No. ___

IN THE
Supreme Court of the United States

NETSOC, LLC

Petitioner,

v.

MATCH GROUP, LLC, PLENTY OF FISH MEDIA ULC, and HUMOR RAINBOW, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Is the addition of a network computer implemented social network, with a novel and unconventional rating system, to a method of organizing human activity per se unpatentable as directed to an abstract idea?

2. Is a network computer implemented social network an application of an abstract concept, namely the organizing and rating of human activity, to a new and useful end, therefore remaining eligible for patent protection?

3. In 2003, did the creation of a network computer implemented social network with a novel and unconventional rating system transform it into an improved social network that is something concrete and tangible?

PARTIES TO THE PROCEEDINGS

The parties to the proceeding in the court whose judgment is sought to be reviewed (the Federal Circuit Court of Appeals) are:

Petitioner

- NetSoc, LLC

Respondent

- Match Group, LLC, Plenty of Fish Media ULC, and Humor Rainbow, Inc.

RULE 29.6 STATEMENT

NetSoc, LLC has no parent corporations or publicly held corporation that owns 10% or more of the stock of NetSoc, LLC.

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TABLE OF AUTHORITIES

Cases

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OPINIONS BELOW

The Federal Circuit's opinion is reprinted at App. A, and is reported at *NetSoc v. Match Grp., LLC*, 838 F. App'x 544 (Fed. Cir. 2020). The Federal Circuit's unpublished order denying full court rehearing is reprinted at App. C.

JURISDICTION

The Federal Circuit entered judgment on December 31, 2020 (App. B), and denied a timely petition for rehearing en banc on February 23, 2021. (App. C) This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Question Presented involves 35 U.S.C. §101 that states:

35 U.S.C. §101

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.

STATEMENT OF THE CASE

This is a patent case whether there is a *per se* rule that claims directed towards a computer implemented social network with a novel and unconventional rating system are unpatentable. The technology relates to the creation of a social network with novel aspects for enabling participants to communicate with and rate one another. The rating aspect allows the social network to function differently than if the rating system was not part of the invention, thus producing an enhanced social network for at least the reason that participants who are more actively engaged in the social network will have higher ratings.

On May 22, 2018, U.S. Patent No. 9,978,107 ("the '107 patent") entitled "Method and System for Establishing and Using a Social Network to Facilitate People in Life Issues" was duly and legally issued by the U.S. Patent and Trademark Office. The priority date for each claim of the '107 patent is September 3, 2003.

The '107 Patent describes the invention as follows:

> In an embodiment, a social network may be established and used to assist individuals in having issues resolved at a particular geographic location, particularly one that is unfamiliar to them (such as in the case where they are moving to a new city). ... Subsequently, the user and the recipient/participant

> are enabled to communicate with one another.[1]

The '107 patent defines a social network as something physical:[2]

> The result is that the spouse, who may be located in Germany, is networked to individuals who can establish answers to her issues, assist her relocation on a personal and/or professional level, and perhaps include the spouse/family in a growing social network of trusted contacts for the particular location.[3]

Claim 1 provides that information that is associated with each participant that is matched to the category selection of the user is displayed, but the claim also qualifies what information is displayed "based on the rating associated with each of the multiple participants" - to solve a technological problem arising in computer implemented social networks: how to match participants.[4] The claim recites an underlying computing technology (computer platform to establish social network), an improvement to the underlying technology (associating users with an updated rating), and also how the improvement is determined (tracking

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[1] *See* Patent at Column 2, lines 16-36 ("2:16-36").

[2] *See* Patent at 11:53-58.

[3] *See* Patent at 11:53-58.

[4] *See* Patent at 17:15-48.

response time of participants). Additional claim elements focus on how the rating is determined (based at least in part on the tracked response time of the respondent), which in turn affects what information that is displayed to the user. The claims of the '107 patent apply computing technology to a "social network" based on a priority date of September 3, 2003, well before when social networks became everyday technology with which everyone is now familiar.[5]

[5] Pet.App. 22a-23a.

