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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WILDSEED MOBILE LLC,  
Plaintiff,  
v.  
GOOGLE LLC, et al.,  
Defendants.

Case No. [22-cv-04928-WHO](#)

**ORDER GRANTING DEFENDANTS'  
MOTION FOR PARTIAL JUDGMENT  
ON THE PLEADINGS AS TO CLAIMS  
II, III, AND IV**

Re: Dkt. No. 92

**INTRODUCTION**

Defendants Google LLC and YouTube LLC move to dismiss three of five patent infringement claims brought by plaintiff Wildseed Mobile LLC (“Wildseed”), arguing that they are directed to abstract ideas and fail to claim patent-eligible subject matter under 35 U.S.C. § 101. I agree that the ’960, ’021, and ’040 patents are directed to patent-ineligible abstract ideas, do not improve device functionality, and do not contain any inventive concepts. These patents are invalid under § 101. Accordingly, defendants’ motion for partial judgment on the pleadings is **GRANTED**, and Claims II, III, and IV of the First Amended Complaint (“FAC”) are dismissed with prejudice.

**PROCEDURAL BACKGROUND**

Wildseed filed this action against defendants in the U.S. District Court for the Western District of Texas and filed the operative first amended complaint on May 9, 2022. *See* First Amended Complaint [Dkt. No. 46] (“FAC”). In that complaint, Wildseed accused defendants of infringing five of its patents. The parties stipulated to transfer the case to this District in August 2022.

Defendants bring a motion for judgment on the pleadings under Federal Rule of Civil

1 Procedure 12(c), contending that three of the five asserted patents are invalid because they are  
2 directed at unpatentable subject matter under 35 U.S.C. § 101. Dkt. No. 92 (“Mot.”). The patents  
3 at issue in this motion are U.S. Patent Nos. 9,141,960 (the “’960 patent”), 10,251,021 (the “’021  
4 patent”), and 10,959,040 (the “’040 patent”).

5 Although claim construction is sometimes necessary to resolve whether a patent claim is  
6 directed to unpatentable subject matter, the Federal Circuit has clarified that “claim construction is  
7 not an inviolable prerequisite to a validity determination under § 101.” *Bancorp Servs., L.L.C. v.*  
8 *Sun Life Assur. Co. of Can. (U.S.)*, 687 F.3d 1266, 1273–74 (Fed. Cir. 2013). Where the court has  
9 a “full understanding of the basic character of the claimed subject matter,” the question of patent  
10 eligibility may properly be resolved on the pleadings. *Content Extraction*, 776 F.3d at 1349. The  
11 parties agree that no claim construction is required to resolve this motion.

12 **FACTUAL BACKGROUND**

13 The Wildseed patents claim priority to U.S. Provisional Application No. 60/945,677, filed  
14 on June 22, 2007 (*See Ex. A*, the ’677 Application), with the earliest non-provisional filing date of  
15 June 23, 2008. An analysis of the validity of these patents focuses on the state of the art at that  
16 time. “The Court need not individually analyze every claim under the *Alice* rubric if certain  
17 claims are “representative.”” *Esignature Software, LLC v. Adobe Inc.*, No. 22-CV-05962-JSC,  
18 2023 WL 2808381, at \*3 (N.D. Cal. Feb. 21, 2023) (citing *Twilio*, 249 F. Supp. 3d at 1141).

19 While each patent contains multiple independent claims, at this procedural posture, I will treat  
20 Claim 1 of the ’960 patent as representative because the claims are substantially similar and are all  
21 linked to the same abstract idea.<sup>1</sup> Each patent at issue is directed at using information about the  
22 media contained on a user’s mobile device and the user’s location to recommend nearby venues or  
23 events that would appeal to the user.

24 **1. Claim**

25 Claim 1 of the ’960 patent claims portable media players that utilize (1) what a person likes  
26

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27 <sup>1</sup> Wildseed asserts 24 claims in the ’960 patent, 17 claims in the ’040 patent, and 12 claims in the  
28 ’021 patent, but treats Claim 1 of the ’960 patent as representative. Opposition (“Opp.”) [Dkt. No.  
103] 5:15.

1 (preferences) and (2) where a person is (location) to (3) recommend a venue/event:

2 It recites a method comprising:

3 [a] retrieving, by a server, a plurality of media stored on or accessed using a portable  
4 media player device, or information about said plurality of media;

5 [b] inferring, by the server, based at least in part on the retrieved plurality of media  
6 or the retrieved information about said plurality of media, one or more entertainment  
7 preferences of a user of the portable media player device;

8 [c] accessing, by the server, one or more sources of information about venues or  
9 events proximal to a current location of the user;

10 [d] identifying, by the server, at least one of said venues or events as being of interest  
11 to the user based at least in part on the one or more entertainment preferences  
12 inferred by the server and the current location of the user;

13 [e] generating, by the server, a recommendation indicating the identified venue or  
14 event as a venue or event of interest to the user; and

15 [f] communicating, by the server, the recommendation to the user.

