

**APPENDIX TO PETITION FOR
WRIT OF CERTIORARI**

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IN THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

No. 2024-1545

INNOVAPORT LLC,

Plaintiff-Appellant,

v.

TARGET CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court for
the Western District of Wisconsin in No. 3:22-cv-
00425-wmc, Judge William M. Conley.

Before Reyna, Stoll, and Cunningham, Circuit
Judges.

Decided: February 6, 2026

Opinion

Cunningham, Circuit Judge.

Innovaport LLC (“Innovaport”) appeals the
United States District Court for the Western District
of Wisconsin's grant of Target Corporation's (“Target”)
motion for summary judgment of invalidity under 35
U.S.C. § 101 for the asserted claims of U.S. Patent No.

8,775,260 (the “260 patent”), U.S. Patent No. 8,787,933 (the “933 patent”), U.S. Patent No. 9,489,690 (the “690 patent”), U.S. Patent No. 9,990,670 (the “670 patent”), U.S. Patent No. 7,231,380 (the “380 patent”), and U.S. Patent No. 7,819,315 (the “315 patent”). *See Innovaport, LLC v. Target Corp.*, No. 22-CV-425-WMC, 2024 WL 451308, at *7 (W.D. Wis. Feb. 6, 2024) (“Decision”). For the following reasons, we affirm.

I. Background

On January 20, 2023, Innovaport filed the operative First Amended Complaint, accusing Target of infringing one or more of the asserted claims of the ’260, ’933, ’690, ’670, ’380, and ’315 patents.¹ J.A. 201–31; see Decision at *1. The asserted patents each claim priority to U.S. Provisional Application No. 60/158,444 and share, in relevant part, a specification. See Decision at *1. The asserted patents claim systems and methods for providing product location within a store. *See, e.g.*, ’260 patent col. 16 ll. 26–57; ’933 patent col. 16 l. 32 to col. 17 l. 3; ’690 patent col. 16 ll. 18–45; ’670 patent col. 16 l. 41 to col. 17 l. 9; ’380 patent col. 16 l. 40 to col. 17 l. 5; ’315 patent col. 16 ll.

¹ The asserted claims are: Claims 1–4, 6, 7, 9–11, and 15–17 of the ’260 patent; claims 1, 3, 6, and 7 of the ’933 patent; claims 1, 4–6, and 9–14 of the ’690 patent; claims 1, 2, 4, 6–10, 12, and 14 of the ’670 patent; claims 1, 5, 13, 14, 22, 24, and 25 of the ’380 patent; and claims 1–5, 9, 12, 14, and 16–19 of the ’315 patent. Brief in Support of Target's Motion for Summary Judgment at 2, *Innovaport LLC v. Target Corp.*, No. 22-CV-425-WMC, 2023 WL 9196617 (W.D. Wis. Sept. 28, 2023), Dkt. No. 49 (“Target Summary Judgment Brief”).

24–50. The asserted patents explain that in stores that sell many products, shoppers may struggle to locate desired goods. ’260 patent col. 1 ll. 38–46. The asserted patents criticize prior art signs as being “difficult to read” and “limited in that only a small amount of information can be fit onto the signs.” ’260 patent col. 1 ll. 47–57. The asserted patents also explain that “asking an employee of the store to direct them to the products they are looking for” has the “significant disadvantages” that “store employees are not always able to provide clear instructions and, indeed, frequently do not themselves know where various products are located,” and that “a constant barrage of product location questions to employees from shoppers invariably detracts from the employees’ productivity.” ’260 patent col. 1 l. 58 to col. 2 l. 12. Moreover, the asserted patents note that “many modern stores have a computerized or other information system that is utilized to keep track of the stores’ inventory.” ’260 patent col. 2 ll. 21–29. The asserted patents seek to solve these issues with methods and systems for providing product location information within a store. *See, e.g.*, ’260 patent col. 3 l. 15 to col. 4 l. 10.

Claim 15 of the ’260 patent, which the district court found to be representative, Decision at *7, recites:

15. A method of providing product location information within a first store, the method comprising:

providing a hub that is at least indirectly in communication with each of a plurality of user

interfaces, and that is capable of accessing at least one database, the at least one database including both product location information and additional product-related information,

wherein the additional product-related information includes: information concerning a quantity of a first product within the store; information concerning a price of the product; information concerning an availability or unavailability of the product within the store; and information linking the product with another product in a cross-referential manner;

periodically engaging in the communication with each of the user interfaces, wherein the engaging in the communication includes: receiving inquiry signals from the user interfaces; querying the database to obtain portions of the product location information in response to the inquiry signals; and providing information signals in response to the inquiry signals for receipt by the user interfaces, wherein the information signals include portions of both the product location information and the additional product-related information, whereby the user interfaces are able to provide output signals based upon the information signals; wherein at least some of the communication is wireless communication.

'260 patent claim 15. Several other claims are narrower. For example, claim 1 of the '933 patent recites:

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1. A method of providing product location information within a first store, the method comprising:

providing a plurality of devices including a mobile device, wherein the plurality of devices are in communication with one another, wherein at least one of the devices includes at least one user interface, and wherein at least one of the devices includes at least one information storage device,

wherein the at least one information storage device includes both product location information and additional product-related information that includes information regarding at least one of information concerning a quantity of a first product within the store, information concerning a price of the product, information concerning a presence or absence of the product within the store, information concerning a time at which the product should be available at the store if the product is currently absent from the store, and information linking the product with another product in a cross-referential manner, and further information concerning at least one past location inquiry of a customer;

receiving an input signal at least indirectly by way of the at least one user interface;

querying the information storage device to obtain portions of the product location information and the additional product-related information in response to the input signal; and

providing a product location information signal in response to the input signal, for receipt by the at least one user interface, whereby the at least one user interface is able to provide an output signal based upon the product location information signal,

wherein the output signal provides at least one suggestion to the customer in accordance with one or more preferences of the customer, including location information concerning a location of at least one item of interest to the customer, the one or more preferences being obtained at least in part based upon the further information.

'933 patent claim 1; *see* Decision at *7.

Target moved for summary judgment of invalidity of all asserted claims under 35 U.S.C. § 101, while Innovaport cross-moved for partial summary judgment as to Target's § 101 defense. *See* Decision at *1. The district court granted Target's motion and denied Innovaport's motion.

