

APPENDIX

APPENDIX**TABLE OF CONTENTS**

Appendix A	Opinion in the United States Court of Appeals for the Federal Circuit, 2020-1995 (March 8, 2021)	App. 1
Appendix B	Memorandum and Order in the United States District Court Eastern District of Missouri Southeastern Division, Case No. 1:19-cv-00039-SNLJ (March 20, 2020)	App. 12
Appendix C	Order of Dismissal in the United States District Court Eastern District of Missouri Southeastern Division, Case No. 1:19-cv-00039- SNLJ (March, 2020).	App. 24
Appendix D	Memorandum and Order in the United States District Court Eastern District of Missouri Southeastern Division, Case No. 1:19-cv-00039-SNLJ (May 5, 2020).	App. 26
Appendix E	Order on Petition for Panel Rehearing in the United States Court of Appeals for the Federal Circuit, 2020-1995 (April 23, 2021)	App. 32

App. 1

APPENDIX A

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

2020-1995

[Filed: March 8, 2021]

ENCO SYSTEMS, INC.,)
)
<i>Plaintiff-Appellant</i>)
)
v.)
)
DAVINCIA, LLC,)
)
<i>Defendant-Appellee</i>)

Appeal from the United States District Court for the
Eastern District of Missouri in No. 1:19-cv-00039-
SNLJ, Judge Stephen N. Limbaugh, Jr.

Decided: March 8, 2021

BRAD SMITH, Endurance Law Group PLC, Jackson,
MI, for plaintiff-appellant. Also represented by
MATTHEW L. CUTLER, Harness, Dickey & Pierce, P.L.C,
St. Louis, MO; JAMES BRADLEY LUCHSINGER, Troy, MI.

App. 2

DENNIS J. ABDELNOUR, Honigman LLP, Chicago, IL,
for defendant-appellee. Also represented by J. MICHAEL
HUGET, Ann Arbor, MI.

Before TARANTO, CHEN, AND STOLL, *Circuit Judges*.

TARANTO, *Circuit Judge*.

ENCO Systems, Inc. owns U.S. Patent No. 7,047,191, titled “Method and System for Providing Automated Captioning for AV Signals.” ENCO sued DaVincia, LLC in the United States District Court for the Eastern District of Missouri, alleging that DaVincia infringed the ’191 patent. The district court held that the ’191 patent claims are invalid under 35 U.S.C. § 101. *ENCO Systems, Inc. v. DaVincia, LLC*, 447 F. Supp. 3d 916 (E.D. Mo. 2020). We affirm.

I

A

The ’191 patent describes an audio-visual (AV) captioning system and method “using a speech-to-text processing system and associating the caption data with the AV signal.” ’191 patent, col. 2, lines 17–23. Offering a solution to what it describes as costly and error-prone human transcription, the ’191 patent’s system includes several components that work in concert to present captioned text accurately. *Id.*, col. 3, lines 11–52. The ’191 patent explains that incoming audio can be separated from the whole of a video camera’s AV signal and processed by a speech-to-text processing system, which converts an audio signal into text using “conventional speech-to-text software.” *Id.*,

App. 3

col. 3, line 53 through col. 4, line 23. Thereafter, an encoder processes the received text “to produce a captioned AV signal by associating the text data with the original AV signal,” *id.*, col. 4, lines 37–45, before that captioned AV signal is sent to a display device for presentation to a user, *id.*, col. 5, line 62 through col. 6, line 2. *See also id.*, col. 6, line 16 through col. 7, line 26 (describing Fig. 2). At least one embodiment of the ’191 patent includes an “autoflush counter” as part of the speech-to-text processor that sets “[discrete] time intervals” by which the system will process portions of an AV signal. *Id.*, col. 8, lines 13–21.

Claim 1 of the ’191 patent recites:

1. A method for providing captioning in an AV signal, the method comprising:

selecting a number of lines of caption data which can be displayed at one time;

determining a type of a caption encoder being used with a speech-to-text processing system;

retrieving settings for the speech-to-text processing system to communicate with the caption encoder based on the identification of the caption encoder;

automatically identifying a voice and speech pattern in an audio signal from a plurality of voice and speech patterns with the speech-to-text processing system;

training the speech-to-text processing system to learn one or more new words in the audio signal;

App. 4

directly translating the audio signal in the AV signal to caption data automatically with the speech-to-text processing system, wherein the direct translation is adjusted by the speech-to-text processing system based on the training and the identification of the voice and speech pattern;

associating the caption data with the AV signal at a time substantially corresponding with the converted audio signal in the AV signal from which the caption data was directly translated with the speech-to-text processing system, wherein the associating further comprises synchronizing the caption data with one or more cues in the AV signal; and

displaying the AV signal with the caption data at the time substantially corresponding with the converted audio signal in the AV signal, wherein the number of lines of caption data which is displayed is based on the selection.