16 U.S. Patent No. 9,141,960 [Dkt. No. 46-2] Ex. B at 8:5-25.

17 **2. Specification**

18 The specification of the '960 patent describes how a user's location could be inferred:

19 The server may estimate the current location of the portable media  
20 player device based on a location of a wireless access point through  
21 which the portable media player device establishes a network  
22 connection to the server. Or, the server may estimate the current  
23 location of the portable media player device based upon the results of  
24 triangulating signals from various signal towers or based upon the  
server's communication with other portable media player devices  
having known current locations. The server might also receive the  
current location of the portable media player device from a global  
positioning system (GPS) module located within the portable media  
player device.

25 *Id.* at 4:39-51.

26 The specification also elaborates on how the user's entertainment interests are inferred:

27 In various embodiments, the server can analyze the media and the  
28 information about the media stored on or accessed using the portable  
media player device to identify user preferences for particular genres

1 of media. Thus, in various embodiments, the server may analyze e.g.  
2 the meta data associated with a wide variety of media stored on or  
3 accessed using the portable media player device such as music,  
4 podcasts, books or audiobooks, video, photos or other images for  
5 various trends that can be translated into user preferences for a  
6 particular genre of music, film, video or art. The meta data may  
7 include data about the media title, media type, artist, subject matter,  
8 and so forth. For example, the server may determine that the user has  
9 a preference for a jazz music genre if the portable media player device  
10 stores or has been used to access a substantial amount of music by  
11 famous jazz artists such as Ella Fitzgerald or Louis Armstrong. What  
12 constitutes a substantial amount may be evolved dynamically  
13 overtime based on feedback on the relevance, success or usefulness  
14 of the recommendation and/or information provided to the user or a  
15 group of users. The server may also determine that the user has a  
16 preference for film genres related to science fiction if a significant  
17 number of science fiction movies such as Close Encounters of the  
18 Third Kind or Star Wars are stored as video media in or accessed  
19 using the portable media player device.

20 *Id.* at 5:22-46.

### 21 LEGAL STANDARD

22 Under Federal Rule of Civil Procedure 12(c), judgment on the pleadings is proper when,  
23 accepting all material allegations in the nonmoving party’s pleadings as true, the moving party is  
24 entitled to judgment as a matter of law. *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir.  
25 2012). Defendant argues that the ’960, ’021, and ’040 patents are ineligible for patent protection  
26 under 35 U.S.C. § 101 as a matter of law. *See In re Roslin Inst. (Edinburgh)*, 750 F.3d 1333, 1335  
27 (Fed. Cir. 2014) (“Section 101 patent eligibility is a question of law”).

28 35 U.S.C. § 101 “defines the subject matter that may be patented under the Patent Act.”  
*Bilski v. Kappos*, 561 U.S. 593, 601, 130 S.Ct. 3218, 177 L.Ed.2d 792 (2010). Under § 101,  
patentable subject matter includes “any new and useful process, machine, manufacture, or  
composition of matter, or any new and useful improvement thereof.” 35 U.S.C. § 101. “These  
categories are broad, but they are not limitless.” *Twilio, Inc. v. Telesign Corp.*, 249 F. Supp. 3d  
1123, 1136 (N.D. Cal. 2017). “Laws of nature, natural phenomena, and abstract ideas are not  
patentable.” *Alice Corp. Pty. v. CLS Bank Int’l*, 573 U.S. 208, 216, 134 S.Ct. 2347, 189 L.Ed.2d  
296 (2014) (internal citation omitted). This is so because “they are the basic tools of scientific and  
technological work,” which are “free to all men and reserved exclusively to none.” *Mayo*  
*Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70, 132 S.Ct. 1289, 182 L.Ed.2d 321

1 (2012) (quotation marks omitted). Allowing patent claims for such purported inventions “would  
2 tend to impede innovation more than it would promote it.” *Id.* But Courts must “tread carefully in  
3 construing this exclusionary principle lest it swallow all of patent law.” *Alice Corp.*, 573 U.S. at  
4 217, 134 S.Ct. 2347. “At some level, all inventions embody, use, reflect, rest upon, or apply laws  
5 of nature, natural phenomena, or abstract ideas.” *Id.* Accordingly, “applications of such concepts  
6 to a new and useful end . . . remain eligible for patent protection.” *Id.*

