No. 21-1370

IN THE

Supreme Court of the United States

SPIREON, INC.,

Petitioner,

v.

PROCON ANALYTICS, LLC,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petitioner Spireon, Inc. ("Spireon") received a patent for a "method for managing a vehicle inventory for a dealer implemented by a computer." U.S. Patent No. 10,089,598 [hereinafter "the '598 Patent"] at col. 27, ll. 6-8. The '598 Patent's claims recite routine data management steps, a location device, a network, and a computer—i.e., "a handful of generic . . . components configured to implement [this abstract] idea." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 226–27 (2014).

The district court, considering the claims as a whole, concluded that they were directed "to the abstract idea of vehicle inventory management." The district court further held that Spireon failed to identify any factual evidence that the claims as a whole include an inventive concept that transforms this abstract idea into a patent-eligible application. The Federal Circuit summarily affirmed, after echoing the district court's reasoning in the panel's questions during oral argument.

1. Whether the District Court and Federal Circuit's straightforward application of *Alice*/*Mayo*'s two-part framework is correct where the claims contain: (i) an explicit statement that the method is for an abstract idea, (ii) conventional data management steps, and (iii) conventional hardware.

2. Whether Spireon alleged or otherwise identified any facts to counter the factual evidence of conventionality in the '598 Patent to survive a Motion for Judgment Under the Pleadings under Fed. R. Civ. P. 12(c).

RULE 29.6 STATEMENT

The Respondents to the proceedings include those listed on the cover.

No parent or publicly held corporation owns 10% or more of the stock of the Respondents.

RELATED PROCEEDINGS

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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INTRODUCTION

Spireon fails to provide any reason this Court should review *Spireon*'s case. The arguments advanced in its Petition for Writ of Certiorari ("Petition") were never made by Spireon, either on its first try before the district court or its second try before the Federal Circuit. Spireon's Petition instead adopts the arguments made by the petitioner in *American Axle & Manufacturing Inc. v. Neapco Holdings LLC*.[1] The Petition's Reasons for Granting the Petition provides three sentences analyzing Spireon's case; the remaining eighteen pages discuss *American Axle* and the general state of the law implementing 35 U.S.C. § 101. Spireon offers nothing to compel this Court to grant *Spireon*'s Petition.

Spireon is not entitled to the relief requested here—a third chance to save its patent on yet a third set of disparate arguments. Spireon failed to provide a satisfactory answer to both the district court and the Federal Circuit when asked what technological improvement was captured by the '598 Patent claims. To the district court, Spireon paraphrased the claim limitations and said, "It's a specific use of an actual hardware location device performing specific steps that are not — that are not routine and conventional, and then achieving the association or location device identifier with the vehicle identifier. And so the claims really do lay those steps out in a specific way." Resp. App. 8a–10a. To the Federal Circuit, Spireon pivoted to saying that "a person of ordinary skill in the art reading about this registration process and the de-registration process that is disclosed in the speci-

[1] United States Supreme Court Docket No. 20-891 (docketed Jan. 5, 2021).

fication would understand that makes it reusable and interchangeable." Oral Arg. Rec. 6:20-7:12, *Spireon, Inc. v. Procon Analytics, LLC*, No. 2021-1954, https://oralarguments.cafc.uscourts.gov/default.aspx?fl=21-1954_01142022.mp3. Spireon fails again before this Court. Given three opportunities, Spireon could not escape the simple conclusion that its claimed method of managing a vehicle inventory is not patent eligible. The Court should reject Spireon's attempt to delay the final death knell for the '598 Patent until the Court (perhaps) decides *American Axle*. Spireon offers nothing to compel the Court to "hold this petition" until then or to "take up this case as a companion to *American Axle*." Petition at 4.

The '598 Patent claims "[a] method for managing a vehicle inventory for a dealer by a computer," not "a new inventive method for vehicles." Petition at (i). The patent claims in this case recite routine data management functions carried out by a computer coupled to a vehicle and a database—collecting, transmitting, and storing data. Contextualizing these routine data management functions in a vehicle inventory management framework does not transform the claims into patent-eligible subject matter. The preamble of the sole independent claim expressly describes this focus, reciting "[a] method for managing a vehicle inventory for a dealer implemented by a computer . . . ." The expanded claim scope for which Spireon argues is not tethered to the claims. This Court should reject Spireon's thinly veiled attempt to ride the coattails of *American Axle*, hoping to receive another bite of the apple under a revised *Alice* framework.

Unlike *American Axle*, where the Federal Circuit read beyond the explicit claim language to hold that

the claims were directed to Hooke's law, it is Spireon that now reads beyond the claim language to aver a purported improvement to "conventional vehicles." According to Spireon, as in *American Axle*, "[h]ere too, the district court overgeneralized the claims to their preamble, and ignored the recited limitations and method steps to find the claims were directed to an abstract idea." Petition at 15. But Spireon never explains why the claims were overgeneralized or what recited limitations were ignored. Nor does Spireon explain how the claims should be properly viewed.[2]

Granting Spireon's Petition will invite any party dissatisfied with an opinion below to simply copy the arguments of others believed to have a high likelihood of having certiorari granted. Such a result would hinder the efficiency of the judicial system by allowing cases to linger based on cursory analyses rather than meritorious arguments. This Court's role is more than to act as another circuit court of appeals.

STATEMENT OF THE CASE

A detailed look at the proceedings below shows a thorough review of the '598 Patent by the district court and a failure by Spireon to provide any reason for further explanation to the Federal Circuit. Both the district court and the Federal Circuit asked Spireon to identify what technological problem the patent solved, and Spireon failed to provide a sufficient response both times. Oral Arg. Rec. 5:00-9:00; Resp. App. 8a–10a. Ultimately, both courts concluded that Spireon's arguments were not tied to the claims and disclosure of the '598 Patent.

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[2] Spireon did not contest the district court's claim construction at the Federal Circuit.

A. Legal Background

In the Patent Act, Congress—exercising its power "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries," U.S. Const. Art. I, § 8, cl. 8—provided 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." 35 U.S.C. § 101.

Section 101 contains an implicit exception: "Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice*, 573 U.S. at 216 (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). "[A]n idea of itself is not patentable." *Id.* at 218 (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Nor can one "make [a] concept patentable" by "limiting an abstract idea to one field of use." *Bilski v. Kappos*, 561 U.S. 593, 612 (2010).

This Court developed the current two-step framework for patent eligibility under § 101 primarily in two cases. In *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), this Court discussed patents concerning natural laws, while in *Alice*, 573 U.S. at 208, this Court discussed patents concerning abstract ideas. *Alice* clarified *Mayo*'s two-step test for patent eligibility. First, a court "determine[s] whether the claims at issue are directed to one of those patent-in-eligible concepts." *Id.* at 217. Second, if so, the court "must examine the elements of the claim to determine whether it contains an 'inventive concept,'" 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.* at 217–18, 221 (quoting *Mayo*, 566 U.S. at 73).

B. The '598 Patent Claims Recite a Method for Managing a Vehicle Inventory Using an Off-the-Shelf Location Device

The preamble of the sole independent claim of the '598 patent recites an intended use: "[a] method for managing a vehicle inventory for a dealer." Discussing infringement, Spireon's pleadings implicitly affirmed that the claims are directed to this abstract idea: "Like Spireon, [Procon] has been providing products and services for dealership vehicle inventory management." Resp. App. 43a–44a. Indeed, on ten occasions, Spireon's pleadings allege some variation of "Procon makes, sells, and offers for sale products and services for managing vehicle inventory for dealerships that infringe on certain claims of the '598 Patent." *See* Resp. App.37a–48a.

The '598 Patent's claims recite routine data management steps and generic computer components. Claim 1 is representative:

> 1. A method for managing a vehicle inventory for a dealer implemented by a computer having a processor and a memory, the method comprising:
>
> while a location device is not communicatively coupled with a vehicle, associating the location device with a dealer's group of available location devices in the memory, wherein the dealer's group of available location devices comprises location devices owned by the dealer that are not coupled with any vehicle;

communicatively coupling the location device with a vehicle;

in response to the location device becoming communicatively coupled with the vehicle, the location device transmitting a connection notice over a network, the connection notice comprising a vehicle identifier and a location device identifier;

receiving, by the computer, the connection notice from the location device over the network;

in response to the connection notice received by the computer, the processor:

associating the location device identifier with the vehicle identifier in the memory; and

disassociating the location device from the dealer's group of available location devices in the memory; and

receiving, by the computer, current location information from the location device.

'598 Patent at col. 27, ll. 6-32. The only hardware recited in the independent claims are a conventional vehicle, an off-the-shelf location device (i.e., a computer), and a generic computer. Only one method step requires a physical action: "communicatively coupling" the location device with the vehicle (e.g., plugging the off-the-shelf location device into the vehicle's conventional OBD-II port). *Id.* at col. 7, ll. 2-8. All other claim limitations recite routine data management functions carried out by the off-the-shelf location device or generic computer. These steps represent nothing more than collecting, transmitting, and storing data. Even the "associating" and "dis-

associating" steps are veneers over the function of storing updated information in a database.

The specification supports this view of the claims, explaining that "[t]he inventory management system 100 may be configured to manage a vehicle inventory for a car dealer." *Id.* at col. 15, ll. 49-50. And the Summary of the Invention explains that inventory management is accomplished in a routine and conventional way: "an inventory management system configured to provide machine-to-machine network connectivity may be configured to accept from a requestor a plurality of digits of a vehicle VIN and return the location of the vehicle, having a location device, to the requestors." *Id.* at col. 4, ll.33-37.

The specification describes the hardware recited in the claims—a computer and a location device—generically. The only discussion of the computer appears in Column 6:

> The present technology may be embodied as a method, a system, a device, and/or a computer program product. Accordingly, the present technology may take the form of an entirely software embodiment, an entirely hardware embodiment, or an embodiment combining aspects of both software and hardware. Furthermore, the present technology may take the form of a set of instructions, such as a computer program product, for causing a processor and/or computing device to perform a desired function, stored on a computer-readable storage medium having computer-readable program code embodied in the storage medium. Any suitable computer-readable storage medium may be utilized, including, but not limited to, hard

> disk drive, CD-ROM, optical storage devices, magnetic storage devices, USB memory devices, any appropriate volatile or non-volatile memory system, and the like or any combination thereof.

Id. at col. 6, ll. 9-26. As for the location device, the specification explains that:

> In accordance with various embodiments, a method and system of machine-to-machine communication includes multiple unique devices utilizing device specific protocols, device specific networks, and device specific applications. One or more of the unique devices may comprise a location device for a vehicle, for example a GPS tracking unit, which may be configured to be selectably connectable to a vehicle interface such as an on-board diagnostic interface (e.g. OBD-II).

Id. at col. 4, ll. 44-52. Later, the specification explains that "a location device may be an off-the-shelf tracking device for a vehicle, for example for use by an end user, for user-based insurance, for fleet management, for managing driver behavior, and/or the like." *Id.* at col. 8, ll. 23-27.

The specification does not describe any specific way of programming the generic hardware components to carry out the functions recited in the claims. The only guidance from the specification is extensive lists of industry-standard computer languages,[3] proto-

[3] "Some embodiments may utilize the .NET Framework . . . . .NET languages comprise Visual Basic .NET (VB.NET) and C#." '598 Patent at col. 18, l. 36-col. 19, l. 12.

cols,[4] platforms,[5] and networks.[6] These recitations fail to provide any substantive guidance as to how any of the claimed functions should be implemented. For example, the only flow charts included in the '598 Patent (Figures 8, 9A, and 9B) relate to high-level machine-to-machine network connectivity and lack any specificity as to the claimed methods of managing a vehicle inventory for a dealer.

C. Spireon Failed to Articulate a Non-Abstract Idea to Which the '598 Patent Was Directed to an Inventive Concept

Procon filed a Motion for Judgment on the Pleadings that the '598 Patent was not patent eligible under § 101. In granting that motion, the district court determined, at *Alice* Step One, that the claims "are directed to the abstract idea of vehicle inventory management." Pet. App. 12a, 16a. The district court further determined, at *Alice* Step Two, that the loca-

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[4] "The device specific protocols may include one or more of XML, SOAP over HTTP, WSDL, UDDI, SMTP, binary encoding over TCP, ReFlex, GPRS, EDGE, Mobitex, CDMA, EVDO, VSAT, wired LAN, Wired WAN, message queues via Microsoft Windows MSMQ, and the like and/or any combination thereof, but these are examples only and are not limiting of device specific protocol options." '598 Patent at col. 4, ll. 52-58.

[5] "The[] communication platforms may comprise any appropriate platform, including but not limited to: XML, SOAP over HTTP, WSDL, UDDI, SMTP, binary encoding over TCP, ReFlex, GPRS, EDGE, Mobitex, CDMA, EVDO, VSAT, wired LAN, Wired WAN, and message queues via Microsoft Windows MSMQ or other appropriate application." '598 Patent at col. 13, ll. 25-31.

