Stylitics, Inc. v. Findmine, Inc., No. 1:22-cv-02983 (PGG) (SDA), 2023 BL 57153 (S.D.N.Y. Feb. 21, 2023), Court Opinion

Pagination

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Majority Opinion >

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Stylitics, Inc., Plaintiff, -against- FindMine, Inc., Defendant.

1:22-cv-02983 (PGG) (SDA)

February 21, 2023, Filed

February 21, 2023, Decided

For Stylitics Inc., Plaintiff: Evan Gourvitz, Josef Bryks Schenker, Steven Pepe, Ropes & Gray LLP (NYC), New York, NY; James R Batchelder, Ropes & Gray LLP, East Palo Alto, CA; S. Lara Ameri, Ropes & Gray LLP, Boston, MA.

For Findmine Inc., Defendant: Michael Renaud, Mintz Levin Cohn Ferris Glovsky and Popeo P.C., Boston, MA; Peter Francis Snell, Mintz Levin Cohn Ferris Glovsky & Popeo P.C.(NYC), New York, NY.

STEWART D. AARON, United States Magistrate Judge. HONORABLE PAUL G. GARDEPHE, UNITED STATES DISTRICT JUDGE.

STEWART D. AARON

REPORT AND RECOMMENDTION

STEWART D. AARON, UNITED STATES MAGISTRATE JUDGE.

TO THE HONORABLE PAUL G. GARDEPHE, UNITED STATES DISTRICT JUDGE:

Pending before the Court is a motion by Defendant FindMine, Inc. ("Defendant" or "FindMine"), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure , for an Order dismissing the Complaint of Plaintiff Stylitics, Inc. ("Plaintiff" or "Stylitics"). (Def.'s Not. of Mot., ECF No. 33.) For the reasons set forth below, I respectfully recommend that Defendant's motion be GRANTED.

BACKGROUND

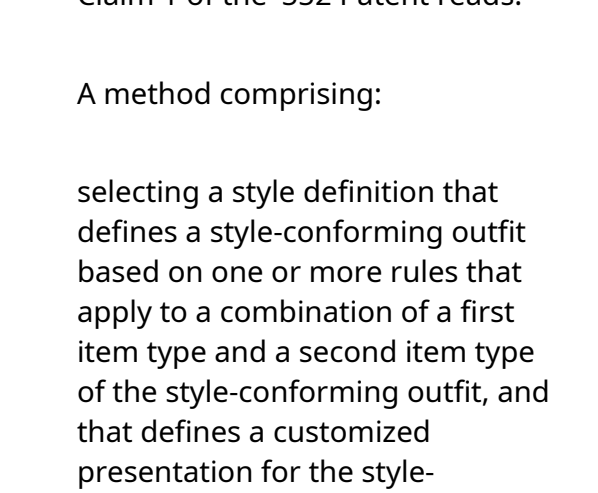
In this patent infringement action, Stylitics alleges that FindMine directly, indirectly and willfully infringed asserted claims in a patent assigned to Stylitics, *i.e.*, U.S. Patent No. 11 , *100* ,552, titled "Automated Stylist for Curation of Style-Conforming Outfits." (the "'552 Patent"). (Compl., ECF No. 1, ¶¶ 1, 45-57.)

I. Background Of '552 Patent

The U.S. Patent and Trademark Office ("PTO") issued the '552 Patent on August 24, 2021. (*See* '552 Patent, ECF No. 7-1.) The '552 Patent describes an automated styler or so-called "auto-styler" (hereinafter, "Auto-Styler") that "may include systems and/or methods for automatically generating a plurality of outfits that conform to one or more styles, and for

presenting the generated outfits in a single presentation so that users may readily visualize different styles that can be created from pairing items of different item types in an outfit." (*Id.* at 2:9-14.)

Below, Figure 11 shows an example of a customized presentation of an outfit in accordance with some embodiments in the Patent:



Claim 1 of the '552 Patent reads:

> A method comprising:
>
> selecting a style definition that defines a style-conforming outfit based on one or more rules that apply to a combination of a first item type and a second item type of the style-conforming outfit, and that defines a customized presentation for the style-conforming outfit, wherein each of the first item type and the second item type comprises a plurality of different items with a utility that differs from the plurality of items of another item type;
>
> generating the style-conforming outfit comprising a combination of a first item of the first item type and a second item of the second item type in response to a collective style produced by the combination satisfying the one or more rules;
>
> determining a z-depth[1] ordering for the first item type and the second item type based on a predefined template;
>
> positioning a first image of the first item relative to a second image of the second item in a single **[*2]** interface based on a specified positioning in the predefined template and the z-depth ordering for the first item type and the second item type;
>
> sizing the first image relative to the second image in the single interface based on a specified sizing for the first item type and the second item type in the customized presentation;
>
> automatically adjusting the positioning of the first image from the specified positioning in order to adjust an amount of overlap between the first image and the second image after said sizing; and
>
> presenting the collective style provided by the style conforming outfit based on said positioning, sizing, and adjusting of the first image and the second image in the single interface.

(*See* '552 Patent at 20:34-67, ECF No. 7-1.) Claims 2 through 18 are dependent claims that include additional limitations to the method of claim 1. (*Id.* at 21:1-23:43.)