7 The two-step “Alice” framework distinguishes “patents that claim laws of nature, natural  
8 phenomena and abstract ideas from those that claim patent eligible applications of those  
9 concepts.” *Id.* First, the Court must “determine whether the claims at issue are directed to a  
10 patent-ineligible concept.” *Id.* If so, the Court then assesses “whether the elements of the claim,  
11 both individually and as an ordered combination . . . transform the nature of the claim into a patent  
12 eligible application.” *Id.*

13 The Federal Circuit has held that the inventive concept in step two of this analysis must be  
14 contained in the claim itself, “as opposed to something purportedly described in the specification.”  
15 *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1338 (Fed. Cir. 2017).  
16 However, the Federal Circuit clarified that it is appropriate to use the specifications to “inform [the  
17 court’s] understanding of the claimed invention and the technological solution,” and “how the  
18 elements in the claim functioned together.” *Mentone Sols. LLC v. Digi Int’l Inc.*, No. 2021-1202,  
19 2021 WL 5291802, at \*5 (Fed. Cir. Nov. 15, 2021). Accordingly, the specification cannot save  
20 claims directed at an abstract idea but can inform my understanding of whether the claimed  
21 invention provides a technological solution or inventive concept that transforms the claim into a  
22 patent-eligible application.

## 23 DISCUSSION

### 24 I. Alice Step One: Whether the claims are directed to an abstract idea

25 At *Alice* step one, a court decides whether the patents’ claims are directed to an “abstract  
26 idea.” This inquiry has two parts. First, I must identify precisely what the claims are directed to  
27 accomplish. Second, I must determine whether that “focus” is an abstract idea. *Esignature*  
28 *Software, LLC v. Adobe Inc.*, No. 22-CV-05962-JSC, 2023 WL 2808381, at \*3 (N.D. Cal. Feb. 21,

1 2023).

2 **A. Identification of the focus**

3 The identification step must be done with “enough specificity to ensure the step one  
4 inquiry is meaningful.” *Thales Visionix Inc. v. United States*, 850 F.3d 1343, 1347 (Fed. Cir.  
5 2017). “Describing the claim at such a high level of abstraction and untethered from the language  
6 of the claims all but ensures that the exceptions to § 101 swallow the rule.” *Enfish, LLC v.*  
7 *Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016).

8 Wildseed characterizes its patents as being “directed to patent-eligible improvements to  
9 portable media players’ functionality that build on the inherent technical capabilities of portable  
10 media players to improve the overall user experience.” Opp. 11:6-8. It elaborates that the  
11 “specification and claims are aligned to describe functional improvements (i.e., venue/event  
12 recommendations based on a user’s inferred location and preferences) in a non-generic  
13 environment (i.e., portable media players).” Defendants characterize the patents as being directed  
14 to “customizing information (recommendations) based on information known about the user  
15 (media stored on their devices) and specific data (location).” Mot. at 11:22-25. Wildseed’s  
16 characterization makes a conclusory assertion that the claims describe a functional improvement to  
17 portable media players. While I must accept the nonmovants material allegations as true, I need  
18 not credit conclusory allegations. *See Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir.  
19 2012) (describing the analysis under Rule 12(c) is “substantially identical” to analysis under Rule  
20 12(b)(6)).

21 While defendants’ characterization seems to be high level, it appears to accurately describe  
22 the claims. More precisely, the claimed inventions are directed toward providing tailored event  
23 and venue recommendations to users. They do so through a specific method that evaluates  
24 information accessible within mobile devices, including their location and the genres of media  
25 stored on them, thus improving the usefulness of its recommendations to the user. The specific  
26 method for accomplishing the goal, however, is a question for step two of the *Alice* analysis. And  
27 novelty is irrelevant to step one of the *Alice* analysis. “We may assume that the techniques  
28 claimed are groundbreaking, innovative, or even brilliant, but that is not enough for eligibility.”

1 *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018) (internal quotation and  
2 citation omitted).

3 **B. Whether the focus is abstract**

4 Having determined that the focus of the claimed invention is providing tailored event and  
5 venue recommendations to users, I must determine whether that focus is indeed an abstract idea.  
6 “Neither the U.S. Supreme Court nor the Federal Circuit has set forth a bright line test separating  
7 abstract ideas from concepts that are sufficiently concrete so as to require no further inquiry under  
8 the first step of the *Alice* framework.” *Twilio*, 249 F. Supp. 3d at 1138 (citing *Alice*, 573 U.S. at  
9 221, 134 S.Ct. 2347). Rather, courts “compare claims at issue to those claims already found to be  
10 directed to an abstract idea in previous cases.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327,  
11 1334 (Fed. Cir. 2016).