[6] "The device specific networks may comprise any appropriate networks, including but not limited to Skytel, USAM, Wyless, Sprint, Private LAN, T-Mobile, AT&T, Private VPN, and Private WAN." '598 Patent at col. 14, ll. 14-17.

tion device was conventional and that all the recited steps were well-known, functional computer limitations. Spireon appealed, and the Federal Circuit summarily affirmed under its Rule 36. But Spireon was not without guidance; at oral argument, the Federal Circuit pressed Spireon on the same questions the district court asked. Now, having lost the issue twice, Spireon petitions this Court for a writ of certiorari.

At *Alice* Step One, the district court determined that the '598 Patent was directed "to the abstract idea of vehicle inventory management," that the patent itself characterized the limitations as conventional, and that Spireon had not identified evidence to the contrary. The district court found that, because the '598 Patent claims focus on no more than "gathering and sharing of information," they "are directed to the abstract idea of vehicle inventory management." Pet. App. 12a, 16a. It analyzed whether the claimed invention "simply adds conventional computer components to the field of vehicle inventory management, or is instead directed to the improvement in the functioning of a computer." Pet. App. 12a. The district court held that Procon demonstrated that the '598 Patent claims are directed to "manipulating information of a specified content . . . and not any particularly assertedly inventive technology for performing those functions." Pet. App. 13a. In response, Spireon asserted that the claims "go to a particular method of 'managing a dealer's inventory,'" but never explained how that "particular method" was any more than the implementation of an abstract idea using generic computer hardware and conventional programming. Pet. App. 13a–14a.

At *Alice* Step Two, the district court held that "the '598 Patent does not pass muster under step 2 of *Alice* because it does not provide a technological solution." Pet. App. 20a. The '598 Patent "merely describes the *functions* of associating, disassociating, and communicative coupling, without providing *how* those functions are achieved." Pet. App. 18a–19a (emphasis in original). It "does not disclose the parameters, coding language, or otherwise tell the user how to manage the vehicle inventory—it merely provides functional language for doing so." Pet. App. 20a.

Before reaching this holding, the district court specifically asked Spireon "How is the problem solved? Let's . . . we can all see the claim language. It's there. How is the problem solved? . . . I want you to just tell me exactly how the problem is solved." Resp. App. 9a. Spireon's response did nothing more than recite the limitations, emphasize that it was Procon's burden to prove conventionality, and accuse Procon's arguments of glossing over the details in the patent. Resp. App. 9a–11a.[7] But, as the district court explained in its order, "simply repeating the word specific does not change the disclosure of the '598 Patent." Pet. App. 20a.

At the Federal Circuit, recognizing that nothing in the specification or claims provided an inventive concept, Spireon asserted for the first time that technological benefits were inherent in the claims. Spireon identified purported technological problems solved by the claimed methods including "[e]stablish-

[7] Spireon never requested leave to file amended counterclaims that, had it been able to allege the necessary facts, provides an explicit avenue to surviving the § 101 challenge under Federal Circuit precedent. *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1128–30 (Fed. Cir. 2018).

ing a network connection between a conventional vehicle and a computer," "[i]mproving location devices and solving a reusability / universality problem," "[s]olving a problem in which vehicles with a low battery can be remotely detected," and "[s]olving a problem that prevents location devices from being constantly trackable." Resp. App. 18a–19a. Spireon also argued for the first time that "off-the-shelf" did not mean off-the-shelf but rather that the location device could be manufactured and made available off-the-shelf. Resp. App. 15a–17a.[8] Procon responded, pointing out that these new benefits were untethered from the claims and the specification, amounting to mere attorney argument that cannot be considered as factual evidence in a Rule 12(c) motion. Resp. App. 21a–33a. Procon continued, reiterating in detail where the '598 patent specification provided factual evidence that each step of the claim limitations was routine and conventional. For example, Procon noted that the full context of the "off-the-shelf" disclosure for the location device belied Spireon's acontextual reading of the term. Resp. App. 34a–36a. Instead, the disclosure

[8] In its Statement of the Case, Spireon again asserts that the specification describing the location device as "unique" somehow confers a special meaning to "off-the-shelf." Petition at 12. Review of the parent application to which the '598 patent claims priority shows that "unique" referred to each of the multiple devices that may have differing protocols and applications that can be used for machine-to-machine communication. *See* U.S. Patent App. Pub. No. 2011/0016514A1, ¶ [0017]. The language that "[o]ne or more of the unique devices may comprise a location device for a vehicle" was added as part of the continuation-in-part to provide an example of one type of device having a specific protocol and application that could be used for machine-to-machine communication—a "unique" device. It does not indicate, nor does the specification disclose, anything novel about the location device itself.

of an "off-the-shelf" location device was evidence that the location device was conventional.

At oral argument, Chief Judge Moore asked Spireon to identify factual support for these alleged technological benefits, just as the district court asked Spireon to do. Chief Judge Moore asked "where is the specific improvement articulated in the specification? [In the cases you cited t]here were very specific and concrete improvements to the device itself that could be identified and were articulated in the spec . . .where it is that for this case?" Oral Arg. Rec. 4:20-5:00. Spireon responded:

> Well Your Honor, the specification described the registration or pairing process at column 15. It starts, well in, the most relevant part would be around 63 and through the end of that column and into the next column it describes how the registration process works and how that is done, and if you're asking where you know where exactly does the specification identify this as being you know this registration as being a problem. I think that would be an issue of fact whether to the extent they're disputing whether that was actually a problem in the industry that's something that you know could be identified through fact discovery and experts.

Id. at 5:00-5:50. Unsatisfied, Chief Judge Moore again asked, "Well, I'm having trouble understanding your answer . . . . Where, is there anything in the specification that tells us of a specific improvement like an increased speed or decreased memory consumption or something that this invention and some particularly claimed component of it achieves?" *Id*. at 5:50-6:20. Spireon responded, "I think a person of

ordinary skilled in the art reading about this registration process and the de-registration process that is disclosed in the specification would understand that makes it reusable and interchangeable. . . ." *Id*. at 6:20-7:12.

The Federal Circuit summarily affirmed the district court under Federal Circuit Rule 36. Spireon did not file for a motion to reconsider or for en banc review to seek further explanation from the Federal Circuit. Spireon instead filed its Petition.

REASONS FOR DENYING CERTIORARI

Spireon's Petition copies the two questions presented in *American Axle* and attempts to shoehorn its case into these two questions without any substantive analysis of why its claims are patent eligible. Instead, Spireon spends all but three sentences of the "Reasons for Granting the Petition" section discussing *American Axle* and the general state of § 101 precedent. In the "The Proceedings Below" section, Spireon attempts to transform its disagreements with the district court's reading of the patent specification into legal error related to the standard for Rule 12 motions. Petition at 13–14. Ultimately, however, Spireon's argument is really that the district court was not permitted to take the '598 Patent at face value when it stated that "[i]n an exemplary embodiment, a location device may be an off-the-shelf tracking device for a vehicle" or to conclude that the transmission of data by such a device was routine and conventional. '598 Patent at col. 8, ll. 23-25.

Spireon's desire to delay in hopes that this Court will fundamentally alter the § 101 framework is obvious. If this Court "hold[s] this petition," Spireon can continue to stifle competition in the dealer vehicle

inventory management industry. But the outcome of *American Axle*, should the Court choose to grant certiorari, will not change the conclusion that the '598 Patent is directed to unpatentable subject matter.

Spireon has provided no analysis showing how this case is similar to *American Axle*. Regarding the first Question Presented, the issue in *American Axle* focuses on the Federal Circuit's finding that claims reciting a natural relationship were directed to a natural law because that natural relationship was used in a calculation. There, the claims do not explicitly recite the natural law. Here, in contrast, the '598 Patent claims explicitly recite the abstract idea. It is Spireon that tries to read beyond the claims' explicit language. Regarding the second Question Presented, *American Axle* had competing factual evidence that was weighed at summary judgment. But Spireon has identified no facts in the pleadings, including the '598 patent itself (at any point during this case), that contradict that contradict the clear evidence supporting a finding of ineligibility.[9] This is not the proper vehicle to address the Questions Presented in *American Axle*.

[9] Under Federal Circuit precedent, Spireon could have requested leave to amend its counterclaims to assert the necessary facts. *Aatrix*, 882 F.3d at 1128–30. Spireon never made this request.

I. THE QUESTION PRESENTED IS NOT IMPLICATED

The Questions Presented are not implicated because this case is not like *American Axle*. Rather, this case involves a straightforward application of this Court's *Alice* framework. Spireon provides no explanation for why it believes the Questions Presented are implicated beyond the fact that the '598 Patent was held ineligible and a generalized characterization of the Federal Circuit's § 101 case law as inadequate.

A. The Claims of the '598 Patent Are Explicitly Directed to Managing a Vehicle Inventory.

Spireon's first Question Presented, seeking the appropriate standard for determining what a claim is "directed to," is not at issue in this case. This Court already articulated that standard in *Alice*. Applying that standard was a straightforward task; the '598 Patent claims clearly state what they are directed to: "a method for managing a vehicle inventory for a dealer implemented by a computer." Thus, the district court's analysis, and indeed any analysis rooted in the claim language, compels the conclusion that the claims are directed to an abstract idea.

Only by departing from the claim language into abstract potential benefits of the claimed method can one assert that the claims improve vehicles or location devices generally. Spireon commits this error in its "Statement of the Case":

> With Spireon's invention, a remote computer can "review location information received from a location device" coupled to a vehicle. This allows one to remotely determine where the vehicle is and if, for example, the vehicle

> is "on or off the lot" of a car dealer. That is, the invention transforms and improves a conventional vehicle into a vehicle that exists as a trackable and addressable node on a network to enable communications between the vehicle and a remote computer.
>
> But Spireon's patented claims are not so broad. The patent also discloses and the claims are limited to a specific registration or pairing method, which allows the location device to be reusable and interchangeable across different vehicles. That is, the patent discloses and claims an improvement to the location device itself.

Petition at 8 (internal citations omitted). Spireon argues, on the one hand, that "the invention transforms and improves a conventional vehicle," and, on the other, that the "claims are not so broad" as to encompass that alleged improvement. Thus, by Spireon's own admission, the claims themselves do not cover improving the vehicle. And Spireon has never identified any claim language that covers improving off-the-shelf location devices. Only by abstracting the claims can the claim language infer the alleged technical improvements.

It is Spireon that is guilty of overgeneralizing in its attempt to circumvent the explicit claim language—"[a] method for managing vehicle inventory." Like its arguments to the district court and the Federal Circuit, Spireon's Petition never identifies what the claims are directed to. Only by overgeneralizing can Spireon suggest that the claims are directed to improvements in conventional vehicles and off-the-shelf location devices rather than the explicitly recited abstract idea. This ignores the Court's warning about

adopting analyses that would make "§ 101 patentability a dead letter" because vitiating § 101 is "not consistent with prior law." *Mayo*, 566 U.S. at 89.

While the Petition strives to paint the '598 Patent as revolutionizing vehicles themselves, the purported "invention" in this case is nothing more than a computer device that transmits routine data to a database. There is nothing unconventional or inventive in the collection of the data, transmission of the data, storage of the data, or operation of the database. Nor has Spireon cited any evidence that the location device itself is not conventional or utilizes any unconventional parts.

This case differs from *American Axle* because Spireon, not the court, is reading beyond the claim language. The question in *American Axle* asks whether the Federal Circuit properly interpreted the claims reciting a natural relationship between mass and stiffness as directed to Hooke's Law. Hooke's Law is not explicitly recited in the claims, but the Federal Circuit found that the draftsman's art should not be able to avoid § 101 by avoiding explicitly reciting the natural law. *Am. Axle & Manuf., Inc. v. Neapco Holdings LLC*, 967 F.3d 1285, 1301 (Fed. Cir. 2020). Here, the district court emphasized that the express recitation of the abstract idea in the '598 Patent claims demonstrates that they are directed to "managing a vehicle inventory." The district court then correctly held that "managing a vehicle inventory" is a fundamental economic activity, and is therefore an abstract idea, like this Court's holding in *Alice* that intermediated settlement is an abstract idea in part because it is a "building block of the modern economy." 573 U.S. at 220.

And while the issue in *American Axle* may reveal a particular disagreement within the Federal Circuit, the Federal Circuit is not split with regard to typical § 101 cases—like the present case—resulting in remarkably consistent and predictable results. As Professor Mark Lemley and Research Fellow Samantha Zyontz have written, the Federal Circuit "affirmed 91 percent of the 162 decisions it issued in patent eligibility cases" they analyzed. Mark A. Lemley & Samantha Zyontz, *Does Alice Target Patent Trolls?*, 18 J. EMPIRICAL LEGAL STUDIES 47, 74 & n.80 (2021). This affirmance rate for § 101 cases is actually higher than the average Federal Circuit affirmance rates, which has been between 75-80% between 2017-2020. *See* Dan Bagatell, *Fed. Cir.'s Patent Decisions: A Statistical Analysis*, LAW360 (2017)[10] (2018)[11] (2019)[12] (2020)[13] (four reviews finding affirmance rates of 75% in 2017 and 2018, 77% in 2019, and 79% in 2020); *see also* J. Jonas Anderson & Peter S. Menell, *Informal Deference: A Historical, Empirical, and Normative Analysis of Patent Claim Construction*, 108 NW. U. L. REV. 1, 42 (2013) ("Historically, the Federal Circuit has reversed around 20% of appealed issues . . . ."). While some cases, such as *American Axle*, draw sharp dissents, these affirmance rates confirm that the Federal Circuit is no more split on § 101 issues than on other patent law issues.

