *Id.* at 1:63–65. *See e.g.*, March 23, 2010 “CTIA Guidelines,” attached hereto as Exhibit E, at page 1 (“The Guidelines rely on two fundamental principles: user notice and consent.”).

The ’943 patent claims “methods” and “systems” that, for the purposes of this motion, are not substantively different. Claim 1 is representative of all of the claims of the ’943 patent:

> A computer implemented method for indicating location of freight carried by a vehicle, the method comprising:
>
> [a] correlating the freight to a communications device;
>
> [b] receiving a first signal including data representing a request for information regarding the location of the freight;

> [c] transmitting to the communications device a second signal including data that prompts an automated message to be communicated to a user of the communications device, the automated message representing a notice communicating to the user of the communications device that the location information of the communication device will be obtained;
>
> [d] receiving from the communications device a third signal including data indicative of consent from the user to the obtaining of the location information of the communications device;
>
> [e] transmitting a fourth signal to a location information provider, the fourth signal including data representing a request for location information of the communications device, wherein the location information provider corresponds to a party or device other than the communications device and the location information provider corresponds to at least one of:
>
> [e][i] a wireless service provider providing wireless service to the communications device,
>
> [e][ii] a third party that obtains the location information of the communications device from the wireless service provider providing wireless service to the communications device, and
>
> [e][iii] a party that has access to the location information of the communications device but is other than the wireless service provider or the third party that obtains the location information of the communications device from the wireless service provider;
>
> [f] receiving a fifth signal from the location information provider, the fifth signal including data representing the location information of the communications device;
>
> [g] correlating the location information of the communications device to the location of the freight based at least in part on the correlation between the freight and the communications device; and
>
> [h] transmitting a sixth electronic signal including data representing the location of the freight.

Id. at 20:63–21:38.

Ultimately, all that is claimed is the idea of tracking freight. The recitations of technology—a computer, a communications device, a variety of signals—amount to nothing more than the use of a general computer to perform the method. Stripped of those extra-solution components, the method of claim 1 consists of the steps of: (1) receiving a request for the location of freight; (2) asking the truck in possession of that freight where it is; and (3) reporting the location of the truck. That is another way of reciting the abstract idea of tracking freight.

The claims of the ’943 patent add steps for notice and consent pursuant to the (pre-existing) CTIA Guidelines, but those are nothing more than routine, conventional activities. The claims of the ’943 patent also describe from whom the location information may be obtained, but that does nothing to change the nature of the claims themselves. In all, the claims of the ’943 patent recite no more than the idea of tracking freight.

The claims of the ’943 patent attempt to cloak themselves in technology, but the addition of generic computer components is insufficient to transform an idea into patentable subject matter. The “signals” in the claims are really just “information”: information being sent to request the location of freight, information being sent to report the location of a truck, etc. This information may be written to or read from a computer, but these are no more than extra-solution activities using conventional components. Thus, the ’943 patent has done nothing more than claim the use of a computer to do steps that can be done by humans.

LEGAL STANDARDS

I. Rule 12(b)(2).

Rule 12(b)(2) requires the court to dismiss a case when it lacks personal jurisdiction over the defendant. There are two types of personal jurisdiction: general, or “all-purpose,” jurisdiction, and specific jurisdiction. *Daimler AG v. Bauman*, 134 S.Ct. 746, 751, 754 (2014).

To be subject to general jurisdiction, a defendant's "affiliations with the State in which suit is brought are so constant and pervasive 'as to render it essentially at home in the forum State.'" *Id.* at 751 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011)).

Specific jurisdiction exists where a defendant's activity in the forum state gives rise to the asserted claim. *Daimler*, 134 S.Ct. at 754. Evaluating specific jurisdiction is a two-step process. *Breckenridge Pharmaceutical, Inc. v. Metabolite Laboratories, Inc.*, 444 F.3d 1356, 1361 (Fed. Cir. 2006).[1] First, the Court must determine the state's long-arm statute permits service of process. *Id.* Second, it must satisfy itself that due process is not being violated by finding: "(1) the defendant purposefully directed its activities at residents of the forum, (2) the claim arises out of or relates to those activities, and (3) assertion of personal jurisdiction is reasonable and fair." *Id.* at 1363.