Claims 19 and 20 are two other independent claims. Claim 19 is directed to a device that includes "one or more processors configured to" perform steps that are substantively similar to the steps claimed in claim 1. ('552 Patent at 23:44-24:20.) Claim 20 is directed to a "non-transitory computer-readable medium, storing a plurality of processor-executable instructions to" perform steps that are substantively similar to the steps claimed in claim 1. (*Id.* at 24:21-55.)

II. Complaint Allegations [2]

Stylitics is an outfitting solution and digital merchandising technology company founded in 2011 with the goal of improving and enhancing the digital shopping experience for retailers and consumers. (Compl. ¶ 2.) Stylitics has invested significant time and resources to develop unique and innovative technology (including the patented technology at issue in this litigation) that allows online retailers to deliver visually inspiring, look-based content to their consumers across digital platforms. (*Id.*) Stylitics' Auto-Styler uses a proprietary system that generates and displays collages of high quality, on-brand outfits, each consisting of multiple well-proportioned, attractively arranged and appropriately sized complementary products. (*Id.* ¶ 3.) Stylitics sought and obtained patent protection on its Auto-Styler technology, including the '552 Patent. (*Id.* ¶ 4.) Stylitics' patented system is used by hundreds of online retailers. (*Id.*)

FindMine entered the e-commerce industry years after Stylitics was founded. (Compl. ¶ 5.) In 2016, FindMine launched its own online styling and visual merchandising services and system, which it described as "Complete the Look." (*Id.* ¶ 36.) FindMine's original outfitting system used a conventional digital merchandising approach and lacked much of the sophistication of Stylitics' technology, and its visual merchandising options were less robust than the options offered by Stylitics. (*Id.*) In 2021, FindMine began pursuing a relationship with one of Stylitics' largest e-commerce retailer customers that, during the course of its partnership with Stylitics, had used the Stylitics Auto-Styler to display hundreds of thousands of shoppable outfit collages **[*3]** on its websites. (*Id.* ¶¶ 6, 37.) This customer asked FindMine to create an outfitting solution for its websites that looked and worked like Stylitics' system. (*Id.* ¶ 6.) In response to this request, FindMine changed the manner in which it styled and displayed outfits to mimic the user-interface and collages generated by Stylitics' Auto-Styler technology. (*Id.* ¶¶ 7, 38-40.)

FindMine's system generated near exacts replicas of Stylitic's collages at scale, as demonstrated by the images below:

(Compl. ¶ 41.)

Copying Stylitics' system was an express condition to gaining the customer's business. (Compl. ¶ 43.) FindMine either was aware or became aware of the '552 Patent during its negotiations or business-dealings with the customer, including because the customer had express knowledge of the '552 Patent. (*Id.*) On December 15, 2021, Stylitics sent FindMine a letter explicitly notifying it of the '552 Patent and demanding that FindMine cease and desist its unauthorized use of the '552 Patent technology. (*Id.*) FindMine responded by denying infringement, without any substantive analysis or discussion, and

refusing to stop any of its conduct. (*Id.*) This action followed. (*Id.*)

LEGAL STANDARDS

I. Rule 12(b)(6)

A defendant may move to dismiss a claim for "failure to state a claim upon which relief can be granted." **Fed. R. Civ. P. 12(b)(6)** . To survive a motion to dismiss under **Rule 12(b)(6)** , "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, **556 U.S. 662** , **678** (2009) (quoting *Bell Atl. Corp. v. Twombly*, **550 U.S. 544** , **570** (2007)). "A claim is facially plausible if the complaint contains factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Nguyen v. FXCM Inc.*, **364 F. Supp. 3d 227** , **239** (S.D.N.Y. 2019) (internal quotation marks and citation omitted).

In deciding a motion to dismiss, the Court "must accept as true all of the factual allegations contained in a complaint[,]" but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, **556 U.S. at 678** (citation omitted); *see also Nguyen* **364 F. Supp. 3d at 239** ("The Court need not accept as true, 'legal conclusions, deductions, or opinions couched as factual allegations.'") (quoting *In re NYSE Specialists Sec. Litig.*, **503 F.3d 89** , **95** (2d Cir. 2007)).

II. Patent Eligibility

"Patents granted by the Patent and Trademark Office . . . are presumptively valid." *Bytemark, Inc. v. Xerox Corp.*, No. 17-CV-01803 (PGG), [**2022 BL 7859**], 2022 WL 94859 , at *7 (S.D.N.Y. Jan. 10, 2022) (citing *Microsoft Corp. v. i4i Ltd. P'ship*, **564 U.S. 91** , **100** (2011)). "An alleged infringer challenging the validity of a patent 'must prove that the patent does not satisfy the prerequisites for issuance of a patent, including the requirements set forth in Section 101 of the Patent Act.'" ***Id.*** (quoting *Cellspin Soft, Inc. v. Fitbit, Inc.*, **927 F.3d 1306** , **1319** (Fed. Cir. 2019)) (internal alterations omitted).[3] The burden of proof is one of clear and convincing evidence. *See Microsoft* Corp., **564 U.S. at 95** .

