

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CAVE CONSULTING GROUP, INC.,
Plaintiff,
v.
TRUVEN HEALTH ANALYTICS INC.,
Defendant.

Case No. [15-cv-02177-SI](#)

**ORDER DENYING DEFENDANT’S
MOTION FOR JUDGMENT ON THE
PLEADINGS**

Re: Dkt. 52

On January 22, 2016, the Court held a hearing on defendant’s motion for judgment on the pleadings. For the reasons discussed below, the Court hereby DENIES the motion.

BACKGROUND

Plaintiff Cave Consulting Group (“CCGroup”) accuses defendant Truven Health Analytics, Inc. (“Truven”) of willfully and deliberately infringing two of CCGroup’s patents: U.S. Patent No. 8,340,981 (“the ‘981 patent”) and U.S. Patent No. 8,768,726 (“the ‘726 patent”). Second Amended Compl. (“SAC”) ¶¶ 9, 12. Both patents are entitled *Method, System, and Computer Program Product for Physician Efficiency Measurement and Patient Health Risk Stratification Utilizing Variable Windows for Episode Creation*. *Id.* ¶¶ 8, 11. The ‘981 patent is incorporated by reference in its entirety into the ‘726 patent. *See* ‘726 Patent at 1:11-23. The abstracts in both patents contain the following language:

A method for measuring physician efficiency and patient health risk stratification is disclosed. Episodes of care are formed from medical claims data and an output process is performed. Physicians are assigned to report groups, and eligible physicians and episode assignments are determined. Condition-specific episode statistics and weighted episode statistics are calculated, from which physician efficiency scores are determined.

1 See '981 Patent at Abstract; '726 Patent at Abstract.

2 CCGroup alleges that Truven is “infringing one or more claims of both Asserted Patents
3 by making, importing, using, selling, and/or offering for sale its physician efficiency measurement
4 software and services, including at least the software products marketed as the ‘Advantage Suite’
5 and ‘Physician Performance Assessment’ (‘the Accused Products’).” SAC ¶15.

6 On December 14, 2015, defendant Truven filed a motion for judgment on the pleadings,
7 contending that the asserted claims of the Patents-in-Suit are invalid under 35 U.S.C. § 101 for
8 lack of patentable subject matter. Truven contends that under the Supreme Court’s decision in
9 *Alice Corp. Pty. v. CLS Bank Int’l*, 134 S. Ct. 2347 (2014), the claims of the Patents-in-Suit are
10 directed to a patent-ineligible abstract idea, and that the claims in question lack the “inventive
11 concept” that is necessary for patent eligibility.

12
13 **LEGAL STANDARD**

14 Rule 12(c) of the Federal Rules of Civil Procedure permits a party to dismiss a suit “[a]fter
15 the pleadings are closed . . . but early enough not to delay trial.” Fed. R. Civ. P. 12(c). A motion
16 for judgment on the pleadings is “functionally identical” to a Rule 12(b)(6) motion to dismiss for
17 failure to state a claim. *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989).
18 The court must accept “all factual allegations in the complaint as true and construe them in light
19 most favorable to the non-moving party.” *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009)
20 (quoting *Turner v. Cook*, 362 F.3d 1219, 1225 (9th Cir. 2004). “A judgment on the pleadings is
21 properly granted when, taking all the allegations in the pleadings as true, [a] party is entitled to
22 judgment as a matter of law.” *Lyon v. Chase National Bank, USA, N.A.*, 656 F.3d 877, 883 (9th
23 Cir. 2011) (quoting *Dunlap v. Credit Protection Ass’n, L.P.*, 419 F.3d 1011, 1012 n.1 (9th Cir.
24 2005)).

25 Under § 282 of the Patent Act, issued patents are presumed to be valid. 35 U.S.C. § 282.
26 As such, an alleged infringer asserting an invalidity defense pursuant to § 101 bears the burden of
27 proving invalidity by clear and convincing evidence. *Microsoft Corp. v. i4i L.P.*, 564 U.S. 91, 131
28 S. Ct. 2238, 2242 (2011).