II. Rule 12(b)(6).

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal where the plaintiff "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Whether a patent is directed to patent-eligible subject matter under 35 U.S.C. § 101 is a question of law. *In re Roslin Institute (Edinburgh)*, 750 F.3d 1333, 1335 (Fed. Cir. 2014). As such, claims brought based on a patent directed to unpatentable subject matter may be dismissed pursuant to Rule 12(b)(6). *See, e.g., Content Extraction and Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343 (Fed. Cir. 2014) (affirming Rule 12(b)(6) dismissal on § 101 grounds); *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, No. 3:14-cv-3942, slip

[1] Federal Circuit law controls where the personal jurisdictional inquiry is "intimately involved with the substance of the patent laws." *Electronics for Imaging, Inc. v. Coyle*, 340 F.3d 1344, 1348 (Fed. Cir. 2003).

op. attached hereto as Exhibit F (N.D. Tex. May 15, 2015) (granting motion to dismiss on § 101 grounds); *Carfax, Inc. v. Red Mountain Techs.*, No. 1:14-cv-1590, slip op. attached hereto as Exhibit G (E.D. Va. Mar. 30, 2015) (same); *Priceplay.com Inc. v. AOL Advertising Inc.*, No. 14-cv-92, 2015 WL 1246781 (D. Del. Mar. 18, 2015) (same).

Patent-eligible subject matter does not include laws of nature, natural phenomena, and abstract ideas. *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014). In *Alice*, the Supreme Court made clear that claims directed to abstract concepts are invalid unless they add something that transforms the nature of the claims into a patent-eligible application of the idea. *Id.* at 2355. As the Court stated, to assess whether a patent claims an unpatentable abstract idea, a court must determine whether the claims at issue are directed to one of the patent-ineligible concepts, *i.e.* laws of nature, natural phenomena, or abstract ideas. *Id.* If so, the court must then determine whether any additional elements transform the nature of the claims into a patent-eligible application. *Id.* This is referred to as the search for an "inventive concept." *Alice Corp.*, 134 S. Ct. at 2355.

The Court should "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." *Id.* When a claim "as an ordered combination adds nothing to the laws of nature that is not already present when the steps are considered separately," such as when it simply recites a concept "as performed by a generic computer," it is invalid. *Id.* at 2359; *see also Mayo Collaborative Services v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1298 (2012).

Since the Supreme Court's *Alice* decision, the Federal Circuit and various district courts have been asked with increasing frequency to review patents and determine the extent to which

the patent claims are directed to ineligible abstract ideas. *See, e.g., Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 714 (Fed. Cir. 2014). Courts in these cases found a variety of patent claim types directed to ineligible subject matter, and accordingly dismissed associated claims for infringement. The same is the case here.

ARGUMENT

I. FourKites Is Not Subject to Personal Jurisdiction in Ohio.

The Court lacks jurisdiction over FourKites. FourKites is not subject to general jurisdiction because it is not "at home" in Ohio. FourKites is also not subject to specific jurisdiction because the alleged acts of infringement do not occur within the state of Ohio. Therefore, FourKites is not subject to personal jurisdiction, and MacroPoint's claims must be dismissed.

a. The Court Lacks General Jurisdiction Because FourKites Is Not At Home In Ohio.

FourKites has limited connections to the state of Ohio. FourKites is a Delaware corporation with headquarters in Chicago, Illinois. Ex. A at ¶ 4. FourKites has no other offices outside of Chicago. *Id.* **a**t ¶ 8. It has no equipment in Ohio, no facilities in Ohio, no property of any kind in Ohio. *Id.* at ¶ 9. FourKites does not maintain an Ohio mailing address, and it does not have an Ohio phone number. *Id.* It has no employees in Ohio and does not regularly transact business in Ohio. *Id.* Thus, FourKites does not have constant and pervasive affiliations with the state sufficient to exercise general jurisdiction. *See, e.g., Bettcher Industries, Inc. v. Hantover, Inc.*, No. 3:14 cv 406, 2015 WL 105772, at *5 (N.D. Ohio Jan. 7, 2015).

b. The Court Lacks Specific Jurisdiction Because FourKites' Allegedly Infringing Acts Did Not Occur in Ohio.

The alleged acts giving rise to MacroPoint's claim do not support exercising specific jurisdiction because they did not occur in Ohio. The Court must first determine whether exercising jurisdiction over FourKites would satisfy Ohio's long-arm statute. *Breckenridge Pharmaceutical*, 444 F.3d at 1361. It would not.

