No. 17-

IN THE

Supreme Court of the United States

R+L CARRIERS, INC.,

Petitioner,

v.

INTERMEC TECHNOLOGIES CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

ANTHONY C. WHITE
Counsel of Record
THOMPSON HINE LLP
41 South High Street, Suite 1700
Columbus, OH 43215
(614) 469-3200
tony.white@thompsonhine.com

Counsel for Petitioner

January 9, 2018

277935

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

May a court determine that a patent claim is "directed to" an abstract idea under Step 1 of *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014) without analyzing the requirements of the individual claim steps?

Do Fed. R. Civ. P. 56(c), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) prohibit a court from entering a summary judgment finding that an invention is ineligible for patent protection when the record contains uncontroverted, relevant evidence establishing that there is at least a genuine issue of material fact as to whether the claim is "directed to" an abstract idea?

PARTIES TO THE PROCEEDING

The following were parties to the proceeding in the U.S. Court of Appeals for the Federal Circuit:

1. R+L Carriers, Inc., petitioner on review, was plaintiff/counterclaim plaintiff-appellant below.

2. Intermec Technologies Corporation, respondent on review, was defendant-appellee below.

3. DriverTech LLC was a counterclaim defendant-appellee in the proceeding below. R+L Carriers, Inc. and DriverTech LLC have since settled their claims.

4. Microdea, Inc. was a defendant-appellee in the proceeding below. R+L Carriers, Inc. and Microdea, Inc. have since settled R+L Carrier's claims.

5. PeopleNet Communications Corp. was a counterclaim defendant-appellee in the proceeding below. R+L Carriers, Inc. and PeopleNet Communications Corp. have since settled their claims.

CORPORATE DISCLOSURE STATEMENT

Petitioner R+L Carriers, Inc. has no parent corporation. No publicly traded company owns 10% or more of its stock.

TABLE OF CONTENTS

Cited Authorities

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

CASES

Page

Page

STATUTES AND OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Petitioner R+L Carriers, Inc. ("R+L") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The decision of the court of appeals (App. 1a-3a) is reported at *R+L Carriers, Inc. v. Microdea, Inc.*, 698 Fed. Appx. 614 (Fed. Cir. 2017). The decision of the district court (App. 6a-15a) is reported at *In re Bill of Lading Transmission & Processing Sys. Patent Litig.*, No. 1:09-md-2050, 2016 U.S. Dist. LEXIS 115562 (S.D. Ohio Aug. 29, 2016).

JURISDICTION

The judgment of the Federal Circuit was entered on October 11, 2017. This Court has jurisdiction under 28 U.S.C. § 1254(1). The jurisdiction of the U.S. District Court for the Southern District of Ohio (the "District Court") was invoked under 28 U.S.C. § 1331.

STATUTORY PROVISIONS INVOLVED

Section 101 of the Patent Act states 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.

INTRODUCTION

The decision of the Federal Circuit below, and the others that will soon follow it, only serves to inject confusion into the *Alice* framework and the determination of patent eligibility. Without clear guidance from this Court, district courts can choose among conflicting Federal Circuit precedents to suit their end goals. Jurists and practitioners alike have called for a uniform approach to addressing § 101 cases to avoid the trap of having patent eligibility turn on the "luck-of-the-panel."

In this case, U.S. Patent 6,401,078 ("the '078 Patent") is directed to a method of load planning for less-than-truckload motor carriers that pick up freight from a number of different local customers and deliver them to their intended destinations around the country. In evaluating whether the '078 Patent was directed to patent eligible subject matter, the District Court ignored guidance from this Court that a patent claiming a specific method and structure for producing a result is directed to patent-eligible subject matter under § 101. The District Court also reached its conclusions without clear and convincing, undisputed evidence to support that finding. The District Court's error was enabled by a dizzying array of contradictory Federal Circuit precedent that lack any consistent rationale for how to enforce, or when to invoke, the judicially-created exceptions to patent eligible-subject matter found in *Alice*. As seen by the Court in this past year alone, the ongoing obfuscation of this area of the law has disrupted the patent world, and will continue to do so until the Court can clarify its position. The Court's guidance is now needed to set clearly defined rules for determining patent eligibility.

This Court should grant certiorari and reverse.

STATEMENT OF THE CASE

I. The Need For Clarity Over When A Claim Is Directed To An Abstract Idea

In *Alice*, this Court explained that while Congress enacted 35 U.S.C. § 101 to give patent laws wide scope, there were nevertheless three judicially-created exceptions to the broad definition of patent-eligible subject matter that applied so as not to inhibit the use of "building blocks of human ingenuity." *Alice*, 134 S. Ct. at 2354. Yet the Court was equally careful to warn lower courts not to allow those exceptions to become the rule. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1293 (2012).