Indeed, even the sharpest dissenter in *American Axle*, now-Chief Judge Moore, felt a summary affirmance was appropriate in the present case. Notably,

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[10] https://www.law360.com/articles/999115

[11] https://www.law360.com/articles/1114963

[12] https://www.law360.com/articles/1232623

[13] https://www.law360.com/articles/1341846

Chief Judge Moore specifically asked Spireon—multiple times—to identify where in the specification there was any indication of an inventive concept. The best Spireon was able to say under such direct questioning was that by reading the claim limitations, a skilled artisan would have inferred the technological benefits Spireon asserted for the first time on appeal.[14] Ultimately, Spireon is simply unhappy with how the law was applied to the '598 Patent and has failed to identify how this case implicates a legal question for this Court to resolve.

B. Spireon Did Not Identify Any Factual Evidence to the Courts Below to Contradict the Evidence of Conventionality in the Patent.

The second Question Presented is not implicated because there are no contravening facts supporting a finding of eligibility and Spireon forfeited any opportunity to add facts to the record. The district court's order and Procon's arguments were based solely on statements in the '598 Patent specification, which were properly considered at the pleadings stage. At no point did Spireon identify any facts contradicting those statements. Nor did Spireon request leave to amend its counterclaims to allege such facts. All Spireon's assertions on appeal were attorney argument that cannot refute express statements in the specification.

Procon's briefing to the district court detailed the facts supporting the conventionality of the '598 Patent. Those facts included the '598 Patent's admissions of

[14] Again, these supposed benefits were attorney argument. Nothing in the pleadings, including the patent, provided these technological benefits.

conventionality and laundry lists of industry-standard protocols. For example, the claimed methods can be implemented using conventional, off-the-shelf tracking devices to permit wireless transmission of data pulled from the vehicle. '598 Patent at col. 8, ll. 23–27 (acknowledging that tracking devices already existed for end users, user-based insurance, fleet management, and managing driver behavior); *Id.* at col. 7, Il. 2–8.(explaining that the location device may "determine the physical location of the location device by receiving GPS information or other physical location information from the vehicle"). The '598 Patent also does not purport to have invented any new kind of vehicle interface, disclosing the industry-standard OBD-II port as an exemplary interface. *Id*. ("[T]he location device may be communicatively coupled, such as selectably or permanently, to the vehicle interface (e.g., OBD-II) of a vehicle. . . ."). For various other aspects of the claims, such as the database and the network, the specification provides a laundry list of commercially available options for a skilled artisan to choose from. *See supra* notes 3-6.

On appeal, Chief Judge Moore pressed Spireon to identify facts contradicting the portions of the specification relied on by the district court, but it could not do so. Instead, Spireon argued that a skilled artisan would have inferred that the patent supported Spireon's assertions and that "[t]here is no duty to identify the facts at the pleading stage." Oral Arg. Rec. 6:20-7:12. This statement caused Chief Judge Moore to ask:

> Mr. Blum, there's no evidence at present in the actual specification that demonstrates a technological improvement. You're saying the

> Court needs to nonetheless assume there is one, and therefore would never be able in a Rule 12 case to actually rule on any of these things so all of the many, many cases that have been decided under Rule 12 on Section 101 to date would be wrongly decided?

Id. at 7:12-7:44. Spireon responded:

> No, Your Honor, because I think when you look at the cases where they were dismissed at the present stage there was no improvement or even alleged improvement to the technology. What they did in those cases, it was usually just data being received by a computer and then processed and data being displayed. There's no alleged improvement to the underlying technology itself.

Id. at 7:44-9:00. That is exactly what happened here. Aside from attorney argument,[15] there is no alleged improvement to the underlying technology itself.

While the Petition alleges that facts were assumed below, no one has assumed facts or placed an improper burden on Spireon. As Spireon admitted during the Federal Circuit oral argument, there are cases where a finding of invalidity under § 101 is proper at the pleadings stage. This is one of those cases. Procon met its burden of proof. Spireon failed to rebut that

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[15] During that same exchange, counsel asserted that "we have alleged that it improves the location device by making it reusable and interchangeable, and moreover, we have also alleged that it improves the conventional computer, or conventional vehicles themselves by transforming them into a vehicle can transfer their location device . . . ." Oral Arg. Rec. 7:44-9:00. Again, those are purely attorney arguments raised for the first time on appeal to the Federal Circuit.

showing. And by failing to identify the necessary facts or requesting leave to properly assert factual allegations, Spireon forfeited its opportunity to add facts to the record. The district court properly granted judgment on the pleadings, and the Federal Circuit correctly affirmed.

II. THIS CASE IS A PARTICULARLY UNSUITABLE VEHICLE TO CONSIDER THE LAW OF PATENT ELIGIBILITY

Spireon has not provided any explanation for why this case would help resolve the Questions Presented or further clarify the law of patent eligibility. Rather, this case falls squarely within the types of cases that have already been decided by this Court. Whatever changes may be made to the § 101 analysis, the result in this case will be the same. This case does not present any issue this Court has not already addressed, and other cases are better vehicles through which the Court could provide additional guidance.

This case is particularly undeserving of this Court's review because the Petition merely copies the Questions Presented of *American Axle*, primarily discusses the issues of that case, and only provides three sentences discussing the present case in its "Reasons for Granting Certiorari." This Court should deny Spireon's copycat petition. To do otherwise would undermine the finality of lower court decisions and allow cases—particularly those involving assertions of invalid patents—to linger long after they have been decided.

A. This Case Falls Squarely Under the Categories of Abstract Ideas Found in *Bilski* and *Alice*, Because Managing a Vehicle Inventory is a "Building Block of the Modern Economy."

Viewed in the context of the record below, the inescapable conclusion is that this case falls squarely under *Bilski* and *Alice*. Because it does not raise any specific issue needing clarification, this case is an inappropriate vehicle to reevaluate the Court's § 101 case law.

As the Court explained in *Alice*, "[t]he claims at issue in *Bilski* described a method for hedging against the financial risk of price fluctuations. Claim 1 recited a series of steps for hedging risk, including: (1) initiating a series of financial transactions between providers and consumers of a commodity; (2) identifying market participants that have a counterrisk for the same commodity; and (3) initiating a series of transactions between those market participants and the commodity provider to balance the risk position of the first series of consumer transactions." *Alice*, 573 U.S. at 218–19. The Court then held that this was directed to the abstract idea of "hedging." *Id*. In *Alice*, the Court held that "intermediated settlement," like hedging, is "a fundamental economic practice long prevalent in our system of commerce," going so far as to call intermediated settlement a "building block of the modern economy." *Id*. at 219–20. And this Court further held that where "[t]he method claims recite the abstract idea implemented on a generic computer; [and] the system claims recite a handful of generic computer components configured to implement the same idea," they are patent ineligible. *Id.* at 226.

Like the abstract ideas of *Bilski* and *Alice*, the claims of the '598 Patent claim a "building block of the modern economy"—inventory management, specifically vehicle inventory management. The claims explicitly recite "a method for managing vehicle inventory," which is surely a more fundamental building block of the modern economy than hedging or intermediated settlement; it is impossible to imagine any seller of goods operating without inventory management. Like *Bilski*, after reciting the abstract idea in the preamble, the claims merely recite a method consisting of routine computer functions. In this case, those routine computer functions operate a conventional database, including (1) coupling the off-the-shelf location device with the vehicle,[16] (2) the location device receiving data from the vehicle, (3) the location device transmitting that data to a computer database using a network, and (4) the computer database updating the data stored therein. Such basic ideas are hardly inventive, they simply use functional language to describe generic, routine computer functions.

[16] This coupling is no different than networking a computer. Indeed, the '598 Patent explains that the off-the-shelf location device may be coupled with the OBD-II port of a conventional vehicle. '598 Patent at 7:2-8. That On Board Diagnostic II port is simply an industry standard interface used to access the vehicle's computer.

B. Spireon's Arguments Continue to Nebulously Shift Before Each Forum, Departing Further from the Text of the '598 Patent Each Time.

Spireon's arguments have shifted each time it has presented its case to a different forum. This is true for both the first and second Question Presented.

Regarding the first Question Presented, Spireon argued to the district court that "the '598 Patent does not just address just any generic 'management' of a vehicle inventory for a dealer; it addresses a specific method for managing such inventory using a group of 'available location devices' that are 'owned by the dealer.'" Resp. App. 49a (emphasis in original). At the hearing, Spireon also explained that "[i]f you read the '598 patent, it doesn't set itself out to be directed to abstract inventory management. Instead, when you read the patent, it recites specific embodiments of monitoring and control of electronic devices." Resp. App. 4a. The district court rejected these arguments, explaining that "simply repeating the word specific does not change the disclosure of the '598 Patent." Pet. App. 20a.

Before the Federal Circuit, Spireon conjured four new technological problems that were purportedly solved by the claimed invention and alleged for the first time that the location device was a "unique" device that Spireon had invented. None of these technological problems, nor their solutions are contemplated in the specification itself, as Spireon admitted to the Federal Circuit. Oral Arg. Rec. 6:20-7:12 ("[A] person of ordinary skilled in the art reading about this registration process and the deregistration process that is disclosed in the specification would understand that makes it reusable and

interchangeable."). Nor has Spireon identified anywhere else in the pleadings asserting these technological problems or their solutions. And Spireon's arguments regarding a skilled artisan's understanding of "off-the-shelf" border on the incredible.

Now, before this Court, Spireon changes its argument yet again. This time, Spireon attempts to analogize this case, which involves the abstract idea exception, to *American Axle*, which involves the natural law exception. As to the '598 Patent claims, Spireon has completely abandoned the argument that the claims are not abstract because they "recite[] specific embodiments of monitoring and control of electronic devices." The Petition instead asserts that the claims transform conventional vehicles. Petition at (i). Confusingly, though, the Petition later contradicts its own argument when it explains that "Spireon's patented claims are not so broad. . . . [T]he claims are limited to a specific registration or pairing method, which allows the location device to be reusable and interchangeable across different vehicles. That is, the patent discloses and claims an improvement to the location device itself." Petition at 8. It is otherwise unclear what Spireon's arguments to this Court are beyond vaguely complaining that "the district court overgeneralized the claims to their preamble, and ignored the recited limitations and method steps to find the claims were directed to an abstract idea." Petition at 15.

Regarding the second Question Presented, Spireon now directly contradicts its admission to the Federal Circuit. Spireon's position as to whether it believes a fact issue is appropriate for the patent eligibility analysis generally or why § 101 should be different from any other Rule 12 motion that may properly rely

on facts in the pleadings remains unclear. *See* Petition at (i), 12, 15–16. Regardless, Spireon acknowledged before the Federal Circuit that patent eligibility may properly be decided on a Rule 12 motion. Accordingly, Spireon's only available argument here is that it should have survived the Rule 12 motion because its counsel "alleged" improvements to the technology. But those "allegations" are only attorney argument, not factual allegations. Because Spireon's attorney arguments are not facts, the Court should reject Spireon's request that this Court determine whether patent eligibility may be determined at the pleadings stage.

C. Other Cases Already Presented to the Court Provided Better Vehicles for Review.

Spireon is wrong that this case is "an ideal companion case to *American Axle*." *Id*. at 16. First, this case involves an abstract idea, not a natural law. Second, this Court has already rejected numerous petitions for certiorari that more clearly invoked the issues Spireon now asserts in the abstract idea context. Third, the mere fact that this case resulted from the grant of a Rule 12(c) motion, without more, does not compel a grant of certiorari.

The Petition provides no substantive explanation of why the questions in *American Axle* are relevant to the abstract idea category. As Judge Plager explained in his concurrence to *Interval Licensing LLC v. AOL, Inc.*:

> All too often courts discussing these three judicially created exceptions to patent eligibility lump them together, as if all three present the same set of issues to be conceptualized and analyzed. They do not. 'Laws of

> nature' and 'natural phenomena' have understandable referents, and thus have proven more amenable to workable definitions, or at least a reasonable degree of boundary-setting, and thus are more amenable to analysis.
>
> However, when it comes to applying the concept of "abstract ideas" to a challenged patent (or application for patent) as a distinct test of patent eligibility, the issues are different, and require close examination.

896 F.3d 1335, 1348 (Fed. Cir. 2018) (Plager, J., concurring-in-part and dissenting-in-part). But these differences underscore why this case is not a good companion case. It is hard to imagine a factual equivalent in the abstract idea sphere to a natural law where a natural relationship in the claim is really a claim of the unrecited natural law.