Id., col. 10, lines 18–50. The '191 patent includes twenty-one claims in total; among them are independent apparatus claims 8 and 15, whose limitations are similar to those of method claim 1. *See id.*, col. 11, lines 8–35; *id.*, col. 12, lines 1–35.

B

ENCO sued DaVincia on March 7, 2019, in the Eastern District of Missouri for infringement of the '191 patent. On May 13, 2019, DaVincia filed a motion to dismiss under Rule 12(b)(6), arguing in relevant part that the '191 patent claimed patent-ineligible subject

App. 5

matter under 35 U.S.C. § 101. Applying the framework of *Alice Corp. Pty. Ltd. v. CLS Bank International*, 573 U.S. 208 (2014), the district court first determined that the claims are directed to the abstract idea of automated stenography processes implemented on a computer. *ENCO*, 447 F. Supp. 3d at 921–22. The district court explained that the claims “suffer[] from the same high-level generalities and broad-form functional terminology” that this court rejected as ineligible under § 101 in *University of Florida Research Foundation, Inc. v. General Electric Co.*, 916 F.3d 1363 (Fed. Cir. 2019). *ENCO*, 447 F. Supp. 3d at 922. The district court then determined that the claims do not include an “inventive concept” beyond the abstract idea because they rely on “self-described conventional computer components” arranged for functional purposes without a “particularized and concrete” configuration. *Id.* at 922–23. Based on those determinations, the court dismissed ENCO’s case with prejudice. *Id.* at 923. The court subsequently denied ENCO’s motion for reconsideration and request for leave to amend its complaint. *See ENCO Systems, Inc. v. DaVincia, LLC*, No. 1:19-cv-00039, 2020 WL 2129680, at *2 (E.D. Mo. May 5, 2020).

ENCO timely appealed. We have jurisdiction under 28 U.S.C. § 1295(a)(1).

II

On appeal, ENCO argues that the claims of the ’191 patent are not directed to an abstract idea and, in any event, include inventive concepts. We disagree.

App. 6

We review a district court’s dismissal for failure to state a claim under the law of the regional circuit, which here requires that we review the district court’s dismissal *de novo* and take all facts alleged in the complaint as true. *See Univ. of Fla.*, 916 F.3d at 1367; *Kelly v. City of Omaha*, 813 F.3d 1070, 1075 (8th Cir. 2016). Subject-matter eligibility under § 101 is a question of law based on underlying facts. *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1125 (Fed. Cir. 2018). “Like other legal questions based on underlying facts, this question may be, and frequently has been, resolved on a Rule 12(b)(6) . . . motion where the undisputed facts, considered under the standards required by that Rule, require a holding of ineligibility under the substantive standards of law.” *SAP America, Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1166 (Fed. Cir. 2018).

Section 101 provides that “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. But § 101 “contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice*, 573 U.S. at 216 (internal quotation marks omitted). “A claim falls outside § 101 where (1) it is directed to a patent-ineligible concept, *i.e.*, a law of nature, natural phenomenon, or abstract idea, and (2), if so, the particular elements of the claim, considered both individually and as an ordered combination, do not add enough to transform the nature of the claim

App. 7

into a patent-eligible application.” *SAP America*, 898 F.3d at 1166–67 (internal quotation marks omitted).

A

Under the first step of the *Alice* framework, we consider “what the patent asserts to be the ‘focus of the claimed advance over the prior art.’” *Solutran, Inc. v. Elavon, Inc.*, 931 F.3d 1161, 1168 (Fed. Cir. 2019) (quoting *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016)). In this case, claim 1, together with the specification, makes clear that the focus of the claimed advance is simply the abstract idea of automating the AV-captioning process. That process, consisting of converting audio to text and associating the text with corresponding video, is not itself asserted to be an advance over the prior art. The focus is not any specific improved computer techniques for performing those functions—functions intrinsic to the concept of AV captioning—but simply the use of computers to “conserve human resources” by automating work otherwise performed through human labor. *Univ. of Fla.*, 916 F.3d at 1367.¹

“[C]laiming the improved speed or efficiency inherent with applying the abstract idea on a computer’ [is] insufficient to render the claims patent eligible.”

¹ Although ENCO contends on appeal that claim 1 is not representative, *see* ENCO Opening Br. 11, it provided no separate argument regarding dependent claims 3, 7, 10, 13, 14, and 21 (requiring “timers,” “counters,” and time-related thresholds) in the district court and therefore forfeited such argument. We therefore treat claim 1 as representative. *See Affinity Labs*, 838 F.3d at 1256 n.1.

