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NOTE: This disposition is nonprecedential.

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

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**FAST 101 PTY LTD.,**  
*Plaintiff-Appellant*

v.

**CITIGROUP INC., CITIBANK, N.A.,**  
*Defendants-Appellees*

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2020-1458

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Appeal from the United States District Court for  
the District of Delaware in No. 1:19-cv-01819-RGA,  
Judge Richard G. Andrews.

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Decided: November 25, 2020

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ROBERT R. BRUNELLI, Sheridan Ross P.C., Denver,  
CO, for plaintiff-appellant. Also represented by MAT-  
THEW CHRISTIAN HOLOHAN.

JOHN MOEHRINGER, Cadwalader, Wickersham &  
Taft LLP, New York, NY, for defendants-appellees. Also  
represented by HOWARD WIZENFELD.

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Before NEWMAN, LOURIE, and CHEN, *Circuit Judges*.

CHEN, *Circuit Judge*.

Fast 101 Pty Ltd. (Fast 101) appeals from a decision of the United States District Court for the District of Delaware dismissing its complaint for failure to state a claim and denying its motion for leave to take targeted discovery and amend its complaint. The district court found that all claims of the asserted patents recite patent-ineligible subject matter under 35 U.S.C. § 101. *We affirm.*

BACKGROUND

Fast 101 brought suit against CitiGroup Inc. and Citibank, N.A. (collectively, Citi) alleging infringement of all claims of five of its patents: U.S. Patent Nos. 8,515,867 ('867 patent), 8,660,947 ('947 patent), 8,762,273 ('273 patent), 9,811,817 ('817 patent), and 10,115,098 ('098 patent) (collectively, the asserted patents). The asserted patents share a common written description and all relate “generally to data processing systems, and more particularly, to electronic trading and settlement systems,” '867 patent col. 1 11. 19-21. The asserted patents describe “an invoiceless trading system that creates incentives for customers to pay suppliers within a predetermined period of time, such as a settlement period.” *Id.* at abstract. This system “enables a customer to obtain a discount on orders placed with suppliers in return for an immediate payment.” *Id.* Claim 1 of the '867 patent is representative of all 234 asserted claims:

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1. A system configured for electronic settlement of an order placed by a customer with a supplier comprising:

one or more bank servers, at least one of the one or more bank servers receives a message related to the order, the message comprising at least an order amount;

a database associated with at least one of the one or more bank servers that stores the order amount;

one or more processors associated with at least one of the one or more bank servers that determines an incentive amount, wherein the incentive amount is determined based at least in part on one or more fiscal attributes of the customer and the order amount; and

a payment gateway associated with at least one of the one or more bank servers, the payment gateway electronically transfers to a supplier account on a first date an early payment for the order, the supplier account associated with the supplier, wherein the early payment is less than the order amount by at least the incentive amount, and the payment gateway that electronically receives a customer payment from a customer account on a second date, the customer account associated with the customer, wherein the customer payment is not less than the early payment plus an interest amount, wherein the interest amount is based at least in part on a credit period, wherein the credit period is an amount

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of time between the first date and the second date.

*Id.* at claim 1; *see also Fast 101 Pty Ltd. v. Citigroup Inc.*, 424 F. Supp. 3d 385, 387-88 (D. Del. 2020) (finding claim 1 representative); *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365 (Fed. Cir. 2018) (“Courts may treat a claim as representative . . . if the patentee does not present any meaningful argument for the distinctive significance of any claim limitations not found in the representative claim.”).

In response to Fast 101’s complaint, Citi filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim under which relief can be granted, arguing that all the asserted claims recite patent-ineligible subject matter under § 101. Fast 101 contended primarily in response that the asserted claims are valid and sought leave for targeted discovery and to amend its complaint. The district court granted Citi’s motion to dismiss and denied Fast 101 leave to amend and conduct targeted discovery.

Applying the Supreme Court’s § 101 two-step inquiry from *Alice Corp. Pty. Ltd. v. CLS Bank International*, 573 U.S. 208, 217-18 (2014), the district court reasoned that the asserted claims are directed to the abstract idea of “an intermediated settlement system” with “a discount for early payment.” *Fast 101*, 424 F. Supp. 3d at 390. The district court then concluded that “[n]one of the claimed elements, taken individually or as an ordered combination, provide the required inventive concept ‘sufficient to ensure that the patent

in practice amounts to significantly more than a patent upon the ineligible concept itself.” *Id.* at 392 (citing *Alice*, 573 U.S. at 218). In denying Fast 101’s motion for leave, the district court explained that leave would “be futile.” *Id.* at 393. Fast 101 timely appealed. We have jurisdiction pursuant to 28 U. S. C. § 1295(a)(1).

#### DISCUSSION

We apply the law of the regional circuit when reviewing a district court’s disposition of a motion to dismiss for failure to state a claim. *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1092 (Fed. Cir. 2016). The Third Circuit “review [s] de novo a district court’s grant of a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).” *Balentine v. United States*, 486 F.3d 806, 808 (3d Cir. 2007). We review de novo the determination that a claim is directed to patent-ineligible subject matter, *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016), and under Third Circuit law, we review “a district court’s denial of leave to amend for abuse of discretion,” *City of Cambridge Ret. Sys. v. Altisource Asset Mgmt. Corp.*, 908 F.3d 872, 878 (3d Cir. 2018).

Section 101 allows inventors to obtain patents on “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court, however, has held that certain categories of subject matter, including abstract ideas, are not eligible for patent protection under § 101. *Mayo Collaborative Servs. v. Prometheus*

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*Labs., Inc.*, 566 U.S. 66, 70 (2012). “The abstract ideas category embodies the longstanding rule that an idea of itself is not patentable.” *Alice*, 573 U.S. at 218 (internal brackets and quotation marks omitted). To determine whether claimed subject matter is patent eligible, we apply the two-step framework enumerated in *Alice*. *Id.* We first “determine whether the claims at issue are directed to a patent-ineligible concept.” *Id.* If so, we “examine the elements of the claim to determine whether it contains an inventive concept sufficient to transform the claimed abstract idea into a patent-eligible application.” *Id.* at 221 (internal quotation marks omitted) (quoting *Mayo*, 566 U.S. at 72, 80). At each step, the claims should be considered as a whole. *See id.* at 218 n.3, 225.

## A

Applying *Alice* step one, we agree with the district court and Citi that the claims are directed to the abstract idea of an intermediated settlement system that employs a discount for early payment. As the district court explained, “[L]ike *Alice*, these claims describe a method of exchanging financial obligations between two parties by the use of a third-party intermediary.” *Fast 101*, 424 F. Supp. 3d at 390. The asserted patents do, however, recite an element not found in the claims in *Alice*—an “incentive amount.” ’867 patent at claim 1. But we agree with the district court’s further finding that this incentive amount, or discount, describes nothing more than the abstract idea of calculating an amount based on fiscal attributes, *see Fast 101*, 424

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F. Supp. 3d at 390, just as we concluded in *Mortgage Grader, Inc. v. First Choice Loan Services Inc.*, 811 F.3d 1314, 1324 (Fed. Cir. 2016) (determining that generating a discounted loan price is an abstract idea). Fast 101 contends that the claims are directed to “an improved method of obtaining an early payment for the supplier based on various attributes of the specific transaction using the claimed system,” Appellant’s Br. at 11-12, such improvements including “[i]ncreased cash flow” and “[c]ost reduction through automation and paper reduction,” *id.* at 15 (citation and internal quotation marks omitted). This argument fails to persuade; the so-called improvements resulting from the claimed method are simply improvements attendant to using electronic systems. Contrary to Fast 101’s contentions, these improvements do not demonstrate that the “[p]atents-in-[s]uit are drawn to a particular improvement in the function of prior art technology, and thus properly not considered drawn to an abstract idea.” *Id.* at 14 (citation, internal quotation marks, and brackets omitted).