Second, this Court has already rejected the petitions for certiorari in *Chamberlain Group v. Techtronic Industries Co.*[17] and *HP Inc. v. Berkheimer*,[18] both of which involved an abstract idea and both of which sought review of detailed Federal Circuit opinions on these same issues. In *Chamberlain*, the Federal Circuit detailed the role that conventional hardware may play in the analysis of an abstract idea, holding that implementing an abstract idea on conventional hardware does not save the patent from being ineligible. The same is true here, where the '598 Patent claims recite implementing routine data management steps on conventional hardware. In *Berkheimer*, the Federal Circuit details the analysis

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[17] 141 S. Ct. 241 (2020); 935 F.3d 1341 (Fed. Cir. 2019).

[18] 140 S. Ct. 911 (2020); *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018).

that surrounds findings of fact in the § 101 inquiry, but this Court denied the petition for certiorari. In this case, neither the district court nor the Federal Circuit provided a similarly detailed analysis for the fact-finding role, instead relying on the standard principles governing Rule 12 motions. Accordingly, granting the Petition here would require this Court to engage the issue in the first instance. *Chamberlain* and *Berkheimer* were better vehicles to address the abstract idea versions of the Questions Presented in *American Axle*, yet the Court did not grant those petitions for certiorari. It should not grant certiorari here either.

Spireon's suggestion that this is a good companion case because it was decided under Rule 12(c) rather than summary judgment ignores that the parties in *American Axle* submitted competing evidence. Spireon, on the other hand, has proffered attorney argument, not evidence. Such a lack of evidence would fail to defeat a Rule 12 motion in any area of the law.

Even if it has any interest in revisiting § 101, this Court has no reason to engage Spireon's superficial arguments, which would require this Court to decide numerous issues in the first instance. Section 101 is litigated frequently enough before the Federal Circuit and raised frequently enough in certiorari petitions that better vehicles will be before the Court.

III. UNDER ANY TEST, THE CLAIMS OF THE '598 PATENT ARE INELIGIBLE FOR PATENT PROTECTION

Finally, review is unwarranted because the claims are ineligible under any reasonable test for patent eligibility. The claim language demonstrates that the claims are directed to a "method for managing a

vehicle inventory for a dealer implemented by a computer." '598 Patent at col. 27, ll. 6-7. A party cannot patent (and receive a monopoly on) the abstract idea of managing an inventory, even if limited to vehicle inventory. Just as Samuel Morse could not claim the idea of transmitting intelligible characters, signs, or letters by electromagnetism, *O'Reilly* v. *Morse*, 56 U.S. 62, 112 (1853), the idea of managing a vehicle inventory by transmitting routine data cannot be patented. Nor can a party receive a patent by restricting this abstract idea to a field of use, *e.g.*, managing a *vehicle* inventory *for a dealer by a computer*, even if that computer is more specifically called a location device.

Here, the generic components recited in the claims—a vehicle, a location device (i.e., a computer), a network, and a computer database—are all inherent in the abstract idea. Unless a party can patent the abstract idea of managing a vehicle inventory using a computer (a result that neither § 101 nor the Constitution permits), the claims are invalid. *See Am. Axle & Manuf., Inc. v. Neapco Holdings LLC*, 966 F.3d 1347, 1356 (Fed. Cir. 2020) ("The lesson to patent drafters should now be clear: while not all functional claiming is the same, simply reciting a functional result at the point of novelty poses serious risks under section 101") (Chen, J., concurring in denial of grant of en banc review). As the Federal Circuit has explained, claims such as this "have failed to pass section 101 muster, because they did not recite any assertedly inventive technology for improving computers as tools and/or because the elements of the asserted invention were so result-based that they amounted to patenting the patent-ineligible concept itself." *Interval Licensing*, 896 F.3d at 1344.

Under Step One of *Alice*, the claims are directed to the abstract idea of managing a vehicle inventory for a dealer. In its brief to the Federal Circuit, Spireon was unable to find any technological innovation, problem, or benefit in the '598 Patent itself or the rest of the pleadings. Instead, Spireon was only able to assert attorney argument for hypothetical technological benefits. Any purported improvements is, at best, an application of the abstract idea using conventional location devices and generic computer networks. Spireon can repeat its refrain that the method recites specific steps as much as it wants, but as the district court stated, "simply repeating the word specific does not change the disclosure." Pet. App. 20a.

Under Step Two of *Alice*, the claims lack an inventive concept that transforms the abstract idea into a patent-eligible application. There can be no "inventive concept" in hardware and software that the '598 Patent specification describes as conventional. '598 Patent at col. 4, ll. 44-58, col. 6, ll. 9-26, col. 8, ll. 14-27, col. 13, ll. 25-31, col. 14, ll. 14-17, col. 18, l. 36-col. 19, l. 12. And the Court is not required to accept Spireon's allegations that the description of the "off-the-shelf" location device is novel where that is not a reasonable interpretation in the full context of the disclosure. *See id*. at col. 8, ll. 14-27.

Section 101 may well have permitted Spireon to patent a specific location device that collected its data in a novel way or processed the data in a new or more efficient way, but parties cannot claim a monopoly on the "building block[s] of the modern economy." *Alice*, 573 U.S. at 219–20. Section 101 does not permit a party to patent the idea of managing a vehicle inventory by claiming conventional hardware and basic data management functions. These types of

claims are precisely why Congress enacted § 101. Under any test for patent eligibility, Spireon's claims are ineligible for patent protection. There was no error in the decision below, either by the district court or the Federal Circuit.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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May 23, 2022

APPENDIX

APPENDIX A

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE, TENNESSEE

No. 3:19-CV-00201

PROCON ANALYTICS, LLC,
Plaintiff,

vs.

SPIREON, INC.,
Defendant.

TRANSCRIPT OF VIDEO MOTION CONFERENCE
BEFORE THE HONORABLE JON P. McCALLA

TUESDAY
MARCH 2, 2021

TINA DuBOSE GIBSON, RPR
OFFICIAL REPORTER

FOURTH FLOOR FEDERAL BUILDING
MEMPHIS, TENNESSEE 38103

UNREDACTED TRANSCRIPT

* * *

[22] all sorts of inventories. It's like looking — what do we have in stock, which has been done forever.

Now, the — there might be one other problem that's stated, and this is the only one that's actually stated in the background of the invention. And at column 2, lines 14 to 21, it discusses how there's difficulty programming software to carry out these methods because you're dealing with different devices and networks, and that can be time-consuming.

Now, I don't know if the time consumption is the problem, but it doesn't really matter because there is no solution in the claims to the programming issue.

Now I'd like to move to — I think I have about three our four minutes here.

THE COURT: Two minutes.

MR. OGDEN: Two minutes. Okay.

Yep. Okay. I can get there.

So I just want to talk about that the '598 patent claims don't recite a technical solution, nor does the specification. And I think the easiest way to look at this is to go to Figure 13. And Figure 13 is the only schematic figure that shows a — that shows something that involves an actual vehicle.

You'll notice the rest of the figures are generic and can be used for managing kind of communications from any [23] remote device. And what we see is — and this is the whole problem — is that in the middle of that figure, Box 100 is this black box that is the inventory management system. And within that box, there's a device translation server module, a DTS, and a complex message constructor, a CMC, and a data-

base. And then there's just a lot of arrows that say all these things connect and talk to each other, but don't tell you how that's done.

And that's essentially what claim 1 describes. It doesn't describe much more than that. And if we look — and I think we've set this out, actually. If you take a look at our briefing in ECF No. 41 at page 6, we really go through. But essentially it's just receiving, transmitting, associating, disassociating. And these are all claimed generically. So I think, other than that, that addresses the *Alice* issue.

And there's one more thing I want to point out. And that is the PTAB did not address the patentable subject matter issue. It only addressed whether a location device being owned by a dealer happened to be present in the printed prior art publications that accompanied Procon's petition.

So aside from the — what the PTAB said was known in the prior art, which is part of the intrinsic evidence, there's not much to take from the PTAB decision about 101 because they didn't address it.

[24] THE COURT: I think we're ready for —

MR. OGDEN: And with that, Your Honor, my time is up.

THE COURT: It is up, and I need to let counsel respond. Obviously, counsel is going to tell me somehow how a problem is solved here. And that's — that's something that we've been talking about. And, obviously, you referenced particularly the material on column 2, which — I need to let, however, Mr. Googe go through his presentation.

You've got about 20 minutes. Well, you've got 20 minutes exactly. I will time it because we need to be

focused. But, yes, sir, this is a big opportunity, but I need to know some answers.

MR. GOOGE: Sure. Thank you, Your Honor. You know, the way we'd like to address it, and I think an important point to address first is Step 1. And if you read Procon's briefing, Procon essentially, throughout the briefing, equates this to a general abstract idea of managing an inventory. Procon repeatedly characterizes the claims at a high level as being directed to managing an inventory, but Procon's characterization of the claims ignores the actual language of the claims and the specification.

If you read the '598 patent, it doesn't set itself out to be directed to abstract inventory management. Instead, when you read the patent, it recites specific [25] embodiments of monitoring and control of electronic devices. This is consistent with the title of the '598 patent, which is "Methods and Apparatus for Control of Electronic Devices."

When you look at the actual language of the claims — and I think it's something — when you read Procon's briefing, they don't really address the actual limitations of the claims, other than to say that certain limitations are routine and conventional over the prior art. The claims are directed to a method of managing vehicle inventory for a dealer using location devices that are communicatively coupled in a specific way to perform specific steps.

They are concrete and tangible steps that are performed by the location device, which include communicative coupling of the device to the vehicle through the OBD port and concrete steps that occur in response to communicative coupling of that location device. So it's not just the claim around just general

inventory management. There are a specific series of steps that outline a specific process of connecting the device to the vehicle, the device sending the connection notice, including the vehicle identifier, and the location device identifier. And then in response to that, certain steps being taken to associate that device with the vehicle in the memory.

So it's not just this generic inventory [26] management system, but it's specific steps that are tied to concrete actions and devices that have to take place.

THE COURT: And what problem is being solved?

MR. GOOGE: There are a number of problems. And obviously that's something that's being developed in the factual record. But one of them is this orphan device issue. And so one problem some of these companies were having early on implementing this process was that you had devices that weren't associated with any vehicle in the memory, and so you had orphan devices that couldn't transmit data and couldn't be tracked. And so you had technical problems around the devices actually being associated with a vehicle and being able to communicate with the vehicle.

You had specific technical problems around how you actually installed the devices, and there were problems where, if you unplugged the device, that device then loses the ability to transmit data. And so there are specific problems that are laid out in the claims through those specific steps that are addressed in the claims.

Your Honor, we point out those specific steps because almost every limitation of the claim recites a concrete step where the location device performs a specific action or that something happens in response

to the specific action being performed by the location device. So these aren't just generic steps for managing inventory. These are [27] specific steps that involve the hardware doing specific things.

And there's a case that we cited. I believe it's the *ID Image Sensing* case. And it says the language that at a certain point when the real-world tangible-specific components predominate what is claimed, that has to count for something in the 101 calculus, particularly in Step 1. And here, there's ample indication throughout the claim that this is not just some abstract inventory management process, but, instead, it's a specific series of steps that have to happen, with specific hardware, to occur.

There are also parallels between the claims of the '598 patent. And I believe it was the *Innovative Global Systems* case. And That was a case out of the Eastern District of Texas. And in that case, the Court concluded that claims involving an onboard electronic system for logging and reporting driver activity and operation data of a vehicle was not an abstract idea under Step 1.

Like that case, here there's a device that physically exists and is adapted to operate in a specific way, that's laid out in the claims and communicate in certain ways with the vehicle.

In *Innovative Global* the party moving for judgment attempted to characterize the claims at an inappropriate high level of abstraction. They tried to

* * *

[35] THE COURT: All right. Counsel, response? And I'm going to let — Mr. Ogden, I'm going to let you ask that question you were trying to ask and the

Court would like to have answered on the specificity in the claim language.

MR. OGDEN: On the — sorry, Your Honor, on the specificity in the claim language?

THE COURT: You were specifically asking about what are the specific steps, right?

MR. OGDEN: Yes.

THE COURT: Maybe I missed your point there. Go ahead.

MR. OGDEN: Well, I — no. I think we're on the same page. The issue is, is what I heard just now was a recitation of what's in the briefing.

THE COURT: Right.

MR. OGDEN: And you can recite the claim language all you want and say that's a specific step. But that's not how this analysis works. And we know that because if you look at any of the federal circuit decisions that we have cited — that Procon has cited in support of affirming decisions that subject matter was patent ineligible, of course they recite specific steps. You wouldn't have a claim if you didn't recite specific steps.

But you need a nexus between specificity, technical nature, and not being present in the prior art. [36] And so, actually, if you take a look at — there's a case called *Dropbox v. Synchronoss Tech*. And, now, this is in the Federal Appendix, but it's 815 Federal Appendix 529. And this is at page 534, and they are quoting other cases and collecting them, and that's why I think this is important.