App. 8

Customedia Techs., LLC v. Dish Network Corp., 951 F.3d 1359, 1364 (Fed. Cir. 2020) (quoting *Intell. Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1367, 70 (Fed. Cir. 2015)). In *University of Florida*, we held claims focused just on replacing “pen and paper methodologies” with “data synthesis technology”—without a focus on specific, assertedly improved processing techniques—to be directed to an abstract idea. 916 F.3d at 1367. The same focus is evident here, not just from the non-specific nature of the claim language, but from the specification. See ’191 patent, col. 1, lines 24–56 (in describing the asserted advance, focusing on the fact that in prior-art systems, “captions are either typed-in from a script or are typed in real-time by stenographers” or “an individual listens to a recorded audio signal and manually inputs the caption information as text in a computer”). The advance is only at the abstract level of computerization because claim 1 fails to set forth specific techniques for processing the data, instead reciting known computer techniques for automation of known processes. See *Univ. of Fla.*, 916 F.3d at 1368; see also *In re Mohapatra*, No. 2020–1935, 2021 WL 408755, at *3 (Fed. Cir. Feb. 5, 2021) (“[T]his court has frequently looked to whether the claims are sufficiently concrete or specific to be directed to a patent-eligible process rather than a patent- ineligible result.”); cf. *McRO, Inc. v. Banda Namco Games America Inc.*, 837 F.3d 1299, 1313 (Fed. Cir. 2016) (finding claims not to be directed to an abstract idea where claims were “limited to rules with specific characteristics” and “set out meaningful requirements for the first set of rules” for the creation of better animation images, as confirmed by the specification (internal quotation marks omitted)).

App. 9

ENCO suggests that the Patent and Trademark Office’s recently designated “informative” decision, *Ex parte Hannun*, No. 2018-003323, 2019 WL 7407450 (P.T.A.B. Apr. 1, 2019) (previously captioned *Ex parte Linden*), requires a finding that the ’191 patent claims are not focused on abstract subject matter. ENCO Opening Br. 29–31. We disagree. We are not bound by internally precedential decisions of the Patent Trial and Appeal Board that seek to follow this court’s precedents, which we apply directly. *See In re Rudy*, 956 F.3d 1379, 1383 (Fed. Cir. 2020). In any event, the Board in *Hannun* ruled patent eligible claims that recited automatic speech-recognition methods that were “directed to a specific implementation” of processing data by measuring tailored parameters identified within audio files. *Hannun*, 2020 WL 7407450, at *5. No such specificity exists here. We conclude that the claims of the ’191 patent are directed to an abstract idea.

B

The claims also fail under the second step of the *Alice* framework because they do not set forth an inventive concept that would transform their subject matter into something more than the abstract idea.

The claims do not incorporate anything more beyond conventional computing hardware and software, which do not transform the subject matter into an eligible application of the abstract idea. The specification, with respect to each part of the system, including the audio-to-text conversion, explains that “conventional” components and techniques can be used.

See, e.g., '191 patent, col. 3, lines 53–56; *id.*, col. 4, lines 17–20; *id.*, col. 4, lines 37–41; *id.*, col. 5, lines 13–16; *id.*, col. 9, line 67 through col. 10, line 5.² No factual issues preclude deciding § 101 eligibility in this case under Rule 12(b)(6). *See Secured Mail Sols. LLC v. Universal Wilde, Inc.*, 873 F.3d 905, 913 (Fed. Cir. 2017) (“In ruling on a 12(b)(6) motion, a court need not ‘accept as true allegations that contradict matters properly subject to judicial notice or by exhibit,’ such as the claims and the patent specification.” (citation omitted)). Understood in light of the specification, representative claim 1 of the '191 patent requires nothing more than “off-the-shelf, conventional computer . . . and display technology for gathering, sending, and presenting the desired information.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016).

ENCO also argues that the Board’s decision not to institute DaVincia’s parallel petition for an inter partes review on obviousness grounds undermines our conclusion. *See* ENCO Opening Br. 34; ENCO Reply Br. 19–20. It does not. We have explained that satisfying the requirements of non-obviousness does not imply eligibility under § 101, including under the second step of the *Alice* inquiry, because what may be non-obvious can still be abstract. *See Chamberlain Grp., Inc. v. Techtronic Indus. Co.*, 935 F.3d 1341, 1348–49 (Fed. Cir. 2019); *SAP America*, 898 F.3d at 1163.

² Even the “training” required by claim 1 is described in the specification by reference to the available “Dragon” speech-to-text software. *See* '191 patent, Fig. 3; *id.*, col. 3, lines 53–56; *id.*, col. 7, lines 31–40.

App. 11

We have considered ENCO's remaining arguments and find them unpersuasive.

III

For the foregoing reasons, we affirm the district court's grant of DaVincia's motion to dismiss.