## B

Under *Alice* step two, we conclude that the claims do not recite any inventive concept to render them patent eligible. Fast 101’s main argument on appeal is that the asserted patents recite “numerous *technical* improvements to electronic trading systems,” *id.* at 19, including “specialized gateway technology,” *id.* We disagree. Just as the district court concluded, the claims refer to nothing more than well-understood, routine,

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and conventional technology components. *See Fast 101*, 424 F. Supp. 3d at 392. The claimed payment gateway cannot be construed as specialized in any sense. *See id.* at 391-92 and n.5 (explaining that the '867 patent's written description demonstrates an understanding that the gateway is nothing more than "conventional commercially-available browsers and products").

CONCLUSION

We have considered Fast 101's remaining arguments and are unconvinced. Further, Fast 101 has failed to provide any persuasive reason why the district court abused its discretion in denying leave to take targeted discovery and to amend because Fast 101 has not identified with specificity any additional factual allegations or claim constructions that would render amendment and discovery not futile. We therefore affirm.

**AFFIRMED**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

FAST 101 PTY LTD.,  
Plaintiff,  
v.  
CITIGROUP INC.  
and CITIBANK, N.A.,  
Defendants.

Civil Action No.  
19-1819-RGA

MEMORANDUM OPINION

(Filed Jan. 30, 2020)

Raymond H. Lemisch and Sean M. Brennecke, KLEHR HARRISON HARVEY BRANZBURG, LLP, Wilmington, DE; and Robert R. Brunelli, Matthew C. Holohan, and Tara K. Hawkes, SHERIDAN ROSS P.C., Denver, CO, Attorneys for Plaintiff.

Kelly E. Farnan and Valerie A. Caras, RICHARDS, LAYTON & FINGER, P.A., Wilmington, DE; and Howard Wizenfeld and Maegan A. Fuller, CADWALADER, WICKERSHAM & TAFT LLP, New York, NY, Attorneys for Defendants.

January 30, 2020

/s/ Richard G. Andrews

**ANDREWS, UNITED STATES DISTRICT JUDGE:**

Before me is Defendants' Motion to Dismiss for failure to state a claim. (D.I. 14). I have reviewed the parties' briefing. (D.I. 15, 17, 20). Because I find that

none of the claims in the Asserted Patents claim patent-eligible subject matter, I will grant Defendants' motion.

## I. BACKGROUND

Plaintiff alleges Defendants infringe all of the claims of U.S. Patent Nos. 8,515,867 ("the '867 patent"), 8,660,947 ("the '947 patent"), 8,762,273 ("the '273 patent"), 9,811,817 ("the '817 patent"), and 10,115,098 ("the '098 patent") (collectively, the "Asserted Patents"). The Asserted Patents, all of which have a common specification, "relate[] generally to data processing systems, and more particularly, to electronic trading and settlement systems." (D.I. 1, Ex. 1 at 1:19-21). The patents claim priority to an Australian patent application filed on May 3, 1999. (*Id.* at 1:6-14).

Defendants move to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. (D.I. 14). Defendants argue that none of the claims in the Asserted Patents claim patent-eligible subject matter, and thus are all invalid under 35 U.S.C. § 101. (D.I. 15). Defendants also contend that Plaintiff has failed sufficiently to plead indirect or willful infringement of any of the claims of the Asserted Patents.

I find Claim 1 of the '867 patent representative of all 234 claims of the Asserted Patents for the purposes of determining whether the claims recite patent-eligible subject matter. First, the independent claims in the remaining patents recite the same concept as

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described in the '867 patent, an incentive system applied to trade between a customer, a supplier, and a provider of funds. The dependent claims discuss, for example, variations in “incentive amount” based on different factors,<sup>1</sup> a “message” containing the various amounts involved in the financial transaction,<sup>2</sup> an “agreement” between the provider of funds and the supplier,<sup>3</sup> and an “electronic network” used to communicate a message.<sup>4</sup> Plaintiff argues that these additional limitations add inventive concepts to the claims. (D.I. 17 at 15). But none of these asserted limitations in the dependent claims offer any improvement—or even significant variation—in technical functioning of the claimed invention.

Because all of the independent claims of the remaining patents recite the same concept as described in the '867 patent, and the dependent claims offer only minor, non-technical variations, I will consider claim 1 of the '867 patent as representative of the other claims in the Asserted Patents. *See Content Extraction & Transm'n LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1348 (Fed. Cir. 2014). “[C]ourts may treat a claim

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<sup>1</sup> *See* '876 Patent at Cls. 2, 6, 17; '947 Patent at Cls. 6, 32, 47, 51, 55, 76, 80, 84, 102, 107, 111, 129, 137, 155, 159; '273 Patent at Cls. 3, 10, 17.

<sup>2</sup> *See* '876 Patent at Cl. 5; '947 Patent at Cls. 2, 5, 12, 31, 46, 54, 75, 83, 101, 110, 128, 133, 136, 154, 158; '273 Patent at Cls. 10, 21, 31.

<sup>3</sup> *See* '876 Patent, Cls. 7, 14; '947 Patent, Cls. 7, 15, 23, 26, 38, 41, 56, 67, 70, 85, 93, 96, 112, 120, 123, 138, 146, 149.

<sup>4</sup> *See* '876 Patent, Cl. 9; '947 Patent, Cls. 9, 17, 58, 87, 114, 140; '098 Patent, Cls. 9, 20, 30.

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as representative . . . if the patentee does not present any meaningful argument for the distinctive significance of any claim limitations not found in the representative claim.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365 (Fed. Cir. 2018).

The claims recite a system to: (1) receive an order from a customer, (2) store the order, (3) determine a discount, (4) pay a supplier a discounted amount from a fund provider, and (5) receive customer payment at a later date. (D.I. 1). Representative claim 1 recites:

A system configured for electronic settlement of an order placed by a customer with a supplier comprising:

one or more bank servers, at least one of the one or more bank servers receives a message related to the order, the message comprising at least an order amount;

a database associated with at least one of the one or more bank servers that stores the order amount;

one or more processors associated with at least one of the one or more bank servers that determines an incentive amount, wherein the incentive amount is determined based at least in part on one or more fiscal attributes of the customer and the order amount; and

a payment gateway associated with at least one of the one or more bank servers, the payment gateway electronically transfers to a supplier account on a first date an early payment for the order, the supplier account

associated with the supplier, wherein the early payment is less than the order amount by at least the incentive amount, and the payment gateway that electronically receives a customer payment from a customer account on a second date, the customer account associated with the customer, wherein the customer payment is not less than the early payment plus an interest amount, wherein the interest amount is based at least in part on a credit period, wherein the credit period is an amount of time between the first date and the second date.

## **II. LEGAL STANDARD**

### **a. Patent-Eligible Subject Matter**

Patentability under 35 U.S.C. § 101 is a threshold legal issue. *Bilski v. Kappos*, 561 U.S. 593, 602 (2010). Accordingly, the § 101 inquiry is properly raised at the pleading stage if it is apparent from the face of the patent that the asserted claims are not directed to eligible subject matter. See *Cleveland Clinic Found. v. True Health Diagnostics LLC*, 859 F.3d 1352, 1360 (Fed. Cir. 2017), *cert. denied*, 138 S. Ct. 2621 (2018). This is, however, appropriate “only when there are no factual allegations that, taken as true, prevent resolving the eligibility question as a matter of law.” *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1125 (Fed. Cir. 2018).