Under the Ohio Long–Arm Statute: "A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person's: . . . Causing tortious injury by an act or omission in this state." Ohio Rev. Code § 2307.382. Patent infringement is a "tort" that "occurs where the offending act is committed and not where the injury is felt." *N. Am. Philips v. Am. Vending Sales*, 35 F.3d 1576, 1578–79 (Fed. Cir. 1994). To come within the scope of the long-arm statute, "both the tortious act and the injury must occur in Ohio." *Canplas Industries, Ltd. v. InterVac Design Corp.*, 1:13 cv 1565, 2013 WL 6211989, at *4 (N.D. Ohio Nov. 22, 2013).

FourKites' alleged acts of infringement did not occur within the state of Ohio. First, MacroPoint pleads only that FourKites infringed the '943 patent "[b]y making, using, offering to sell, and selling services through the FourKites Platform and FourKites Driver Mobile application in the United States." Compl., Dkt. # 1 at ¶ 13. That is, MacroPoint fails to even allege that FourKites is infringing the '943 patent in Ohio.[2] It is not enough that MacroPoint claimed to be harmed in Ohio—it must point to acts of infringement by FourKites in Ohio. *See Canplas*, 2013 WL 6211989 at *4 (finding no personal jurisdiction where alleged patent infringer did not sell the accused product in Ohio).

[2] In contrast, two paragraphs later MacroPoint alleged that "[t]he harm to MacroPoint within this judicial district and elsewhere in the United States resulting from the Defendant's infringement . . . ." Dkt. # 1 at ¶ 15.

In fact, the alleged acts of "making, using, offering to sell, and selling services through the FourKites Platform and FourKites Driver Mobile" did not occur in Ohio. FourKites operates from its headquarters in Chicago, Illinois. Ex. A at ¶ 5. It "made" the FourKites Platform and FourKites Driver Mobile application in Chiago or abroad. *Id.* at ¶ 8. Customers of FourKites may pass through Ohio at times, but any actions done by FourKites for those customers necessarily occur at FourKites' computer systems located at Amazon Web Services datacenters, which are not located in Ohio. *Id.* at ¶ 7.

The case of *Freescale Semiconductor, Inc. v. AmTran Tech. Co., Ltd.*, No. A-12-CV-644, 2014 WL 1603665 (W.D. Tex. Mar. 19, 2014), is instructive. In *Freescale*, the Court concluded the defendant was not subject to personal jurisdiction despite "know[ing], with reasonable certainty, that its [accused products] will end up in the United States marketplace, including, by inference, in Texas" because "no evidence demonstrates that any of [defendant's] conduct or activity is any more specifically directed at this state [*i.e.*, Texas] than it is at the North American market as a whole." *Id.* at *5. Likewise, in this case, there is no evidence that FourKite's conduct or activity is "any more specifically directed" at Ohio "than it is at the North American market as a whole," and there is no evidence that FourKites "purposefully targets its business conduct specifically at [Ohio]" or that the Ohio market for tracking "is of any particular focus." *Id*.

Exercising specific jurisdiction over FourKites is also inconsistent with due process for similar reasons. FourKites has not directed any activities at Ohio, let alone activities that give rise or relate to MacroPoint's claim, and it would be fundamentally unfair to exercise jurisdiction over FourKites when it has never done business in Ohio and has no connection to Ohio whatsoever. Therefore, MacroPoint's claim must be dismissed. *See Canplas*, 2013 WL

6211989 at *5 (holding that "random," "fortuitous," and "attenuated" contacts with Ohio are "not constitutionally sufficient" to support exercising jurisdiction).[3]

II. The Claims of the '943 Patent Are Directed to Unpatentable Abstract Ideas.

FourKites does not infringe the '943 patent, and the claims of the '943 patent are invalid as anticipated and obvious. Remote tracking systems like that claimed in the '943 patent were well-known in the industry and publicly available for years prior to the filing of the '943 patent. While FourKites is confident it would prevail on these issues if forced to litigate, the Court should instead dismiss MacroPoint's claims on the pleadings. *See Ultramercial*, 772 F.3d at 718 (Mayer, J., concurring) ("Section 101 is the gateway to the Patent Act for good reason. It is the sentinel, charged with the duty of ensuring that our nation's patent laws encourage, rather than impede, scientific progress and technological innovation.").

Subject-matter eligibility is a threshold question that should be resolved "at the first opportunity." *OIP Techs., Inc. v. Amazon.com, Inc.*, No. 2012-1696, 2015 WL 3622181, at *4 (Fed. Cir. June 11, 2015) (Mayer, J., concurring) ("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.").

