UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GEOGRAPHIC LOCATION INNOVATIONS LLC Plaintiff, v. DOLLAR TREE STORES, INC., Defendant.	Case No. 2:16-cv-01329-JRG-RSP

DEFNDANT DOLLAR TREE STORES, INC.'S
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

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I. INTRODUCTION

Defendant Dollar Tree Stores, Inc. ("Dollar Tree") hereby respectfully moves to dismiss this patent case for failure to state a claim upon which relief can be granted. This motion is based upon two independent grounds:

First, as Safeway Inc. ("Safeway") and U-Haul International, Inc. ("U-Haul") have already briefed, the Geographic Location Innovations LLC ("GLI") patent purports to cover an abstract idea and is not patentable under 35 U.S.C. § 101.[1] Another division of this Court has already held that a closely related patent is ineligible because it claims an abstract idea: address retrieval.[2] The same is true of the patent GLI asserts in this case.

Second, GLI's complaint fails to allege facts from which it would be plausible to conclude that Dollar Tree infringes any patent claim. This deficiency is fatal given the pleading requirements of *Iqbal/Twombly*.

II. STATEMENT OF THE ISSUES

Whether this case should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted for either of two independent reasons:

1. The claims of the asserted patent are invalid because they purport to cover an abstract idea, and are therefore ineligible for patentability under 35 U.S.C. § 101.
2. GLI's complaint fails to allege sufficient facts to state a plausible claim for patent infringement, and therefore must be dismissed pursuant to *Ashcroft v. Iqbal*, 556

[1] For the Court's convenience, Safeway's motion is attached as Exhibit A, and U-Haul's motion is attached as Exhibit B (*Geographic Location Innovations LLC v. U-Haul Int'l, Inc.*, E.D. Tex. Case No. 2:16-cv-01335-JRG-RSP, Dkt. Nos. 11 and 11-3).

[2] *Rothschild Location Techs. LLC v. GeoTab USA, Inc.*, E.D. Tex. Case No. 6:15-cv-682-RWS-JDL (Jan. 4, 2016 Report and Recommendation attached as Exhibit C); (May 16, 2016 Order adopting Report and Recommendation attached as Exhibit D).

U.S. 662, 678 (2009), and *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 570 (2007).

III. BACKGROUND

On November 30, 2016, GLI filed this case against Dollar Tree alleging infringement of U.S. Patent No. 7,917,285 (the "Asserted Patent"), Dkt. No. 1. That same day, GLI filed eight other largely identical cases alleging infringement of the Asserted Patent. *See* E.D. Tex. Case Nos. 2:16-cv-01326 (AutoNation); 2:16-cv-01327 (Discount Tire); 2:16-cv-01330 (Bridgestone); 2:16-cv-01331 (Home Depot); 2:16-cv-01332 (Nordstrom); 2:16-cv-01333 (Safeway); 2:16-cv-01335 (U-Haul); and 2:16-cv-01336 (UPS). GLI did not immediately serve Dollar Tree.

As in each of the eight other complaints, GLI alleges that Dollar Tree's "mobile website with associated hardware and software" infringes "at least claim 13" of the Asserted Patent. *Id.* ¶ 13. Dollar Tree infringes, GLI alleges, because its website "allows remote entry of location information, such as store locations," and "automatically loads nearby store locations onto the [user's] positional information device based on the user's location." *Id.* ¶ 14.

In response to the infringement allegations levied against U-Haul, U-Haul filed a motion to dismiss for failure to state a claim on February 6, 2017. *See* Ex. B at 2. U-Haul's motion explains why the claims of the Asserted Patent are invalid as directed to subject matter that is ineligible for patentability. *Id.*

U-Haul's motion also explains that on May 16, 2016—more than six months before GLI filed the instant wave of cases—another division of this Court invalidated a close relative of the Asserted Patent. *Id.* at 2, 23-24. Specifically, in *Rothschild Location Technologies LLC v. GeoTab USA, Inc.*, E.D. Tex. Case No. 6:15-cv-682-RWS-JDL ("*GeoTab*"), the Court considered the patentability of a continuation of the Asserted Patent, U.S. Patent No. 8,606,503 (the "'503