Section 101 of the Patent Act defines patent-eligible subject matter. It provides: “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. The Supreme Court has recognized an implicit exception for three categories of subject matter not eligible for patentability—laws of nature, natural phenomena, and abstract ideas. *Alice Corp. Pty. v. CLS Bank Int’l*, 573 U.S. 208, 215 (2014). The purpose of these carve-outs is to protect the “basic tools of scientific and technological work.” *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012). “[A] process is not unpatentable simply because it contains a law of nature or a mathematical algorithm,” as “an application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.” *Id.* at 1293-94 (internal quotation marks and emphasis omitted). In order “to transform an unpatentable law of nature into a patent-eligible application of such a law, one must do more than simply state the law of nature while adding the words ‘apply it.’” *Id.* at 72 (emphasis omitted).

The Supreme Court reaffirmed the framework laid out in *Mayo* “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 573 U.S. at 217. First, the court must determine whether the claims are drawn to a patent-ineligible concept. *Id.* If the answer is yes, the court must look to “the elements of the claim

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both individually and as an ‘ordered combination’ to see if there is an ‘inventive concept’—i.e., an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’ *Id.* (alteration in original). “A claim that recites an abstract idea must include ‘additional features’ to ensure that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].” *Id.* at 221. Further, “the prohibition against patenting abstract ideas cannot be circumvented by attempting to limit the use of [the idea] to a particular technological environment.” *Id.* at 222 (quoting *Bilski*, 561 U.S. at 610-11). Thus, “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Id.* For this second step, the machine-or-transformation test can be a “useful clue,” although it is not determinative. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir. 2014).

“Patent eligibility under § 101 is a question of law that may contain underlying issues of fact.” *Solutran, Inc. v. Elavon, Inc.*, 931 F.3d 1161, 1165 (Fed. Cir. 2019). Whether a claim is drawn to patent-eligible subject matter “is a matter of both claim construction and statutory construction.” *In re Bilski*, 545 F.3d 943, 951 (Fed. Cir. 2008), *aff’d sub nom. Bilski v. Kappos*, 561 U.S. 593 (2010). Claim construction is a question of law. See *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 837 (2015) (citing *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 388-91 (1996)).

### III. DISCUSSION

#### a. Patent Eligible Subject Matter

##### i. The Asserted Patents Claim an Abstract Idea

The claimed invention comprises “methods and systems . . . [which] provid[e] an invoiceless trading system that creates incentives for customers to pay suppliers within a predetermined period of time, such as a settlement period.” (D.I. 1, Ex. 1 at Abstract). The incentive system between suppliers and customers uses “an intermediary settlement institution, such as a bank.” (D.I. 1 at ¶ 30). Defendants argue that the claims fail under step one of the *Alice* framework for claiming the abstract idea of an intermediated settlement system, the same abstract idea presented in *Alice*. (D.I. 15 at 8; see *Alice*, 573 U.S. at 219-21). In *Alice*, the claims “involve[d] a method of exchanging financial obligations between two parties using a third-party intermediary to mitigate settlement risk.” 573 U.S. at 219. Like *Alice*, these claims describe a method of exchanging financial obligations between two parties by the use of a third-party intermediary.

Distinguished from the facts in *Alice*, the claims further recite “an incentive amount” (*i.e.*, a discount) for an early payment, which is facilitated by having the bank pay the supplier and receive customer payment at a later date. (D.I. 1, Ex. 1 at 8:56-60). Although the idea of providing a discount for early payment was not discussed in *Alice*, Defendants argue that the idea of providing a discount for early payment is “merely a



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marketing and advertising concept,” which the Federal Circuit has held to be an abstract idea. (D.I. 15 at 1, citing *Intell. Ventures I LLC v. Cap. One Bank (USA)*, 792 F.3d 1363, 1369 (Fed. Cir. 2015) (finding tailored advertisement to be an abstract idea)). Whether or not the discounting concept can be considered marketing, the Federal Circuit has found that calculating an amount based on fiscal attributes to be an abstract idea. *Mortg. Grader, Inc. v. First Choice Loan Servs., Inc.*, 811 F.3d 1314, 1324 (Fed. Cir. 2016).

Plaintiff argues that the Asserted Patents are drawn to “a particular improvement in the functioning of prior art,” and thus are not drawn to an abstract idea. (D.I. 17 at 7, citing *Uniloc USA, Inc. v. ADP, LLC*, 772 F. App’x 890, 898 (Fed. Cir. 2019)). The cited case law, however, is irrelevant with regards to supporting Plaintiffs claim because Plaintiff goes on to describe an incentive system designed to encourage customer and supplier participation in “existing trading and settlement systems.” (D.I. 17 at 7, citing Ex. 1 at 2:66-3:5). The patents do not claim “a particular improvement in *how* this is done.” See *Uniloc*, 772 F. App’x at 897. The “incentive system,” rather, is “at the heart of the claimed invention.” (D.I. 17 at 17). I am thus convinced that the Asserted Patents claim an abstract idea.

### **ii. The Asserted Patents Contain No In-ventive Concept**

Plaintiff states that the Asserted Patents claim technology that improves upon identified existing

systems but offers little support for this contention. (D.I. 17 at 3). The complaint pleads that (1) “claims of the Patents-in-Suit go beyond well-understood, routine, conventional activities,” (2) “existing electronic trading systems such as Internet-based trading systems had significant limitations,” and (3) the claimed incentive calculation method was an improvement over deficient prior art incentive systems. (D.I. 1 at ¶¶ 14, 15, 30).

In its complaint, Plaintiff acknowledges that “prior art systems could calculate discounts,” but alleges that the inventive concept in its patents is directed to “calculated incentives based on the circumstances of the transaction itself, such as the customer’s credit standing or the timing of payment.” (D.I. 1 at ¶ 15). I do not find that providing a discount based on early payment and a customer’s credit rating is a practice that transforms the claims beyond “a fundamental economic practice long prevalent in our system of commerce,” similar to the concepts of “hedging risks” in *Bilski* and “intermediate settlement” in *Alice*. See *Alice*, 573 U.S. at 219-21 (holding “the concept of intermediated settlement is ‘a fundamental economic practice’ and is “squarely within the realm of ‘abstract ideas’”); *Solutran*, 931 F.3d at 1166-67 (holding “crediting a merchant’s account as early as possible while electronically processing a check” is an abstract idea). Plaintiff acknowledges in its complaint that “existing electronic trading systems such as Internet-based trading systems” “could calculate discounts for an item to be offered for purchase.” (D.I. 1 at ¶¶ 15, 30).

Despite Plaintiff's assertion to the contrary, the Asserted Patents also fail to offer a specific improvement in banking technology. *See* D.I. 17 at 9-10. The complaint specifically states that the inventor developed an electronic system "based on incentives that would encourage participation in the system among all participants in the transactions." (D.I. 1 at ¶ 15, citing D.I. 1, Ex. 5 at 2:9-15). The claims do not provide a technical solution to the problem of participation. Instead, the claims offer an incentive to use the electronic trading system. (D.I. 1, Ex. 1 at 2:9-25). The various improvements are described as including "incentives to embrace e-commerce," "increased cash flow," "cost reduction," and "increased profits." (D.I. 1 at ¶ 26, citing Ex. 1 at 4:5-11, 4:15-51). None of these features are technical improvements. It may be "well-settled that improvements to the functioning of prior art technical systems constitute inventive concepts that establish patent eligibility under Section 101." (D.I. 17 at 9, citing *SRI Int'l, Inc. v. Cisco Systems, Inc.*, 930 F.3d 1295, 1300 (Fed. Cir. 2019); *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1309 (Fed. Cir. 2019); *Ancora Techs., Inc. v. HTC America, Inc.*, 908 F.3d 1343, 1344 (Fed. Cir. 2018)). But here, there is no cognizable improvement to the functioning of a prior art technical system at all.