AFFIRMED

APPENDIX B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

Case No. 1:19-cv-00039-SNLJ

[Filed March 20, 2020]

ENCO SYSTEMS, INC.,)
)
Plaintiff,)
)
v.)
)
DaVINCIA, LLC.,)
)
Defendant.)
)

MEMORANDUM AND ORDER

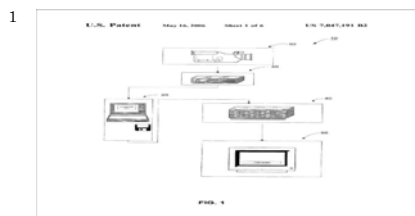
This matter comes before the Court on defendant DaVincia LLC.'s motion to dismiss under 35 U.S.C. § 101 and Rule 12(b)(6). [ECF #18]. For the reasons that follow, DaVincia's motion is **GRANTED** and this case is **DISMISSED with prejudice**.

I. BACKGROUND

This is a patent infringement action involving two competitors in the manufacture and sale of automated

audio-visual (“AV”) captioning equipment for television broadcasters and “other forms of transmitted AV signals.” Since October 2017, Enco has been the owner of United States Patent No. 7,047,191 (the “191 Patent”) entitled “Method and System for Providing Automated Captioning for AV Signals.” Enco says DaVincia sells various automated AV captioning systems—including the “ACE 2000,” “ACE 2100,” and “ACE 2200” (the “Accused Products”)—that “practice the claimed invention of the 191 Patent.” As such, Enco asserts two counts for direct infringement (Count I) and indirect infringement (Count II) of the 191 Patent.

The 191 Patent was issued by the United States Patent and Trademark Office (“USPTO”) on May 16, 2006, and is summarized as a “method for providing captioning” using an “AV captioning system.” That system is composed of a speech-to-text processor, a signal separation processor, an encoder, a video camera, and a display device. Figure 1 shows a particular configuration of the “video camera [being] operatively coupled to [a] signal processing system, [a] speech-to-text processor system [being] operatively coupled to [the aforementioned] signal separation processing system and to [an] encoder, and [the] encoder [being] operatively coupled to [a] display device.”¹ But, “other configurations for AV captioning



system with other components may also be used.” In any event, the speech-to-text processor system, signal separation processing system, encoder, video camera, and display device may each take any “conventional” form—that is to say, none of these components are uniquely created or improved by the invention, but borrow from existing (and interchangeable) technologies. The 191 Patent suggests, for example, that the speech-to-text processor take the form of a “software application such as [] Dragon Dictate.” Whereas, the encoder could be “a Link Electronics PCE-845 Caption Encoder or any other device that can receive and process text data to produce a captioned AV signal.” The Display Device, meanwhile, “may comprise ... a projection screen, television, or computer display, so long as the particular display is capable of receiving, processing, and displaying an AV signal[.]” One claimed advantage of the 191 Patent, in fact, was to produce captioning data for AV broadcasts “***without the need for any special hardware*** other than what is presently available in the field of captioning equipment.” (emphasis added).

In practice, the 191 Patent’s method and system is purposed to avoid complications associated with human-transcribed captioning methods. According to the patent, human methods are expensive, time-consuming (particularly in post-broadcast captioning requiring much rewinding), and “prone to error [in live broadcast captioning] since there is a finite amount of time within which to correct mistakes[.]” The 191 Patent’s automated system, by contrast, is “able to quickly and inexpensively produce captioning data for AV broadcasts.”

The 191 Patent asserts 21 total claims. Of those, Enco says the 191 Patent comprises “three independent claims for a method (claim 1), system (claim 8), and a medium (claim 15) for automatically inserting captions into AV signals, as well as 18 dependent claims.” The complaint alleges DaVincia is “directly infringing at least claims 1-14 of the 191 Patent ... by using the Accused Products without authority” and is “directly infringing at least claims 15-21 ... by making, using, selling, and or offering to sell the Accused Products without authority.” It also alleges DaVincia is “inducing infringement ... and/or committing contributory infringement ... of at least claims 1-6, 8-12, and 14-21 of the 191 Patent.” In sum, the complaint alleges DaVincia is directly infringing Patent 191’s method and system claims and is indirectly infringing Patent 191’s medium claim.

DaVincia moves to dismiss all asserted claims against it under Rule 12(b)(6), arguing the 191 Patent is unpatentable under 35 U.S.C. § 101 as a mere abstract idea.