Patent"). The '503 Patent shares the same inventor and title, and contains a specification nearly identical to the Asserted Patent. Ex. B at 2. The *GeoTab* Court found that the claims of the '503 Patent are "directed to the abstract idea of address retrieval," and that their "inclusion of generic computer components such as a server and a GPS device did not constitute an inventive concept." *Id.* (citing Report and Recommendation (attached as Ex. C) at 10-16 and Order adopting Report and Recommendation (attached as Ex. D) at 4-6). As U-Haul's motion explains, there are no material differences between the '503 Patent and the Asserted Patent. *Id.* at 23-24.

GLI never opposed U-Haul's motion. After jointly requesting an extension of time, *see* Case No. 2:16-cv-01335-JRG-RSP, Dkt. No. 13, on February 27, 2017, GLI filed an unopposed motion requesting dismissal with prejudice of GLI's claims against U-Haul (and dismissal without prejudice of U-Haul's counterclaims against GLI). *Id.*, Dkt. No. 15. The Court dismissed on the requested terms on March 1, 2017. *Id.*, Dkt. No. 16.

On February 27, 2017, GLI served Dollar Tree with its complaint in this case. On March 14, 2017, Safeway filed a motion to dismiss for failure to state a claim. Ex. A. Safeway's motion raises the same two grounds that Dollar Tree presents in this timely motion.

IV. ARGUMENT

GLI has filed suit upon—and continues to pursue—a patent directed to ineligible subject matter, and which Dollar Tree does not plausibly infringe. For either or both of these reasons, Dollar Tree's motion should be granted and the case dismissed for failure to state a claim.

A. The Asserted Patent Claims An Abstract Idea And Is Not Patentable.

As briefed in Safeway and U-Haul's motions, the case should be dismissed for a fatal deficiency: the Asserted Patent is directed to the abstract idea of address retrieval. The only additional limitations are "conventional," and fail to add any inventive concept. As a result, the

Asserted Patent is not eligible for patentability under 35 U.S.C. § 101. Dismissal is warranted pursuant to *Alice Corp. v. CLS Bank International* and its progeny. 134 S. Ct. 2347 (2014).

As Safeway's motion (attached as Exhibit A) explains, U-Haul's motion on the *Alice* issue (attached as Exhibit B) is thorough and persuasive. So too are the Report and Recommendation and Order adopting the Report and Recommendation in the *GeoTab* case, which held the patent ineligible and dismissed the case based upon the related and materially indistinguishable '503 Patent. These are attached as Exhibits C and D, respectively.[3] The reasoning in each of these papers applies with equal force to the Asserted Patent. For brevity, Dollar Tree summarizes the pertinent legal principles and their application to this case, as these exhibits set forth extensively.

1. Pleading Stage Dismissals Are Appropriate Where, As Here, It Is Clear That A Patent Recites Ineligible Subject Matter.

Section 101 of the Patent Act states that "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title." 35 U.S.C. § 101. The Supreme Court has held that there is an implicit exception for "laws of nature, natural phenomena, and abstract ideas," which are not patentable. *Alice*, 134 S. Ct. at 2355.

Determining whether the exception applies entails two steps. First, courts must determine whether the claim is directed to one of the patent-ineligible concepts, such as an abstract idea. *Id.* If the claim is directed to excluded subject matter, courts proceed to the second step. *Id.* That is to determine whether the other claim elements, considered "both individually and as an ordered

[3] This result is final as to the '503 Patent. The District Court considered and denied a motion for reconsideration, Case No. 6:15-cv-000682 Dkt. No. 132 (E.D. Tex. Dec. 5, 2016). On January 27, 2017, a previously filed appeal was dismissed. *Id.*, Dkt. No. 136.

combination," add an "inventive concept" sufficient to "transform the nature of the claim into a patent-eligible application." *Id.* (citation and quotation marks omitted). "At step two, more is required than 'well-understood, routine, conventional activity already engaged in by the . . . [relevant] community,' which fails to transform the claim into 'significantly more than a patent upon the' ineligible concept itself." *Rapid Litig. Mgmt. Ltd. v. CellzDirect, Inc.*, 827 F.3d 1042, 1047 (Fed. Cir. 2016) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1298, 1294 (2012)).