Plaintiff attempts to distinguish its incentive system as being "implemented through a specific arrangement of technical components." (D.I. 1 at ¶ 15, citing Ex. 1 at 3:25-32, 3:36-38, 3:45-54, Fig. 1A, Fig. 4.). Plaintiff insists that the asserted claims involve "a specially-designed and unique payment gateway," which

sets the claimed technology apart from a solution that simply uses known electronic components. (D.I. 17 at 2, citing D.I. 1 at ¶ 17; *see* D.I. 1, Ex. 1 '867 patent at 5:66-67). The specification, however, describes generic servers and computers performing routine, well-understood and conventional functions. (D.I. 1, Ex. 1 at 5:23-66). While I normally accept whatever claim construction the plaintiff proffers at the Rule 12(b)(6) stage, to the extent that Plaintiff argues that the claimed phrase “payment gateway” should be construed as “a specially-designed and unique payment gateway,” this is simply implausible.<sup>5</sup>

In implementing the intermediated settlement system, the claimed system describes utilizing a “gateway,” akin to an interne or intranet service, with optional additional functions such as security measures or “translation, logging, and forwarding services.” *See* D.I. 1, Ex. 1 at 3:41-56. The claims recite functionality such as “receiv[ing]” a message, “determin[ing]” an incentive amount, “transfer[ring]” payment and “electronically paying.” *See, e.g. id.* at 8:49-9:07, Ex. 2 at 10:35-47. The claimed “bank server” moreover uses a generic server that includes well-known and conventional

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<sup>5</sup> The patent specification describes the gateway in terms of conventional commercially-available browsers and products that facilitate the transfer of information such as “Netscape Navigator browser, from Netscape Communications Corp., and Internet Explorer browser, from Microsoft Corp.” and the “AT&T INTER-COMMERCE gateway, available by AT&T.” (D.I. 1, Ex. 1 at 3:41-56, 5:23-36). “Gateway” as described in the claims uses the internet and internet browsers in their typical conventional manners, such as sending and receiving information.

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settlement software. (*Id.* at 1:44-50, 5:57-67). As further examples, the claimed database and processor are described in the specification as using components such as “memory” and “CPU,” which were also well-known and conventional at the time of the Asserted Patents’ priority date. (*Id.* at 5:57-67).

The Federal Circuit has held that the type of computer functionality described in the Asserted Patents is routine and conventional. *See Content Extraction*, 776 F.3d at 1348 (holding “processing technology to recognize and store data” is “well-understood, routine and conventional”); *In re Greenstein*, 778 F. App’x 935, 939 (Fed. Cir. 2019) (holding “stor[ing], process[ing], and transmit[ing] information” is “generic use of a computer”); *OIP Techs, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (holding that “‘determin[ing]’” an estimated outcome and setting a price” as well as “sending a first set of electronic messages” are well-understood, routine and conventional) (citation omitted).

The Asserted Patents also fail to explain how the generic components actually accomplish what is disclosed in the claims, instead reciting results-oriented functionality such as “sending” and “receiving” orders and messages, “transferring” payment, and “determining” an incentive amount. *See, e.g.*, D.I. 1, Ex. 1 at 8:49-9:07; *see Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1337 (Fed. Cir. 2017) (patent-ineligible claim “requires the functional results . . . but does not sufficiently describe how to achieve those results in a non-abstract way”); *Intell.*

*Ventures I LLC v. Cap. One Fin. Corp.*, 850 F.3d 1332, 1342 (Fed. Cir. 2017) (claim language “provides only a results-oriented solution, with insufficient detail for how a computer accomplishes it”).

None of the claimed elements, taken individually or as an ordered combination, provide the required inventive concept “‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the ineligible concept itself.’” *Alice*, 573 U.S. at 218 (citation omitted). The claims contain no inventive concept because they are not directed to “an improvement in computers as tools,” but instead assert an “independently abstract idea[] that use[s] computers as tools.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016). The fact that the claims recite various technological components such as a “bank server” and “gateway” is not sufficient to confer patentability where the claims do not offer an improvement in the functioning of that technology. *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1354 (Fed. Cir. 2014) (finding that where the computer functionality is generic, “[t]he claims’ invocation of computers adds no inventive concept”); *see also In re TLI Commc’ns LLC Pat. Litig.*, 823 F.3d 607, 612-13 (Fed. Cir. 2016) (finding that “the focus of the patentee and of the claims was not on” improved hardware because the specification described the functionality of the hardware “in vague terms without any meaningful limitations”).

Encouraging participation in a system in which all parties need to utilize similar technology through the well-known concept of discounting does not offer a

technical improvement that would comprise an inventive concept. Therefore, I find that the Asserted Patents claim ineligible subject matter.

**b. Leave to Take Targeted Discovery and to Amend**

The Asserted Patents claim ineligible subject matter and amending the complaint would be futile where the claims describe the implementation of a business transaction using conventional computer technology. Leave to amend Plaintiff's complaint and to conduct "targeted discovery" (D.I. 17 at 20) is therefore denied.

**IV. CONCLUSION**

For the reasons stated above, I will grant Defendants' motion, and dismiss Plaintiff's complaint, without leave to amend. An accompanying order will be entered.

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

FAST 101 PTY LTD.,	§	
	§	
Plaintiff,	§	
	§	Case No. ____
v.	§	
	§	JURY TRIAL
CITIGROUP INC.	§	DEMANDED
and CITIBANK, N.A.,	§	
	§	
Defendants.	§	

**COMPLAINT FOR PATENT INFRINGEMENT**

(Filed Sep. 27, 2019)

Plaintiff Fast 101 Pty Ltd. (“Fast 101”), for its Complaint against Defendants Citigroup Inc. and Citibank, N.A. (collectively “Defendants”), states and alleges:

**I. THE PARTIES**

1. Fast 101 is an Australian company having a principal place of business at 586 Hampton Street, Hampton, VIC 3188, Australia.

2. Citigroup Inc. is a Delaware corporation having its principal place of business at 388 Greenwich Street, New York, New York 10113.

3. Citibank N.A. is a national banking association having its principal place of business at 388 Greenwich Street, New York, New York 10113. On



information and belief, Citibank N.A. is wholly-owned by Citigroup Inc. and is under the control of Citigroup Inc.

## **II. JURISDICTION AND VENUE**

4. This action arises under the Patent Act, 35 U.S.C. §§ 101, *et seq.* The infringing acts of Defendants, as complained of herein, were committed in this District, among other places, and have caused and continue to cause Fast 101 injury in this District and elsewhere in the United States. The Court has original jurisdiction over the parties and the claims asserted in this action pursuant to 28 U.S.C. §§ 1331 and 1338.

5. This Court has personal jurisdiction over Defendants because they have committed and continue to commit acts of infringement in this District, have conducted business in this District, and/or have engaged in continuous and systematic activities in this District.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1400 because Citigroup Inc. is incorporated in and thus resides in this District and all Defendants have committed acts of infringement and have regular and established places of business in this District.

## **III. THE PATENTS-IN-SUIT**

7. U.S. Patent No. 8,515,867 (“the ‘867 Patent”), titled “Invoiceless Trading and Settlement Method and System,” was filed on March 15, 2013 and claims priority to U.S. Patent Application No. 09/561,990, filed on

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May 2, 2000. The United States Patent & Trademark Office (“USPTO”) duly and legally issued the '867 Patent on August 20, 2013. A copy of the '867 Patent is attached hereto as Exhibit 1 and incorporated herein by reference.

8. U.S. Patent No. 8,660,947 (“the '947 Patent”), titled “Invoiceless Trading and Settlement Method and System,” was filed on February 12, 2008 and claims priority to U.S. Patent Application No. 09/561,990, filed on May 2, 2000. The USPTO duly and legally issued the '947 Patent on February 25, 2014. A copy of the '947 Patent is attached hereto as Exhibit 2 and incorporated herein by reference.

9. U.S. Patent No. 8,762,273 (“the '273 Patent”), titled “Invoiceless Trading and Settlement Method and System,” was filed on February 20, 2014 and claims priority to U.S. Patent Application No. 09/561,990, filed on May 2, 2000. The USPTO duly and legally issued the '273 Patent on June 24, 2014. A copy of the '273 Patent is attached hereto as Exhibit 3 and incorporated herein by reference.