II. STANDARD OF REVIEW

The Supreme Court has articulated a two-step framework for assessing patentability under Section 101. *See Alice Corp. Pty. Ltd. v. CLS Bank Intern.*, 573 U.S. 208 (2014). First, the court “determine[s] whether the claims at issue are directed to a patent-ineligible concept,” such as “[l]aws of nature, natural phenomena, and abstract ideas.” *Id.* at 216, 218. If so, the court moves on to determine whether the claim nonetheless contains an “inventive concept” sufficient to “transform

the nature of the claim into a patent-eligible application.” *Id.* at 217, 221; *see also Koninklijke KPN N.V. v. Gemalto M2M GmbH*, 942 F.3d 1143 (Fed. Cir. 2019). “Whether a claim supplies an inventive concept that renders a claim significantly more than an abstract idea to which it is directed is a question of law that may include underlying factual determinations.” *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 773 (Fed. Cir. 2019) (internal quotations omitted). Because patents are presumed valid, factual determinations of a patent’s validity or invalidity must be proven by clear and convincing evidence. *Id.*; *Microsoft Corp. v. I4I Ltd. P’ship*, 564 U.S. 91, 95 (2011). “For example, within the overall step two analysis, whether a claim element or combination of elements is well understood, routine and conventional to a skilled artisan in the relevant field is a question of fact that must be proven by clear and convincing evidence.” *ChargePoint, Inc.*, 920 F.3d at 773.

In this case, DaVincia argues the 191 Patent is an unpatentable abstract idea. The “abstract ideas category embodies the longstanding rule that an idea of itself is not patentable.” *Alice Corp.*, 573 U.S. at 218; *see also Gottschalk v. Benson*, 409 U.S. 63, 71 (1972) (“It is conceded that one may not patent an idea.”). Said differently, “[a] principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right.” *Diamond v. Diehr*, 450 U.S. 175, 185 (1981) (quoting *Le Roy v. Tatham*, 14 L.Ed. 367 (1853)). Thus, as an example, a patent seeking to monopolize a general method for hedging risk in the energy commodities market—reduced to a

mathematical formula and adding only “token” inventive contributions—has been deemed too abstract as what is essentially a retelling of “fundamental economic practice[s] ... taught in any introductory finance class.” *Bilski v. Kappos*, 561 U.S. 593, 611-12 (2010). In a more recent example, the Federal Circuit concluded that a claim which “simply recite[s] a system that wirelessly communicates status information” about a movable barrier, such as a garage door opener, was directed to an abstract idea of communicating information wirelessly and did not contain an inventive concept because the invention used “well understood,” off-the-shelf wireless technology without particular “technological improvement.” *Chamberlain Group, Inc. v. Techtronic Industries Co.*, 935 F.3d 1341, 1347-1348 (Fed. Cir. 2019).

III. ANALYSIS

A. *Alice Corp.*, Step One – Whether the Claims are Directed to Patent-Ineligible Concepts

The 191 Patent states that it is “a method and system for providing automated captioning for AV [] signals,” and that it is a method and system designed to replace human-directed stenography with computer-directed alternatives. The benefit of the 191 Patent, it is explained, is to automate stenography processes with less-fallible computer systems. The question, here, is whether such a method and system falls into the unpatentable category of an abstract idea.

DaVincia relies on *Univ. of Fla. Research Found., Inc. v. General Electric Co.*, which Davincia says is

indistinguishable from the case at hand. *See* 916 F.3d 1363 (Fed. Cir. 2019). In that case, a patent known as the “251 Patent” described a method and system for automating the taking of patient bedside physiological data. *Id.* at 1366-1367. The 251 Patent explained how “most health care facilities ... acquire bedside patient information using pen and paper methodologies”—that is to say, the collection of data by humans to later be entered into computer information systems—which can be “time consuming and expensive” and result in “transcription errors” in a “fast-paced environment.” *Id.* at 1367. To remedy those human deficiencies, the 251 Patent “propose[d] replacing the pen and paper methodologies with data synthesis technology” in the form of “device drivers” written to allow various bedside machines to present data in a “configurable fashion within a signal interface.” *Id.*

On the first step of the *Alice Corp.* analysis, the Federal Circuit concluded Patent 251 “is a quintessential ‘do it on a computer’ patent,” effectively proposing—at a broad and overly-generalized level—simply to replace manual collection, analysis, and manipulation of data with computer-driven alternatives. *Id.* Thus, it was “directed to abstract ideas,” failing to “specific[ally] improve[] the ways computers operate” or else explain “how the [device] drivers,” the only real proposed technological advance, were able to convert machine-specific data into globally usable data by a single graphical interface. *Id.* at 1368. In fact, “[t]he 251 patent fails to provide any technical details for the tangible components[,] instead predominately describing the system and methods in purely functional terms.” *Id.* Describing the patent as

a method and system of high-level functional ideas, and not discrete patentable technical advancements, the Court went on to remark that many components of the 251 Patent were interchangeable and relied on present art. For example, the component linking bedside machines “employs **any** serial connection that can convey information,” and the “programmatic action involving said machine-independent data” can “be performed using **any** kind of computer system or other apparatus, including a general-purpose computing system.” *Id.* (emphasis added). Meanwhile, the “bedside graphical user interface” that displays the synthesized bedside machine data was not “limited by [a] particular [graphical user interface] or data entry mechanism.” All in all, the 251 Patent was directed merely to the “abstract idea of collecting, analyzing, manipulating, and displaying data” with the replacement of humans by computers. *Id.*