The federal circuit states, and I quote: "Our cases have consistently held that an 'inventive concept'

exists when a claim 'recite[s] a specific, discrete implementation of the abstract idea' where the 'particular arrangement of elements is a technical improvement over [the] prior art.'"

And so that's this nexus between specificity, technicality, and novelty, and we don't have any of that here. We know we don't have novelty because we can look to the intrinsic evidence from the PTAB to know that this was in the prior art. And these claims are not written in a technical nature. They don't improve the performance of any of these computers. All they do is automate what had been done before by humans.

And so I still didn't hear any — I just heard quotations of the language. And what I would point to is you can go look at the claims in, for example, *cxLoyalty*. And, you know, I did a presentation on this the other day, and when I tried to put the claim language into a slide, I had to divide it into three slides for one claim. It's that long. [37] There's that many steps recited, but the Court still affirmed, it doesn't matter how much language you put in there if you're not telling someone how to accomplish something in a technical way.

So as long as you're just reciting something that's aspirational, I want the computers to transmit this information and I want them to do that, that is not a technical advance that is sufficient to create an inventive concept. So —

THE COURT: So you'll recall at the beginning —

MR. OGDEN: So that would be —

THE COURT: — at the beginning, I asked how the problem is solved.

I'm going to go back to Mr. Googe. How is the problem solved? Let's — let's — I — we can all see the claim language. It's there. How is the problem solved?

MR. GOOGE: Yeah, I think if you read the claims, the claims clearly lay out how you solve that —

THE COURT: I have mine really marked up, and I want you to just tell me exactly how the problem is solved.

MR. GOOGE: Sure. And so it's important to read the actual limitations of the claims and consider not only just the individual limitations, but collectively how this operates together.

And so you look at this first step where, before [38] you plug the device into any dealer or into vehicle or communicatively couple it, you associate it with a dealer's group of available location devices in the memory.

And, again, that's a step where we haven't heard Procon say this is just a conventional step; this is something that's out there; this isn't a specific technological step.

The claims recite you're associating it with a dealer's group of available location devices in the memory before you communicatively couple it.

The very next step then talks about communicatively coupling the location device with a vehicle. And in response to that communicatively coupling step, it then becomes — it then sends the connection notice, which includes the specific format of the connection notice, which is a vehicle identifier and a location device identifier. And then from there, you have responsive steps where you associate that location device with the vehicle identifier and disas-

sociate it. And so in broader terms, you essentially have this dual inventory, which is something that Spireon contends was not done before.

You had devices that are available to the dealer, owned by the dealer, and they're available to it in the memory. And then you have those devices becoming communicatively coupled and then moved into the other group [39] of location devices that are associated with the vehicle. And the claims lay out the specific series of steps of how you accomplish that.

Now, the language might not be as long at the *cxLoyalty* claims, but there's a clear distinction between what's happening in these claims in cases like *cxLoyalty*. In almost every case, like *cxLoyalty*, it's an underlying business method or practice. I believe *cxLoyalty* was a review of a covered business method decision by the PTAB.

So, again, you had a full record developed on a set of claims that clearly covered just the fundamental business practice that was being implemented on the software. And here that's not the case. It's a specific use of an actual hardware location device performing specific steps that are not — that are not routine and conventional, and then achieving the association or location device identifier with the vehicle identifier.

And so the claims really do lay those steps out in a specific way. And I think that's something that's glossed over in Procon's briefing. Again, it's referred to, at a high level, as just inventory management. It's a known location device.

But if we really drill down into Procon's arguments, there's not a showing of why these are just conventional steps, that are routine, being performed on [40] conventional hardware. It's not something that — the

location devices aren't managing inventory. And I think Procon's position in this case is that you have a location device and then you have the claims, and that's not really what the claims are covering. It goes beyond just the location device, but actual specific steps that involve the location device doing specific things. And then in response to the specific actions by the location devices, there are other specific steps that happen.

So there's — there's a level of detail here. Again, I think the problem with Procon's argument is it contends these are routine and conventional, and that's something that it has to prove by clear and convincing evidence. And there's no evidence that these are all routine and conventional steps. I think the argument is essentially the location device is off the shelf and therefore all these steps are routine and conventional. But there's a gap in the leap that you have to make from saying you have an off-the-shelf location device to saying that location device performs these specific steps.

The only way Procon can really fill that gap is to say, well, the prior art teaches it would have been known to have the location device send a connection notice and do certain steps, but then that involves us getting into what does the prior art teach, are these anticipated, are they [41] obvious.

And those are entirely different questions than what we should be addressing today.

THE COURT: Let's go back to Mr. Ogden.

Mr. Ogden, your motion, do you need to respond? If you wish to.

MR. OGDEN: Sure. So I just want to return to the fact that the patent doesn't tell you how to do any of this. We just heard that it's specific with these tangible location devices. But there is no disclosure of how to program these devices to transmit these messages. They're just doing what they do, off the shelf. That is how we know they're routine and conventional.

And, you know, the other thing we heard is, oh, there is a problem here that is solved in a new way because what we do is, in a computer, we keep stock of what devices are available and what devices are out on a vehicle. We have to step back at some point and use common sense. Knowing what is on the shelf that you could put on a car and what's not is not anything beyond the routine and conventional. And citing it in a particular technological environment of a location device is not sufficient to transform that from something that's routine and conventional.

I don't think that's something where we need to have experts brief was it routine and conventional to keep

* * *

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

[Filed July 15, 2021]

PROCON ANALYTICS, LLC,

Plaintiff-Appellee,

v.

SPIREON, INC.,

Defendant-Appellant.

Appeal from the United States District Court for the
Eastern District of Tennessee in
No. 3:19-Cv-00201-JPM-HBG,
Judge Jon P. McCalla

CORRECTED BRIEF OF APPELLANT

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* * *

1. The claims of the '598 Patent are directed to a specific method that improves conventional vehicles.

Claim 1, from which all other claims of the '598 Patent depend, does not generically computerize inventory management. It is directed to one specific and improved method that can be used in managing a vehicle inventory. Conventional vehicles do not report or keep track of their current locations. They cannot be tracked and their location determined, for example, after a test drive moves the vehicle from one lot to a location in front of the dealership. Claim 1, however, recites a method that uses a "location device" that can communicate with a "computer" over a "network." Appx49; *see also* Appx1699–1702 (construing "location device" as one "that can determine and transmit location information"). Among its many limitations, claim 1 recites "communicatively coupling the location device with a vehicle" and "receiving, by the computer, current location information from the location device." Appx49.

The district court found that "[t]he '598 Patent is directed to tasks inherent to the business practice and process of vehicle inventory management that have been available as long as the existence of car dealerships." Appx13. But that simply isn't true, and nothing in the pleadings establishes that it is true. There is no analog to the steps recited in the claims in the pre-computer or pre-Internet world. Dealers could not previously track their conventional vehicles' locations; conventional vehicles do not report back their current location. The invention of the '598 Patent turns a conventional vehicle into a constantly trackable and addressable node on a network, such that it can report its location to a car dealer and be tracked

remotely. *See also* Appx49 (claims 2 and 6 reciting a "plurality of location information" being transmitted to a computer and associated with a vehicle, such that it can be used to track the vehicle, *e.g.*, using the "VIN" as the vehicle identifier). The '598 Patent also describes and claims using multiple location devices across multiple vehicles, so that one or more car dealers can track their entire inventories of vehicles 24/7. *See id.* (claim 4 reciting a plurality of location devices, inventories and dealers).

The district court ignores this fact by asserting the "location device" of the claims is an "off-the-shelf tracking device." Appx12. The district court, however, misreads the specification, which does not make such an admission. The '598 Patent instead states: "In an exemplary embodiment, a location device may be an off-the-shelf tracking device for a vehicle, for example for use by an end user, for user-based insurance, for fleet management, for managing driver behavior, and/or the like." Appx39 (8:23–27). This doesn't mean that a "location device" as disclosed (*e.g.*, with a "GPS receiver," "OBD-II" interface, and "radio antenna") could have been acquired off-the-shelf at the time of the invention. Appx37 (4:49–63); Appx39 (7:2–18).

Instead, the specification explains that the location device disclosed by the '598 Patent could, "[i]n an exemplary embodiment," be sold as "an off-the-shelf tracking device for a vehicle" for use by end users, for insurance, etc. Appx39 (8:23–27). That is, the patent envisioned its invention becoming an off-the-shelf product—not that it already was one. Indeed, the specification explicitly states that the disclosed location devices are "*unique*." *See*, *e.g.*, Appx37 (4:44–52) (emphasis added) ("One or more of the unique devices may comprise a location device for a vehicle,

for example a GPS tracking unit, which may be configured to be selectably connectable to a vehicle interface such as an on-board diagnostic interface (e.g. OBD-II).”). And on a motion for judgment on the pleadings, the pleadings (including exhibits such as the patent) must be construed “in the light most favorable to” Spireon. *Anders*, 984 F.3d at 1174. The district court failed to do so, instead construing the specification in favor of Procon and relying heavily on its apparent misreading of the “off-the-shelf” language.

Spireon does not necessarily assert—nor does it need to—that it was the first to update conventional cars with location tracking and networked functionality. While not in the record or factually developed at this stage, it may have been the case, for example, that built-in modules that could be used for tracking were included with certain prior-art vehicles. But this is different from location devices that can be communicatively coupled to conventional vehicles without such built-in capability (*e.g.*, through an OBD-II port).

In any event, as explained above, the Court is to construe the pleadings in the light most favorable to Spireon, without making factual assumptions in Procon’s favor. Plus, this factual question is not even relevant. Regardless of whether location devices had already been invented (and included the same functionality as set forth in the claims), that is a question for §§ 102 and 103, not § 101. *See CardioNet*, 955 F.3d at 1372 (“[T]he novelty or non-obviousness of the invention has little to no bearing on the question of what the claims are ‘directed to.’”). And use of location devices to improve conventional vehicles has certainly not been a “longstanding practice” of which the Court can take judicial notice based on “overwhelming

to the point of being indisputable" evidence. *Id.* at 1373–74.

Because the claims of the '598 Patent are directed to a method that improves conventional vehicles themselves, allowing dealers to constantly track vehicles in order to manage their vehicle inventory, the claims are eligible for patenting. In *CardioNet*, the Court found an "improved cardiac monitoring device" patentable. 955 F.3d at 1368. Just as an improvement in heart monitoring is patentable, an improvement in vehicle monitoring is also patentable. In addition, the Court has explained that claims that do not "use a computer as a tool to automate conventional activity and instead employ[] a computer to 'perform a distinct process to automate a task previously performed by humans'" are patent-eligible. *EcoServices, LLC v. Certified Aviation Sers., LLC*, 830 F. App'x 634, 642 (Fed. Cir. 2020) (quoting *McRO*, 837 F.3d at 1314) (finding a method for automated jet engine washing patentable). Here, the claims employ unique computing technology (and not off-the-shelf or generic computers) to perform a process that wasn't even previously performed by humans. As such, the claims of the '598 Patent are eligible for patenting, and the district court should be reversed.

2. The claims of the '598 Patent are directed to a specific method that improves location devices.

The claims of the '598 Patent are additionally eligible for patenting because they aren't simply limited to using location devices. Instead, they recite a process that improves the capabilities of location devices, used for tracking vehicles and managing a vehicle inventory.

In determining eligibility of "software innovations," the Court has explained that the "inquiry often turns on whether the claims focus on specific asserted improvements in computer capabilities or instead on a process or system that qualifies an abstract idea for which computers are invoked merely as a tool." *Uniloc USA, Inc. v. LG Elecs. USA, Inc.*, 957 F.3d 1303, 1306 (Fed. Cir. 2020); *see also Enfish*, 822 F.3d at 1336. Where claims are focused on "an improvement in computers [and other technologies] as tools"—that is where they improve "the functioning of computers"—they are patent-eligible. *CardioNet*, 955 F.3d at 1371 (internal citation omitted); *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1362–63 (Fed. Cir. 2018) (finding eligible

* * *

F.3d 1303, 1309 (Fed. Cir. 2020), the Court found claims eligible that recited "a specific improvement in the functionality of the communication system itself, namely the reduction of latency experienced by parked secondary stations." Here, the claims of the '598 Patent are directed to specific improvements in location devices, regarding their ability to detect voltage and enter into a power-conserving mode, which directly improves the ability of dealers to manage their vehicle inventory. Claims 7–10 and 13–14, therefore, are patent-eligible.

* * *

The claims of the '598 Patent are eligible for patenting. They are not directed at the abstract idea of managing a vehicle inventory, which is an oversimplification of the claims. They are instead directed to managing a vehicle inventory by practically applying a unique location device in combination with computer networking technology to solve multiple technical problems in the art, including:

- Establishing a network connection between a conventional vehicle and a computer that would not otherwise exist, using a location device so the vehicle is constantly trackable;
- Improving location devices and solving a reusability / universality problem so that the location device is capable of use and reuse and interchangeable with a number of different vehicles over time;
- Solving a problem in which vehicles with a low battery can be remotely detected so the battery can be recharged and/or replaced; and
- Solving a problem that prevents location devices from being constantly trackable by reducing the amount of power they consume, and thus improving location devices themselves.