Neither claim construction nor discovery is required to conduct an analysis on this question of law. *See* Ex. B at 2 (collecting authorities). Rather, "when patent claims on their face are plainly directed to an abstract idea, a court may properly assess patent-eligibility under § 101 at the pleading stage." *See* Ex. D at 3 (citing *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1364 (Fed. Cir. 2015); *Content Extraction & Transmission LLC v. Wells Fargo Bank*, 776 F.3d 1343, 1347 (Fed. Cir. 2015); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715-16 (Fed. Cir. 2014)).

2. The Asserted Patent Recites The Abstract Idea Of Address Retrieval And Includes Nothing That Would Render Any Claim Patent-Eligible.

The Asserted Patent contains two independent claims (claims 1 and 13) and sixteen dependent claims (claims 2-12 and 14-18). Each one is directed to an abstract idea: address retrieval. *See* Ex. B at 9, 17-18. None adds any limitations—considered individually or as an ordered combination—that would make them patent-eligible. *Id.* at 10-23.

Claim 1 of the Asserted Patent broadly covers a system for asking someone to retrieve an address from another location. This is a function humans have long performed—a sure sign the claims are abstract. *See* Ex. B at 9-10 (citing authorities including *Clear with Computers, LLC v. Dick's Sporting Goods, Inc.*, 21 F. Supp. 3d 758, 765-66 (E.D. Tex. Jan. 21, 2014)).

The system comprises "conventional" and "well-known" technology: a server, a positional information device (such as a GPS device), and a communications network. *See* Ex. B at 9-17. It is well-settled that invoking computers or other well-known technology to implement an abstract idea does not make it patent-eligible. *Id.* at 11. *See also* Ex. D at 5 ("The Magistrate Judge specifically addressed the purposes that the '503 Patent sought to solve, as articulated in the specification. R&R [attached as Exhibit C] at 11. The Court agrees with the Magistrate Judge's finding that each of these purposes 'simply relate[s] to ease, accuracy, and efficiency benefits achieved when any fundamental or well-known concept is implemented on a computer device.'").

U-Haul's motion contains the following helpful—and telling—comparison between exemplary claims of the Asserted Patent and the '503 Patent that this Court (Schroeder, J.) determined in *GeoTab* was directed to ineligible subject matter:

'503 patent claim 8 (found invalid)	**'285 patent claim 1** (at issue)
8. A system for entering location information into a positional information device, the system comprising:	1. A system for remotely entering location information into a positional information device, the system comprising:
a server configured to receive a request for at least one location,	a server configured to receive a request for an address of at least one location not already stored in the positional information device, to
determine an address of the least one requested location and to	determine the address of the least one location and to
transmit the determined coordinates to a first positional information device;	transmit the determined address to the positional information device,
the first positional information device including	the positional information device including
a locational information module for determining location information of the first positional information device;	a locational information module for determining location information of the positional information device;
a communication module for receiving the address of the at least one location from the server;	a communication module for receiving the determined address of the at least one location from the server;
a processing module configured to receive the address from the communication module and determine route guidance based on the location of the first positional information device and the received address; and	a processing module configured to receive the determined address from the communication module and determine route guidance based on the location of the positional information device and the determined address; and
a display module for displaying the route guidance; and	a display module for displaying the route guidance; and
a communications network for coupling the first positional information device to the server,	a communications network for coupling the positional information device to the server.

wherein the server receives a request from a first positional information device for the at least one address stored in at least one second positional information device, the request including a first identifier of the first positional information device, determines a second identifier for identifying at least one second positional information device based on the received first identifier, retrieves the requested at least one address stored in the at least one second positional information device, and transmits the retrieved at least one address to the first positional information device.	wherein the request is received from a remote computer with a first identifier and the server being configured to determine a second identifier for identifying the positional information device based on the received first identifier;[8]

Ex. B at 23-24 (footnote 8 reads as follows: "This limitation appears in claim 1 of the '285 [P]atent before 'the positional information device including' and has been moved to improve readability."). There are no material differences. This Court should also conclude that claim 1 of the Asserted Patent is directed to the abstract idea of address retrieval and that none of the other limitations—which the specification admits are "conventional," or "standard"—transforms it into patent-eligible subject matter. *See* Ex. A. at 11-12.