REASONS FOR GRANTING THE PETITION

Review is warranted to resolve issues of significant national and legal importance, specifically:

(1) Whether the Federal Circuit's holding establishes a *per se* rule that computer implemented social networks are unpatentable subject matter is in direct contravention of *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 134 S. Ct. 2347 (2014) and *Gottschalk v. Benson*, 409 U.S. 63, 93 S. Ct. 253 (1972), as an appropriate inquiry is whether the computer implemented social network is an application of an abstract concept to a new and useful end, thereby remaining patent eligible.

(2) Whether, in 2003, a network computer implemented social network with a novel and unconventional rating system was an application of an abstract concept, namely the organizing and rating of human activity, to a new and useful end, therefore remaining eligible for patent protection.

(3) Whether the creation of a network computer implemented social network with a novel and unconventional rating system transformed it into an improved social network that is something concrete and tangible.

(4) Whether it is proper to dismiss, on eligibility grounds under Rule 12, when a patent's specification provides that the claimed invention

solves a prior art technological problem.

A. The Federal Circuit's Analysis Establishes a *per se* Rule that Claims Directed to a Computer Implemented Social Network are Unpatentable.

The Federal Circuit erroneously made an assumption that the claims of the '107 patent were directed to "automating the conventional establishment of social networks to allow humans to exchange information and form relationships"[6] without considering the underlying facts that the patent examiner particularly found the rating system to be unconventional,[7] and 'automation' is never mentioned.[8] The Federal Circuit further erroneously failed to recognize that the network computer implementation of a social network, with a novel and unconventional rating system, creates an improved social network that is patent eligible because it solves a technological problem associated with social networks, namely how to match users and participants based on a novel rating.[9]

The Federal Circuit's search for a specific field or specialized component failed to properly determine the focus of the claims, the creation of a network

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[6] Pet.App. 1a-Pet.App. 12a at 7.

[7] Pet.App. 19a.

[8] *See, generally*, Patent at 21.

[9] *Gottschalk v. Benson*, 409 U.S. 63, 67, 93 S. Ct. 253 (1972)..

computer implemented social network with a novel and unconventional rating system and resulted in a determination that the claims are not directed towards the creation of something concrete, failing the first step of *Alice*.[10] However, in 2003, a computer implemented social network with a novel rating system was not conventional and thus not an abstract unpatentable idea pertaining to organizing human activity.[11]

B. The Fedeal Circuit's Conclusion that Social Networks Are a Long-Standing Practice Is Not the Appropriate Inquiry.

This Court's two-step test for examining patent eligibility of alleged "abstract ideas" was never intended as a *per se* rule rendering unpatentable all ideas or concepts related to the implementation of a social network because, at some level, all inventions "embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas."[12] When social network implementation concepts are put "to a new and useful end ... [they] remain eligible for patent protection."[13] A 2003 computer implemented social network with a novel and unconventional rating

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[10] Pet.App. 1a-Pet.App. 12a at 7-8.

[11] Pet.App. 1a-Pet.App. 12a at 8.

[12] *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 218, 134 S. Ct. 2347 (2014) (*quoting Benson*, 409 U.S. at 67).

[13] *Id.*

system[14] is a "new and useful end" for a social network and is patent eligible.[15] For instance, the '107 patent's specification[16] discusses how the claimed social network facilitates people with life issues like employee relocation.[17]

The Federal Circuit however erred by finding the claims of the '107 patent conventional based on the incorrect assertion that "the '107 patent specification acknowledges that social networks[18] are a long-standing practice."[19] Rather, the specification provides the claimed social networks "facilitate individuals to resolve various life issues[,]" which

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[14] Pet.App. 17a-Pet.App. 20a.

[15] *See, e.g., CLS Bank Int'l*, 573 U.S. at 218 (*quoting Benson*, 409 U.S. at 67).

[16] *See Chamberlain Grp., Inc. v. Techtronic Indus. Co.*, 935 F.3d 1341, 1346 (Fed. Cir. 2019) ("[T]he specification [is] helpful in illuminating what a claim is 'directed to.'").

[17] *See* Patent at 2:4-20.