10. U.S. Patent No. 9,811,817 (“the '817 Patent”), titled “Invoiceless Trading and Settlement Method and System,” was filed on June 20, 2014 and claims priority to U.S. Patent Application No. 09/561,990, filed on May 2, 2000. The USPTO duly and legally issued the '817 Patent on November 7, 2017. A copy of the '817 Patent is attached hereto as Exhibit 4 and incorporated herein by reference.

11. U.S. Patent No. 10,115,098 (“the '098 Patent”), titled “Invoiceless Trading and Settlement Method and System,” was filed on November 6, 2017 and claims priority to U.S. Patent Application No. 09/561,990, filed on May 2, 2000. The USPTO duly and legally issued the '098 Patent on October 30, 2018. A copy of the '098 Patent is attached hereto as Exhibit 5 and incorporated herein by reference.

12. Fast 101 owns and at all relevant times has owned all rights, title and interest in and to the '867 Patent, the '947 Patent, the '273 Patent, the '817 Patent, and the '098 Patent (collectively, “the Patents-in-Suit”).

#### **IV. THE PATENTED TECHNOLOGY**

13. William James Duncan, the inventor of all five Patents-in-Suit, is an early innovator in the field of leveraging technology to improve the process of settling invoices and making payments.

14. Mr. Duncan developed the patented technology after recognizing significant problems in conventional invoicing and payment systems. As noted in the specification common to all Patents-in-Suit, although many suppliers and customers had attempted to move to electronic trading and settlement systems to reduce the inefficiencies of paper-based transactions, *see, e.g.*, '098 Patent at 1:31-37, Mr. Duncan recognized that existing electronic trading systems such as Internet-based trading systems had significant limitations.

15. In particular, Mr. Duncan recognized that all participants in the process must be similarly technically situated in terms of their online infrastructures for the benefits of existing invoicing and payment systems to be realized. *Id.* at 1:60-65. For this reason, at the time of the inventions of the Patents-in-Suit, the few systems that tried to address some of the problems identified by Mr. Duncan had not been widely adopted. Mr. Duncan thus developed an electronic system based on incentives that would encourage participation in the system among all participants in the transactions. *Id.* at 2:9-15. For example, while prior art systems could calculate discounts for an item to be offered for purchase before a consumer decided to purchase the item, Mr. Duncan's system calculated incentives based on the circumstances of the transaction itself, such as the customer's credit standing or the timing of payment.

16. Mr. Duncan's inventions are thus directed toward specific, unconventional improvements in the technical field of electronic invoicing and payment systems rather than abstract ideas. For example, Claim 1 of the '867 Patent recites:

A system configured for electronic settlement of an order placed by a customer with a supplier comprising:

one or more bank servers, at least one of the one or more bank servers receives a message related to the order, the message comprising at least an order amount;

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a database associated with at least one of the one or more bank servers that stores the order amount;

one or more processors associated with at least one of the one or more bank servers that determines an incentive amount, wherein the incentive amount is determined based at least in part on one or more fiscal attributes of the customer and the order amount; and

a payment gateway associated with at least one of the one or more bank servers, the payment gateway electronically transfers to a supplier account on a first date an early payment for the order, the supplier account associated with the supplier, wherein the early payment is less than the order amount by at least the incentive amount, and the payment gateway electronically receives a customer payment from a customer account on a second date, the customer account associated with the customer, wherein the customer payment is not less than the early payment plus an interest amount, wherein the interest amount is based at least in part on a credit period, wherein the credit period is an amount of time between the first date and the second date.

17. This claim is not directed to an abstract idea, but to a specific system involving bank servers, a database for storing unique order amounts, processors to determine incentive amounts based on various factors,

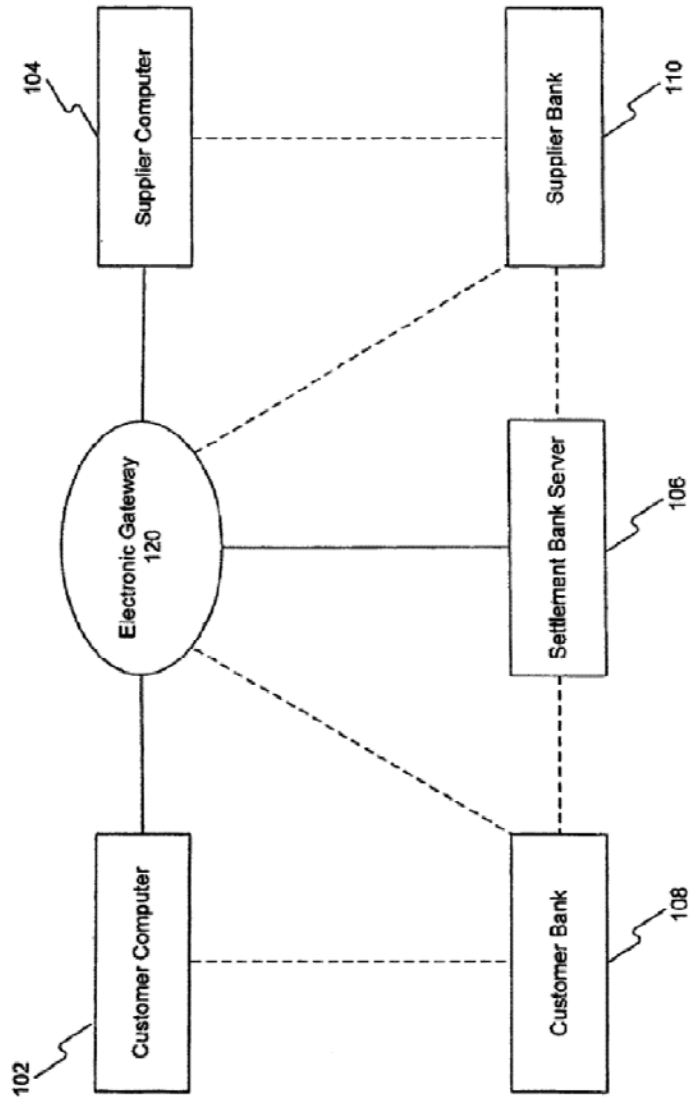
and a specially-designed and unique payment gateway, all of which work in concert to implement Mr. Duncan's novel incentive-based invoicing system. Exemplary claims of the other Patents-in-Suit are similar.

18. Using Mr. Duncan's technology, an incentive system is applied to a transaction involving a customer and a supplier. *Id.* at 3:10-12. The system can then seamlessly and efficiently debit the customer and remit payment to the supplier while applying the incentive system. *Id.* at 3:12-20.

19. In addition, the claims recite an inventive concept. The incentive system is implemented through a specific, ordered combination of electronic components and communication protocols, again marking significant improvements on existing technical systems. These components include:

- A customer computer and supplier computer used by the customer and supplier, respectively, to conduct the transaction (*id.* at Fig 1A).
- An electronic gateway used by the customer to place an order (*id.* at 3:25-32).
- An electronic message transmitted immediately by the supplier to the customer via the electronic gateway to ensure accuracy (*id.* at 3:36-38).
- Infrastructure at a settlement bank that electronically receives payment authorization from the customer and electronically transmits payment to the supplier on specific dates while processing and applying the incentive system (*id.* at 3:45-54).