Under the Court's precedent, every claim of the '598 Patent is patent-eligible because no claim is directed to an abstract idea. The district court, therefore, should be reversed.

D. *Alice* Step 2: The Claims of the '598 Patent Contain an Inventive Concept, and Thus Are Patent Eligible.

The claims are also patent-eligible because they recite an inventive concept sufficient to satisfy step two of the *Alice* framework. "[T]he second step of the *Alice/Mayo* test is satisfied when the claim limitations involve more than performance of well-understood, routine, and conventional activities previously known to the industry." *Aatrix*,

* * *

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

[Filed August 23, 2021]

2021-1954

PROCON ANALYTICS, LLC,

Plaintiff-Appellee,

v.

SPIREON, INC.,

Defendant-Appellant,

Appeal from the United States District Court
for the Eastern District of Tennessee
in No. 3:19-cv-00201-JPM-HBG,
Judge Jon P. McCalla

CORRECTED BRIEF OF APPELLEE

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Dated: August 23, 2021

* * *

the parameters, coding language, or otherwise tell the user how to manage the vehicle inventory—it merely provides functional language for doing so." Appx16.

On appeal, Spireon's Brief suffers from the same problem as did its arguments at the district court, the failure "to identify any disclosures in the '598 Patent that go beyond functional language and explain *how* the functions are achieved." Appx15 (emphasis in original). This is not surprising, as neither the specification nor the *claims* provide the *how*. Accordingly, the '598 patent claims do not recite a technological solution.

This Court should affirm the district court's determination that all the claims of the '598 patent are directed to patent-ineligible subject matter under § 101 for the same reasons it affirmed such determinations in cases like *cxLoyalty* and *Interval Licensing*.

1. The '598 Patent Claims Do Not Recite a Technological Solution to a Technological Problem.

Spireon's Brief does not identify any disclosure in the '598 patent of a technological problem solved by the *claimed* invention. Nowhere does Spireon's discussion of solutions to "problems in the art" include a citation to the '598 patent. *See* Appellant's Br. at 12, 39–40, 43–44. This is because the '598 patent identifies only one problem, a problem never mentioned in Spireon's briefing—programming different devices and networks to interface with one another is hard and time consuming.

> Dealing with different devices and networks can be a burden to developers, since each device may have a different communication protocol, and different networks have different interface requirements. Initially, if a developer was versed in the inner workings of the device operating system, a custom device driver was written for controlling the device operation, but this was time consuming and required intimate knowledge of device operation.

Appx36 at col. 2, ll. 14–21. And nothing recited in the claims recites a technological solution for *how* to make that programming easier or faster.[4]

Instead, Spireon manufactures purported technological problems / solutions by creatively rephrasing the functional claim language. But just as in *cxLoyalty*, Spireon's conclusory labeling of the invention cannot imbue the claims with an inventive concept. And like the claims in *Electric Power Group*, "[t]he claims in this case do not even require a new source or type of information, or new techniques for analyzing it. As a result, they do not require an arguably inventive set of components or methods, such as measurement devices or techniques, that would generate new data. They do not invoke any assertedly inventive programming. Merely requiring the selection and manipulation of information . . . by itself does not transform the otherwise-abstract processes of information

---

[4] The specification explains that embodiments of the invention "eliminate[] complexity [by] providing a common interface for all devices regardless of protocol or network." Appx42 at col. 13, ll. 16–25. But the claims do not recite any technological solution for providing such a common interface.

collection and analysis." 830 F.3d at 1355 (internal citations omitted).

Here, the claims state the goal of solving the problem without explaining *how* to do so, instead reciting the management of information in purely functional terms. The specification fails to provide additional detail on *how* to accomplish the claimed functions. Therefore, neither the claims nor the specification provides an inventive concept sufficient to transform the claims into patent-eligible subject matter. Spireon's failure to identify anything in the *claims* that provides a technological solution to a technological problem underscores that the claims fail *Alice* Step Two.

a. The claims do not provide a technological solution for solving the problem of creating a network between a vehicle and a computer.

Spireon's *first* asserted problem—"[e]stablishing a network connection between a conventional vehicle and a computer that would not otherwise exist"—is not a technological problem solved by the claimed invention. Appellant's Br. at 43. This problem simply recharacterizes the result of the claimed function of "communicatively coupling a location device with a vehicle." Appx49 at col. 27, ll. 15–16 (claim 1). The '598 patent acknowledges that conventional vehicles already had an on-board diagnostic interface for communicatively coupling devices with the vehicle, an OBD-II. *See, e.g.*, Appx37 at col. 4, ll. 49–52; Appx39 at col. 7, ll. 2–8 and ll. 44–46. And the '598 patent acknowledges that, "[i]n an exemplary embodiment, a location device may be an off-the-shelf tracking device for a vehicle, for example for use by an end user, for user-based insurance, for fleet management, for managing driver behavior, and/or the like." Appx39

at col. 8, ll. 23–27. The claims do no more than recite these conventional features, and the specification does not add anything more. *See, e.g.*, Appx37 at col. 4, ll. 48–52 ("a location device for a vehicle, . . . which may be configured to be selectably connectable to a vehicle interface"); Appx39 at col. 7, ll. 2–8 ("the location device may be communicatively coupled"); Appx39 at col. 7, ll. 24–30 (same); Appx39 at col. 7, ll. 44–46 ("[t]he location device may be configured to communicatively couple with a vehicle"). Thus, not only do the claims fail to recite a technological solution, neither the claims nor the specification describes *how* to accomplish this aspirational goal. *Interval Licensing*, 896 F.3d at 1346 ("[W]hile the specification and claims of the '652 patent purport to describe an improved user experience which allows the presentation of an additional set of information, the patent is wholly devoid of details which describe *how* this is accomplished." (emphasis in original)).

Spireon's further assertion that this first problem is solved by "using a location device so the vehicle is constantly trackable" also fails. Appellant's Br. at 43. Except for Spireon's addition of "constantly trackable," which is not required by the claims, this is just simply recharacterizing the result of the claimed functions of "transmitting" or "receiving" "location information from the location device." Appx49 at col. 27, ll. 31–32 (claim 1); Appx49 at col. 28, ll. 3–6 (claim 6). The claims do no more than recite these conventional features, and the specification does not add anything more. *See, e.g.*, Appx37 at col. 4, ll. 27–32 ("a location device may be configured to track whether the location device is located inside or outside of a predetermined perimeter"); Appx38 at col. 6, ll. 55–58 ("The location device may comprise any suitable system for determining a physical location of the location device

and communicating the position to the inventory management system."); Appx39 at col. 7, ll. 24–30 ("the location device may . . . transmit the physical location of the device"); Appx39 at col. 8, ll. 21–23 ("The location device may be configured to be always on and determining location information . . . ."); Appx41 at col. 12, ll. 10–11 ("The inventory management system 100 may receive location information from the location device . . . ."). Thus, not only do the claims fail to recite a technological solution, neither the claims nor the specification describes *how* to accomplish this aspirational goal. *Interval Licensing*, 896 F.3d at 1346.

b. The claims do not provide a technological solution for solving a reusability / universality problem.

Spireon's *second* asserted problem—"[i]mproving location devices and solving a reusability / universality problem so that the location device is capable of use and reuse and interchangeable with a number of different vehicles over time"—is not a technological problem solved by the claimed invention.[5] Appellant's Br. at 44. This problem simply recharacterizes the result of the claimed functions of "associating the location device identifier with the vehicle identifier in

[5] Spireon's argument mischaracterizes the claim language. While claim 3 does recite "receiving a disconnect notice" and "associating the location device with the dealer's group of available location devices," this is not sufficient to permit re-use in another vehicle. According to the claims' plain language, the device remains associated "with the vehicle identifier" of the vehicle from which it was disconnected. Communicably coupling the location device with a new vehicle appears to result in that device being associated with two vehicles. Thus, Spireon is wrong that the claims capture a solution to a reusability problem.

the memory" and "[associating / disassociating] the location device from the dealer's group of available location devices in the memory." Appx49 at col. 27, ll. 26–29 (claim 1); Appx49 at col. 27, ll. 49–50 (claim 3); Appellant's Br. at 47–48, 53. The claims do no more than recite these conventional features,[6] and the specification does not add anything more.[7] *See, e.g.*, Appx37 at col. 4, ll. 21–27 ("an inventory management system . . . may be used in conjunction with a location device configured to transmit a vehicle identification number (VIN) and an identifier of the location device, wherein the inventory management system may be configured to associate the VIN and the location device identifier"); Appx43 at col. 15, ll. 53–55 ("The inventory management system 100 may be configured to automatically associate and/or disassociate a vehicle and/or device with the dealer's vehicle inventory."); Appx43 at col. 16, ll. 61–64 ("the inventory management system 100 may disassociate the VIN and/or device identifier with the previous owner's account"). Thus, not only do the claims fail to recite a technological solution, neither the claims nor the

---

[6] The preamble of claim 1 defines the computer as "having a processor and a memory," which without more, is a generic computer. *Univ. Fla. Res. Found., Inc. v. Gen. Elec. Co.*, 916 F.3d 1363, 1369 (Fed. Cir. 2019) ("[C]laims like these that 'merely recite the abstract idea . . . along with the requirement to perform it on . . . a set of generic computer components' do not contain an inventive concept." (quoting *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016))).

[7] The specification states that existing location devices can be configured to obtain a device identifier from the vehicle, e.g., by obtaining the VIN from the OBD-II port. Appx43 at col. 15, l. 66–col. 16, l. 5 ("[T]he location device may be programmed or otherwise configured to retrieve the VIN of a vehicle when it is coupled with the vehicle . . . ."). It never describes *how* to do so.

specification describes *how* to accomplish this aspirational goal. *Interval Licensing*, 896 F.3d at 1346

The prosecution history further undercuts Spireon's arguments on this point. Spireon identifies claims 3 and 5 as providing "unconventional interchangeability in the use of locations[sic] devices for vehicles." Appellant's Br. at 53; *see also* Appellant's Br. at 10, 37–39. But, in issuing a § 101 rejection, the Examiner determined that language like that to which Spireon now points was insufficient to supply an inventive concept. Appx1303–1304. For example, pending claim 24 recited:

> 24. A computer-implemented vehicle inventory management system according to claim 22, wherein the vehicle dealer operates a dealer management system, and wherein the inventory management system further comprises:
>
> a location device management module operating on the processor, wherein the location device management module is configured to:
>
> *receive*, over the network, *a disconnect notice* comprising a vehicle identifier;
>
> *identify*, based on the received vehicle identifier, *the vehicle the*
>
> *location device was most recently associated with*;
>
> *retrieve ownership information* associated with the identified vehicle from the dealer management system; and
>
> *upon a condition in which the identified vehicle is owned by the dealer* according to the received ownership information,

> *associate the location device with a group of available location devices for the dealer in the memory*.

Appx1492 (emphasis added). And pending claim 26 recited:

> 26. A computer-implemented vehicle inventory management system according to claim 22, further comprising a location device management module operating on the processor, wherein the location device management module is configured to:
>
> *receive*, over the network, *an updated ownership information for the vehicle*; and
>
> *upon a condition in which the vehicle has a new owner*:
>
> *create a user account for the new owner* in the memory;
>
> associate the user account with the new owner in the memory;
>
> *associate the vehicle and the location device with the user account* in the memory; and
>
> *disassociate the vehicle and the location device from the dealer* in the memory.

Appx1493 (emphasis added). The Examiner concluded that:

> The dependent claims recite the abstract idea of the independent claim. The subject matter of claims . . . 24 (process disconnection notice) [and] . . . 26 (update ownership and account) . . . add additional steps to the abstract idea. These appear to be additional

> steps implemented on a generic computer. Generic computer implementation does not provide significantly more than the abstract idea.

Appx1304. The Applicant argued that the addition of location device to claim 22 overcame the § 101 rejection, Appx1274.[8] Regardless, the Examiner's reasoning was correct as to pending claims 24 and 26 and applies equally to claims 3 and 5 of the '598 patent because the claims and specification do not identify specific location device hardware or programming. Moreover, the claimed generic functional "association" and disassociation" steps, implemented on a generic remote computer, do not supply an inventive concept.

c. The claims do not provide a technological solution for solving a low battery detection problem.

Spireon's *third* asserted problem—"[s]olving a problem in which vehicles with a low battery can be remotely detected so the battery can be recharged and/or replaced"—is not a technological problem solved by the claimed invention. Appellant's Br. at 44. This problem simply recharacterizes the result of the claimed functions of "determining a voltage of the vehicle battery" or "location device battery" and "transmitting . . . an indication of low battery state" or "a disconnected vehicle battery or location device battery." Appx49 at col. 28, ll. 22– 25 (claim 7); Appx49 at col. 28, ll. 44–50 (claim 9); Appx50 at col. 29, ll. 10–16 (claim 13); Appellant's Br. at 53–54. The claims do no more than recite these conventional features,

[8] Claims 22-30 were ultimately cancelled by an Examiner's amendment included with the Notice of Allowance. Appx1245.

and the specification does not add anything more. *See, e.g.*, Appx43 at col. 7, ll. 53–55 ("[T]he location device may be configured to determine a state, voltage, and/or current of the vehicle battery, to determine if the location device is disconnected . . . ."); Appx42–43 at col. 14, l. 66–col. 15, l. 1 ("Determining that a battery is low or dying may comprise determining that the battery voltage and/or current are below a predetermined or dynamically chosen threshold."). Thus, not only do the claims fail to recite a technological solution, neither the claims nor the specification describes *how* to accomplish this aspirational goal. *Interval Licensing*, 896 F.3d at 1346.