[18] A social network has a very particular meaning in the art field and is commonly understood as a website that brings people together to talk, share ideas and interests, or make new friends. (at ¶3). This type of collaboration and sharing is known as social media. Unlike traditional media that is created by limited people, social media sites contain content created by hundreds or even millions of different people. (From Federal Circuit Appeal, Pet.App. 22a at ¶s4-7).

[19] Pet.App. 1a-Pet.App. 12a at 7.

"may include problems and concerns that arise when individuals or families travel or relocate.... Moreover, the claims "focus on a specific means or method that improves" a network computer implemented social network and thus are patent eligible.[20]

A computer implemented social network is not unlike the claims in *CardioNet, LLC v. InfoBionic, Inc.*,[21] where the Federal Circuit found the "focus [of the claims] on a specific means or method that improves" cardiac monitoring technology and not "directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery."[22] The Federal Circuit used the written description to confirm its conclusion, which explained "by identifying 'variability in the beat-to-beat timing . . . as relevant to the at least one of atrial fibrillation and atrial flutter in light of the variability in the beat-to-beat timing caused by ventricular beats identified by the ventricular beat detector,' the claimed invention achieves multiple technological improvements. First and foremost, the device more accurately detects the occurrence of atrial fibrillation and atrial flutter—as distinct from V-TACH and other arrhythmias—and allows for more reliable and immediate treatment of these two medical conditions" [] and ... to identify sustained episodes of atrial fibrillation and atrial flutter that have 'increased

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[20] *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016).

[21] 955 F.3d 1358 (Fed. Cir. 2020).

[22] *InfoBionic, Inc.*, 955 F.3d at 1368.

clinical significance.'"[23] Similarly, the specification of the '107 patent are more akin to a technological improvement, an unconventional network computer implemented social network that facilitates people with life issues, by for example making relocation a success.

C. Dismissal Under Rule 12 Is Improper When the Specification Alleges Solutions to Prior Art Issues.

A fully developed factual record would illustrate that a 2003-network implemented social network cannot be considered conventional. At the heart of the Federal Circuit's erroneous step one analysis is the incorrect assumption that the claims are directed to automating known techniques.[24] It is difficult to fathom how any human could mentally (or manually) create a social network with the claimed novel and unconventional rating system, based at least in part on tracked response time. While a human can match classifications, for a conventional social network, it is the rating based at least in part on tracked response time that is unconventional about the computer implemented social network and not fathomably performed by a human. In fact, the Federal Circuit did not identify that any social network where a human performed the rating as claimed.[25] Moreover,

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[23] *InfoBionic, Inc.*, 955 F.3d at 1370-71 citing '207 patent col. 3 ll. 6-16, 16-20, 21-26, 35-39.

[24] *See, e.g., id.* at 1378.

[25] *See id.*

during the examination process, the claimed rating system was found to cause the claimed social network to function in an unconventional manner,[26] a fact that would have been more fully developed through discovery. Thus, the claims were particularly found to be unconventional, a point not properly addressed at the 12(b)(6) stage when all reasonable inferences should be taken for the non-movant.

One of the advantages of the claims of the '107 patent is described in the specification as making employee relocation a success.[27] Such factual determinations are important in the eligibility analysis which is a reason early dismissals on eligibility grounds without a well-developed record should be rare.[28] The development of a full record would show that in 2003, computer implemented social networks were not conventional.[29] In fact, it weas not until 2004 that Facebook launched, but at that time was only available to Harvard students.[30] No human could mentally or manually perform as the claimed computer implemented social network with the novel and unconventional rating system.

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[26] Pet.App. 19a.

[27] *See* Patent at 2:4-20.

[28] Including, in this case, an Order construing claims. *See Nat. Alts. Int'l, Inc. v. Creative Compounds, LLC,* 918 F.3d 1338, 1354 (Fed. Cir. 2019, Judge Reyna's concurring opinion)

[29] Pet.App. 20a; Pet.App. 22a-Pet.App. 23a at ¶s 3-7.

[30] Pet.App. 21a.

CONCLUSION

Because the Federal Circuit establishes a *per se* rule that a computer implemented social network is directed to unpatentable subject matter, in contravention to binding precedent, Petitioner requests the Supreme Court grant review of this matter.

Respectfully Submitted,

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APPENDIX

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