Section 101 of the Patent Act authorizes inventors to obtain patents for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." **35 U.S.C. § 101** . However, it is well established that "this provision contains an important **[*4]** implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, **573 U.S. 208** , **216** (2014) (citation omitted). That is because these are "the basic tools of scientific and technological work," *Gottschalk v. Benson*, **409 U.S. 63** , **67** (1972), and to award a patent for their discovery would risk "inhibit[ing] further discovery by improperly tying up the future use of" such tools. *Mayo Collaborative Svcs. v. Prometheus Labs., Inc.*, **566 U.S. 66** , **85** (2012). Nevertheless, the Supreme Court has warned against construing this exception too broadly, "lest it swallow all of patent law." *Alice*, **573 U.S. at 217** . An invention that applies an abstract idea or law of nature "to a new and useful end" therefore may be patent eligible. *Gottschalk*, **409 U.S. at 67** (quoting *Funk Bros. Seed Co. v. Kalo Inoculant Co.*, **333 U.S. 127** , **130** (1948)).

To assess patent eligibility, the Supreme Court in *Alice* articulated a two-part test. First, courts must "determine whether the claims at issue are directed to a patent-ineligible concept," such as an abstract idea. *Alice*, **573 U.S. at 218** . If so, then courts must determine whether any of the claims "transform that abstract idea into a patent-eligible invention." ***Id.* at 221** .

Under the first step, "[c]ourts 'consider the claims in their entirety to ascertain whether their character as a whole is directed to excluded subject matter.'" *Bytemark*, [**2022 BL 7859**], 2022 WL 94859 , at *7 (quoting *CardioNet, LLC v. InfoBionic, Inc.*, **955 F.3d 1358** , **1367-68** (Fed. Cir. 2020); *see also Enfish, LLC v. Microsoft Corp.*, **822 F.3d 1327** , **1335** (Fed. Cir. 2016). "Judges also consider the patent's written description, which informs [courts'] understanding of the claims." *Bytemark*, [**2022 BL 7859**], 2022 WL 94859 , at *7 (internal quotation marks and alterations omitted). "In performing the first step of the *Alice* analysis, courts consider 'whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.'" *Id.* at 8 (quoting *CardioNet*, **955 F.3d at 1367**). Neither the Supreme Court nor the Federal Circuit has defined what constitutes an abstract idea. Instead, they "have found it sufficient to compare claims at issue to those claims already found to be directed to an abstract idea in previous cases." *Enfish*, **822 F.3d at 1334** .

Courts have identified multiple inquiries relevant to *Alice* 's step one. The first is whether the claimed process "can be accomplished mentally"; if so, the claims are likely directed to an abstract idea. *See Quantum Stream Inc. v. Charter Comms., Inc.*, **309 F. Supp. 3d 171** , **183** (S.D.N.Y. 2018). If the patent claims an abstract "result or effect" while invoking "generic processes and machinery," then the claims are directed to an abstract idea. *See Free Stream Media Corp. v. Alphonso Inc.*, **996 F.3d at 1363** (Fed. Cir. 2021) (quoting *McRO, Inc. v. Bandai Namco Games Am. Inc.*, **837 F.3d 1299** , **1314** (Fed. Cir. 2016)). Indeed, patent claims must "go beyond stating a functional result [and] identify how that functional result is achieved by limiting the claim scope to . . . concrete action." *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, **967 F.3d 1285** , **1302** (Fed. Cir. 2020) (internal quotation marks omitted). Particularly in the context of computer-based patents, courts must determine "whether the focus of the claims is on a specific asserted improvement in capabilities, **[*5]** or instead, on a process that qualifies as an abstract idea for which computers are invoked merely as a tool.'" *BSG Tech LLC v. Buyseasons, Inc.*, **899 F.3d 1281** , **1286** (Fed. Cir. 2018) (quoting *Enfish*, **822 F.3d at 1336**) (cleaned up). Moreover, "[a]n abstract idea does not become nonabstract by limiting the invention to a particular field of use or technological environment, such as the Internet." *Intellectual Ventures I LLC v. Cap. One Bank (USA)*, **792 F.3d 1363** , **1366** (Fed. Cir. 2015).

If the main thrust of the claims is a patent-ineligible concept, then courts must consider, in the second step of the *Alice* framework, whether the elements of the claims, both individually and "as an ordered combination" include an "inventive concept," sufficient to "transform" the claimed abstract idea into a patent-eligible application." *Alice*, **573 U.S. at 221** . The purpose of the inquiry is to determine whether the claims "amount[] to significantly more than a patent upon the ineligible concept itself." *Ultramercial, Inc. v.*

Hulu, LLC, 772 F.3d 709 , 714 (Fed. Cir. 2014) (quoting *Alice*, 573 U.S. at 218) (cleaned up). Most importantly, if the only possible "inventive concept is the application of an abstract idea using conventional and well-understood techniques," then the patent will fail at *Alice* step two. *See BSG Tech. LLC*, 899 F.3d at 1290 (internal quotation marks omitted). Thus, implementing an abstract idea on a computer, without more, does not make otherwise ineligible claims patentable. *See Alice*, 573 U.S. at 222 ("[C]omputer implementation did not supply the necessary inventive concept.") (citing *Gottschalk*, 409 U.S. at 67). By contrast, claim limitations that direct "the non-conventional and non-generic arrangement of known, conventional pieces" comprise an inventive concept. *See BASCOM Glob. Internet Svcs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 , 1350 (Fed. Cir. 2016); *see also Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306 , 1318-19 (Fed. Cir. 2019) (noting that patent claims using conventional technology in novel ways comprise inventive concept). Any inventive concept "must be evident in the claims." *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322 , 1327 (Fed. Cir. 2017).