Innovaport timely appealed. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(1).

II. Discussion

“We review the court's grant of summary judgment under the law of the regional circuit; here, the Seventh Circuit's *de novo* standard.” *Rapid Litig. Mgmt. Ltd. v. CellzDirect, Inc.*, 827 F.3d 1042, 1046–47 (Fed. Cir. 2016). “The issue of patent-eligibility

under § 101 is a question of law that we review without deference.” *Id.* at 1047.

To determine whether a patent claim is directed to patent-ineligible subject matter under 35 U.S.C. § 101, we apply the two-step framework set forth by the Supreme Court in *Mayo Collaborative Servs. v. Prometheus Lab'ys, Inc.*, 566 U.S. 66 (2012) and *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014). At step one, we determine whether the claims at issue are “directed to” a patent-ineligible concept. *Alice*, 573 U.S. at 217; *accord Mayo*, 566 U.S. at 77. At step two, we “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78–79). The Supreme Court has described the step two analysis “as a search for an ‘inventive concept.’” *Id.* at 217 (quoting *Mayo*, 566 U.S. at 72).

On appeal, Innovaport contends that the district court erred by determining claim 15 of the '260 patent to be representative of all the asserted claims across the six patents, Appellant's Br. 17–23, and by holding various claims invalid based on patent-ineligible subject matter at both step one and step two, Appellant's Br. 23–63. In its briefing and at oral argument, Innovaport presented argument on four sets of claims: (1) claim 1 of the '933 patent, Appellant's Br. 39–41, 50–51; (2) claim 15 of the '260 patent, Appellant's Br. 41–42, 51–52; (3) claim 1 of the '670 patent and claim 1 of the '690 patent, Appellant's Br. 34–39, 44–50, 54–55, which it concedes “rise and fall together,” Oral

Arg. 13:10–13:20, https://www.cafc.uscourts.gov/oral-arguments/24-1545_08062025.mp3; and (4) various claims of the '315 patent and the '380 patent, Appellant's Br. 52–54. We need not address Innovaport's representativeness argument, because even if we agreed that the differences among the claims are “material to the eligibility analysis,” we would still hold that “each separate claim (i.e., those not fairly represented by the purported representative claim) is ineligible for patenting.” *Mobile Acuity Ltd. v. Blippar Ltd.*, 110 F.4th 1280, 1291 (Fed. Cir. 2024); *King Pharms., Inc. v. Eon Labs, Inc.*, 616 F.3d 1267, 1278 (Fed. Cir. 2010) (“As an appellate court, we are not limited to a district court's stated reasons for invalidating claims and can affirm a grant of summary judgment on any ground supported by the record and adequately raised below.”); Target Summary Judgment Brief at 9–21 (addressing all asserted claims); see Decision at *7 (addressing Innovaport's “strongest example,” claim 1 of the '933 patent). Accordingly, at each step of the Alice/Mayo test, we begin by addressing and rejecting Innovaport's challenges applicable to claim 1 of the '933 patent,² before explaining why none of the other claims are patent eligible.

A.

We start with Innovaport's challenges to the district court's analysis under Alice/Mayo step one. As an initial matter, we reject Innovaport's argument

² A number of Innovaport's arguments are directed to all asserted claims. See Appellant's Br. 23–34. We address those arguments with respect to all asserted claims in the discussion regarding claim 1 of the '933 patent.

that the district court erred by characterizing all of the asserted claims as “directed to the abstract idea of collecting, analyzing, retrieving, and displaying information,” specifically by: “(1) collecting product-related information; (2) analyzing the product information (i.e., cross-referentially linking the products); (3) receiving a product-location inquiry; (4) retrieving product-location information in response to the query; and (5) presenting the product-location information plus some additional information.” Decision at *4; *see* Appellant's Br. 23–31. Innovaport contends that instead, the claims are “directed to a specific organization of data that produces a particular response when a customer submits a product location inquiry,” implemented by “linking related products in a database and providing a suggestion regarding a product.” Appellant's Br. 27. We disagree.

The district court's characterization accurately reflects that claim 1 of the '933 patent, for example, covers “receiving an input signal” from a user interface, “querying the information storage device to obtain portions of the product location information and the additional product-related information in response to the input signal,” “providing a product location information signal in response to the input signal ... based upon the product location information signal,” and “provid[ing] at least one suggestion to the customer in accordance with one or more preferences of the customer.” '933 patent claim 1. Beyond the addition of the words “specific organization of data,” Innovaport's characterization of the claims is not meaningfully different from the district court's characterization—both characterizations capture “linking the products” and

“presenting [] product-location information” and “additional information” after a user submits “a product-location inquiry.” Compare Appellant's Br. 27, with Decision at *4. There is no “specific organization of data” claimed beyond the functionally-claimed linking of two products. Accordingly, we agree with the district court's characterization of the asserted claims.

We also agree with the district court that claim 1 of the '933 patent is directed to an “abstract idea” of “collecting, analyzing, retrieving, and displaying information,” and “customizing information.” Decision at *4, *7.³ “[A] telltale sign of abstraction” is when the claimed functions are “mental processes that ‘can be performed in the human mind’ or ‘using a pencil and paper.’” *PersonalWeb Techs. LLC v. Google LLC*, 8 F.4th 1310, 1316 (Fed. Cir. 2021) (quoting *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371–72 (Fed. Cir. 2011)). We have previously held “analyzing information by steps people go through in their minds” and “collecting information, including when limited to particular content” to be abstract ideas. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) (“[M]erely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis.”).

³ The district court held that all asserted claims were directed to “collecting, analyzing, retrieving, and displaying information,” Decision at *4, and added “customizing information” for claim 1 of the '933 patent, Decision at *7.