20. These components are illustrated in Figure 1A of the patents:



**FIG. 1A**

21. The settlement process is illustrated in Figure 4:

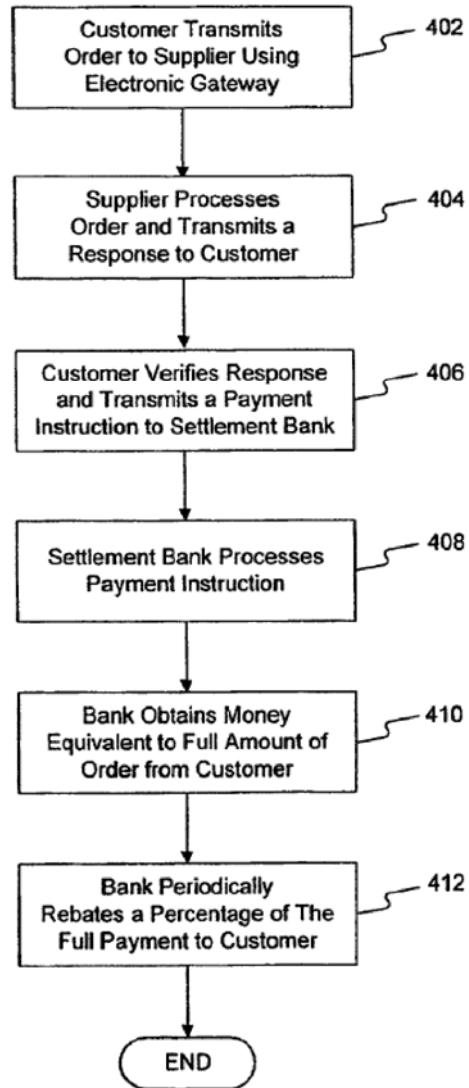


FIG. 4



22. Accordingly, the Patents-in-Suit recite a specific manner of performing the conceived of improved invoicing and payment system.

23. The specifications of the Patents-in-Suit also provide detailed examples of the types and functionalities of the electronic gateway of the system, again demonstrating improvements over prior existing systems. *Id.* at 3:55 – 4:3. The specification explains:

An electronic gateway may be an independent entity or specific to the type of products being bought and sold. For example, in the case of a private network, an electronic gateway may include an administrator that exchanges, logs and translates messages between subscribing customers and subscribing suppliers. In the case of an open network, the electronic gateway may be the Internet. To provide security in an open network, a firewall or VPN may be used when connecting the customer, supplier, their respective banks, and the settlement bank. In addition, the electronic gateway may include translation, logging, and forwarding services to ensure the accuracy of all orders, payments, and notices. An example of an electronic gateway suitable for practicing methods and systems consistent with the present invention is the AT & T INTERCOMMERCE gateway, available from AT&T.

*Id.* The various functions of the gateway are also specified in the claims of the asserted patents.

24. The specifications of the Patents-in-Suit also provide detailed examples of system components to

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implement the claimed technology in an ordered combination that is required to achieve the stated benefits of the inventive system. *Id.* at 4:51 – 6:15.

25. The inventive concept in this ordered combination includes using electronic systems to improve electronic commerce through incentive systems.

26. The improvements of the Patents-in-Suit over existing electronic trading systems are further detailed in the specifications. These improvements include:

- Tangible incentives to embrace e-commerce, which was nascent at the time of invention (*id.* at 4:5-7).
- Increased cash flow (*id.* at 4:7-11).
- Cost reduction through automation and paper reduction (*id.* at 4:15-26).
- Increased profits (*id.* at 4:27-51).

27. These specific improvements are all tied to the discrete and specific innovations of the Patents-in-Suit, namely, an improved manner of using electronic systems to implement invoicing and payment incentives. Accordingly, the Patents-in-Suit recite a patentable invention and are not directed to abstract ideas, but rather specific technological improvements in a technical field.

28. The claims of the Patents-in-Suit disclose inventive concepts, namely, using electronic systems to

improve electronic commerce through incentive systems.

29. The claimed ordered combination of each Patent-in-Suit thus generally comprises one or more bank servers or other bank computing equipment, storage components to store information related to orders, processors to compute incentives, and a payment gateway for use by the supplier and customer to conduct the transaction, all configured to execute a specific electronic invoicing and payment system with calculated incentives. The gateway technology, as detailed in the specification, facilitates a beneficial transaction allowing the bank computer equipment to implement an incentive system that facilitates the invoicing and payment process, creating significant technical improvements over existing technology. This is realized via a specific, ordered combination of technical components configured to perform specific steps and functions within the transaction.

30. The claims recite specific technical components that work in conjunction to implement an incentive system between suppliers and customers using an intermediary settlement institution, such as a bank. The claims of the Patents-in-Suit go beyond well-understood, routine, conventional activities. Indeed, Mr. Duncan recognized significant shortcomings in the well-understood, routine, and conventional methods of electronically settling invoices and invented substantial improvements to the known systems.

31. The ordered combinations of the claimed features in the Patents-in-Suit amount to particular, practical applications of Mr. Duncan's invention. The claims of the Patents-in-Suit do not pre-empt all ways for electronic trading, but instead recite a discrete implementation of electronic trading with a very specific order of events to solve existing problems.

**V. INFRINGEMENT OF THE  
PATENTS-IN-SUIT BY DEFENDANTS**

32. Defendants have offered one or more banking services that can generally be characterized as "supplier finance" services that infringe at least one claim of each of the Patents-in-Suit. Defendants' supplier finance services include, without limitation, certain implementations of the SWIFT Bank Payment Obligation (BPO) system.

33. Defendants' supplier finance services are electronically implemented systems for settling accounts between suppliers of goods or services and their customers. Defendants use electronic systems and components to receive electronic communications related to orders, as well as electronic authorizations to remit payments to suppliers. The systems enable customers to provide payment to Defendants in satisfaction of the payment previously provided by Defendants to the supplier on behalf of the customer. The system includes electronic components and systems that calculate and implement incentive systems, such as discounts for early payments. Incentives are also based on

fiscal attributes of the customer, such as credit standing.

34. The basic flow of Defendants' supplier finance service is as follows. Defendants' system receives a message that provides information about an order. A customer authorizes Defendants to remit payment to the supplier on a due date. The supplier receives an early payment from the bank/funds provider, reduced by an incentive amount based on an early payment and/or fiscal attributes of the customer. The customer remits full payment to the Defendants on the due date or the full payment plus an interest amount based on the period of time between payment to the supplier and payment to Defendants. Defendants implement this system through electronic components and systems, and thus utilize the Patents-in-Suit without authorization

**VI. FIRST CLAIM FOR RELIEF**  
**(Patent Infringement Under**  
**35 U.S.C. § 271 – U.S. Patent No. 8,515,867)**

35. The allegations set forth in paragraphs 1 through 34 are hereby realleged and incorporated herein by reference.

36. Defendants have directly and literally, or in the alternative under the doctrine of equivalents, infringed one or more claims of the '867 Patent, in violation of 35 U.S.C. § 271, in this District and elsewhere by making, using, selling, offering for sale and/or importing a product or service or products or services that

infringe one or more claims of the '867 Patent. Defendants have also induced and contributed to the direct literal, or in the alternative under the doctrine of equivalents, infringement of one or more claims of the '867 Patent, in violation of 35 U.S.C. § 271, in this judicial district and elsewhere by making, using, selling, and/or offering for sale such products or services.

37. For example, Defendants' supplier finance system infringes at least claim 1 of the '867 Patent.

38. Defendants' supplier finance system is a system for electronic settlement of an order placed by a customer with a supplier.

39. Defendants' supplier finance system comprises one or more bank servers, and at least one of the one or more bank servers receives a message related to the order, the message comprising at least an order amount. Defendants' supplier finance service includes bank servers configured to receive a message such as a purchase order which is related to an order placed by a purchaser. The purchase order comprises at least an order amount.

40. Defendants' supplier finance system comprises a database associated with at least one of the one or more bank servers that stores the order amount. Defendants' supplier finance service includes a database configured to store data related to the purchase orders, including the order amount.