That is also the case here. The 191 Patent takes a collection of “conventional,” off-the-shelf computer components—a speech-to-text processor system, signal separation processing system, encoder, video camera, and display device—and proposes to replace humans with the coupled-together result. The patent does not endeavor to improve any particular component, nor does it offer a new intervening component within the larger system or a novel composition of the various components. In fact, like *Univ. of Fla. Research*, the components are interchangeable and the 191 Patent, therefore, suffers from the same high-level generalities and broad-form functional terminology as the unpatentable 251 Patent. As such, the 191 Patent is

essentially a “do it on a computer” patent—a patent-ineligible abstract idea.

A. *Alice Corp.*, Step Two – Whether the Claims Have an Inventive Concept Sufficient to Transform Them into Patent-Eligible Applications

At step two, *Alice Corp.* tells us that a patent may still be saved—notwithstanding that it has been directed to a patent-ineligible concept—if “an element or combination of elements [of each claim]” create an “inventive concept” that transforms the patent, either in “practice” or “application,” into something “significantly more than a patent upon the ineligible concept itself.” 573 U.S. 217-218. In other words, step two asks whether an inventive concept arises “in one or more of the individual claim limitations or in the ordered combination of the limitations.” *BASCOM Global Internet Servs., Inc. v. AT&T Mobility, LLC.*, 827 F.3d 1341, 1349 (Fed. Cir. 2016).

Here, each individual claim limitation relies either on self-described conventional computer components, such as the Dragon Dictate speech-to-text processor and the Link Electronics PCE-845 caption encoder, or else functionally describes potentially inventive improvements like training enhancements (to be applied to the speech-to-text processor) without at all explaining how those enhancements work. That is no concern, Enco says, because “the fact that one or more of the steps in the claimed invention may not, in isolation, be novel ... is irrelevant to the question of whether the claims as a whole recite subject-matter

eligible for patent protection.” Enco points to two flow charts (Figures 2, 5) that it says shows unique combinations of conventional computer components to create what is an inventive concept.

It is true that “an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.” *BASCOM Global Internet Servs., Inc.*, 827 F.3d at 1350; *see also Diamond*, 450 U.S. at 188 (“[A] new combination of steps in a process may be patentable even though all the constituents of the combination were well known and in common use before the combination was made.”). This follows from the recognition that “inventions usually rely upon building blocks [of early inventions] long since uncovered.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 401 (2007). However, such a combination or arrangement of conventional pieces must be particularized and concrete in its configuration. “Merely recit[ing] the abstract idea [] along with the requirement to perform it on [] a set of generic computer components do[es] not contain an inventive concept.” *University of Fla. Research Found.*, 916 F.3d at 1369.

And that is the problem for the 191 Patent at this second step. It is based on interchangeable components **and** interchangeable composition of those components. There is “[no] need for any special hardware,” just “conventional” components of any variety sufficient to achieve the stated function, and various “configurations [of the] AV captioning system ... [can] be used.” In that regard, the patent calls for any “conventional speech-to-text software application,” such as “Dragon Dictate,”

and then refers to various “operation process[es]” those variable applications are expected to do, according to Figure 4 and 5, such as utilizing an “autoflush counter” or “determin[ing] when to send [] text [data] to the encoder.” But, nowhere does the 191 Patent suggest its purpose is to specifically improve speech-to-text processing software, and nowhere does it explain how this is to be accomplished—across myriad software iterations—at a technical level.² Simply put, there are references to things like “autoflush counters” and computer-determined communication relays between speech-to-text processors and encoders, but nothing at all to explain how those functional operations are implemented at an inventive level. This is insufficient to create an inventive concept that transforms the patent into something more than a patent upon the ineligible concept itself. *See Solutran, Inc. v. Elavon, Inc.*, 931 F.3d 1161 (Fed. Cir. 2019) (concluding a patent proposing the electronic processing of paper checks was directed to an abstract idea where the