However, leaving the lower courts to define the parameters of the abstract idea exception has created a state of disarray and uncertainty, and this Court's warning about the exception swallowing the rule has become a self-fulfilling prophecy. Faced with conflicting Federal Circuit precedent, the District Court characterized the nature of the claims in a manner similar to that of the panel in *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1150 (Fed. Cir. 2016) to make broad generalizations that inevitably led it to conclude that the '078 Patent was directed to an unpatentable abstract idea. Yet had the District Court followed the method endorsed by the panel in *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1313 (Fed. Cir. 2016), it would have reached the complete opposite conclusion. The lack of clear and consistent guidance from the Federal Circuit on how to

determine whether a patent is directed to an abstract idea prevents the proper application of this Court's two-step abstract idea analysis and is thus detrimental to U.S. patent law. Once a patent is deemed to be an abstract idea under Step 1 of the *Alice* test, it is nearly impossible for it to be redeemed by an inventive concept under Step 2 of the test.

II. Well-Established Guidelines For Summary Judgment Apply With Equal Force To Patentability Determinations.

Lower courts have also exempted § 101 cases from well-established summary judgment standards, ignoring evidence that raise genuine issues of material fact to make so-called patentability determinations as a matter of law. Yet the § 101 analysis requires a factual inquiry, and is one in which expert opinions, particularly from those having ordinary skill in the art, are critical to the resolution of the patentability issue. When lower courts substitute their version of the facts over uncontroverted testimony from an expert witness, the summary judgment standard crafted by this Court is eroded. This Court's guidance is needed to assist lower courts in adhering to the safeguards of Fed. R. Civ. P. 56 when assessing patentability issues under 35 U.S.C. § 101.

III. The '078 Patent

R+L is a less-than-truckload ("LTL") carrier that collects and consolidates freight from numerous customers onto a single trailer, and then brings that freight to a central hub for sorting and reloading onto other trailers bound for the freight's ultimate destinations. LTL carriers

must efficiently coordinate and manage the movement of inbound and outbound freight. Load planning—determining what inbound freight goes on which outbound trucks—is critical to an LTL carrier's efficiency.

R+L developed the business method claimed in the '078 Patent to maximize load planning efficiency. Claim 1 of the '078 Patent is representative:

> A method for transferring shipping documentation data for a package from a transporting vehicle to a remote processing center comprising the steps of:
>
> placing a package on the transporting vehicle;
>
> using a portable document scanner to scan an image of the documentation data for the package, said image including shipping details of the package;
>
> providing a portable image processor capable of wirelessly transferring the image from the transporting vehicle;
>
> wirelessly sending the image to a remote processing center;
>
> receiving the image at said remote processing center; and
>
> prior to the package being removed from the transporting vehicle, utilizing said documentation data at said remote processing center to prepare

> an advance loading manifest document for another transporting vehicle which includes said package for further transport of the package on another transporting vehicle.

(SA 16)

When using the business method claimed in the '078 Patent ("the '078 Patented Process"), LTL drivers scan each customer's shipping documents when they pick up the customer's freight, and wirelessly transmit those documents from the truck to the terminal. Load planners then use the information from those documents, such as the freight's destination, weight, contents and specific handling instructions, to prepare loading manifests for the freight's further transport to its next destination. The '078 Patented Process allows an LTL carrier to perform the load planning analysis of which incoming freight should be combined on which outbound trailer before that freight arrives at the terminal. Prior to the development of the '078 Patented Process, load planners would have to wait until the inbound freight arrived at the terminal and was unloaded before they could begin determining where to load the freight next. The '078 Patented Process eliminated the time spent waiting for a trailer to be unloaded, thereby creating a more time-efficient and cost-effective method of load planning.

IV. Proceedings Below

The lawsuit between R+L and Intermec Technologies Corporation ("Intermec") is one of fifteen lawsuits that were consolidated by the Judicial Panel on Multidistrict Litigation into one multidistrict litigation in the U.S.

District Court for the Southern District of Ohio. R+L brought claims alleging induced and contributory infringement against Intermec because it provides tools and equipment that are specifically adapted and used to directly infringe the '078 Patent.

On July 15, 2016, Intermec moved for summary judgment that the '078 Patent is directed to an unpatentable abstract idea. R+L opposed the motion with, among other things, evidence about the load planning method taught by the '078 Patent and the conventional, long-standing load planning methods. Relying on *Alice*, the District Court granted summary judgment to Intermec on the grounds that the '078 Patent is directed to an unpatentable abstract idea. (App. 15a) The Federal Circuit affirmed summary judgment on October 11, 2017 without opinion under Federal Circuit Rule 36. (App. 3a)

REASONS FOR GRANTING THIS PETITION

I. COURTS AND PATENTEES NEED A CLEAR STANDARD THAT CAN BE CONSISTENTLY APPLIED FOR DETERMINING WHETHER A CLAIM IS "DIRECTED TO" AN ABSTRACT IDEA

Congress has provided that "[w]hoever invents or discovers any new and useful process, machine, manufacture or composition of matter, or any new and useful improvements thereof, may obtain a patent therefor subject to the conditions and requirements of this title." 35 U.S.C. § 101. This Court has recognized that, in choosing such broad categories of patent-eligible subject matter, "Congress plainly contemplated that the patent laws would be given wide scope." *Diamond v. Chakrabarty*, 447 U.S. 303, 308 (1980).