[3] In the alternative, FourKites requests this case be transferred to the United States District Court for the Northern District of Illinois pursuant to 28 U.S.C. § 1404(a). FourKites, all of its domestic employees, and all of its documents are located in the Northern District of Illinois. In contrast, none of the allegedly infringing acts occurred in this district. Moreover, because the primary alleged acts of infringement occurred in the Northern District of Illinois, the citizens of that district have a stronger interest in deciding the outcome of this matter. Therefore, private and public interests strongly favor transferring this case to the Northern District of Illinois. *See, e.g., Chuck Roaste LLC v. Reverse Gear*, No. 1:14-cv-1109, 2014 WL 4794584, at *1–2 (N.D. Ohio Sept. 25, 2014) (transferring patent infringement where "[v]irtually none of the alleged misconduct occurred here.").

a. Claims Directed to Abstract Ideas Are Invalid.

An "ordered combination of steps [that] recites an abstraction—an idea, having no particular concrete or tangible form"—is not patent eligible. *Ultramercial*, 772 F.3d at 715. Where an alleged invention is nothing more than "a method of organizing human activity," it is an abstract idea. *Alice Corp.*, 134 S. Ct. at 2356 (finding "intermediated settlement" an abstract idea); *see also Planet Bingo, LLC v. VKGS LLC*, 576 Fed. App'x 1005, 1008 (Fed. Cir. 2014) (finding "methods and systems for 'managing a game of Bingo'" and for "solving a tampering problem and also minimizing other security risks during bingo ticket purchases" were abstract ideas).

The Supreme Court has made clear that "fundamental economic practice[s]" and known methods of doing business are also abstract ideas. *See Alice Corp.*, 134 S. Ct. at 2356 (intermediated settlement); *Bilski v. Kappos*, 561 U.S. 593, 611-13 (2010) (hedging risk). The Federal Circuit similarly concluded in a recent case that computerized methods for managing credit applications are directed to the abstract concept of a "clearinghouse." *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1331-33 (Fed. Cir. 2012); *see also OIP Techs., Inc*., 2015 WL 3622181 at *3 (collecting Federal Circuit cases). In all these cases, the subject patent claims were found to be subject-matter ineligible. *See Bilski*, 561 U.S. at 611-13; *Dealertrack*, 674 F.3d at 1333-34.

b. The '943 Patent Claims the Abstract Idea of Tracking Freight.

The claims of the '943 patent are directed to the basic steps of tracking freight: (1) receiving a request for the location of freight; (2) asking the truck in possession of that freight where it is; and (3) reporting the location of the truck. The claims "use" a computer, but they are nothing more than a method of organizing a basic human activity. Without more, the claims are invalid. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372-73 (Fed. Cir.

2011) ("[A] method that can be performed by human thought alone is merely an abstract idea and is not patent eligible under § 101.").

Other courts have recently dismissed similar claims on Rule 12(b)(6) motions. For example, in *Wireless Media Innovations, LLC v. Maher Terminals, LLC*, Nos. 14-7004; 14-7006, 2015 WL 1810378 (D. Del. Apr. 20, 2015), the district court invalidated two patents directed to freight "monitoring" systems. The patents claim methods "for monitoring location and load status of shipping containers" and "[a] computerized system for monitoring and recording location and load status of shipping containers." *Id.* at *2. The district court found the claims were all directed "to the same underlying abstract idea: monitoring locations, movements, and load status of shipping containers within a container receiving yard, and storing, reporting and communicating this information in various forms." *Id.* at *7. The claims of the '943 patent are likewise directed to monitoring locations and movements, storing them, and reporting or communicating them—*i.e.*, directed to the abstract idea of tracking freight.

c. The '943 Patent Claims Do Not Add An Inventive Concept.

Claims directed to an abstract idea are patent eligible only if they include "additional elements [that] 'transform the nature of the claim' into a patent-eligible application." *Alice Corp.*, 134 S. Ct. 2355. To be found patent eligible, "[a] claim that recites an abstract idea must include 'additional features' . . . [that are] more than 'well-understood, routine, conventional activity.'" *Ultramercial*, 72 F.3d at 715 (emphasis added). Simply adding computers and databases to the process is insufficient to transform the abstract idea into patent eligible subject matter. *Alice Corp.*, 134 S. Ct. at 2358 ("Stating an abstract idea while adding the words 'apply it' is not enough for patent eligibility.").