² On this point, Enco takes issue with *ChargePoint, Inc., v. SemaConnect, Inc.*—a Federal Circuit case that found ineligible a patent that claimed to improve electric vehicle charging stations by adding generic networking capabilities. 920 F.3d at 774-775. Enco says *ChargePoint* is “believe to be the only improved machine [case] that the Federal Circuit has found directed to an abstract idea,” and points out how it has been “uniformly condemned by the patent bar.” (emphasis in original). Be that as it may, *ChargePoint* remains good law and helpfully points to the same concern this Court has for the 191 Patent: namely that an abstract idea cannot be transformed into a patentable one simply by claiming an improvement through the addition of generic equipment. *Id.* (claim did not improve charging stations by merely seeking to “add generic networking capabilities to [them]”).

claims were highly generalized, relied predominately on conventional activities of general-purpose computers, and failed to articulate a specific improvement of the way computers operate); *Elec. Power Group, LLC. v. Alstrom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) (concluding a method of detecting and analyzing electric power grid events, with no inventive technology used to perform those functions, was an abstract idea urging the use of computer technology generally); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336 (Fed. Cir. 2013) (concluding that patent, which implements an abstract concept through the arrangement of generalized software components, without incorporating additional imitations or features, fails to turn the abstract idea into an inventive concept).

IV. CONCLUSION

Accordingly,

IT IS HEREBY ORDERED that defendant DaVincia LLC.'s motion to dismiss under 35 U.S.C. § 101 and Rule 12(b)(6) [ECF #18] is **GRANTED**. This case is **DISMISSED with prejudice**.

So ordered this 20th day of March 2020.

/s/ Stephen N. Limbaugh, Jr.
STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX C

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

Case No. 1:19-cv-00039-SNLJ

[Filed March 20, 2020]

<u>ENCO SYSTEMS, INC.,</u>)
)
Plaintiff,)
)
v.)
)
DaVINCIA, LLC.,)
)
Defendant.)
<u></u>)

ORDER OF DISMISSAL

In accordance with the memorandum and order entered today, it is hereby ordered that this case is **DISMISSED with prejudice.**

So ordered this 20th day of March 2020.

App. 25

/s/ Stephen N. Limbaugh, Jr.
STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX D

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

Case No. 1:19-cv-00039-SNLJ

[Filed May 5, 2020]

<u>ENCO SYSTEMS, INC.,</u>)
)
Plaintiff,)
)
v.)
)
DaVINCIA, LLC.,)
)
Defendant.)
<u></u>)

MEMORANDUM AND ORDER

This matter comes before the Court on plaintiff
Enco Systems, Inc.'s motion for reconsideration (ECF

#37) under Rule 60(b)(1) and 60(b)(6).¹ For the following reasons, the motion is **DENIED**.

On March 20, 2020, this Court held that United States Patent No. 7,047,191 (the “191 Patent”) is unpatentable under 35 U.S.C. § 101 as a mere abstract idea. *See Enco Sys., Inc. v. DaVincia, LLC*, -- F.Supp.3d --, 2020 WL 1323035 (E.D. Mo. Mar. 20, 2020). The 191 Patent is summarized as a “method for providing captioning” using an “AV captioning system.” In rejecting the 191 Patent, this Court explained that

The 191 Patent takes a collection of “conventional,” off-the-shelf computer components—a speech-to-text processor system,

¹ There is some argument whether Enco’s Rule 60(b) motion should be entertained at all in that “it is not a vehicle for simple rearguments on the merits.” *Broadway v. Norris*, 193 F.3d 987, 990 (8th Cir. 1999). Certainly, Enco identifies no “extraordinary circumstances” for which to apply Rule 60(b)(6)—so that angle fails. *See Buck v. Davis*, 137 S.Ct. 759, 777 (2017) (“Rule 60(b)(6) is available only in *extraordinary* circumstances.”). And, as understood by the brief, Enco’s reliance on Rule 60(b)(1) is based on this Court’s own purported inadvertence in failing to originally address certain of Enco’s arguments. *See Lowry v. McDonnell Douglas Corp.*, 211 F.3d 457, 461 (8th Cir. 2000) (noting Rule 60(b)(1), when alleging judicial error, is limited to “judicial inadvertence”). That, too, would be an inappropriate challenge—essentially a re-attack on the merits. In truth, this Court did not speak at length on Enco’s arguments made the basis of its motion to reconsider because the Court found them to be a red herring. But, given the developing nature of Federal Circuit law on the appropriateness of granting Rule 12(b)(6) dismissals under Section 35 U.S.C. § 101—specifically from an opinion penned in 2018—this Court will briefly clarify why Enco’s argument fails.

signal separation processing system, encoder, video camera, and display device—and proposes to replace humans with the coupled-together result. The patent does not endeavor to improve any particular component, nor does it offer a new intervening component within the larger system or a novel composition of the various components. In fact, like *Univ. of Fla. Research*, the components are interchangeable and the 191 Patent, therefore, suffers from the same high-level generalities and broad-form functional terminology as the unpatentable 251 Patent. As such, the 191 Patent is essentially a “do it on a computer” patent—a patent-ineligible abstract idea.