There are three limited, judicially-created exceptions to the broad definition of patent-eligibility for "laws of nature, natural phenomena, and abstract ideas." *Alice,* 134 S. Ct. at 2350. The concern that led this Court to create those exceptions was one of preemption. *Id.* at 2354. Laws of nature, natural phenomena, and abstract ideas are "the basic tools of scientific and technological work[,]" and awarding patents covering those topics "might tend to impede innovation more than it would tend to promote it." *Mayo*, 132 S. Ct. at 1293. Those exceptions are designed to insure "that patent law not inhibit further discovery by improperly tying up the future use of … these building blocks of human ingenuity." *Alice,* 134 S. Ct. at 2354. But this Court has also recognized "that too broad an interpretation of this exclusionary principle could eviscerate patent law. For all inventions, at some level in body, use, reflect, rest upon or apply laws of nature, natural phenomena, or abstract ideas." *Mayo* 132 S. Ct. at 1293. For this reason, this Court has directed lower courts to "tread carefully in construing this exclusionary principle lest it swallow all of patent law." *Alice*, 134 S. Ct. at 2354.

In *Alice,* this Court provided a road map for lower courts to follow in their search for patent-eligible subject matter. First, courts must "determine whether the claims at issue are directed to one of those patent-ineligible concepts." *Alice*, 134 S. Ct. at 2355. If so, the court must then "search for an 'inventive concept'—i.e., an element or combination of elements that is 'sufficient to insure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 132 S. Ct. at 1289).

"The line between a patentable 'process' and an unpatentable 'principle' is not always clear." *Parker v. Flook*, 437 U.S. 584, 589 (1978). Nevertheless, this Court has declined to "delimit the precise contours of the 'abstract ideas' category[.]" *Alice*, 134 S. Ct. at 2357. The Federal Circuit has also refused to "define 'abstract' beyond the recognition that this disqualifying characteristic should exhibit itself so manifestly as to override the broad statutory categories of eligible subject matter[.]" *Research Corp. Techs. v. Microsoft Corp.*, 627 F.3d 859, 868 (2010).

Unfortunately, this Court's practice of establishing a principle and then allowing lower courts to define the metes and bounds of that principle has not brought the much-needed clarity to answering the question of whether a claim is "directed to" a patent-ineligible abstract idea. In 2017 alone, this Court received at least fourteen certiorari petitions seeking guidance on how lower courts should apply the abstract idea exception. Furthermore, some Federal Circuit justices have recognized the difficulty and danger inherent in the current state of uncertainty:

> [T]he contours of the abstract idea exception are not easily defined. For that reason, the abstract idea exception is almost impossible to apply consistently and coherently. . . . [T]he problem with [the *Alice* and *Mayo*] test . . . is that it is indeterminate and often leads to arbitrary results. Moreover, if applied in a legal vacuum divorced from its genesis and treated differently from the other two exceptions, it can strike down claims covering meritorious inventions not because they attempt

> to appropriate a basic building block of scientific or technological work, but simply because they seemingly fail the Supreme Court's test.
>
> ***
>
> Despite the number of cases that have faced these question and attempted to provide practical guidance, great uncertainty yet remains. And the danger of getting the answers to these questions wrong is greatest for some of today's most important inventions in computing, medical diagnostics, artificial intelligence, the Internet of Things, and robotics, among other things.

Smart Sys. Innovations, LLC v. Chicago Transit Auth., 873 F.3d 1364, 1377-78 (Fed. Cir. 2017) (Linn, J., dissenting in part and concurring in part). *See also BASCOM Global Internet Servs. v. AT&T Mobility LLC*, 827 F.3d 1341, 1353 (Fed. Cir. 2016) (Newman, J., concurring in the result) ("[T]he emphasis on eligibility has led to erratic implementation in the courts.").

The District Court's decision in this case is emblematic of the results produced by the inconsistent and unpredictable application of § 101 precedent. Although the District Court concluded that the '078 Patent is directed to an abstract idea, it could not come up with a consistent characterization of what that abstract idea was. It variously described what it considered to be the abstract idea to which the representative claim was directed as (1) "creating an advance loading manifest" (App. 10a); (2) "the process of receiving transportation documentation

and producing advance loading manifests therefrom" (App. 11a); (3) "getting shipping information to the load planners faster" (*id.*); and (4) "it is even possible [that it is] … creating a loading manifest." *Id.*

The District Court's confusion is the product of the contradictory direction by the Federal Circuit on how to determine what the claim is "directed to." One panel said that courts should look to "capture . . . the 'basic thrust' of the Asserted Claims." *Synopsys Inc.*, 839 F.3d at 1150 (quoting *BASCOM Global Internet Servs. Inc.*, 827 F.3d at 1348). Yet another panel stated that "courts 'must be careful to avoid oversimplifying the claims' by looking at them generally and failing to account for the specific requirements of the claims." *McRO, Inc.*, 837 F.3d at 1313.