Claim 1 of the '933 patent requires: (1) “receiving an input signal;” (2) “querying [an] information storage device to obtain portions of the product location information and the additional product-related information;” (3) “providing a product location information signal;” and providing “at least one suggestion to the customer in accordance with one or more preferences of the customer, including location information concerning a location of at least one item of interest to the customer.” Each of these steps could be performed by humans, or on pen and paper. A store clerk could receive a question from a customer regarding where a product is, use a catalog to determine where that product is, tell a customer where that product is, and give that customer a suggestion of another product location based on past inquiries from the customer. Thus, claim 1 of the '933 patent is focused on “collecting information, analyzing it, and displaying certain results,” which places [it] in the ‘familiar class of claims “directed to” a patent-ineligible concept.” *Trinity Info Media, LLC v. Covalent, Inc.*, 72 F.4th 1355, 1362 (Fed. Cir. 2023) (quoting *Elec. Power*, 830 F.3d at 1353). Even though claim 1 of the '933 patent requires a “mobile device” and an “information storage device,” it does not alter the analysis. *See, e.g., In re TLI Commc'ns LLC Pat. Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016) (“[A]lthough the claims limit the abstract idea to a particular environment—a mobile telephone system—that does not make the claims any less abstract for the step 1 analysis.”). Thus, claim 1 of the '933 patent is directed to an abstract idea.

The specification confirms that the asserted claims are directed to an abstract idea using

computers as a tool, not an improvement in computer capabilities. For “software-based inventions” such as this one, “Alice/Mayo step one ‘often turns on whether the claims focus on the specific asserted improvement in computer capabilities or, instead, on a process that qualifies as an abstract idea for which computers are invoked merely as a tool.’” *Trinity*, 72 F.4th at 1362–63 (quoting *In re Killian*, 45 F.4th 1373, 1382 (Fed. Cir. 2022)). The specification describes the business drawbacks of shoppers “asking an employee of the store to direct them to the products they are looking for,” ’260 patent col. 1 l. 58 to col. 2 l. 12, and recites “generic computing terms,” *Trinity*, 72 F.4th at 1364, such as “user interfaces,” ’260 patent col. 4 l. 59, “a central computer database,” *id.* col. 5 ll. 30–31, “standard communications protocols,” *id.* col. 5 l. 65, and “a standard typewriter (QWERTY-type) keyboard,” *id.* col. 10 l. 14–15. In other words, the specification focuses on how to solve a business problem using off-the-shelf technology, rather than an improvement to computer technology. The specification supports holding that the claims are directed to an abstract idea.

Innovaport contends that the asserted “claims recite a ‘specific technique’ that improved the technical functioning of the computer network, e.g., linking related products in the database provided a more efficient way to store product information and to present pertinent information to a customer (including information that was not requested by the customer) in response to an inquiry.” Appellant's Br. 29. Similarly, Innovaport contends that claim 1 of the ’933 patent is not abstract because it recites “providing a suggestion

for an ‘item of interest’ based upon a past search of a customer.” Appellant's Br. 40.

However, the purported technical advantage Innovaport suggests is that “the customer[s] receive[] information in real-time about the product they were looking for (e.g., product location of a toothbrush) and information about related products that was not requested (e.g., floss is on sale).” Appellant's Br. 29. But “improving a user's experience while using a computer application is not, without more, sufficient to render the claims directed to an improvement in computer functionality” or the functionality of the “network platform itself.” *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359, 1365 (Fed. Cir. 2020); *see, e.g., Trinity*, 72 F.4th at 1364 (“[A]sserted claims can be directed to an abstract idea even if the claims require generic computer components or require operations that a human could not perform as quickly as a computer.”); *Elec. Power*, 830 F.3d at 1351–54 (affirming judgment of invalidity under section 101 where claims cover real-time monitoring of a power grid). And both linking products and providing users suggestions based on their preferences and history are longstanding methods of human activity, not new technological innovations. *See, e.g., Intell. Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1327–28 (Fed. Cir. 2017) (holding claims on “organizing and accessing records through the creation of an indexsearchable database” directed to an abstract idea and noting that libraries “organize and cross-reference information and resources”); *Intell. Ventures I LLC v. Cap. One Bank (USA)*, 792 F.3d 1363, 1369–70 (Fed. Cir. 2015) (holding claims on tailoring information based

on a “viewer's location” or “navigation data” are directed to an abstract idea).

This case is distinguishable from the cases cited by Innovaport. For example, Innovaport relies on *Data Engine Technologies LLC v. Google LLC*, 906 F.3d 999, 1003, 1010–11 (Fed. Cir. 2018), in which we held that claims directed to a “method of implementing a notebook-tabbed interface, which allows users to easily navigate through three-dimensional electronic spreadsheets” were patent eligible, and *SRI International, Inc. v. Cisco Systems, Inc.*, 930 F.3d 1295, 1303 (Fed. Cir. 2019), in which we held to be patent-eligible claims directed to “using a plurality of network monitors that each analyze specific types of data on the network and integrating reports from the monitors.” Appellant's Br. 27–29. Unlike here, the claims in each of those cases were patent-eligible because they presented technological solutions to technological problems. Thus, we agree with the district court that claim 1 of the '933 patent is directed to an abstract idea.⁴

⁴ Innovaport contends throughout that the district court erred by deviating from its prior reasoning in *Innovaport LLC v. Lowe's Home Ctrs., LLC*, No. 21-CV-418-WMC, 2022 WL 1078548, at *1–3 (W.D. Wis. Apr. 11, 2022), in which the same judge denied a Rule 12(b)(6) motion to dismiss several of the same claims at issue here. See, e.g., Appellant's Br. 8–10, 12–14, 24–26, 38–39, 41–43. Innovaport cites no basis to preclude the district court from changing its mind about the merits of Innovaport's litigation position. Cf. *Beacon Oil Co. v. O'Leary*, 71 F.3d 391, 395 (Fed. Cir. 1995) (“[T]here can be no collateral estoppel against a [party] who has not had ‘a full and fair opportunity to litigate the

The remaining claims fare no better. Innovaport notes that claim 15 of the '260 patent is the “broadest of the 55 asserted claims.” Appellant's Br. 17. Innovaport contends that claim 15 of the '260 patent “recites storing specific types of information in a database in addition to product location information,” and “specifies that at least some of the communication within the system is wireless communication, which further limits the configuration of the recited claim elements.” Appellant's Br. 41–42. Storing specific types of information is merely “collecting information,” which falls “within the realm of abstract ideas.” *Elec. Power*, 830 F.3d at 1353. And wireless communication is a “routine process[] implemented by a general-purpose device (e.g., a handheld mobile device) in a conventional way.” *United Servs. Auto. Ass'n v. PNC Bank N.A.*, 139 F.4th 1332, 1337 (Fed. Cir. 2025) (holding patent-ineligible a claim that included a limitation of “using a wireless network”). Thus, claim 15 is directed to an abstract idea.