41. Defendants' supplier finance system comprises one or more processors associated with at least

one of the one or more bank servers that determines an incentive amount, wherein the incentive amount is determined based at least in part on one or more fiscal attributes of the customer and the order amount. Defendants' supplier finance system includes one or more processors associated with the bank servers configured to calculate an incentive amount such as an early payment discount based at least in part on one or more of the financial attributes of the customer, such as credit history or other indicators of credit standing, and the order amount.

42. Defendants' supplier finance system comprises a payment gateway associated with at least one of the one or more bank servers. Defendants' supplier finance system allows customers to make payments electronically via an online payment gateway.

43. The payment gateway of Defendants' supplier finance system electronically transfers to a supplier account on a first date an early payment for the order, the supplier account associated with the supplier, wherein the early payment is less than the order amount by at least the incentive amount. The payment gateway of Defendants' supplier finance system is configured to transfer payment electronically to the supplier on a particular date or earlier. Further, Defendants' supplier finance system is configured to calculate an incentive amount for early payment, and the payment to the supplier is reduced by that amount.

44. The payment gateway of Defendants' supplier finance system electronically receives a customer

payment from a customer account on a second date, the customer account associated with the customer, wherein the customer payment is not less than the early payment plus an interest amount, wherein the interest amount is based at least in part on a credit period, wherein the credit period is an amount of time between the first date and the second date. Defendants' supplier finance system is configured to transfer payment to the supplier on a date earlier than the date on which the supplier finance system receives payment from the customer. Defendants' supplier finance system is configured to calculate an interest amount based at least in part on a credit period defined as the period between the date on which payment is transferred to the supplier and the date on which payment is transferred from the customer. Defendants' supplier finance system is configured to receive a payment from the customer that is increased by the interest amount and decreased by the incentive amount. The payment gateway of Defendants' supplier finance system is configured to transfer this payment electronically.

45. The infringing products and services include but may not be limited to the supplier finance system. Discovery will be needed to confirm the full nature and scope of Defendants' infringing conduct.

46. Because of Defendants' infringement of the '867 Patent, Fast 101 has suffered and will continue to suffer damages.



47. Because of Defendants' infringement of the '867 Patent, Fast 101 has suffered and will continue to suffer irreparable harm in this District.

**VII. SECOND CLAIM FOR RELIEF**  
**(Patent Infringement Under**  
**35 U.S.C. § 271 – U.S. Patent No. 8,660,947)**

48. The allegations set forth in paragraphs 1 through 47 are hereby realleged and incorporated herein by reference.

49. Defendants have directly and literally, or in the alternative under the doctrine of equivalents, infringed one or more claims of the '947 Patent, in violation of 35 U.S.C. § 271, in this District and elsewhere by making, using, selling, offering for sale and/or importing a product or service or products or services that infringe one or more claims of the '947 Patent. Defendants have also induced and contributed to the direct literal, or in the alternative under the doctrine of equivalents, infringement of one or more claims of the '947 Patent, in violation of 35 U.S.C. § 271, in this judicial district and elsewhere by making, using, selling, and/or offering for sale such products or services.

50. For example, Defendant' supplier finance system infringes at least Claim 132 of the '947 Patent.

51. Defendants' supplier finance system is one or more systems used in electronic settlement of an order placed by a customer with a supplier.

52. Defendants' supplier finance system comprises one or more bank servers configured to receive a payment message, the payment message related to the order, the payment message comprising an order amount. Defendants' supplier finance service includes bank servers configured to receive a message such as a purchase order which is related to an order placed by a purchaser. The purchase order comprises at least an order amount.

53. The order amount is stored in a database associated with at least one of the one or more of the bank servers. Defendants' supplier finance service includes a database configured to store data related to the purchase orders, including the order amount.

54. Defendants' supplier finance system comprises a processor associated with at least one of the one or more bank servers that determines an incentive amount, wherein the incentive amount is determined based at least in part on one or more fiscal attributes of the customer and the order amount. Defendants' supplier finance system includes one or more processors associated with the bank servers configured to calculate an incentive amount such as an early payment discount based at least in part on one or more of the financial attributes of the customer, such as credit history or other indicators of credit standing, and the order amount.

55. Defendants' supplier finance system comprises a payment gateway associated with at least one of the one or more bank servers. Defendants' supplier

finance system allows customers to make payments electronically via an online payment gateway.

56. The payment gateway of Defendants' supplier finance system electronically transfers to a supplier account on a first date an early payment for the order, wherein the supplier account is associated with the supplier, wherein the early payment is less than the order amount by at least the incentive amount. The payment gateway of Defendants' supplier finance system is configured to transfer payment electronically to the supplier on a particular date. Further, Defendants' supplier finance system is configured to calculate an incentive amount for early payment, and the payment to the supplier is reduced by that amount.

57. The payment gateway of Defendants' supplier finance system electronically receives a customer payment from a customer account on a second date, the customer account associated with the customer, wherein the customer payment is not less than the early payment plus an interest amount, wherein the interest amount is based at least in part on a credit period, wherein the credit period is an amount of time between the first date and the second date. Defendants' supplier finance system is configured to transfer payment to the supplier on a date earlier than the date on which the supplier finance system receives payment from the customer. Defendants' supplier finance system is configured to calculate an interest payment based at least in part on a credit period defined as the period between the date on which payment is transferred to the supplier and the date on which payment

is transferred from the customer. Defendants' supplier finance system is configured to receive a payment from the customer that is increased by the interest amount and decreased by the incentive amount. The payment gateway of Defendants' supplier finance system is configured to transfer this payment electronically.

58. The infringing products and services include but may not be limited to the supplier finance system. Discovery will be needed to confirm the full nature and scope of Defendants' infringing conduct.

59. Because of Defendants' infringement of the '947 Patent, Fast 101 has suffered and will continue to suffer damages.

60. Because of Defendants' infringement of the '947 Patent, Fast 101 has suffered and will continue to suffer irreparable harm in this District.

**VIII. THIRD CLAIM FOR RELIEF**  
**(Patent Infringement Under**  
**35 U.S.C. § 271 – U.S. Patent No. 8,762,273)**

61. The allegations set forth in paragraphs 1 through 60 are hereby realleged and incorporated herein by reference.

62. Defendants have directly and literally, or in the alternative under the doctrine of equivalents, infringed one or more claims of the '273 Patent, in violation of 35 U.S.C. § 271, in this District and elsewhere by making, using, selling, offering for sale and/or importing a product or service or products or services that

infringe one or more claims of the '273 Patent. Defendants have also induced and contributed to the direct literal, or in the alternative under the doctrine of equivalents, infringement of one or more claims of the '273 Patent, in violation of 35 U.S.C. § 271, in this judicial district and elsewhere by making, using, selling, and/or offering for sale such products or services.

63. For example, Defendants' supplier finance system infringes at least Claim 1 of the '273 Patent.

64. Defendants' supplier finance system comprises one or more bank servers configured to electronically receive one or more messages, the one or more messages relating to an order between a customer and a supplier, the one or more messages comprising supplier data and an order amount. Defendants' supplier finance service includes bank servers configured to receive a message such as a purchase order which is related to an order placed by a purchaser. The purchase order comprises at least an order amount as well as information about the supplier.

65. Defendants' supplier finance system comprises storage configured to store, for the order, at least some of the supplier data and the order amount. Defendants' supplier finance service includes a database configured to store data related to the purchase orders, including the order amount as well as information about the supplier.

66. Defendants' supplier finance system comprises one or more computer processors configured to determine an incentive amount based at least in part

on one or more fiscal attributes of the customer. Defendants' supplier finance system includes one or more processors associated with the bank servers configured to calculate an incentive amount such as an early payment discount based at least in part on one or more of the financial attributes of the customer, such as credit history or other indicators of credit standing.