Here, the District Court took the high-level approach of attempting to capture the basic thrust of the claims that the *Synopsys* panel endorsed. In doing so, it arrived at a characterization of the patent that could not be anything but an abstract idea. *Enfish LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016) (characterizing claims to "a high level of abstraction" that is "untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule.") On the other hand, had the District Court viewed the claims as an ordered combination in accordance with the *McRO* directive, it would have seen that the patent is directed to a method that employs communication technology to transmit information about an incoming package so that outbound load planning for that package can be accomplished before the package arrives at the terminal.

That characterization of the invention would have produced a different result under the *McRO* decision. In *McRO,* the Federal Circuit observed that "[t]he abstract idea exception has been applied to prevent patenting of claims that abstractly cover results where 'it matters not by what process or machinery the result is accomplished.'" *McRO*, 837 F.3d at 1314 (quoting *O'Reilly v. Morse*, 56 U.S. 62, 113 (1854). "A patent is not good for an effect, or the result of a certain process, as that would prohibit all other persons from making the same thing by any means whatsoever." *Le Roy v. Tatham,* 55 U.S. 156, 175 (1853). Rather, "[a] patent may issue 'for the means or method of producing a certain result, or effect, and not for the result or effect produced.'" *McRO, Inc.*, 837 F.3d at 1314 (citing *Diamond v. Diehr,* 450 U.S. 175, 182, n.7. (1981)). Since the '078 Patent does not merely recite a result, but rather a method with specific structure for achieving the method's goal in a particular manner, it would have survived the eligibility challenge had the District Court followed the direction of the *McRO* panel rather than that of the *Synopsys* panel.

An incorrect characterization of what the claims are directed to has other consequences under Step 1 of the *Alice* test. Here, the District Court found that "preparing a loading manifest" is a conventional business practice because loading manifests existed before the application date of the '078 Patent. (App. 12a) If that were an accurate characterization of the representative claim, then R+L would agree with the District Court's conclusion. But if the District Court had taken into account the specific requirements of the claim and had avoided oversimplifying it, it would have had to find (at least on the summary judgment record before it) that the '078 Patent was

not directed to "a fundamental economic practice long prevalent in our system of commerce[.]" *Bilski v. Kappos*, 561 U.S. 593, 611 (2010); *Alice*, 134 S. Ct. at 2356. While loading manifests themselves certainly existed before the '078 Patent, the undisputed evidence in the summary judgment record established that the particular method claimed in the patent did not.

A clear and consistent standard for determining whether a claim is directed to an abstract idea under Step 1 of this Court's test is also critical to a proper analysis under Step 2. "[A]n invention is not rendered ineligible simply because it involves an abstract concept." *Alice*, 134 S. Ct. at 2354. However, few patents that fail Step 1 are saved by passing Step 2. Federal Circuit precedent "recognizes the inherently murky line between the two steps." *Smart Sys Innovations*, 873 F.3d at 1382 n.2 (Linn, J., dissenting in part and concurring in part). Thus, it is the rare case in which an inventive concept would be found in the type of oversimplification of what a claim is directed to that many lower courts apply.

Patentees are desperately seeking, and district courts and the Federal Circuit desperately need, guidance from this Court on how to determine whether a patent is directed to an abstract idea. As one district court lamented, "[t]he two-step test may be more like a one-step test evocative of Justice Stewart's most famous phrase. . . . I know it when I see it." *McRO, Inc. v. Activision Publ., Inc.*, No. 14-336, 2014 U.S. Dist. LEXIS 135152, at *12 (C.D. Cal. Sept. 22, 2014) (internal quotation marks and citations omitted). Certiorari should be granted to provide that guidance.

II. COURTS SHOULD APPLY THE WELL-ESTABLISHED SUMMARY JUDGMENT STANDARD TO ISSUES OF PATENTABILITY.

The Federal Rules of Civil Procedure have for more than 80 years authorized motions for summary judgment only when the moving party establishes the absence of a genuine issue of material fact. Under Fed. R. Civ. P. 56(c), summary judgment is proper

> if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In *Celotex*, this Court made it clear that the party seeking summary judgment bears the burden of informing the district court of the basis for its motion, and identifying those portions of the record it believes demonstrate the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. And in *Anderson*, this Court held that when deciding summary judgment motions, the trial judge's function is not to weigh the evidence and determine the truth of the matter, but rather simply to determine whether the record contains disputed issues of fact. *Anderson*, 477 U.S. at 243. Furthermore, trial judges must believe the evidence submitted by the nonmoving party and draw all reasonable inferences from the evidence in the nonmoving party's favor. *Id.* at 255.