1 **DISCUSSION**

2 An invention is patent-eligible if it claims “any new and useful process, machine,
3 manufacture, or composition of matter, or any new and useful improvement thereof.” 35 U.S.C.
4 § 101. The Supreme Court has held that, by defining patentable subject matter with “such
5 expansive terms Congress plainly contemplated that the patent laws would be given wide
6 scope.” *Diamond v. Chakrabarty*, 447 U.S. 303, 308 (1980).

7 However, the Supreme Court has also held that § 101 contains an important implicit
8 exception for three “patent-ineligible concepts”: laws of nature, natural phenomena, and abstract
9 ideas. *Alice*, 134 S. Ct. at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132
10 S. Ct. 1289, 1296–97 (2012)). The purpose of these exceptions is to protect “the basic tools of
11 scientific and technological work that lie beyond the domain of patent protection.” *Ass’n for*
12 *Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013) (citations omitted.).

13 *Alice* provides the relevant analytical framework for “distinguishing patents that claim
14 laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible
15 applications of those concepts.” *Alice*, 134 S. Ct. at 2355. First, the court must determine whether
16 the claims at issue are directed to one of the patent-ineligible concepts. *Id.* Second, if the claims
17 are directed to a patent-ineligible concept, such as an abstract idea, the court “must consider the
18 elements of each claim both individually and as an ordered combination to determine whether the
19 additional elements transform the nature of the claim into a patent-eligible application.” *Id.*
20 (citation and quotation marks omitted). “When viewing claim elements individually, the court
21 must remember that recitation of conventional, routine, or well-understood activity will not save
22 an abstract claim.” *California Inst. of Tech. v. Hughes Commc’ns, Inc.*, 59 F. Supp. 3d 974, 992
23 (citing *Alice*, 134 S. Ct. at 2358). However, “[w]hen viewing claim elements as an ordered
24 combination, the court should not ignore the presence of any element, even if the element, viewed
25 separately, is abstract.” *Id.* “If the ordered combination of elements constitutes conventional
26 activity, the claim is not patentable, but courts should remember that a series of conventional
27 elements may together form an unconventional, patentable combination.” *Id.* (citing *Diamond v.*
28 *Diehr*, 450 U.S. 175, 188 (1981)).

1 Truven contends that the ‘981 and ‘726 patents are invalid because “the asserted claims of
2 the Patents-in-Suit are drawn to the abstract idea of collecting and organizing medical claims data
3 to calculate physician efficiency,” and the asserted claims add no “inventive concept sufficient to
4 transform the claimed abstract idea into a patent-eligible application.” Motion at 12-14 (citing
5 *Alice*, 134 S. Ct. at 2357). CCGroup disputes both contentions, and argues that Truven has not
6 met its burden to demonstrate invalidity. CCGroup notes that Truven did not submit any evidence
7 in support of its motion, and CCGroup asserts that Court must construe the claims prior to
8 determining validity.

9 Based upon the current record, the Court finds that defendant has not met its burden to
10 demonstrate the patents-in-suit are invalid. The Federal Circuit has instructed that while “claim
11 construction is not an inviolable prerequisite to a validity determination under § 101. . . . it will
12 ordinarily be desirable—and often necessary—to resolve claim construction disputes prior to a
13 § 101 analysis, for the determination of patent eligibility requires a full understanding of the basic
14 character of the claimed subject matter.” *Bancorp Servs., L.L.C. v Sun Life Assur. Co. of Canada*
15 *(U.S.)*, 687 F.3d 1266, 1273-1274 (Fed. Cir. 2013); *see also Ultramercial Inc. v. Hulu LLC*, 722
16 F.3d 1335, 1339 (Fed. Cir. 2013) (“the analysis under § 101, while ultimately a legal
17 determination, is rife with underlying factual issues.”). Here, claim construction will aid the
18 Court’s Section 101 analysis in a number of respects, including with regard to determining the
19 scope of preemption and whether the claims contain an inventive concept.

20
21 **CONCLUSION**

22 For the foregoing reasons, the Court DENIES the motion for judgment on the pleadings
23 without prejudice to renewal after claim construction and on a fuller factual record.

24 **IT IS SO ORDERED.**

25
26 Dated: January 25, 2016



27
28
SUSAN ILLSTON
United States District Judge