Innovaport contends that claim 1 of the '670 patent and claim 1 of the '690 patent are not directed to an abstract idea because they recite “information storage device[s]” that “include[] both product location information and additional product-related information linking a product with an other [sic] product in a cross-referential manner,” along with an output signal that “includes location information concerning the product and also provides at least one suggestion related to the other product.” Appellant's Br. 34; '670

claim' at issue.” (second alteration in original) (*quoting Mendenhall v. Cedarapids, Inc.*, 5 F.3d 1557, 1571 (Fed. Cir. 1993)).

patent claim 1; *see* '690 patent claim 1. Innovaport's example of this is that “if a customer searches for a toothbrush, the output signal may include location information for the toothbrush (as requested by the customer) and additional information about a sale on floss (which was not requested by the customer).” Appellant's Br. 34. As the specification explains, the information storage device can be a generic computer with “processing circuitry and a database containing product location information,” '260 patent col. 3 ll. 32–38, and the output signal, as exemplified by Innovaport's toothbrush hypothetical, is a patent-ineligible “method of organizing human activity.” *Alice*, 573 U.S. at 220. Claim 1 of the '670 and claim 1 of the '690 patent, which “rise and fall together,” Oral Arg. at 13:10–20, are directed to an abstract idea.⁵

The '380 and the '315 patents contain system claims. Innovaport contends that the following limitations render certain claims of the '380 and '315 patents non-abstract, *see* Appellant's Br. 52–54: (1) A “user interface” positioned in a store “in a substantially stationary manner,” *see* '380 patent claim 1; '315 patent claim 1; (2) “a database containing product location information and additional product-related information including product availability information,”

⁵ Innovaport contends that, because claim 1 of the '670 patent and claim 1 of the '690 patent overcame a § 101 challenge during examination, the district court failed to apply the presumption of validity. Appellant's Br. 54–55. However, “[t]here is no indication the district court failed to presume the patents were valid. And courts are not required to defer to Patent Office determinations as to eligibility.” *Sanderling Mgmt. Ltd. v. Snap Inc.*, 65 F.4th 698, 705 (Fed. Cir. 2023).

see '380 patent claim 1; (3) an information signal that, when a product is unavailable, is configured “so that the output signal provided by the user interface does not provide an indication that the product is available at the location,” *see* '380 patent claim 1; (4) updating the database “to reflect changes in inventory occurring within the store,” *see* '380 patent claim 22; (5) storage in a database of “product location information, product availability information, and product promotion information,” *see* '380 patent claim 25; (6) “a hub,” *see* '315 patent claim 1; and (7) “a receiver configured to receive” “a voice signal” and “a speaker configured to provide” “a synthesized voice signal,” *see* '315 patent claim 2. We have reviewed the asserted claims of the '380 and '315 patents and conclude that nothing in them meaningfully differentiates them from claim 1 of the '933 patent. All asserted claims of both the '380 and '315 patents either add conventional technology or additional abstract ideas that do not render the claims directed to non-abstract ideas. Accordingly, we conclude that all 55 asserted claims are directed to abstract ideas at Alice/Mayo step one.

B.

We now turn to Innovaport's challenges to the district court's analysis under Alice/Mayo step two. Appellant's Br. 42–52. Innovaport contends that claim 1 of the '933 patent, claim 1 of the '670, and claim 1 of the '690 patent each contain an inventive concept in the combination of “linking” two products together in a cross-referential manner, giving a “suggestion” to a customer for another product, when the customer

searches for one product, and using a “mobile device.”⁶ See Appellant's Br. 42–52. Each of these purported inventive concepts fails, either alone or in combination.

“Linking” two products in a cross-referential manner and providing a recommendation about another product are not inventive concepts because they are merely the abstract ideas. “It has been clear since *Alice* that a claimed invention's use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.” *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018).

The “mobile device” does not provide an inventive concept because it is a “mere recitation of a generic computer” that “cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 573 U.S. at 223. The specification discloses that the mobile devices “can include, for example, telephone or walkie-talkie type units, headphones, specialized eyewear, etc.” ’260 patent col. 14 ll. 42–44. Accordingly, “the mobile device is a piece of generic hardware,” *USAA*, 139 F.4th at 1339, that does not save the asserted claims at *Alice*/Mayo step two.

Nor is this a case where an “ordered combination of limitations” gives rise to an inventive concept. *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016). The claims

⁶ As noted above, the “suggestion” in the ’933 patent is based on a user's past inquiries, while the ’670 and ’690 patents contain no such limitation.

recite nothing more than routine business steps, implemented on a computer, rather than “fundamentally chang[ing] or improv[ing] how a computer functions.” *USAA*, 139 F.4th at 1339; *cf.* Appellant's Br. 47–49 (citing *Bascom*, 827 F.3d at 1350–51). Innovaport has not identified any inventive concept arising from any claims, individually or in an ordered combination.

Lastly, Innovaport contends that summary judgment should be denied because there are still material disputes of fact, namely that cross-referencing, providing suggestions based on past searches, and receiving inquiries on mobile devices were unconventional and not well-understood or routine. Appellant's Br. 61–62. There is no genuine dispute as to any material fact: Cross-referencing and providing suggestions are abstract ideas, so even if they are “[g]round-breaking, innovative, or even brilliant,” ... that is not enough for eligibility.” *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018) (first alteration in original) (*quoting Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013)). Additionally, as discussed above, the asserted patents themselves indicate the mobile devices are generic and conventional. Accordingly, the district court did not err by granting summary judgment.

III. Conclusion

We have considered Innovaport's remaining arguments and find them unpersuasive.⁷ We affirm the

⁷ Innovaport's argument regarding patent office eligibility guidance is unpersuasive. Appellant's Br. 55–61. Patent office

district court's judgment that the asserted claims are invalid under § 101.

AFFIRMED

guidance “is not, itself, the law of patent eligibility, does not carry the force of law, and is not binding in our patent eligibility analysis.” *In re Rudy*, 956 F.3d 1379, 1382 (Fed. Cir. 2020).

**In the United States District Court for the
Western District of Wisconsin**

INNOVAPORT, LLC,

Plaintiff,

22-cv-425-wmc

v.

TARGET CORPORATION,

Defendant.