Although the ultimate question of patent eligibility under § 101 is a question of law, the Federal Circuit

has acknowledged, both before and after *Alice*, that the "legal conclusion may contain underlying factual issues." *Accenture Global Servs. v. Guidewire Software, Inc.*, 728 F.3d 1336, 1341 (Fed. Cir. 2013). *See also Mortg. Grader, Inc. v. First Choice Loan Servs.*, 811 F.3d 1314, 1325-26 (Fed. Cir. 2016) ("The § 101 inquiry 'may contain underlying factual issues.'"). Such questions include, for example, whether "limitations in the claims narrow or tie the claims to specific applications of an otherwise abstract concept," "whether the patent embraces a scientific principle or abstract idea," and "how much of the field is 'tied up' by the claim," which "by definition will involve historic facts." *Ultramercial, Inc. v. Hulu, LLC*, 722 F.3d 1335, 1339 (Fed. Cir. 2013), *vacated sub nom. WildTangent, Inc. v. Ultramercial, LLC*, 134 S.Ct. 2870 (2014). In short, the Federal Circuit confirmed that "factual inquiries likely abound" in the § 101 analysis. *Ultramercial, Inc.*, 722 F.3d at 1339. Nevertheless, district courts and the Federal Circuit routinely ignore the existence of genuine issues of material fact in holding that patent claims are directed to ineligible subject matter. *See*, *e.g.*, *Broadband iTV, Inc. v. Hawaiian Telcom, Inc.*, 136 F. Supp. 3d 1228 (D. Haw. 2015) *aff'd* 669 Fed. Appx. 555 (Fed. Cir. 2016) *(per curiam).*

The District Court's decision and the Federal Circuit's summary affirmance in this case is illustrative of the improper application of this Court's binding summary judgment precedent to questions of patentability under § 101. Intermec did not support its summary judgment motion with any evidence other than the '078 Patent itself. It did not offer any testimony or documentary evidence to establish that the '078 Patent claimed a prevalent, conventional, fundamental or long-standing method

of load planning. Nor did it offer evidence suggesting that the claimed method was a mental process that could be performed by the human mind. R+L opposed the summary judgment motion with an affidavit and deposition testimony from a transportation and logistics industry expert about the nature of the invention of the '078 Patent and how it related to the LTL trucking industry. Nevertheless, in direct violation of this Court's summary judgment jurisprudence, the District Court (and the Federal Circuit by virtue of its summary affirmance) not only failed to construe R+L's evidence in R+L's favor, it completely ignored R+L's evidence and based its ineligibility ruling on findings of fact that were contradicted by that evidence.

The District Court could not have concluded as a matter of law that the '078 Patent claimed ineligible subject matter without disregarding R+L's evidence. At Step 1 of the *Alice* analysis, the District Court concluded that the '078 Patent merely claimed a "conventional business practice of the LTL trucking industry." (App. 12a) Intermec offered no evidence on that issue. However, R+L's expert explained that the '078 Patented Process is fundamentally different from the conventional load planning method because all of the information necessary to plan for further shipment of inbound packages arrives at the terminal before the truck carrying the packages, which allows preparation of what the patent recites as an "advance loading manifest." In contrast, in conventional load planning, drivers return to the terminal with "fistfuls of paper" and wait in line for a clerk to process the bills of lading they had collected throughout the day. R+L's expert relied on these facts to conclude that, based on his experience, "a person in the trucking industry . . . would

have viewed the process outlined in the '078 Patent as an inventive concept that did not exist in the marketplace at that time and that could significantly improve the load handling and freight handling processes." (Appx3620, ¶7)[1] Under both *Celotex* and *Anderson*, the District Court and Federal Circuit were not allowed either to disregard that evidence or find it to be not credible.[2]

The District Court and Federal Circuit made a similar mistake that was outcome-determinative of their analysis under Step 2 of *Alice*. The District Court found there was no inventive concept because the '078 Patent merely recited the use of "available technology, performing its standard functions, to execute" what it had found to be the conventional practice of preparing a loading manifest. (App. 13a) That finding, however, cannot be reconciled with the only relevant evidence in the summary judgment record. R+L's expert explained that the '078 Patent does not simply recite the performance of the conventional load planning method using generic technology. It does not recite using technology to automate an old method, but rather recites using technology to enable a new and different method that provides significant advantages over the conventional method. (Appx3511 (92:2-5)) It is a

1. Citations to "Appx" are to the Joint Appendix submitted in connection with Federal Circuit Appeal No. 2016-2688.

2. Both times this Court found an invention to be directed to an unpatentable abstract idea, it relied on uncontested extrinsic evidence to support its conclusion that the claims were fundamental, long-standing economic practices. *Bilski*, 561 U.S. at 611 (three financial textbooks established that risk hedging was a prevalent practice); *Alice*, 134 S. Ct. at 2356 (an 1896 publication and two more recent textbooks established that intermediate settlement was a prevalent practice).

technology enabled process that can only be performed through the use of the communications technology. (Appx3513 (105:15-106:1)) Without any evidence from Intermec, and contrary to R+L's evidence, the District Court speculated that there was nothing inventive about the method because "it seems a matter of common sense." (App. 14a) Had the District Court and Federal Circuit construed that evidence in R+L's favor as required by *Celotex* and *Anderson*, they could not have made the factual finding that they did.