"Patent eligibility under § 101 is a question of law that may contain underlying questions of fact." *CosmoKey Sols. GmbH & Co. KG v. Duo Sec. LLC*, 15 F.4th 1091 , 1095 (Fed. Cir. 2021). Thus, patent eligibility can be determined on the pleadings "when there are no factual allegations that, when taken as true, prevent resolving the eligibility question as a matter of law." ***Id.* at 1095-1096** (internal quotation marks omitted); *see also Bytemark*, [2022 BL 7859], 2022 WL 94859 , at *8 ("Patent validity under Section 101 presents a question of law that may be determined on the pleadings.") (citing cases); *Zeta Glob. Corp.*, [2022 BL 235659], 2022 WL 2533182 , at *2 (patent validity "may be, and frequently has been, resolved on a Rule 12(b)(6) or (c) motion where the undisputed facts, considered under the standards required by that Rule, require a holding of ineligibility under the substantive standards of law.") (quoting *PersonalWeb Techs. LLC v. Google LLC*, 8 F.4th 1310 , 1314 (Fed. Cir. 2021)); *Guvera IP Pty Ltd. v. Spotify, Inc.*, No. 21-CV-04544 (JMF), [2022 BL 344399], 2022 WL 4537999 , at *4 (S.D.N.Y. Sept. 28, 2022) (same).

DISCUSSION

As its principal ground in support of dismissal of the Complaint, Defendant asserts that the '552 Patent is invalid for failing to claim patent-eligible subject matter. (*See* Def.'s Mem., ECF No. 34, at 6 (citing 35 U.S.C. § 101 and *Alice*).) Defendant argues that the **[*6]** Court should dismiss the Complaint because all claims of the '552 patent are directed to the patent-ineligible abstract idea of recommending a clothing outfit. (Def.'s Mem. at 6-9.) In Defendant's view, all Plaintiff alleges to do is use generic computers to automate tasks that long have been done by human stylists. (*See id.* at 8-9; *see also* 2/1/2023 Tr., ECF No. 45, at 6-9.) In response, Plaintiff argues that Defendant oversimplifies the claims and that the claims are not abstract, "but are directed to specific improvements for a retailer's online store." (Pl.'s Opp. Mem., ECF No. 39, at 11 (citing Compl. ¶¶ 28-35).) Plaintiff focuses on its use of a style definition and its customized digital presentation of the recommended outfit in a single interface, which it asserts are improvements over prior art systems. (*See* Pl.'s Opp. Mem. at 4-6; 2/1/2023 Tr. at 25-26.) Plaintiff also argues that Defendant ignores the prosecution history showing that the PTO examiner suggested specific changes to the claims to address eligibility concerns. (Pl.'s Opp. Mem. at 2, 7-8.)

Construing the factual allegations in the Complaint in the light most favorable to Plaintiff, the Court finds, for the reasons set forth below, that Defendant has met its burden of proving unpatentability. Taken together, and considered with the specification, the Court finds that the '552 Patent claims are directed to the abstract idea of styling a clothing outfit. None of the '552 Patent claims, either separately or as an ordered combination, adds an inventive concept to the abstract idea of styling a clothing outfit. Accordingly, the claims are not eligible for patent protection.

I. Independent Claims

The '552 Patent provides for "an automated styler or 'auto-styler'[,] . . . [that] may include systems and/or methods for automatically generating a plurality of outfits that conform to one or more styles, and for presenting the generated outfits . . .." ('552 Patent at 2:7-10, ECF No. 7-1.) In summary, the method of Claim 1 "select[s] a style definition that defines a style-conforming outfit based on one or more rules," "generat[es] the style-conforming outfit comprising a combination of" certain items, "determine[s] a z-depth ordering" of the items, "position[s]" images of the items, "siz[es]" the images, "automatically adjust[s] the positioning of the" images and "present[s] the collective style provided by the style-conforming outfit based on said positioning, sizing, and adjusting of the" images. (*See* '552 Patent at 20:35-67.) Claim 19 is directed to a device that includes "one or more processors configured to" perform steps that are substantively similar to the steps claimed in claim 1. (*See id.* at 23:44-24:20.) Claim 20 is directed to a "non-transitory computer-readable medium, storing a plurality of processor-executable instructions to" perform steps that are substantively similar to the steps claimed in claim 1. (*See id.* at 24:21-55.)