Signed February 6, 2024

OPINION AND ORDER

WILLIAM M. CONLEY, District Judge

In this patent case, plaintiff Innovaport, LLC, asserts infringement claims against defendant Target Corporation based on six patents related to methods and systems for providing retail product information. The parties have filed cross motions for summary judgment. In its motion, Target argues that Innovaport's asserted claims are invalid under 35 U.S.C. § 101 because they are directed to an abstract idea and recite no inventive concept. For the reason explained below, the court agrees that claim 15 of the '260 patent is directed to abstract ideas of collecting, analyzing, retrieving and presenting information without reciting an inventive concept to make the claim patent

eligible. Moreover, because all of the other patents in suit are directed to the same abstract idea, the court finds that claim 15 is representative of all of plaintiff's asserted claims of infringement as a matter of law. Accordingly, the court will grant defendant's motion for summary judgment and deny plaintiff's motion for partial summary judgment. Having been rendered moot by this ruling, the court will also deny defendant's motions for claims construction, to strike plaintiff's expert's declaration, and for a claims construction hearing.

BACKGROUND¹

Plaintiff Innovaport is a Wisconsin limited liability corporation with its principal place of business in Mequon, Wisconsin. Defendant Target is a corporation with its principal place of business in Minneapolis, Minnesota. In this lawsuit, Innovaport asserts that Target infringed U.S. Patent Nos. 8,775,260 (the “ ’260 patent”); 8,787,933 (the “ ’933 patent”); 9,489,690 (the “ ’690 patent”); 9,990,670 (the “ ’670 patent”); 7,231,380 (the “ ’380 patent”); and 7,819,315 (the “ ’315 patent”).

The asserted patents all claim priority to Provisional Application No. 60/158,444, which was filed on October 9, 1999, and have similar specifications. Referring to the ’260 patent, the patents purport to “provid[e] product location information within a store.” (’260 patent (dkt. #28-1) at 1:24-26.)

¹ The following facts are material and undisputed for purposes of summary judgment.

According to the '260 patent background, an increase in the number of different products sold in stores and the proliferation of “warehouse-type” stores made it difficult for customers to find the products they wanted. (*Id.* at 1:30-46.) Consequently, shoppers often had to ask a store employee to direct them to their desired products. (*Id.* at 1:58-60.) As noted in the background, however, there were disadvantages to this approach: store employees might be unable to provide clear instructions; and a “constant barrage” of product location questions could hamper employee productivity. (*Id.* at 1:62-2:10.) Further, the background noted that many stores already had a computerized inventory system that tracked key product information, like the quantity of available products and product locations. (*Id.* 2:21-29.) Thus, utilizing the existing computerized inventory system to address customer-specific requests would afford various identified advantages, including: “systems [for providing product information that] were easily accessed by customers ... in a rapid and convenient manner”; “employ[ing] a system with user interfaces that are conveniently accessible by customers from a number of locations within a given store”; making “use of modern electronic interface technologies”; and “interconnect[ing]” such a system “with existing ... computerized or other information systems within stores.” (*Id.* at 2:59-3:11.)

OPINION

Summary judgment must be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party bears the burden of showing that the facts material to the motion are not in dispute. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The non-moving party may not avoid summary judgment merely by showing that some facts are in dispute; rather, it must establish that there are factual issues that might affect the outcome of the suit under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Although the court must “take all facts and reasonable inferences in the light most favorable to” the non-moving party, *Helman v. Duhaime*, 742 F.3d 760, 761 (7th Cir. 2014), that party must still come forth with enough evidence to support a reasonable jury verdict in its favor. *Delta Consulting Grp., Inc. v. R. Randle Constr., Inc.*, 554 F.3d 1133, 1137 (7th Cir. 2009).

Here, among other things, defendant argues that it is entitled to summary judgment because the claims are unpatentable, abstract ideas -- retrieving and providing information -- and present no inventive concepts.²

² Alternatively, defendant argues that plaintiff's infringement theories are flawed in whole or in part because: (1) defendant's website and mobile application do not infringe when used remotely; (2) its website and mobile application do not have “user

I. Patent-Eligible Subject Matter

Section 101 of the Patent Act defines patentable subject matter: “Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. This section also contains “an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013) (alteration adopted and emphasis added).

Setting up a two-stage framework, the Supreme Court has held that a claim falls outside § 101 where: (1) it is “directed to” a patent-ineligible concept, like an abstract idea; and (2) the particular elements of the claim, considered “both individually and ‘as an ordered combination,’” do not add enough to “‘transform the nature of the claim’ into a patent-eligible application.” *Alice Corp. Pty. v. CLS Bank Int’l*, 573 U.S. 208, 217-18 (2014) (quoting *Mayo Collaborative Servs. v. Prometheus Lab’ys, Inc.*, 566 U.S. 66, 77-79 (2012)). Under this Alice framework, the first-stage inquiry looks to “the focus of the claims, their character as a

interfaces”; (3) it does not provide mobile devices; and (4) plaintiff has not shown “periodic” communication with any user interface. Defendant further argues that it could not have willfully infringed plaintiff’s patents, and plaintiff’s asserted claims are invalid for lack of a written description. Because the court will grant summary judgment on § 101 grounds, it need not address these additional arguments.

whole,” while the second-stage inquiry looks “precisely at what the claim elements add—specifically, whether, in the Supreme Court’s terms, they identify an ‘inventive concept’ in the application of the ineligible matter to which (by assumption at stage two) the claim is directed.” *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016).

Because the exceptions to § 101 “are the basic tools of scientific and technological work,’ the Court has emphasized [its] concern that a patent claim which ties up a law of nature or an abstract idea ‘might tend to impede innovation more than it would tend to promote it.’” *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1343 (Fed. Cir. 2018) (*quoting Mayo*, 566 U.S. at 71); *see also Le Roy v. Tatham*, 55 U.S. (14 How.) 156, 175, 14 L. Ed. 367 (1853) (“A patent is not good for an effect, or the result of a certain process,” for such patents “would prohibit all other persons from making the same thing by any means whatsoever.”). The Federal Circuit has likewise stressed that “a claimed invention must embody a concrete solution to a problem having the specificity required to transform a claim from one claiming only a result to one claiming a way of achieving it.” *Interval Licensing*, 896 F.3d at 134. Nevertheless, courts must be careful using the invalidity tool because “all inventions ... embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Alice*, 573 U.S. at 217.