District courts and the Federal Circuit cannot be permitted to ignore uncontroverted evidence in deciding a motion for summary judgment on patentability issues under § 101 and make patentability determinations outside the constraints of Fed. R. Civ. P. 56. Direction from this Court is necessary to assure that district courts and the Federal Circuit properly decide issues of patentability in the summary judgment context—factual disputes may not be resolved against the non-movant and courts must construe evidence in the non-movant's favor and refrain from making credibility determinations. Certiorari should be granted to provide that direction.

CONCLUSION

For the foregoing reasons, the Court should grant this Petition for a Writ of Certiorari.

Respectfully submitted,

ANTHONY C. WHITE
Counsel of Record
THOMPSON HINE LLP
41 South High Street, Suite 1700
Columbus, OH 43215
(614) 469-3200
tony.white@thompsonhine.com

Counsel for Petitioner

APPENDIX

APPENDIX A — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, FILED OCTOBER 11, 2017

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

2016-2688, 2016-2689, 2016-2690, 2016-2692

R+L CARRIERS, INC.,

Plaintiff-Appellant,

v.

MICRODEA, INC., PEOPLENET COMMUNICATIONS CORPORATION, DRIVERTECH LLC, INTERMEC TECHNOLOGIES CORP.,

Defendants-Appellees.

PEOPLENET COMMUNICATIONS CORPORATION,

Plaintiff-Appellee,

v.

R+L CARRIERS, INC.,

Defendant-Appellant.

Appendix A

DRIVERTECH LLC,

Plaintiff-Appellee,

v.

R+L CARRIERS, INC.,

Defendant-Appellant.

R+L CARRIERS, INC.,

Plaintiff-Appellant,

v.

INTERMEC TECHNOLOGIES CORP.,

Defendant-Appellee.

Appeals from the United States District Court
for the Southern District of Ohio in Nos.
1:09-cv-00179-SSB, 1:09-cv-00472-SSB,
1:09-cv-00502-SSB, 1:09-cv-00532- SSB,
1:09-md-02050-SSB-SKB,
Senior Judge Sandra S. Beckwith.

JUDGMENT

Appendix A

THIS CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

PER CURIAM (DYK, O'MALLEY, and WALLACH, *Circuit Judges*).

AFFIRMED. *See* Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

October 11, 2017
Date

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

APPENDIX B — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO WESTERN DIVISION AT CINCINNATI, FILED AUGUST 28, 2016

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

Case Nos. 1:09-cv-502
1:09-cv-532
1:09-cv-179
1:09-cv-472

IN RE: Bill of Lading Transmission and Processing System Patent Litigation

JUDGMENT

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdicts.

X Decision by Court: This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that defendants' Drivertech, LLC, Intermec Technologies Corporation, Microdea, Inc., and PeopleNet Communications Corp. motion for summary judgment is **GRANTED.**

Appendix B

Date: August 29, 2016 Richard W. Nagel, Clerk

By: s/Mary C. Brown
Mary C. Brown, Deputy Clerk

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION, FILED AUGUST 29, 2016

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MDL Docket No. 1:09-md-2050

IN RE: Bill of Lading Transmission and Processing System Patent Litigation.

August 29, 2016, Decided
August 29, 2016, Filed

ORDER

This matter is before the Court on the motion for summary judgment filed by Defendants Drivertech, LLC, Intermec Technologies Corporation, Microdea, Inc., and PeopleNet Communications Corp. Doc. No. 407. In their motion, Defendants contend that the patent-in-suit in this case, U.S. Patent 6,401,078 ("the '078 Patent"), owned by Plaintiff R+L Carriers, Inc., is invalid under 35 U.S.C. § 101 because it claims patent-ineligible subject matter. The Court agrees. Accordingly, Defendants' motion for summary judgment is well-taken and is **GRANTED**.

The '078 Patent claims a method for preparing advance loading manifests for use in (but not necessarily limited to) the less-than-a-load ("LTL") trucking industry. According to the specification of the '078 Patent, LTL

shippers collect many small packages during the day, transport them to a central terminal, remove them from the truck, consolidate the packages with other packages heading in the same direction, and then load them onto another truck for further shipment. '078 Patent, col. 1, ll. 21-47. The '078 Patent purports to improve the efficiency of LTL operations by transmitting each package's shipping information to the central terminal before the package actually arrives at the terminal. By having the package's shipping information in advance, the shipping clerks can plan the further shipment of the package in advance. Efficiency results because there is less turnaround time for the package at the terminal and fewer delivery trucks will depart the terminal with partial loads. *Id.* col. 3, ll. 2-15.