12 The parties cite a number of conflicting cases to support their arguments on whether the  
13 focus of the patents is abstract. Most persuasive to me is the Federal Circuit’s discussion of  
14 advertising in *Intell. Ventures I LLC v. Cap. One Bank (USA)* 792 F.3d 1363 (Fed. Cir. 2015)).  
15 There, one patent at issue related to tailoring information displayed on a webpage based on the  
16 viewer’s location information, and another related to tailoring that content based on navigation  
17 information such as the time of day. The court called this “minimal tailoring” an abstract idea. *Id.*  
18 at 1369. It analogized to the long-standing practice of tailoring advertisements based on a  
19 newspaper reader’s location by providing different inserts based on distribution location. And it  
20 described tailoring TV commercials based on the time of day that a viewer is watching as being an  
21 abstract idea. *Id.* Wildseed’s patent seems to claim a combination of these two concepts, similar  
22 to running a television commercial in a particular geographic area while also accounting for the  
23 genre of the television show itself. This, too, is an abstract idea.

24 Wildseed relied on two cases: *Contour IP Holding, LLC v. GoPro, Inc.*, No. 3:17-CV-  
25 04738-WHO, 2021 WL 4148651 (N.D. Cal. Sept. 13, 2021) and *Finjan, Inc. v. Blue Coat Sys.,*  
26 *Inc.*, 879 F.3d 1299 (Fed. Cir. 2018). Neither helps it.

27 In *Contour*, a case I decided, the patents were directed to solving a concrete functional  
28 problem associated with point-of-view video cameras: that users could not readily see and control

1 the video while using the cameras for their intended purpose (i.e., attached to the body during  
2 movement). *Id.*, \*8. The patent accomplished this by streaming a low-quality video to a  
3 smartphone so that the user could watch what was being recorded. It stored a high-quality video  
4 that would ultimately be used, and received specified control signals from the smartphone so that  
5 users could control the image from the smartphone. On that basis, I held that “[i]f an abstract idea  
6 is applied in a non-generic environment and embodied a functional improvement, it succeeds at  
7 step one.” *Id.* I distinguished this holding from *FullView*, where the district court had made an  
8 explicit and uncontested finding that putting together multiple images to form a panoramic one is  
9 something that the visual cortex did since the “dawn of humanity.” *Id.* (citing *FullView, Inc. v.*  
10 *Polycom, Inc.*, 485 F. Supp. 3d 1156, 1163 (N.D. Cal. 2020)). In *Contour*, the moving party did  
11 not provide any basis to draw a similar conclusion.

12 By contrast, Google has persuasively argued that making event and venue  
13 recommendations based on information about a user’s media preferences and location has long  
14 been done by humans without the aid of technology. That a handheld portable device constitutes a  
15 non-generic environment is unpersuasive. A handheld device is not functionally distinguishable  
16 from any other portable device in this context: it simply acts as a computer that performed a  
17 function that has previously been performed without one.

18 *Finjan* is similarly inapplicable. There, the Federal Circuit noted that performing a virus  
19 scan on an intermediary computer, as opposed to the user’s computer, is abstract. *Finjan* at 1304.  
20 But the patented method at issue in *Finjan* “does a good deal more.” *Id.* Conventional virus scans  
21 used “code-matching” to recognize the presence of viruses by cross-referencing to a database of  
22 known virus code. *Id.* *Finjan*’s patent was directed at a specific functional improvement to virus  
23 scans by employing a downloadable file that enabled a “behavior based” virus scan. *Id.* This  
24 behavior-based scan identified suspicious code based on its behavior, such as “potentially  
25 dangerous or unwanted operations—such as renaming or deleting files.” *Id.* It constituted an  
26 improvement to computer functionality. Wildseed does not claim an improvement to computer  
27 functionality. Instead, it claims an abstract idea “for which computers are invoked merely as a  
28 tool.” *Id.* (quoting *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016)).



1 **II. Alice Step Two: The presence of an inventive concept or improvement to computer**  
2 **functionality**

3 At step two of *Alice*, I must “consider the elements of each claim both individually and as  
4 an ordered combination to determine whether the additional elements transform the nature of the  
5 claim into a patent-eligible application.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334  
6 (Fed. Cir. 2016) (internal quotation marks and citations omitted). In doing so, I must “search for  
7 an inventive concept—*i.e.*, an element or combination of elements that is sufficient to ensure that  
8 the patent in practice amounts to significantly more than a patent upon the [ineligible concept]  
9 itself.” *Alice*, 134 S. Ct. at 2355 (internal quotation marks and citations omitted). But this  
10 allegedly inventive concept “cannot simply be an instruction to implement or apply the abstract  
11 idea on a computer” and “must be significantly more than the abstract idea itself.” *BASCOM*  
12 *Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016).