Before beginning the § 101 analysis, the court will briefly address plaintiff’s two procedural arguments. First, plaintiff argues that this court held as a matter

of law in *Innovaport LLC v. Lowe's Home Centers, LLC*, No. 21-CV-418-WMC, 2022 WL 1078548 (W.D. Wis. Apr. 11, 2022), that the claims in the patents in suit were non-abstract and contained an inventive concept. While addressed at the motion to dismiss stage, this court did hold in *Innovaport* that the defendant “arguably overgeneralize[d]” plaintiff’s claims by not addressing that the claims required presenting some “additional information,” such that the patents were not solely directed at an abstract idea. *Id.* at 3 (quotation marks omitted). Accordingly, this court held the “additional information” requirement was “at least facially the very type of inventive concept sufficient to transform the claimed abstract idea into a patent eligible application.” *Id.* (emphasis added and quotation marks omitted).

However, this case is distinguishable from *Innovaport* because defendant has now moved for summary judgment and shown that the material facts to its motion are not in dispute. *See Celotex Corp.*, 477 U.S. at 323. Specifically, defendant has offered evidence and argument supporting its assertions that not only the general claims are abstract and non-inventive but the requirement of “additional information” is itself an abstract idea.

Second, plaintiff argues that its patents are presumptively valid, and it is entitled to summary judgment on § 101 patent eligibility because the U.S. Patent and Trademark Office (“Patent Office”) concluded that the ’690 and ’670 patents were patent eligible under § 101. To begin, although during the prosecution of the ’670 and ’690 patents, the patent examiner

initially rejected the claims under § 101, after plaintiff amended each patent to add, among other things, a limitation of providing “additional product-related information” in response to a product location inquiry, the examiner concluded that the claims satisfied § 101 and were patent eligible. (Amendment to ’690 patent (dkt. #66-2) 2; Amendment to ’670 patent (dkt. #66-5) 2.) Further, the court does presume that plaintiff’s patents are valid, and defendant must prove invalidity by clear and convincing evidence. *Ameritox, Ltd. v. Millennium Health, LLC*, 88 F. Supp. 3d 885, 902 (W.D. Wis. 2015). However, the court is not required to defer to the Patent Office’s § 101 eligibility determinations and will not do so here. *Sanderling Mgmt. Ltd. v. Snap Inc.*, 65 F.4th 698, 705 (Fed. Cir. 2023).

II. Claim 15 of the ’260 Patent

The ’260 patent describes an apparatus and method for providing product-location information to customers in a store. Specifically, claim 15 of the ’260 patent provides as follows:

15. A method of providing product location information within a first store, the method comprising:

providing a hub that is at least indirectly in communication with each of a plurality of user interfaces, and that is capable of accessing at least one database, the at least one database including both product location information and additional product-related information,

wherein the additional product-related information includes: information concerning a quantity of a first product within the store; information concerning a price of the product; information concerning an availability or unavailability of the product within the store; and information linking the product with another product in a cross-referential manner;

periodically engaging in the communication with each of the user interfaces, wherein the engaging in the communication includes:

receiving inquiry signals from the user interfaces;

querying the database to obtain portions of the product location information in response to the inquiry signals; and

providing information signals in response to the inquiry signals for receipt by the user interfaces, wherein the information signals include portions of both the product location information and the additional product-related information, whereby the user interfaces are able to provide output signals based upon the information signals;

wherein at least some of the communication is wireless communication.

A. Alice Step One: Claim 15 is Abstract

Defendant argues that Claim 15 is directed to the abstract idea of (1) receiving a user inquiry, (2) querying a database in response to the inquiry, and (3) providing product-location and “additional” information. Plaintiff responds that defendant overgeneralizes the claim because it also recites storing data cross-referentially and providing additional information to product-location inquiries. However, “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims directed to a patent-ineligible concept.” *Electric Power Grp.*, 830 F.3d at 1353 (quotation marks omitted). “Information as such is an intangible, hence abstract, and collecting information, including when limited to particular content (which does not change its character as information), is within the realm of abstract ideas.” *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (quotation marks omitted and alteration adopted).

For example, in *Electric Power*, the Federal Circuit considered claims “for performing real-time performance monitoring of an electric power grid by collecting data from multiple data sources, analyzing the data, and displaying the results.” 830 F.3d at 1351. Nevertheless, the court concluded these claims were directed to the abstract idea of “gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing these functions.” *Id.* at 1354. Similarly, in *West View Research, LLC v. Audi AG*, 685 F. Appx. 923 (Fed. Cir. 2017), the Federal Circuit considered a patent claim to a “computer readable apparatus” that can “receive input from a

user via ... function keys,” “forward the input to a remote networked server for determination of ... [the] context associated” with the user’s input and “selection of advertising content,” and “present the received content” to the user. *Id.* at 926 (quotation marks omitted). The court similarly determined that the claim was directed at an abstract idea of receiving data queries, analyzing the queries, retrieving information in response, and generating a response to the queries. *Id.* (quotation marks omitted).

Like in *Electric Power* and *West View Research*, the claims asserted here are, at bottom, directed to the abstract idea of collecting, analyzing, retrieving, and displaying information. Specifically, the claims are directed at: (1) collecting product-related information; (2) analyzing the product information (i.e., cross-referentially linking the products); (3) receiving a product-location inquiry; (4) retrieving product-location information in response to the query; and (5) presenting the product-location information plus some additional information. Plaintiff does not assert that the claim requires any inventive technology for performing these functions, and plaintiff’s expert, Jess Stricchiola, stated that the claim did not require any unconventional computer or network hardware. (Stricchiola Dep. (dkt. #65) 20.) Thus, while the claim does list network components (like a hub), it is not focused on an “improvement to computer functionality itself.” *Enfish, LLC v. Microsoft Corp.* 822 F.3d 1327, 1336 (Fed. Cir. 2016) (claims not abstract when “the plain focus of the claims is on an improvement to computer functionality itself”). Indeed, as explained by the inventor of the ’260 patent, John Pienkos, the asserted

patents sought to improve upon the “traditional employee-customer relationship” by creating better and more accessible records. (Pienkos Dep. (dkt. #53) 14.)