The '078 Patent has one independent claim which, after being amended during re-examination proceedings, claims the following:

> 1. A method for transferring shipping documentation data for a package from a transporting vehicle to a remote processing center comprising the steps of:
>
> placing a package on a transporting vehicle;
>
> using a portable document scanner to scan an image of the documentation data for the package, said image including shipping details of the package;

> providing a portable image processor capable of wirelessly transmitting the image from the transporting vehicle;
>
> wirelessly sending the image to a remote processing center;
>
> receiving the image at said remote processing center; and
>
> prior to the package being removed from the transporting vehicle, utilizing said documentation data at said remote processing center to prepare [a] an advance loading manifest document for another transporting vehicle which includes said package for further transport of the package on another transporting vehicle.

See Doc. No. 367-3 (Reexamination Certificate).

In their motion for summary judgment, Defendants contend that the '078 Patent claims nothing more than the abstract idea of getting shipping information to load planners earlier in order to accelerate the creation of a loading manifest and that it is, therefore, ineligible for patent protection under 35 U.S.C. § 101. The Court agrees.

Section 101 of Title 35 of the United States Code establishes the basic requirement for the patentability of an invention:

Appendix C

> Whoever 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. As can be seen, "new and useful" processes, machines, manufactures, and compositions of matter are eligible for patent protection. *CLS Bank Int'l. v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1276 (Fed. Cir. 2013). Excluded from § 101, however, are "laws of nature, natural phenomena, and abstract ideas." *Diamond v. Diehr*, 450 U.S. 175, 185, 101 S. Ct. 1048, 67 L. Ed. 2d 155 (1981). In this case, as already stated, Defendants argue that the '078 Patent claims an abstract idea and, therefore, is invalid under § 101.

Determining patent eligibility is a two-step process. First, the court must determine whether the claims of the patent are directed towards a patent-ineligible concept - in this case, whether the patent is directed towards an abstract idea. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355, 189 L. Ed. 2d 296 (2014). Neither the Supreme Court or the Federal Circuit Court of Appeals have established the exact contours of an abstract idea. As is relevant in this case, however, as a general rule, fundamental economic and conventional business practices are abstract ideas. *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014).

If the claims are directed towards a patent-ineligible concept, the court proceeds to the second step. Here, the

court must determine whether the claims, considered both individually and as an ordered whole, contain an "inventive concept" that transforms the abstract idea into a patent-eligible invention. *Alice Corp.*, 134 S. Ct. at 2357; *DDR Holdings*, 773 F.3d at 1255. This step is to ensure that the claim has additional features to prevent the patentee from drafting claims that monopolize the abstract idea. *Alice Corp.*, 134 S. Ct. at 2357. As another general rule, claims that simply implement the abstract idea by using a computer in a conventional or generic way lack an inventive concept and, consequently, will not be patent-eligible. *Id.* at 2357-59.

Whether the claims are directed towards patent-eligible subject matter is a question of law for the court. *In re Bilski*, 545 F.3d 943, 951 (Fed. Cir. 2008). Patent eligibility is appropriately resolved on a motion for summary judgment if there are no disputed issues of fact. *Mortgage Grader, Inc. v. First Choice Loan Serv. Inc.*, 811 F.3d 1314, 1325 (2016). In this case, there are no genuine issues of material fact which preclude resolving whether the '078 Patent is directed towards patent-eligible subject matter on a motion for summary judgment. *Howes v. Medical Components, Inc.*, 814 F.2d 638, 643 (Fed. Cir. 1987). The Court concludes that the '078 Patent is invalid under 35 U.S.C. § 101 because it is directed towards a patent-ineligible abstract idea.

The record shows that the '078 Patent is directed to the abstract idea of creating an advance loading manifest and it only transfers this idea to a generic technological environment (i.e., the use of scanners, transmission

and receiving devices, and load planning software) in order to execute it. *See* '078 Patent, Abstract ("The present invention *automates the process* of receiving transportation documentation and producing advance loading manifests therefrom to optimize load planning and dynamic product shipment and delivery control.") (emphasis added). More specifically, the abstract idea encompassed by '078 Patent is the "process of receiving transportation documentation and producing advanced loading manifests therefrom." *Id.* And, at an even more basic level, the abstract idea claimed by the '078 Patent is simply "getting shipping information to the load planners faster." *See* Clair Dep. (Doc. No. 407-3), at 56-57 ("Q. If we look at Paragraph 39 of your report, is the gist of the invention getting details about incoming packages to the load planners early so they can begin building the load plans and preparing the load manifest before the last truck arrived? A. Yes."). It is even possible that the abstract idea of the '078 Patent is nothing more than "creating a loading manifest" and that it discloses nothing more than a shift in timing as to when the loading manifest is created (i.e., before the transporting vehicle arrives at the terminal versus after the transporting vehicle arrives at the terminal).