Again, the prosecution history undercuts Spireon's arguments on this point. Spireon points to claims 7–10 and 13–14 as "providing additional limitations regarding voltage detection, alerts of a low-battery status, and power-conserving modes that are directed to additional inventive concepts." Appellant's Br. at 53–54; *see also* Appellant's Br. at 10, 40–43. But, in issuing a § 101 rejection, the Examiner determined that language like that to which Spireon now points was insufficient to supply an inventive concept. Appx1303–1304. For example, pending claim 28 recited:

> 28. A computer-implemented vehicle inventory management system according to claim 22, further comprising a location device management module operating on the processor, wherein the location device management module is configured to:

receive a low voltage signal from the location device corresponding to a low battery in at least one of the vehicle and the location device; and;

transmit, over the network, *a notice of the low voltage state* to the dealer.

Appx1493 (emphasis added). And pending claim 29 recited:

29. A computer-implemented vehicle inventory management system according to claim 22, wherein the location device management module is further configured to:

receive a low voltage signal from the location device corresponding to a low battery in at least one of the vehicle and the location device;

transmit, over the network, *upon a condition of the voltage of the at least one of the vehicle battery and the location device battery being below a predetermined threshold*, at least one of:

an *indication of a disconnected battery*;

and *a notice to the dealer associated with the location device*.

Appx1494 (emphasis added). The Examiner determined that:

The dependent claims recite the abstract idea of the independent claim. The subject matter of claims . . . 28/29 (receive voltage notification) . . . add additional steps to the abstract idea. These appear to be additional steps implemented on a generic computer. Generic computer implementation does not

> provide significantly more than the abstract idea.

Appx1304. As previously noted, the Applicant argued that the addition of location device to claim 22 overcame the § 101 rejection, Appx1274. Regardless, the Examiner's reasoning was correct as to pending claims 28 and 29 and applies to claims 7–10 and 13–14 of the '598 patent because the claims and specification do not identify specific location device hardware or programming. Moreover, the claimed generic "receiving," "transmitting," and "presenting" steps, implemented on a generic remote computer, do not supply an inventive concept. Furthermore, because the claims fail to specify *how* the location device determines battery voltage, the additional limitations regarding the generic location device do not supply an inventive concept.

d. The claims do not provide a technological solution for solving a power consumption problem.

Spireon's *fourth* asserted problem—"[s]olving a problem that prevents location devices from being constantly trackable by reducing the amount of power they consume, and thus improving location devices themselves"—is not a technological problem solved by the claimed invention. Appellant's Br. at 44. This problem simply recharacterizes the result of the claimed functions of "entering a power-saving mode" or "sleep state." Appx49 at col. 28, ll. 25–26 (claim 7); Appx49 at col. 28, ll. 34–52 (claim 8); Appellant's Br. at 53–54. The claims do no more than recite these conventional features, and the specification does not add anything more. *See, e.g.*, Appx42 at col. 14, ll. 45–49 ("the device or devices may be programmed . . . to operate in a low-power mode"); Appx42 at col. 14, ll.

56–61 ("a device may be programmed, for example with a script, to operate in a sleep mode"); Appx43 at col. 15, ll. 5–21 ("Operating in a sleep mode may further comprise the device entering a low-power, passive, sleep state, or similar mode of operation," waking up, and re-entering the sleep mode if no action is needed). Thus, not only do the claims fail to recite a technological solution, neither the claims nor the specification describes *how* to accomplish this aspirational goal. *Interval Licensing*, 896 F.3d at 1346.

2. The District Court Correctly Found That the '598 Patent Claims Recite a Conventional Application of the Abstract Idea of Managing Vehicle Inventory.

Spireon has not demonstrated that the district court erred in "find[ing] that the '598 Patent does nothing more than recite routine and conventional steps using off-the-shelf components." Appx19. Moreover, Spireon's arguments regarding conventionality—none of which were raised before the district court—fail to raise a factual dispute sufficient to alter the ultimate legal conclusion. *See Aatrix*, 882 F.3d at 1128 (explaining that, although *Alice* Step Two may include underlying factual questions regarding whether a particular feature is well-known, conventional, or routine, the ultimate question of whether there is an inventive concept is a question of law).

Spireon's argument that "[t]he '598 Patent's claims recite unconventional elements and a specific arrangement of steps that allow for an unconventional and inventive use and management of location devices in vehicles" lacks support. Appellant's Br. at 44–45. Aside from paraphrasing claim language, Spireon provides no citation to the patent demonstrating that any elements are unconventional, instead relying

wholly on attorney argument. *See generally id.* Thus, even if "for judgment on the pleadings, statements in the patent specification must also be read in the light most favorable to the non-movant," Appellant's Br. at 49, Spireon fails to point to any statements that, when read favorably, demonstrate unconventionality sufficient to supply an inventive concept.

The district court was correct that the '598 patent explains that a conventional off-the-shelf location device may be used to perform the claimed functions. Appx17–19.

> In accordance with the above, the location device may include a memory and a processor configured to be controlled by one or more instructions in the memory. The location device may be configured such that the processor can receive information from one or more sensors, from an antenna, and/or the like. The location device may be configured such that the processor can cause information to be transmitted by an antenna, a USB port, and/or the like. The location device may be configured to be always on and determining location information. *In an exemplary embodiment, a location device may be an off-the-shelf tracking device for a vehicle, for example for use by an end user, for user-based insurance, for fleet management, for managing driver behavior, and/or the like*.

Appx38 at col. 8, ll. 14–27 (emphasis added). This language contemplates that the claimed methods could utilize conventional off-the-shelf vehicle tracking devices that were already available for numerous applications. Implementation using generic computers and off-the-shelf technology does not supply an

inventive concept. *Chamberlain*, 935 F.3d at 1349 (declining to find an inventive concept where "transmitting information wirelessly was conventional at the time the patent was filed and could be performed with off-the-shelf technology"); *Elec. Power Grp.*, 830 F.3d at 1355 (declining to find an inventive concept where "[n]othing in the claims, understood in light of the specification, requires anything other than off-the-shelf, conventional computer, network, and display technology for gathering, sending, and presenting the desired information").

Spireon's suggestion, made for the first time on appeal, that the "['598] patent envisioned its invention becoming an off-the-shelf product—not that it already was one" is illogical. Appellant's Br. at 31–33. As Spireon emphasized to the district court, "the '598 Patent does not just address just <u>any</u> generic 'management' of a vehicle inventory for a dealer, it addresses a specific method for managing such inventory using a group of 'available location devices' that are 'owned by the dealer.'" Appx1529 (emphasis in original). Considering this focus, why would the inventors contemplate creating an off-the-shelf device for user-based insurance, fleet management, and managing driver behavior but not for managing dealer inventory? Even viewed in the most favorable light, Spireon's linguistic position is untenable.

Spireon's argument that the specification's reference to the location device as being "unique" provides context for "off-the-shelf" is also misplaced. Appellant's Br. at 32 (citing Appx37 at col. 4, ll. 44–52). Review of the parent application to which the '598 patent claims priority shows that "unique" referred to each of the multiple devices that may have differing protocols and applications that can be used for

machine-to-machine communication. *See* U.S. Patent App. Pub. No. 2011/0016514A1, ¶ [0017]. The parent application states:

> In accordance with various embodiments a method and system of machine-to-machine communication includes multiple unique devices utilizing device specific protocols, device specific networks, and device specific applications. The device specific protocols may include . . . .

Id. The language that "[o]ne or more of the unique devices may comprise a location device for a vehicle" was added as part of the continuation-in-part to provide an example of one type of device having a specific protocol and application that could be used for machine-to-machine communication—a "unique" device. Considering that the '598 patent lacks any disclosure regarding either location device structure or how to improve conventional location devices, even viewed in the light most favorable, nothing suggests the '598 patent claims a "unique" location device.

The district court was also correct that "[e]ither the '598 Patent adequately discloses how to achieve the functional results (it does not), or they are routine and conventional such that a PHOSITA would be able to determine them. Both cannot be true." Appx17. The '598 patent acknowledges that, where functional aspects are not described in detail, they should be considered conventional. Appx48 at col. 26, ll. 19–21 ("Indeed, for the sake of brevity, conventional manufacturing, connection, preparation, and other functional aspects of the system may not be

* * *

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

2021-1954

PROCON ANALYTICS, LLC,

Plaintiff-Appellee,

v.

SPIREON, INC.,

Defendant-Appellant.

Appeal from the United States District Court for the
Eastern District of Tennessee
in No. 3:19-cv-00201-JPM-HBG,
Judge Jon P. McCalla

JOINT APPENDIX

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* * *

17. Denied.

18. It is admitted that the list of "References Cited" on the '598 Patent contains patent documents filed or published after July 17, 2009. All other allegations in Paragraph 18 are denied.

19. Paragraph 19 is a legal conclusion to which no response is required. To the extent a response is required, Spireon denies the allegations of Paragraph 19.

20. Paragraph 20 is a legal conclusion to which no response is required. To the extent a response is required, Spireon denies the allegations of Paragraph 20.

21. Paragraph 21 is a legal conclusion to which no response is required. To the extent a response is required, Spireon denies the allegations of Paragraph 21.

PROCON'S ACTIVITIES

22. As set forth in its Counterclaims, Spireon believes that Procon makes, sells, and offers for sale products and services for managing vehicle inventory for dealerships that infringements on certain claims of the '598 Patent. Spireon lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 22.

23. As set forth in its Counterclaims, Spireon believes that Procon makes, sells, and offers for sale products and services for managing vehicle inventory for dealerships that infringements on certain claims of the '598 Patent. Spireon lacks knowledge or

information sufficient to form a belief about the truth of the remaining allegations in Paragraph 23.

24. As set forth in its Counterclaims, Spireon believes that Procon makes, sells, and offers for sale products and services for managing vehicle inventory for dealerships that infringements on certain claims of the '598 Patent. Spireon lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 24.

25. As set forth in its Counterclaims, Spireon believes that Procon makes, sells, and offers for sale products and services for managing vehicle inventory for dealerships that infringements on certain claims of the '598 Patent. Spireon lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 25.

26. As set forth in its Counterclaims, Spireon believes that Procon makes, sells, and offers for sale products and services for managing vehicle inventory for dealerships that infringements on certain claims of the '598 Patent. Spireon lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 26.

EXISTENCE OF AN ACTUAL CONTROVERSY

27. Exhibits 1 and 2 speak for themselves. To the extent Paragraph 27 attempts to restate or characterize those Exhibits, such restatement or characterization is denied.

28. Spireon is without information belief as to which "dealers and customers" Paragraph 28 is referencing and therefore lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 28. To the extent Spireon

sent letters to such "dealers or customers," such letters speak for themselves. To the extent Paragraph 28 attempts to restate or characterize those letters, such restatement or characterization is denied.

29. Paragraph 29 is a legal conclusion to which no response is required. To the extent a response is required, Spireon admits there is a justiciable controversy.

30. Denied.

COUNT 1: DECLARATORY JUDGMENT OF NON-INFRINGEMENT

31. Spireon incorporates by reference its responses to the preceding allegations.

32. Paragraph 32 is a legal conclusion to which no response is required. To the extent a response is required, Spireon admits there is a justiciable controversy. Except as admitted, Spireon denies the remaining allegations of Paragraph 32 and specifically denies that Procon is entitled to declaratory relief or other further relief.

33. Paragraph 33 is a legal conclusion to which no response is required. To the extent a response is required, Spireon admits there is a justiciable controversy. Except as admitted, Spireon denies the remaining allegations of Paragraph 33.

34. As set forth in its Counterclaims below, Spireon believes that Procon makes, sells, and offers for sale products and services for managing vehicle inventory for dealerships that infringe on certain claims of the '598 Patent. Spireon lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 34.

35. Spireon admits that claim 1 of the '598 Patent includes the language "in response to the location device becoming communicatively coupled with the vehicle, the location device transmitting a connection notice over a network, the connection notice comprising a vehicle identifier and a location device identifier." To the extent Paragraph 35 attempts to restate or characterize the '598 Patent, such restatement or characterization is denied.

36. As set forth in its Counterclaims, Spireon believes that Procon makes, sells, and offers for sale products and services for managing vehicle inventory for dealerships that infringe on certain claims of the '598 Patent. Spireon lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 36.