Next, reciting storing information in a “cross-referential manner” or providing “additional product-related information” does not make claim 15 non-abstract. First, as to “cross-referential” storing of information, the relevant limitation from claim 15 refers generally to “information linking the [searched for] product with another product in a cross-referential manner.” (’260 patent (dkt. #28-1) at 18:44-45.) Taking the claim in the light most favorable to plaintiff, the court construes that limitation to mean “data linking a product to a different type of product.” (Claims Constr. Table (dkt. #36) at 2); *See Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1349 (Fed. Cir. 2014) (endorsing the district court’s construction of claim terms “in the manner most favorable to [the patent holder]” in deciding § 101 eligibility). Even with that favorable construction, however, the claim contains no requirement for linking the products other than requiring them to be different. This expansive requirement is really no limitation at all because any two, different products could be linked in any way and still satisfy the patent.

Moreover, plaintiff’s expert, Stricchiola, testified at her deposition that the claims referred to “cross-linking” in a “general sense,”³ and there was “nothing in the patents that specify particular algorithms or

³ Stricchiola used the terms “cross-referencing” and “cross-linking” interchangeably. (Stricchiola Dep. (dkt. #65) 30-31.)

processes by which cross-linking can occur.” (Stricchiola Dep. (dkt. #65) 30-31.) She further acknowledged that how the cross-referencing was performed did “not appear to be limited.” (*Id.* at 31.) Thus, even construing the claim favorably to plaintiff and considering plaintiff’s expert testimony, it only requires a result - - cross-referentially linking different products -- with no limitation on how to produce that result. *See Interval Licensing*, 896 F.3d at 1345 (invention encompassed patent-ineligible abstract concept because, as construed, it “demand[ed] the production of a desired result ... without any limitation on how to produce that result”).

Nevertheless, plaintiff suggests in its brief that the “cross-referential” limitation could link toothpaste and floss. (Pl.’s Br. (dkt. #56) 14.) While that is a logical product-category-based pairing, it is the claim that matters to the § 101 analysis, *Accenture Global Servs., GMBH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013), and claim 15 has no requirement for linking products by category. And, even if the claim did recite a system of organizing and cross-referencing products based on product category (like toothcare), such activity was “longstanding conduct that existed well before the advent of computers and the Internet.” *Intell. Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1327 (Fed. Cir. 2017) (concluding that organizing and accessing records through index-searchable database was longstanding conduct and pointing out that a library-indexing system “organize[d] and cross-reference[d] information ... by certain identifiable tags, e.g., title, author, subject” (emphases added)).

Second, claim 15 does list some specific, “additional product-related information,” like product quantity, price, availability, and other linked products -- to be collected, analyzed, retrieved, and presented, but limiting the information to a type of content does not change its character as information. *SAP Am., Inc., LLC*, 898 F.3d at 1167. Likewise, simultaneously displaying two sets of information, like product location and “additional product-related information,” does not make the claim patent eligible. *See Interval Licensing*, 896 F.3d at 1344 (“Standing alone, the act of providing someone an additional set of information without disrupting the ongoing provision of an initial set of information is an abstract idea.”)

Plaintiff’s remaining two arguments as to why claim 15 is non-abstract fail for much the same reason: the claim is result-centric and does not explain how it achieves the desired result. First, plaintiff argues that claim 15 somehow made technological advances by (1) storing product-location information in a database that is accessible to customers, (2) storing product information in a database that links related products together, and (3) providing product-location information in response to a customer inquiry plus some product-related information that the customer did not request. However, each of these alleged improvements are directed to a result, and even if the claims recited improved or innovative results (like a customer-accessible database containing product-location information plus some “additional information”) that is not enough to make the claim patent eligible. *See Koninklijke KPN N.V. v. Gemalto M2M GmbH*, 942 F.3d 1143, 1150 (Fed. Cir. 2019) (“An

improved result, without more stated in the claim, is not enough to confer eligibility to an otherwise abstract idea.”).⁴

Second, plaintiff cites to *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), and *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356 (Fed. Cir. 2018), arguing that its claim improves functionality by enabling customers to access information in real-time and providing additional product information. In *DDR*, the Federal Circuit addressed a claim directed at the problem of retaining website visitors who would be transported away from the host's website after clicking on an advertisement. 773 F.3d at 1257. As an example, a claim called for generating a “hybrid web page that combines visual look and feel elements from the host website and product information from the third-party merchant's website related to the clicked advertisement.” *Id.* The court found that claim non-abstract and patent eligible because it was “necessarily rooted in computer technology in order to overcome” a network-specific problem and “recite[d] a specific way to automate the creation of a composite web page.” *Id.* at 1257, 1259. In *Core Wireless Licensing*, the Federal Circuit similarly held patents disclosing improved display interfaces that allowed quicker access to desired data via

⁴ There is also at least some evidence that one of plaintiff's proposed advances -- storing product information in a database that links related products together -- was already known in the relevant art, since by 1993, kiosks already allowed customers to “locate details of substitute items if a given product is not in stock” and advised customers “about the purchase of extras.” (Rowley Article (dkt. #41-21) 2.)

an “application summary window,” were directed to improving the user interface for computing devices, and thus, were non-abstract. 880 F.3d at 1359, 1362. In so holding, the court acknowledged that while the idea of summarizing information existed prior to the invention, it upheld the claims over a § 101 challenge because they also disclosed “a specific manner of displaying a limited set of information to the user.” *Id.* at 1362. Specifically, by way of example, the court upheld a claim that required (1) an “application summary window” accessed directly from the menu (2) presenting certain data and (3) displayed when one or more device applications were in an “un-launched state.” *Id.* at 1362-63.

However, the patent claim at issue here is readily distinguishable from the example claims considered by the federal circuit in *DDR* and *Core Wireless* because claim 15 neither recites a “specific way” nor a “particular manner” of linking products or providing additional product-related information. To be sure, like the claims in *Core Wireless*, claim 15 requires presenting certain information, but it does not include specific requirements for collecting, analyzing, retrieving, and presenting product information. To the contrary, the method for doing so remains completely abstract.⁵

⁵ Tellingly, the claims in *DDR* and *Core Wireless* are further distinguishable because they were directed to problems specific to the internet and electronic devices, respectively, while the internet and electronic devices were only incidental to claim 15, which purported to improve the “traditional employee-customer relationship.” (Pienkos Dep. (dkt. #53) 14.)