A. *Alice* Step One

The Court first considers step one of the *Alice* analysis—*i.e.*, whether the claims at issue are directed to a patent-ineligible concept, such as an abstract idea. The Court finds that the independent claims of the Patent (*i.e.*, Claims **[*7]** 1, 19 and 20) are directed to the abstract idea of styling a clothing outfit. Although Plaintiff argues that the patent is protecting a specific series of steps and a specific outcome rather than preempting "the entire idea of generating an outfit recommendation" (*see* 2/1/2023 Tr. at 28), the idea of using a set of criteria to decide what clothing items to pair together and presenting the outfit in an appealing way is the essence of what a stylist does and something that human stylists have been doing for generations. Indeed, as Defendant points out, the '552 Patent acknowledges in its "Background" section that it is well known that a "purchaser considers . . . articles of clothing and/or clothing accessories in order to create an outfit with two or more items that conform to a certain style." (Def.'s Mem. at 9 (citing '552 Patent at 1:9-12).) To provide patent protection for these types of claims would risk preempting or monopolizing a mental process. *See Perry Street Software, Inc. v. Jedi Tech., Inc.*, **548 F. Supp. 3d 418** , **422** (S.D.N.Y. 2021) (patent "directed toward the abstract idea of automated matchmaking");[4] *Ghaly Devices LLC v. Humor Rainbow, Inc.*, **443 F. Supp. 3d 421** , **429** (S.D.N.Y. 2020) (patent claiming process for matching different users on dating app is drawn to abstract idea of "human compatibility and matchmaking").

Moreover, the Court agrees with Defendant that "arranging clothing items on a computer instead of on a child's bed, hanger, mannequin, or in a printed advertisement does not make the abstract idea patent eligible." (Def.'s Reply, ECF No. 37, at 8-9.) It is not enough that Plaintiff claims to improve the styling process through the use of computers. *See Customedia Techs., LLC v. Dish Network Corp.*, **951 F.3d 1359** , **1364** (Fed. Cir. 2020) ("We have held that it is not enough, however, to merely improve a fundamental practice or abstract process by invoking a computer merely as a tool."); *see also Guvera IP Pty Ltd.*, [**2022 BL 344399**], 2022 WL 4537999 , at *5 (automating steps that otherwise could be performed by humans "does not render the process patentable").

Plaintiff argues that the auto-styler is not just automating steps that could be performed by humans, but is directed to non-abstract improvements to a retailer's online store. (Pl.'s Opp. Mem. at 11-14.) "In general, '[s]oftware can make non-abstract improvements to computer technology just as hardware improvements can[.]'" *VeriPath, Inc. v. Didomi*, No. 19-CV-01702 (GBD), [**2020 BL 118433**], 2020 WL 1503687 , at *2 (S.D.N.Y. Mar. 30, 2020), *aff'd*, **842 F. App'x 640** (Fed. Cir. 2021) (quoting *Enfish*, **822 F.3d at 1335**). "But to be directed to a patent-eligible improvement to computer functionality, the claims must be directed to an improvement to the functionality of the computer or network platform itself." ***Id.*** (quoting *Customedia Techs.*, **951 F.3d at 1359**). The relevant inquiry is "whether the claims are directed to 'a specific means or method' for improving technology or whether they are simply directed to an abstract end-result." *RecogniCorp*, **855 F.3d at 1326** (quoting *McRO*, **837 F.3d at 1314**).

Here, the Court finds that the claims describe steps taken on a computer in functional terms that lack the specificity or technical detail to transform them from "claiming only a result to [ ] claiming a way of achieving it." *AuthWallet, LLC v. Block, Inc.*, No. 21-CV-05463 (LJL), [**2022 U.S.P.Q.2D 427**], 2022 WL 1321387 , at *8 (S.D.N.Y. May 3, 2022) (quoting *Ancora* ***[*8]*** *Techs., Inc. v. HTC Am., Inc.*, **908 F.3d 1343** , **1349** (Fed. Cir. 2018)). Plaintiff contends that the '552 Patent is patent eligible because it provides a solution to overcome a specific problem in computer technology, namely the prior need for "separate windows, screens, sites, and/or interfaces for each item." (Pl.'s Opp. Mem. at 11 (citing '552 Patent at 3:58-64); *see also* 2/1/2023 Tr. at 30-31.) However, although the claims refer to positioning and presenting items in a single interface, they lack any detail on how this is done. Nor do the claims teach a specific way to improve other computer functions such as determining z-depth based on a predefined template, sizing, re-sizing or adjusting images.[5] Thus, unlike in the *Shopify* case relied upon by Plaintiff, the "plain focus" of Plaintiff's claims is not on an improvement to computer functionality itself, but rather directed to an abstract end result. *See Shopify Inc. v. Express Mobile, Inc.*, No. 19-CV-00439 (RGA), [**2021 BL 357841**], 2021 WL 4288113 , at *22 (D. Del. Sept. 21, 2021) (claims eligible when directed to specific improvement of browser-based web-page-editing).