The conclusion that the '078 Patent claims an abstract idea is buttressed by R+L's expert, Lee Clair. Clair testified in his deposition that the method claimed in the '078 Patent could not be performed until there was an advance in technology - the availability of the scanners, transmitters, and receivers that form the backbone of the claimed method. Clair Dep. (Doc. No. 407-3) at

98-99. Thus, his testimony illustrates that the '078 Patent is directed towards an abstract idea that simply uses technology to execute it. *Cf. Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 , No. 2015-1778, 2016 U.S. App. LEXIS 13861, 2016 WL 4073318, at *4 (Fed. Cir. Aug. 1, 2016) (stating that the patent-in-suit was directed towards a patent-ineligible concept because "the focus of the claims is not on . . . in improvement on computers as tools, but on certain abstract ideas that use computers as tools"). The record also shows that preparing a loading manifest is a conventional business practice of the LTL trucking industry, which further cements the conclusion that the '078 Patent claims an abstract idea. *See* '078 Patent, col. 1, ll. 59-67 (describing the loading manifest preparation process before the claimed invention); Clair Dep. at 85 (testifying that loading manifests existed before the filing date of the '078 Patent); *DDR Holdings*, 773 F.3d at 1256 ("We know that some fundamental economic and conventional business practices are also abstract ideas.").

Accordingly, for all of the above reasons, the Court concludes that the '078 Patent is drawn to an abstract idea that is not patent-eligible.

The Court next considers whether the '078 Patent implements the abstract idea of preparing advance loading manifest documents in an inventive way. *Alice Corp.*, 134 S. Ct. at 2355. As already stated, however, applying computer or other technology to execute an abstract idea does not mean that the patent claims eligible subject matter. *Id.* at 2358-59. In this case, the '078 Patent does not implement the abstract idea of producing advance loading manifest

documents in an inventive way. The steps of the claimed method, as informed by the '078 Patent's specification, simply use available technology, performing its standard functions, to execute the abstract idea of getting shipping information to load planners faster. *See generally* '078 Patent, cols. 3-6. The image scanners simply scan images, the transmitters simply transmit the images, the receivers simply receive the images, and the load planning software simply extracts the data from the images and transforms the data into a loading manifest. *Id.* The patent does not solve any technological problems and it specifically relies on commercially-available hardware and software to execute the method. '078 Patent, col. 2, ll. 18-22 (noting that load planning software has been developed to perform load planning and shipping functions); *id.* cols. 4-6 (describing the use of commercially-available document scanning and transmission/communications systems in the method); *see Electric Power Group*, 2016 U.S. App. LEXIS 13861, 2016 WL 4073318, at *5 (finding that the claims lacked an inventive concept where the specification required nothing more than conventional, off-the-shelf computers to perform the method). The fact that the execution of the abstract idea can be carried out more efficiently through the use of technology does not mean that the patent covers eligible subject matter. *See CLS Bank*, 717 F.3d at 1286 ("[S]imply appending generic computer functionality to lend speed or efficiency to the performance of an otherwise abstract concept does not meaningfully limit claim scope for purposes of patent eligibility.").

The specification of the '078 Patent also indicates that, at bottom, the process of preparing a loading manifest is nothing more than a routine data collection exercise that is not patent-eligible. *OIP Tech., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015); *see also Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1347-48 (Fed. Cir. 2014) (using a generic scanner and computer to extract data from hard copy documents was an abstract idea that lacked inventive concept). For instance, the specification describes that prior to the claimed invention, LTL drivers would return to the shipping terminal at the end of the day with their bills of lading and present them to the shipping clerks. The shipping clerks would then enter the shipping data into the computer system. The data would then be transmitted to the loading dock for further load planning. '078 Patent, col. 1, ll. 59-67. The '078 Patent in essence recites the traditional method of preparing a loading manifest (i.e., truck drivers presenting their bills of lading to shipping clerks) and only shifts the timing of the data collection process so that it occurs at least no later than the return of the transporting vehicle. But there is nothing "inventive" about shifting the timing of the data collection process - indeed, it seems a matter of common sense. This is all the more true when, as already stated, the execution of the method depends entirely on the conventional operation of commercially-available technology. *See Alice*, 717 F.3d at 1286; *Content Extraction*, 776 F.3d at 1348.

Two final points. That the '078 Patent does not preempt all other methods of creating an advance loading manifest, such as a method where the driver faxes bills of

lading from a truck stop to the terminal, does not mean that the '078 Patent covers patent-eligible subject matter. *Vehicle Intelligence & Safety, LLC v. Mercedes-Benz USA, LLC*, 635 Fed. Appx. 914, 918-19 (Fed. Cir. 2015). Lastly, whether the claims of the '078 Patent are novel is immaterial to the question whether they claim patent-eligible subject matter because novelty is a separate question from patent eligibility. *Diamond*, 450 U.S. at 189-90.

In summary, the Court concludes that the '078 Patent is directed towards an abstract idea that it does not implement in an inventive way and that, therefore, it does not claim patent-eligible subject matter under 35 U.S.C. § 101. Consequently, the '078 Patent is invalid. Accordingly, Defendants' motion for summary judgment is well-taken and is **GRANTED**.

IT IS SO ORDERED.

Dated: August 29, 2016

/s/ Sandra S. Beckwith
Sandra S. Beckwith
Senior United States
District Judge