B. Alice Step Two: Claim 15 does not Recite an Inventive Concept

Because claim 15 is directed to an abstract idea, the court turns to Alice step two. At that step, the court “must examine the limitations of the claims to determine whether [they] contain an ‘inventive concept’ to ‘transform’ the claimed abstract idea into patent-eligible subject matter.” *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (quoting *Alice*, 573 U.S. at 221). This step requires the court to “determine whether the claims do significantly more than simply describe that abstract method.” *Id.* “A claim that recites an abstract idea must include additional features to ensure that the claim is more than a drafting effort designed to monopolize the abstract idea.” *Alice*, 573 U.S. at 221 (alterations adopted and quotation marks omitted). Those additional features “must be more than well-understood, routine, conventional activity.” *Ultramercial*, 772 F.3d at 715.

Claim 15 does not meet this requirement. Indeed, nothing in claim 15 transforms it from an abstract idea to something patent eligible. Again, at most, plaintiff suggests inventive concepts exist by linking products in a “cross-referential manner” and providing “additional information” beyond the product location, but as explained in the *Alice* step one analysis above, those both are themselves abstract ideas, and as such, cannot be the basis for an inventive concept, even if considered as an ordered combination. Without pointing to any specific claim language, plaintiff also suggests that allowing customers to query the

database is an inventive concept, but such a limitation only amounts to a result that does not recite an inventive concept. *Interval Licensing*, 896 F.3d at 1341 (“claim limitations directed only to a result do not recite an inventive concept”).⁶

Finally, claim 15 implicates the very policy concerns underlying § 101 by claiming the broadest possible, abstract idea, and thereby threatening to monopolize every potential solution to a problem. *Interval Licensing*, 896 F.3d at 1343 (“a patent claim which ties up ... an abstract idea ‘might tend to impede innovation more than it would tend to promote it.’”) This problem is illustrated by plaintiff’s assertion of infringement under claim 15 of the ’260 patent because defendant’s mobile displays provide customers with product location, price, quantity, and availability, as well as links to other products in response to a customer inquiry. (Pl.’s Am. Compl. (dkt. #28) ¶¶ 17-24.) In fact, plaintiff offers as proof pictures from defendant’s mobile application, which displays, among other things, in response to a query for hand towels, suggestions for other products, like bath towels. (*Id.*) However, plaintiff does not allege that defendant used any

⁶ In any event, the evidence of record shows that such a system was not inventive, but was well-understood and routine by 1993, some six years before plaintiff filed the provisional application for the patents in suit. (Rowley Article (dkt. #41-21) 1-3.) Indeed, the Rowley article explains that stores had, albeit in relatively small numbers, already used kiosks allowing customers to access product information. (*Id.*) In fairness, the article does state that, in 1993, kiosks were “rare and experimental in the retail industry” because of their unproven return on investment, but the article also notes that one brand had placed 600 kiosks in stores. (*Id.* at 3, 6.)

particular method or process for linking hand towels with bath towels. (*Id.*) Thus, no matter how defendant linked the products, it would infringe claim 15. Having monopolized every solution that reaches this specified result, claim 15 threatens to stifle further innovation by prohibiting all other entities from reaching the same result, no matter the means used. See *Le Roy v. Tatham*, 55 U.S. at 175 (a patent is not good for a result because it “would prohibit all other persons from making the same thing by any means whatsoever”).

III. Claim 15 of the ’260 Patent is Representative

The court has separately considered all other claims in this action and determined that rearticulating the same *Alice* analysis for each one is unnecessary, as each of the asserted patents claim the same abstract idea of collecting information, analyzing it, retrieving it, and displaying it. See *Content Extraction*, 776 F.3d at 1348 (approving the use of representative claims where “all the claims are substantially similar and linked to the same abstract idea” (quotation marks omitted)); *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365 (Fed. Cir. 2018) (courts may treat a claim as representative where patentee offers no “meaningful argument for the distinctive significance of any claim limitations not found in the representative claim” (emphasis added)).

While plaintiff asserts there are important limitations in some other claims that distinguish them from claim 15 of the ’260 patent, even its strongest example

falls short. Claim 1 of the '933 patent recites providing a product suggestion “in accordance with one or more preferences of the customer” based on the customer's past location inquiries. ('933 patent, 16:31-17:03.) However, “customizing information” based on the user's preferences and history is still an “abstract idea.” *Intell. Ventures I LLC v. Cap. One Bank*, 792 F.3d 1363, 1369 (Fed. Cir. 2015).

Finally, without citation to any authority, plaintiff asserts that, because claim 15 of the '260 patent recites a method claim, it cannot be representative of the '380 and '315 patents, which recite system patent claims. However, a method claim can be representative of system claims. *Cf. Alice*, 573 U.S. at 214, 226 (concluding that system claims were no different from method claims). Regardless, in this case, plaintiff's system claims recite systems for providing product locations in a store; thus, the system claims in those patents are directed to the same abstract idea as claim 15. ('380 Patent 16:40-41; '315 Patent 18:19-21.) Accordingly, because plaintiff has failed to establish a “distinctive significance” of any limitation not found in the representative claim, the court concludes that claim 15 of the '260 patent is representative, *Berkheimer*, 881 F.3d at 1365, and all the asserted claims are directed to an abstract idea and patent-ineligible subject matter under § 101.

ORDER

IT IS ORDERED that:

1) Defendant Target Corporation's motion for summary judgment (dkt. #48) is GRANTED as to all patents in suit;

2) Plaintiff Innovaport, LLC's, motion for partial summary judgment (dkt. #37) is DENIED;

3) Defendant's motions for claims construction (dkt. #45), to strike plaintiff's expert's declaration (dkt. #55), and for a claims construction hearing (dkt. #73), are all DENIED AS MOOT; and

4) The clerk of court is directed to enter judgment in defendant's favor and close this case.

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IN THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

No. 2024-1545

INNOVAPORT LLC,

Plaintiff-Appellant,

v.

TARGET CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court for
the Western District of Wisconsin in No. 3:22-cv-
00425-wmc, Judge William M. Conley.

ON PETITION FOR REHARING EN BANC

Before MOORE, *Chief Judge*, LOURIE, DYK,
PROST, REYNA, TARANTO, CHEN, HUGEHS,
STOLL, CUNNINGHAM, and Stark, *Circuit Judges*.¹

Per Curiam.

¹ Circuit Judge Newman did not participate.

ORDER

Innovaport LLC filed a petition for rehearing en banc. The petition was first referred as a petition for rehearing to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

April 8, 2026.