67. Defendants' supplier finance system comprises a payment gateway configured to electronically transfer on a first date an early payment for the order to a bank computer associated with the supplier, wherein the early payment is less than the order amount by the incentive amount, the early payment transferred within a shortened settlement period. Defendants' supplier finance system allows customers to make payments electronically via an online payment gateway. The payment gateway of Defendants' supplier finance system is configured to transfer the customer's payment electronically to a bank computer associated with the supplier. Further, Defendants' supplier finance system is configured to calculate an incentive amount for early payment, and the payment to the supplier is reduced by that amount. Defendants' supplier finance system is configured to transfer payment to the supplier within a shortened settlement period if, for example, the customer makes an early payment.

68. The infringing products and services include but may not be limited to the supplier finance system. Discovery will be needed to confirm the full nature and scope of Defendants' infringing conduct.

69. Because of Defendants' infringement of the '273 Patent, Fast 101 has suffered and will continue to suffer damages.

70. Because of Defendants' infringement of the '273 Patent, Fast 101 has suffered and will continue to suffer irreparable harm in this District.

**IX. FOURTH CLAIM FOR RELIEF**  
**(Patent Infringement Under**  
**35 U.S.C. § 271 – U.S. Patent No. 9,811,817)**

71. The allegations set forth in paragraphs 1 through 70 are hereby realleged and incorporated herein by reference.

72. Defendants have directly and literally, or in the alternative under the doctrine of equivalents, infringed Claim 1 of the '817 Patent, in violation of 35 U.S.C. § 271, in this District and elsewhere by making, using, selling, offering for sale and/or importing a product or service or products or services that infringe one or more claims of the '817 Patent. Defendants have also induced and contributed to the direct literal, or in the alternative under the doctrine of equivalents, infringement of one or more claims of the '817 Patent, in violation of 35 U.S.C. § 271, in this judicial district and elsewhere by making, using, selling, and/or offering for sale such products or services.

73. Defendants, using their supplier finance system, receive, on an authorization date and by a banking computer system, an electronic authorization, the

electronic authorization relating to an electronic invoice between a bank customer and a supplier, the electronic authorization authorizing payment for the electronic invoice with an invoice amount, the electronic invoice having an electronic invoice due date, the electronic invoice due date being after the authorization date. Defendants' supplier finance system includes a banking computer system under control of Defendants that receives an electronic authorization relating to an electronic invoice between a bank customer (purchaser) and a supplier, which relates to goods or services being purchased by the customer from the supplier. The authorization authorizes Defendants to pay the invoice amount and specifies a due date after the date of authorization.

74. Based on the electronic authorization, Defendants electronically transfer to a supplier account, on an earlier payment date, the earlier payment date being before the electronic invoice due date, a discounted payment amount for settlement of the invoice. Defendants' supplier finance system calculates an incentive based on early payment and applies this discount to the payment if, for example, payment is made early by the customer.

75. The discounted payment amount discounted from the invoice amount is based at least on a fiscal attribute of the bank customer; and a credit period, the credit period being an amount of time between the earlier payment date and the electronic invoice due date. The incentive amount is based at least in part on one or more of the financial attributes of the customer, such



as credit history or other indicators of credit standing, and the extent to which payment is made early.

76. After the credit period, Defendants electronically debit at least the discounted payment amount from an account associated with the bank customer. Defendants debit the purchaser's account for the amount paid after Defendants pay the supplier on behalf of the purchaser.

77. The infringing products and services include but may not be limited to the supplier finance system. Discovery will be needed to confirm the full nature and scope of Defendants' infringing conduct.

78. Because of Defendants' infringement of the '817 Patent, Fast 101 has suffered and will continue to suffer damages.

79. Because of Defendants' infringement of the '817 Patent, Fast 101 has suffered and will continue to suffer irreparable harm in this District.

**X. FIFTH CLAIM FOR RELIEF**  
**(Patent Infringement Under**  
**35 U.S.C. § 271 – U.S. Patent No. 10,115,098)**

80. The allegations set forth in paragraphs 1 through 79 are hereby realleged and incorporated herein by reference.

81. Defendants have directly and literally, or in the alternative under the doctrine of equivalents, infringed one or more claims of the '098 Patent, in

violation of 35 U.S.C. § 271, in this District and elsewhere by making, using, selling, offering for sale and/or importing a product or service or products or services that infringe one or more claims of the '098 Patent. Defendants have also induced and contributed to the direct literal, or in the alternative under the doctrine of equivalents, infringement of one or more claims of the '098 Patent, in violation of 35 U.S.C. § 271, in this judicial district and elsewhere by making, using, selling, and/or offering for sale such products or services.

82. For example, Defendants' supplier finance system infringes at least Claim 1 of the '098 Patent.

83. Defendants, using their supplier finance system, receive, on an authorization date and by a server, an electronic authorization, the electronic authorization relating to an invoice between a customer and a supplier, the authorization authorizing payment for the invoice, the invoice comprising an invoice amount and an invoice due date, the invoice due date being after the authorization date. Defendants' supplier finance system includes a server that receives an electronic authorization relating to an invoice between a customer (purchaser) and a supplier, which relates to goods or services being purchased by the customer from the supplier. The authorization authorizes Defendants to pay the invoice amount and specifies a due date after the date of authorization.

84. Based on the electronic authorization, Defendants electronically transfer to a supplier account, on an earlier payment date, the earlier payment date

being before the invoice due date, a discounted payment amount for settlement of the invoice. Defendants' supplier finance system calculates an incentive based on early payment and applies this discount to the payment if payment is made early by the customer.

85. The discounted payment amount discounted from the invoice amount is based at least on: one or more fiscal attributes of the customer; and a credit period, the credit period being an amount of time between the earlier payment date and the electronic invoice due date. The incentive amount is based at least in part on one or more of the financial attributes of the customer, such as credit history or other indicators of credit standing, and the extent to which payment is made early.

86. After the credit period, Defendants electronically debit a customer payment from an account associated with the customer, wherein the customer payment is at least the discounted payment amount. Defendants debit the purchaser's account for the amount paid after Defendants pay the supplier on behalf of the customer.

87. The infringing products and services include but may not be limited to the supplier finance system. Discovery will be needed to confirm the full nature and scope of Defendants' infringing conduct.

88. Because of Defendants' infringement of the '098 Patent, Fast 101 has suffered and will continue to suffer damages.

89. Because of Defendants' infringement of the '098 Patent, Fast 101 has suffered and will continue to suffer irreparable harm in this District.

**XI. PRAYER FOR RELIEF**

WHEREFORE, Fast 101 prays for judgment in its favor and against Defendants as follows:

a. That Defendants have infringed one or more claims of the Patents-in-Suit;

b. That Defendants, their officers, directors, agents, servants, employees, privies, representatives, attorneys, parent and subsidiary corporations or other related entities, successors, assigns, licensees, retail distributors, and all persons in active concert or participation with any of them, be permanently enjoined from further acts of infringement of the Patents-in-Suit;

c. That Fast 101 be awarded damages in an amount to be determined at trial for Defendants' infringing activities, which are at least a reasonable royalty;

d. That Fast 101 be awarded treble damages by reason of any willful, wanton and deliberate infringement found under 35 U.S.C. § 284;

e. That Fast 101 be awarded its pre-judgment and post judgment interest; 22

f. That Fast 101 be awarded its costs and expenses of suit, including expert witness fees;

g. That Fast 101 be awarded its attorneys' fees should this be found to be an exceptional case under 35 U.S.C. § 285;

h. That Defendants be ordered to deliver to Fast 101, for destruction at Fast 101's option, all products that infringe the Patents-in-Suit;

i. That Defendants be required to account for all gains, profits, advantages, and unjust enrichment derived from its violations of law; and

j. That Fast 101 be awarded other and further relief as the Court deems appropriate and just.

## **XII. JURY DEMAND**

Fast 101 demands a trial by jury on all issues so triable.

Dated: September 27, 2019 **KLEHR HARRISON  
HARVEY BRANZBURG,  
LLP**

*/s/ Raymond H. Lemisch*

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