37. Denied.

38. Spireon admits that claims 2 through 14 depend on independent claim 1. Spireon denies the remaining allegations of Paragraph 38, and specifically denies that Procon does not infringe any valid and enforceable claim of the '598 Patent.

39. Denied.

COUNT 2: DECLARATORY JUDGMENT OF INVALIDITY

40. Spireon incorporates by reference its responses to the preceding allegations.

41. Paragraph 41 is a legal conclusion to which no response is required. To the extent a response is required, Spireon admits there is a justiciable controversy. Except as admitted, Spireon denies the remaining allegations of Paragraph 41.

42. Paragraph 42 is a legal conclusion to which no response is required. To the extent a response is required, Spireon admits there is a justiciable controversy. Except as admitted, Spireon denies the remaining allegations of Paragraph 42.

43. Paragraph 43 is a legal conclusion to which no response is required. To the extent a response is required, Spireon admits there is a justiciable controversy. Except as admitted, Spireon denies the remaining allegations of Paragraph 43 and specifically denies that Procon is entitled to declaratory relief or other further relief.

44. Spireon admits that U.S. Patent No. 8,452,673 is attached as Exhibit 4 and that the document speaks for itself. Except as admitted, the remaining allegations in Paragraph 44 are denied.

45. Spireon admits that U.S. Patent App. Pub. No. 2013/0033386 is attached as Exhibit 5 and that the document speaks for itself. Except as admitted, the remaining allegations in Paragraph 45 are denied.

46. Spireon admits that U.S. Patent No. 8,768,565 is attached as Exhibit 6 and that the document speaks for itself. Except as admitted, the remaining allegations in Paragraph 46 are denied.

47. Spireon admits that U.S. Patent No. 9,635,518 is attached as Exhibit 7 and that the document speaks for itself. Except as admitted, the remaining allegations in Paragraph 47 are denied.

48. Spireon lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 48.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Spireon denies that Procon is entitled to any of the relief requested in the Paragraph beginning with "WHEREFORE."

58. Any allegation not previous admitted or denied is hereby denied.

AFFIRMATIVE DEFENSES

1. Procon has failed to plead sufficient factual matter to state plausible claims for non-infringement or invalidity of the '598 Patent.

COUNTERCLAIM

By way of counterclaim against Plaintiff, Spireon would respectfully show the Court as follows:

1. Spireon is a leader in the field of connected vehicle intelligence. Its suite of products facilitates the tracking, management, and protection of vehicles in various commercial applications and industries. In particular, Spireon offers GPS lot management solutions to the automotive dealer industry.

2. Like Spireon, Plaintiff Procon Analytics, LLC ("Procon") has been providing products and services for dealership vehicle inventory management. In particular, Procon's Connected Dealer Services ("CDS") product is a GPS cloud-based management system

for dealer vehicle inventory. Procon also offers similar products to dealerships through various resellers.

3. Spireon is the owner of U.S. Patent No. 10,089,598 ("the '598 Patent") for "Methods and Apparatus for Monitoring and Control of Electronic Devices."

4. The '598 Patent was issued on October 2, 2018, based upon application number 14/692,598 filed on April 21, 2015. The application was a continuation-in-part of application number 12/505,325, which was filed on July 17, 2009, and is now U.S. Patent No. 9,516,394.

5. On information and belief, Procon learned of the '598 Patent prior to the filing of the present Complaint. For example, Procon alleges that it became aware of the '598 Patent at least as early as April 2, 2019, through correspondence received by Procon from Spireon.

6. Despite knowing of the '598 Patent and that its products and services infringe the '598 Patent, Procon has and continues to infringe the '598 Patent through making, selling, and offering for sale products and services for managing vehicle inventory for dealerships that infringe on certain claims of the '598 Patent, an/or through inducing or contributing to infringement by Procon's customers.

Claims for Relief

7. The allegations in the following Count I have evidentiary support or are likely to have evidentiary support after Spireon has a reasonable opportunity for further investigation or discovery.

8. Upon information and belief, Procon has been making, selling, offering for sale, and/or importing,

without license or authority from Spireon, CDS products that embody every limitation of claim 1 of the '598 patent.

9. Products and services identified herein are representative of Procon's infringing products and are not intended to be exhaustive. Additional products and services may be identified through discovery. Further, claim 1 of the '598 Patent identified below is merely representative and is not intended to reflect an exhaustive list of claims infringed by Procon's products and services.

Count I: Infringement of the '598 Patent

10. Spireon repeats, realleges, and incorporates the allegations in Paragraphs 1–9 as if fully restated forth herein.

11. Procon has infringed and continues to infringe claims of the '598 Patent in violation of 35 U.S.C. § 271(a), either literally or under the Doctrine of Equivalents.

12. The '598 patent is valid and enforceable.

13. Procon's infringement includes, but is not limited to, the manufacture, use, sale, offer for sale, and/or importation of CDS products.

14. For example, Procon makes, sells, and offers for sale products and services for managing vehicle inventory for dealerships that infringe claim 1 of the '598 Patent. Claim 1 of the '598 Patent recites:

> A method for managing a vehicle inventory for a dealer implemented by a computer having a processor and a memory, the method comprising:

[a] while a location device is not communicatively coupled with a vehicle, associating the location device with a dealer's group of available location devices in the memory, wherein the dealer's group of available location devices comprises location devices owned by the dealer that are not coupled with any vehicle;

[b] communicatively coupling the location device with a vehicle;

[c] in response to the location device becoming communicatively coupled with the vehicle, the location device transmitting a connection notice over a network, the connection notice comprising a vehicle identifier and a location device identifier;

[d] receiving, by the computer, the connection notice from the location device over the network;

[e] in response to the connection notice received by the computer, the processor:

[1] associating the location device identifier with the vehicle identifier in the memory; and

[2] disassociating the location device from the dealer's group of available location devices in the memory; and

[f] receiving, by the computer, current location information from the location device.

[Doc. 1-1, Page ID #40.]

15. By way of example, Procon's website describes CDS as a cloud-based GPS technology company that provides GPS-based systems to help auto dealers manage inventory. Upon information and belief, as well as Procon's website and publicly available marketing materials:

(a) When a dealer places an order, CDS devices are assigned to the dealer's account and then shipped to the dealer. Each device has an electronic serial number that is associated with the dealer's account.

(b) The CDS devices are installed in vehicles.

(c) When a CDS device is installed and the vehicle is started, the CDS device read the vehicle's VIN and transmits the information.

(d) More specifically, the information is transmitted to the dealer portal.

(e) In response, the vehicle's VIN is assigned to the device's electronic serial number in the dealer's account. The device is associated with the vehicle identifier and thus is no longer part of the dealer's group of available devices.

(f) The device subsequently transmits location information to facilitate vehicle tracking.

16. The infringing CDS products provide a method for dealer vehicle inventory management. When a dealer places an order, CDS devices are associated with the particular dealer's account and become part of the dealer's group of available devices. CDS devices are communicatively coupled with vehicles via the installation process, which results in the transmission of vehicle and device identifiers. In response, the

device identifier is associated with the vehicle identifier and is no longer part of the dealer's group of available devices. CDS devices subsequently transmit location information.

17. Each of the steps in Paragraph 14, above, is completed by or at the direction of Procon.

18. Procon will continue to directly infringe the '598 patent unless enjoined by the Court.

19. Procon's continued infringement of the '598 patent has harmed Spireon in the form of lost profits, loss of business opportunities, loss of goodwill, price erosion, and direct and indirect competition. Spireon has suffered and will continue to suffer monetary damages as a result of Procon's infringement of the '598 patent.

20. Procon has actual knowledge of the full contents of the '598 patent. Its prior and continuing infringement has been willful, wanton, and deliberate, justifying an award to Spireon of increased damages, attorneys' fees, and costs pursuant to 35 U.S.C. §§ 284–85.

* * *

II. STEP 1 – THE CLAIMS OF THE '598 PATENT ARE "DIRECTED TO" A PATENT-ELIGIBLE CONCEPT.

Procon suggests that the claims of the '598 Patent are simply directed to "managing an inventory." This is the exact type of description against which *Enfish* warned – one with a high level of abstraction and untethered from the language of the claims. *Enfish*, 822 F.3d at 1337. Procon's description is both inaccurate and incomplete for a number of reasons.

First, the '598 Patent does not address management of just any "inventory;" it addresses management of a "vehicle inventory." [Col. 27, ll. 6-32][1] Second, the '598 Patent does not address management of just any "vehicle inventory;" it address management of a vehicle inventory "for a dealer." [*Id.*] Third, the '598 Patent does not just address just any generic "management" of a vehicle inventory for a dealer; it addresses a specific method for managing such inventory using a group of "available location devices" that are "owned by the dealer." [*Id.*]

Fourth, the '598 Patent does not disclose using the "available location devices" in a generic sense but provides specific uses, functions, and qualities that provide a unique, undisclosed, and unconventional solution in the industry. These include:

- "[W]hile a location device is not communicatively coupled with a vehicle, associating the location device with a dealer's group of available location devices in memory, wherein the dealer's group of available location devices comprises location devices owned by the dealer that are not coupled with any vehicle."
- "[I]n response to the location device becoming communicatively coupled with the vehicle, the location device transmitting a connection notice . . . comprising a vehicle identifier and a location device identifier."
- Upon "receiving . . . the connection notice . . . associating the location device identifier with the vehicle identifier in the memory; and

[1] The '598 Patent is in the record as Document 1-3.

> dissociating the location device from the dealer's group of available location devices in memory;"

[Col. 27, ll. 6-32]. The dependent claims of the '598 Patent provide further specific and unconventional steps, for example:

- "[R]eceiving a disconnect notice from the location device . . . [,] determining that the vehicle is owned by the dealer . . . [,] and associating the location device in the dealer's group of available location devices." [Col. 27, ll. 39-50]
- "[D]eterming based on the updated ownership information that the vehicle has a new owner . . . creating . . . a user account for the new owner . . . [and] associating the vehicle and location device with the new owner; and dissociating the vehicle and location device with the dealer in memory." [Col. 27, ll. 59-66]

The foregoing describes a very specific way to "manag[e] inventory of a dealer" using location devices. As this Court has previously held, a claim can touch on an abstract idea as long as "the claim is directed to a particular method [of performing the abstract idea]." *Katz*, 2016 WL 1179218, at *6 (emphasis original).

Procon ignores each and every one of these aspects of the '598 Patent, often without any explanation at all and with terse indifference. (*See*, *e.g.*, Motion, at 5 ("[I]t is of no consequence that [the '598 Patent] recites 'a vehicle inventory of a dealer.'")). Procon provides absolutely no explanation as to why the limitation that "the dealer's group of *available location devices*

comprise[s] location devices *owned by the dealer*" is of "no consequence" other than to curtly mischaracterize this language as a step that only addresses "storing an association between a location device and a dealer in a computer memory." (*Id.*, at 6.) However, this language provides specific and concrete steps of a particular method for managing a dealer's inventory. Procon has provided nothing more than conclusory statements, which cannot possibly rise to the level of clear and convincing evidence that the claims are "directed to" an abstract idea.

Procon apparently extends its "no consequence" argument to the PTAB's decision in relation to the '598 Patent, which specifically found the "owned by the dealer" language to be critical in distinguishing the '598 Patent from prior art. [Doc. 17-1, PageID # 249 ("[W]e agree that [the prior art] does not disclose or teach that vehicle tracking devices are owned by the dealer.") Although discussing obviousness, the PTAB's decision turned largely on the significance of the "owned by the dealer" language in claim 1 over the prior art. [*Id.*] Given the PTAB's decision, it is not surprising that Procon decided to completely ignore this language in the Motion. However, the "owned by the dealer" language remains a key component and a significant aspect of claim 1 which shows that the claims of the '598 Patent go to a particular method of "managing a dealer's inventory," well beyond the abstract "managing an inventory."

Procon further argues that the "generically claimed location devices could be used to carry out the same steps to manage an inventory of anything – trailers, shipping containers, construction equipment." (Motion, at 7.) Again, this ignores the actual language of the claims of the '598 Patent – "managing *vehicle*

inventory for a dealer" using "location devices *owned by the dealer*" that are "communicatively coupl[ed] *with a vehicle*" and transmitting a "connection notice comprising a vehicle identifier and a location device identifier." [Col. 27, ll. 6-32]. Although Procon attempts to elicit the specter of broad preemption, Procon provides zero explanation – much less clear and convincing evidence – as to how that would actually occur.

The claims of the '598 Patent are not directed to the generic "managing an inventory" but are specific steps of a particular method of managing "a vehicle inventory for a dealer." Accordingly, the claims are not "directed to" only abstract ideas and thus, pass muster under the first step of *Alice*.

III. STEP 2 – EVEN IF "DIRECTED TO" AN ABSTRACT IDEA, THE CLAIMS OF THE '598 PATENT CONTAIN AN "INVENTIVE CONCEPT."

Even if the Court were to determine that the claims of the '598 Patent are directed only to a patent-ineligible abstract idea, the claims of the '598 Patent recite specific methods for managing vehicle inventory for a dealer using a location device in a specific way that allows dealers to

* * *