For these reasons, and considering the character of claims as a whole, the Court finds at *Alice* step one that the '552 Patent claims are directed to an abstract idea of styling a clothing outfit. *See Hawk Tech. Sys., LLC v. Castle Retail, LLC*, No. 2022-1222, [**2023 U.S.P.Q.2D 211**], 2023 WL 2054379 , at *6 (Fed. Cir. Feb. 17, 2023) (claims were directed to the abstract idea of "storing and displaying

video" and not solution to technical problem when failed "to recite a specific solution to make the alleged improvement . . . concrete") (internal quotation marks omitted); *Gabara v. Facebook, Inc.*, **484 F. Supp. 3d 118** , **125** (S.D.N.Y. 2020), *aff'd*, **852 F. App'x 541** (Fed. Cir. 2021) (patent that recited "combination of conventional components of mobile devices and well-known algorithmic steps" lacked "specificity to nudge the patents into the realm of patentable subject matter"); *Sportvision, Inc. v. MLB Advanced Media, LP*, No. 18-CV-03025 (PGG), *2020 WL 1957450* , at *14 (S.D.N.Y. Apr. 23, 2020) (claim directed to automatic calculation of height and volume abstract when lacked detail as to how automatic calculation occurred; distinguishing claim in *McRo*, **837 F.3d at 1307-08** , which in contrast "set[ ] forth five detailed steps explaining exactly how the animation occur[ed] automatically"); *VeriPath*, [**2020 BL 118433**], 2020 WL 1503687 , at *3 (claim failed to teach "specific way to improve the functionality of a computer"); *WalkMe Ltd. v. Pendo.io, Inc.*, No. 18-CV-07654 (DLC), [**2019 BL 121538**], 2019 WL 1512602 , at *4 (S.D.N.Y. Apr. 4, 2019) (patent asserting improvement in functionality by automatically generating calling scripts and automatically determining features of display such as size and location merely claimed desired result and specified no more than that it would be achieved automatically by computer).

B. *Alice* Step Two

In light of the Court's conclusion that the independent claims of the '552 Patent are directed to an abstract idea, it is necessary to proceed to step two of the *Alice* inquiry, which asks whether the claims contain an "inventive concept." *Alice*, **573 U.S. at 217** . To satisfy the second step of the *Alice* test, the claim limitations must "involve more than performance of 'well-understood, routine, [and] conventional activities previously known to the industry.'" *Content Extraction & Transmission **[*9]** LLC v. Wells Fargo Bank, Nat'l Ass'n*, **776 F.3d 1343** , **1347-48** (Fed. Cir. 2014) (quoting *Alice*, **573 U.S. 224**). "Whether the claim elements or the claimed combination are well-understood, routine, conventional is a question of fact." *Aatrix Software, Inc. v. Green Shades Software, Inc.*, **882 F.3d 1121** , **1128** (Fed. Cir. 2018). "Plausible and specific factual allegations that aspects of the claims are inventive are sufficient . . . [a]nd patentees who adequately allege their claims contain inventive concepts survive a **§ 101** eligibility analysis under **Rule 12(b)(6)** [and **Rule 12(c)**]." *Personalized Media Commc'ns, LLC v. Netflix Inc.*, **475 F. Supp. 3d 289** , **299-300** (S.D.N.Y. 2020) (citing *Aatrix*, **882 F.3d at 1126-27**) (internal quotation marks and alterations omitted). "The court may look only to 'sources properly considered on a motion to dismiss, such as the complaint, the patent, and materials subject to judicial notice.'" ***Id.*** (quoting *Aatrix*, **882 F.3d at 1128**).

Defendant argues that the asserted claims do not include an inventive concept and, "at best the '552 Patent merely uses general purpose computers and the Internet as a tool to perform the abstract idea of recommending clothing outfits." (Def.'s Mem. at 11.) In response, Plaintiff asserts that the claims recite an inventive concept in the particular and specific manner in which outfits are generated and presented. (Pl.'s Opp. Mem. at 15-16; *see also* Compl. ¶ 26.) For example, Plaintiff contends that the '552 Patent claims require a non-conventional and non-routine style definition that defines a style-conforming outfit based on one or more rules. (Pl.'s Opp. Mem. at 16; Compl. ¶ 27.) However, as Plaintiff acknowledges, this

process is something that long has been performed manually by stylists, albeit in a less efficient way. (Compl. ¶ 27 (alleging in prior art "online retailers could work with stylists to construct outfits manually and then separately work with marketers to create attractive digital content that reflects these manually-constructed outfits, but this process was inefficient, and cost more time and money than an integrated, automated solution."). "[C]laiming the improved speed or efficiency inherent with applying [an] abstract idea on a computer [does not] provide a sufficient inventive concept." *Intellectual Ventures*, **792 F.3d at 1367** ; *see also Quantum Stream*, **309 F. Supp. 3d at 187** (patents claiming conventional implementation of tailoring advertising to user characteristics lacked inventive concept; patents essentially used computer to implement "the abstract idea of customization" in "real time").