Id. (citing *Univ. of Fla. Research Found., Inc. v. Gen. Elec. Co.*, 916 F.3d 1363 (Fed. Cir. 2019)).

In seeking reconsideration, Enco chiefly relies on *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018). The argument goes that this Court failed to address the inappropriateness of “dismissal on § 101 grounds [] at the pleading stage [where] there are ***factual questions regarding whether the claimed invention was well understood, routine, and conventional***” at the time of patent application. (emphasis added). Enco says DaVincia “has not proven by clear and convincing evidence that the claim elements—standing alone and especially in combination—were well-understood, routine, and conventional.” Enco closes its brief by reminding this Court that “the Federal Circuit will want this Court’s assessment of this issue if and when Enco appeals.”

Berkheimer is a cautionary tale to district courts that “[w]hether a claim recites patent eligible subject-matter is a question of law which **may contain disputes over underlying facts**.” *Id.* at 1368 (emphasis added). Of course, where there are underlying factual disputes genuinely complicating a question of law—the so-called “mixed question of law and fact”—it is inappropriate to grant a motion to dismiss. *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1128 (Fed. Cir. 2018) (referring to Section 101 eligibility determinations as a “question of law” that may possess “subsidiary fact questions” that render 12(b)(6) dismissals inappropriate); *see also BSG Tech, LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) (“[w]e have recently held that whether a claim limitation or combination of limitations is well-understood, routine, and conventional is a factual question” that may create a “genuine dispute [that] precludes summary judgment that a claim is ineligible under § 101.”). But, *Berkheimer* was careful to emphasize that “[p]atent eligibility has in many cases been resolved on motions to dismiss” and “[n]othing in this decision should be viewed as casting doubt on the propriety of those decisions.” *Berkheimer*, 881 F.3d at 1368. *Berkheimer* mandates no absolute rule at the early pleading stage—either in favor of or against Rule 12(b)(6) dismissals. In fact, the Federal Circuit has affirmed Rule 12(b)(6) dismissals following *Berkheimer*. *See, e.g., Athena Diagnostics, Inc. v. Mayo Collaborative Servs., Inc.*, 915 F.3d 743 (Fed. Cir. 2019). The issue then, as later clarified by the Federal Circuit, comes down to this: are there “**specific, plausible** factual allegations [in the complaint]” that, when accepted as true (as

must be done at the dismissal stage), demonstrate how “aspects of [the] claimed invention [are] not conventional.” *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1317-1318 (Fed. Cir. 2019) (emphasis added); *see also Aatrix Software, Inc.*, 882 F.3d at 1128 (reversing a Rule 12(b)(6) dismissal where there were “**concrete allegations** in the second amended complaint that individual elements and the claimed combination are not well-understood, routine, or conventional activity” (emphasis added)).

There are no such “concrete allegations” in the complaint to embrace as true, *Aatrix Software, Inc.*, 882 F.3d at 1128, and so there is no genuine factual dispute for which to render inappropriate a Rule 12(b)(6) dismissal. In fact, rather than providing “specific, plausible factual allegations” supporting the unconventionality of the invention, the complaint only generically references the 21 claims of the 191 Patent, which itself embraces both interchangeable “conventional” components **and** interchangeable “configurations” of those components. The 191 Patent boasts that it specifically does not call for “any special hardware other than what is presently available,” and, having divorced itself from a specific or particular composition, there is no apparent unconventionality in “the claim[ed] elements['] combination” thereof. Therefore, while respecting *Berkheimer* and its progeny, this Court finds no reason to disturb its decision in this case. Enco’s motion is denied.

Accordingly,

App. 31

IT IS HEREBY ORDERED that plaintiff Enco Systems, Inc.'s motion for reconsideration (ECF #37) is **DENIED**.

So ordered this 5th day of May 2020.

/s/ Stephen N. Limbaugh, Jr. _____
STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX E

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

2020-1995

[Filed: April 23, 2021]

<hr/>	
ENCO SYSTEMS, INC.,)
)
<i>Plaintiff-Appellant</i>)
)
v.)
)
DAVINCIA, LLC,)
)
<i>Defendant-Appellee</i>)
<hr/>)

Appeal from the United States District Court for the
Eastern District of Missouri in No. 1:19-cv-00039-
SNLJ, Judge Stephen N. Limbaugh, Jr.

ON PETITION FOR PANEL REHEARING

App. 33

Before TARANTO, CHEN, and STOLL, *Circuit Judges*.
PER CURIAM.

O R D E R

Enco Systems, Inc. filed a petition for panel rehearing.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The mandate of the court will issue on April 30, 2021.

FOR THE COURT

April 23, 2021
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court