The claims of the '943 patent are an effort to patent the performance of a task that human beings have always done. In the past, merchants or shippers tracked freight with paper logs or other written records. Such tasks are now done on computer, but they remain at their core the basic and fundamental concept of tracking freight. Such concepts are not patent eligible. *See SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 Fed. App'x 950, 954 (Fed. Cir. 2014) (non-precedential) ("[S]ection 101 did not embrace a process defined simply as using a computer to perform a series of mental steps that people, aware of each step, can and regularly do perform in their heads. . . . [S]ection 101 covers neither 'mental processes'—associated with or as part of a category of 'abstract ideas'—nor processes that merely invoke a computer and its basic functionality for implementing such mental processes, without specifying even arguably new physical components or specifying processes defined other than by the mentally performable steps."); *see also Wireless Media Innovations*, 2015 WL 1810378 at *11 (finding no inventive step where "claims simply instruct the practitioner to implement the abstract idea with routine, conventional activity.").

d. Recitation of Generic Computer Components Does Not Save The Claims.

Introducing into a patent's claims a general purpose computer, consisting of the most basic building blocks—a processor, a memory, I/O devices—and used for unremarkable, routine steps like storing and reading information, does not make an abstract idea patent-eligible subject matter. *See Ultramercial*, 72 F.3d at 716 (holding routine steps like data-gathering, updating records, and restricting access based on performance of conditions are insufficient to make claim patent eligible). A claimed computer may make application of the idea faster or more efficient, but even that does not make the claims patent eligible. *Bancorp Services, LLC v. Sun Life Assur. Co.*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) ("[T]he fact that the required calculations could be

performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter."); *see also Mayo*, 132 S. Ct. at 1301 ("[S]imply implementing a mathematical principle on a physical machine, namely a computer, was not a patentable application of that principle."). To be sure, "the performance of a long-known abstract idea 'from the pre-Internet world' . . . using a conventional computer" is not patent-eligible subject matter. *Wireless Media Innovations*, 2015 WL 1810378 at *11 (finding claims invalid where they were "not tied to any particular novel machine or apparatus, only a general purpose computer, general communication devices, and general vehicles.").

The claims of the '943 patent recite computer components that do nothing more than read, write, and transmit information. "Adding routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet does not transform an otherwise abstract idea into patent-eligible subject matter." *Ultramercial*, 772 F.3d at 716. Mere "data-gathering steps . . . add nothing of practical significance to the underlying abstract idea." *Id.*; *see also buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (affirming judgment of invalidity entered on the pleadings and observing that "a computer receiv[ing] and send[ing] . . . information over a network—with no further specification—is not even arguably inventive.").

e. Alternately Drafting "System" Claims Does Not Make Methods Patent Eligible.

The conclusion that the claims of the '943 patent are invalid under 35 U.S.C. § 101 holds with equal force for the "system" claims. *Parker v. Flook*, 437 U.S. 584, 590 (1978) ("The concept of patentable subject matter under § 101 is not like a nose of wax which may be turned and twisted in any direction."). As in *Alice*, the system claims of the '943 patent are "no different from the method claims in substance. The method claims recite the abstract idea

implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea." *See Alice Corp.*, 134 S. Ct. at 2360. The result, then, is the same—the system claims of the '943 patent fall just as the method claims do. *See also Joao Bock Transaction Systems, LLC v. Jack Henry & Associates, Inc.*, No. 12-1138, 2014 WL 7149400, at *8 (D. Del. Dec. 15, 2014) (finding that "[t]he fact that the asserted claims are apparatus claims, not method claims, does not change the court's analysis"); *see also Wireless Media Innovations*, 2015 WL 1810378 at *2–4 (applying § 101 analysis to claims variously drafted as "methods" and "computerized systems").

CONCLUSION

WHEREFORE, Defendant FourKites, Inc. requests that the Court enter an order: dismissing MacroPoint, LLC's Complaint for lack of personal jurisdiction over FourKites, Inc.; alternatively, finding all the claims of United States Patent No. 8,604,943 invalid as directed to patent ineligible subject matter under 35 U.S.C. § 101 and dismissing MacroPoint, LLC's Complaint with prejudice; and for all other relief the Court finds just and appropriate.

Dated: June 25, 2015

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