Similarly, Plaintiff's conclusory allegations that its process is non-conventional is not sufficient. Plaintiff argues that the claims focus on the improved visual presentation disclosed by the specification, including a non-conventional process for laying, sizing, positioning, automatically adjusting and re-positioning images of selected items, and that these improvements are sufficient to render the claims eligible under *Alice* . (*See* Pl.'s Opp. Mem. at 16; Compl. ¶¶ 33-34.) However, the claims follow the same process that a stylist in a retail store would use to select and display a clothing outfit. *See Pers. Beasties Grp. LLC v. Nike, Inc.*, **341 F. Supp. 3d 382** , **389** (S.D.N.Y. 2018), *aff'd*, **792 F. App'x 949** (Fed. Cir. 2020) (finding abstract **[*10]** elements followed conventional pattern of user input followed by system collecting, analyzing and displaying information). Moreover, as set forth above, the claims do not articulate an improvement to the specific way the computer positions, sizes or adjusts the images.[6] *See SAP Am.*, **898 F.3d at 1169-70** (no inventive concept when limitations required no improved computer resources the plaintiff claimed to have invented, "just already available computers, with their already available basic functions, to use as tools in executing the claimed process"); *see also WalkMe*, [**2019 BL 121538**], 2019 WL 1512602 , at *3 (generic computer features did not constitute inventive concepts).

Ultimately, what the claims and Plaintiff's allegations show is that the '552 Patent seeks to automate the in-store experience of having a stylist offer clothing recommendations and/or curate an outfit for display. (*See* Compl. ¶ 26 (alleging online retail systems limited in comparison to "a brick-and-mortar retail store" where customers "exposed to an item-rich in-store experience where a given retailer's products can be presented and styled together with complementary items."); ¶ 28 (alleging prior to '552 Patent need for "efficient, cost-conscious online retail system to both automatically create "high-quality and visually appealing outfits at scale" and present those outlines in a sophisticated, item-rich user interface). Thus, rather than allege an unconventional process, as Plaintiff argues, the Court finds that the allegations in the Complaint allege only the automation of an otherwise conventional process. The implementation of an abstract idea using conventional techniques or generic computer technology does not constitute an "inventive concept" so as to render Plaintiff's otherwise abstract idea patent eligible. *See Alice*, **573 U.S. at 222** ; *see also Perry Street Software*, **548 F. Supp. 3d at 434** ("for a patent-ineligible concept to transform into an 'inventive' one, the patent's claims must do more than computerize or automate a common process"). Indeed, as the Court explained in

Alice , "[g]iven the ubiquity of computers, wholly generic computer implementation is not generally the sort of 'additional featur[e]' that provides any 'practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.]" *Alice*, **573 U.S. at 223-24** (quoting *Mayo*, **566 U.S. at 77** .) So too here, the Court finds that allowing Plaintiff to claim the process set forth in the independent claims of the '552 Patent would risk monopolizing the abstract idea itself.

Although Plaintiff argues that, at a minimum, factual disputes prevent the Court from granting Defendant's motion, "in the absence of an innovative concept that goes beyond the abstract idea, no further factual development is needed in order for the Court to determine that dismissal is appropriate." *See RDPA, LLC v. Geopath, Inc.*, **543 F. Supp. 3d 4** , **25** (S.D.N.Y. 2021).[7]

II. Dependent Claims

"Each claim of a patent (whether in independent, dependent, or multiple dependent form) shall be presumed valid independently of the validity of other claims." **35 U.S.C. § 282** . However, where the claims are "substantially similar and linked to the same abstract **[*11]** idea," a court need not address each claim individually. *See Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, **776 F.3d 1343** , **1348** (Fed. Cir. 2014), *cert. denied*, **577 U.S. 914** (2015). In any event, the dependent claims contained in Claims 2 through 18 are invalid for the same reasons as Claim 1 and fail to "offer[] a meaningful limitation" on the abstract idea in the patent. *See Alice*, **573 U.S. at 226** . Claims 2 through 18 involve only slight adjustments or additions to the ways in which the methods described in Claim 1 selects, analyzes and/or displays data regarding clothing outfits.

The Court therefore finds that the '552 Patent is invalid for failing to claim patent-eligible subject matter and recommends that Defendant's motion to dismiss be granted on that basis. Accordingly, the Court need not reach Defendant's argument that Plaintiff has not adequately alleged infringement. (*See* Def.'s Mem. at 13-15.)[8]

CONCLUSION

For the foregoing reasons, I respectfully recommend that Defendant's motion to dismiss be GRANTED.

Dated: New York, New York

February 21, 2023

/s/ Stewart D. Aaron

STEWART D. AARON

United States Magistrate Judge

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fn 1

In an X-Y-Z or 3D matrix, which "is a three-dimensional structure whereby the x-axis and y-axis denote the first two dimensions and the z-axis is the third dimension[,] . . . the x denotes width, y denotes height and the z represents depth." *What Does X-Y-Z Matrix Mean*?, https://www.techopedia.com/definition/10108/x-y-z-matrix (last visited Feb. 21, 2023).

fn 2

For purposes of the pending motion to dismiss, the Court accepts Plaintiff's allegations as true and draws all reasonable inferences in its favor. *See City of Providence v. BATS Glob. Mkts., Inc.*, **878 F.3d 36** , **50** (2d Cir. 2017).

fn 3

"As a threshold matter, the law of the Federal Circuit applies to patent issues, while the law of the regional circuit—in this case, the Second Circuit—applies to non-patent issues." *Zeta Glob. Corp. v. Maropost Mktg. Cloud, Inc.*, No. 20-CV-03951 (LGS), [**2022 BL 235659**], 2022 WL 2533182 , at *2 (S.D.N.Y. July 7, 2022) (citing *Univ. of S. Fla. Rsch. Found., Inc. v. Fujifilm Med. Sys. U.S.A., Inc.*, **19 F. 4th 1315** , **1323** (Fed. Cir. 2021)).