13 Generally, this innovation “must involve more than performance of well-understood,  
14 routine, [or] conventional activities previously known to the industry.” *Content Extraction &*  
15 *Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1347–48 (Fed. Cir. 2014). “[T]he  
16 mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a  
17 patent-eligible invention.” *Id.* at 1348. However, “an inventive concept can be found in the non-  
18 conventional and non-generic arrangement of known, conventional pieces.” *BASCOM*, 827 F.3d  
19 at 1350.

20 Wildseed contends that the requisite “inventive step” lies in “the combination of portable  
21 media players and the added functionality of providing venue/event recommendations based on  
22 the inferred location and preferences of the user.” *Opp.* at 5:25-27. It characterizes this as an  
23 improvement to the mobile device’s functionality, building on its inherent functionality of storing  
24 media and being connected to the internet. But this is still an abstract concept, and Wildseed’s  
25 claims cover every technical implementation of the concept. That the specification provides some  
26 examples of how this might be accomplished does not change that the patents would apply to *any*  
27 means of tailoring recommendations based on a combination of the user’s location and  
28 “entertainment preferences,” as inferred based on the “plurality of media” stored on the user’s

1 device. As those technical means continue to develop, Wildseed’s patents would continue to  
2 apply.

3 Evaluating the claim as an ordered combination yields the same result. The order of the  
4 steps is not inventive: collect information, analyze it, and communicate the result of that  
5 analysis—in the conventional order. *See Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*,  
6 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding that “[t]he claim uses a conventional ordering of  
7 steps—first processing the data, then routing it, controlling it, and monitoring its reception—with  
8 conventional technology to achieve its desired result.”).

9 Wildseed cites *Weisner v. Google LLC* for the proposition that search queries targeting a  
10 geographic area can contain an inventive concept. *Weisner v. Google LLC*, 51 F.4th 1073, 1086  
11 (Fed. Cir. 2022). There, the Federal Circuit explained that the process at issue was “more than just  
12 the concept of improving a web search using location history—[but] a specific implementation of  
13 that concept.” In one patent, this was achieved by using a reference individual who had visited  
14 similar locations to the target user in order to refine recommendations to the target user. *Id.* In  
15 another patent, it was by searching the location history of the target user in order to improve  
16 computerized search results. *Id.* It was these specific solutions, not the wider concept as  
17 articulated by Wildseed, that the Federal Circuit found to be plausibly protectable on a 12(b)(6)  
18 motion.

19 Wildseed also argues that the patents are narrowly drawn because they are limited to  
20 mobile devices, not including laptops and tablets. It points to examples of portable media players  
21 available at the time that are referenced in the patent itself: “the ipod available from Apple  
22 Computer,” “the Zune available from Microsoft Corporation” and “the ibiza™ Rhapsody® from  
23 Varia Mobil.” ’960 at 1:37-41.

24 To be sure, mobile devices were less sophisticated and less prevalent in 2008 than they are  
25 today. But whether it is a mobile device or a laptop implementing the claim, it is still ultimately a  
26 computer implementation of something a human could do, and would previously have done. This  
27 is illustrated by the language used in the claim itself: retrieving, inferring, accessing, identifying,  
28 generating, and communicating. Aside from some “generic computer-implemented steps, as in

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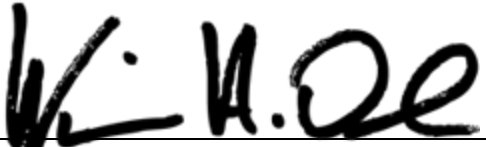
*Intel. Ventures I*, there is nothing in the claims themselves that foreclose them from being performed by a human, mentally or with pen and paper.” *Intel.Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016). This lack of specific implementation (aside from reciting capabilities of the mobile devices themselves) belies a finding that the patents improve the functionality of the mobile devices.

**CONCLUSION**

For the foregoing reasons, I find that the '960,'021, and '040 patents are invalid under § 101. They are directed to an abstract idea and do not contain sufficient inventiveness to transform the concept into patentable subject matter. Accordingly, defendants’ motion for judgment on the pleadings is **GRANTED**, and counts II, III, and IV of the FAC are **DISMISSED**.

**IT IS SO ORDERED.**

Dated: June 7, 2023

  
\_\_\_\_\_  
William H. Orrick  
United States District Judge