fn 4

During oral argument, Plaintiff sought to distinguish *Perry Street Software* by comparing Claim 1 in the '552 Patent to Claim 1 in the '977 Patent in the *Perry Street Software* case. (*See* 2/1/2023 Tr. at 32-34*; see also* Plaintiff's Oral Argument Slide Presentation, ECF No. 47, at slide 13.) However, the patent claims at issue in *Perry Street Software* that Judge McMahon found were "clearly directed to toward [an] abstract idea" were claims in the '918 Patent, not the '977 Patent. *See Perry St. Software*, **548 F. Supp. 3d at 431** . A comparison of the claims in the '918 Patent in *Perry Street Software, see* ***id.*** **at 423-24** , with the claims in the '552 Patent (*see* '552 Patent at 20:34-67, 21:1-23:43, ECF No. 7-1) shows that they have substantial overlap.

fn 5

The Court is mindful that the PTO Examiner recommended amending the claims to include "z-depth ordering . . . based on a predefined template" and "automatically adjusting the positioning . . . after said sizing" prior to allowing the claims. (Pl.'s Opp. Mem. at 7.) Certainly, "[t]he presumption of validity under **35 U.S.C. § 282** carries with it a presumption that the Examiner did his duty and knew what claims he was allowing[,]" *Al-Site Corp. v. VSI Int'l, Inc.*, **174 F.3d 1308** , **1323** (Fed. Cir. 1999). However, the Examiner's recommendation does not change Defendant's burden, as Plaintiff suggests. (*See* Pl.'s Opp. Mem. at 7-8.) Although an alleged infringer's burden has sometimes been described as "heavy" where an examiner has considered evidence of the prior art, *see e.g., Impax Labs., Inc. v. Aventis Pharms., Inc.*, **545 F.3d 1312** , **1314** , (Fed. Cir. 2008), that label is not intended to alter the "clear and convincing evidence" standard, which is the standard the Court applies here. *See* ***id.*** *; see also* Pl.'s Opp. Mem. at 8 (referring to "heavy burden on eligibility (clear and convincing evidence)").

fn 6

In contrast, in *Sportvision*, the Court found that the well-pleaded allegations that claim went beyond "conventional solutions" for adding a strike zone to an image in several key respects were sufficient to create a question of fact at *Alice* step two. *See Sportvision*, [**2020 U.S.P.Q.2D 10418**], 2020

WL 1957450 , *at *15* .

fn 7

In addition, Plaintiff's argument that the Court should conduct claim construction before ruling on eligibility is unavailing (*see* Pl.'s Opp. Mem. at 18-19), since Plaintiff "has not explained how it might benefit from any particular term's construction under an Alice § 101 analysis." *Simio, LLC v. FlexSim Software Prod., Inc.*, **983 F.3d 1353** , **1365** (Fed. Cir. 2020); *see also Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, **776 F.3d at 1349** ("Although the determination of patent eligibility requires a full understanding of the basic character of the claimed subject matter, claim construction is not an inviolable prerequisite to a validity determination under **§ 101** .").

fn 8

In the event that the recommendation regarding eligibility is not adopted, Plaintiff's infringement allegations seem adequate. "A plaintiff is not required to plead infringement on an element-by-element basis." *Bot M8 LLC v. Sony Corp. of Am.*, **4 F.4th 1342** , **1352** (Fed. Cir. 2021). "Instead, it is enough that a complaint place the alleged infringer on notice of what activity is being accused of infringement." ***Id.*** (internal quotation marks and alterations omitted); *see also Ottah v. First Mobile Techs.*, No. 10-CV-07296 (CM), [**2011 BL 441821**], 2011 WL 4343269 , at *3 (S.D.N.Y. Sept. 8, 2011) ("infringement complaint states a claim for relief despite its failure to specify how each claim limitation is satisfied by the accused products") (internal quotation marks omitted). However, "a plaintiff cannot assert a plausible claim for infringement under the *Iqbal/Twombly* standard by reciting the claim elements and merely concluding that the accused product has those elements." *Bot M8*, **4 F.4th at 1353** . "There must be some factual allegations that, when taken as true, articulate why it is plausible that the accused product infringes the patent claim." ***Id.*** Here, Plaintiff does set forth some allegations, taken as true, that articulate why it is plausible that the accused product infringes the patent claim. (*See* Compl. ¶¶ 39-42.) Nevertheless, the Court could grant Plaintiff leave to file an Amended Complaint with "additional detail." (*See* Pl.'s Opp. Mem. at 23 n.6.).

General Information

Case Name	Stylitics, Inc. v. Findmine, Inc.
Court	U.S. District Court for the Southern District of New York
Date Filed	Tue Feb 21 00:00:00 EST 2023
Judge(s)	Aaron, Stewart David
Parties	Stylitics, Inc., Plaintiff, -against- FindMine, Inc., Defendant.
Topic(s)	Civil Procedure; Patent Law