Nor is independent claim 13—which adds the requirement of functionality that permits the server to receive a requested time and date, and send them with the requested location information so that the device displays the retrieved address at a later programmed time—directed to patentable subject matter. *See* Ex. B at 17-19. This claim is directed to the same abstract idea: retrieving an address for a location. The additional limitation does not purport to improve computer functionality, but rather invokes it to perform a well-known and conventional task. As U-Haul's motion explains "[t]he idea of programming a device to perform a task at a later time is well-known and conventional." Ex. B at 18 (quoting *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016) ("The claims at issue do not require any nonconventional computer, network, or display components, or even a non-conventional and non-generic arrangement of known, conventional pieces, but merely call for performance of the claimed

information, collection, analysis, and display functions on a set of generic computer components and display devices.") (citation and quotation marks omitted)).

Similarly, the dependent claims add no limitations that would render them patent-eligible. *See* Ex. B at 19-22. GLI has not asserted any of these claims against Dollar Tree. But were it to do so, they merely limit the technological environment or formatting in more specific, but still-conventional ways that do not constitute inventive concepts. *Id.*

B. The Complaint Does Not State A Plausible Claim Of Infringement By Dollar Tree.

Rule 12(b)(6) requires dismissal of a complaint that fails to state a claim for relief that is "plausible on its face." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Courts accept well-pleaded facts as true and view them in the light most favorable to the plaintiff. *Panoptis Patent Mgmt., LLC v. Blackberry Corp.*, No. 2:16-cv-00059-JRG-RSP, 2017 WL 780855, at *1 (E.D. Tex. Feb. 10, 2017) (citing *Bustos v. Martini Club, Inc.*, 599 F.3d 458, 461 (5th Cir. 2010)). To state a plausible claim in a patent case, the plaintiff "must plead facts to allow a court to draw a reasonable inference that [the defendant] is liable for the alleged patent infringement." *Id.* (citing *Twombly*, 550 U.S. at 556).[4]

GLI fails to allege facts sufficient to support a reasonable inference that Dollar Tree infringes any claim of the Asserted Patent. GLI's only attempt to do so is for a single claim: claim 13. Dkt. No. 1, ¶¶ 13-22. But because claim 13 requires functionality that plaintiff does not allege (and which Dollar Tree's website simply does not possess), GLI's attempt falls woefully short.

[4] As Magistrate Judge Payne recognized in *Panoptis*, with the elimination of Rule 84 and Form 18 from the Federal Rules of Civil Procedure, the *Iqbal/Twombly* standard governs patent infringement pleadings filed on and after December 2, 2015. *Panoptis*, 2017 WL 780885, at *1 (citing *Lyda v. CBS Corp.*, 838 F.3d 1331, 1337 n. 2 (Fed. Cir. 2016)).

Claim 13 is directed to "[a] system for remotely entering location information into a positional information device" (such as, for example, a GPS device). Dkt. No. 1-2, Ex. A to Compl., Col. 14, ll. 25-26. In addition to the device, claim 13 requires "a server configured to receive a request for an address of at least one location not already stored in the positional information device," and a communications network. *Id.*, Col. 14, ll. 27-42. Claim 13 has a further requirement: functionality that allows a user to request and receive an address from the server at a later time. As the specification explains:

> The user may also transmit the time and date that each address will be utilized. This information will also be transmitted to the subject GPS device. The GPS device will then display the address at the specified date and time and route guidance for that address will be given. When the date and time changes, the GPS device will then display the next specified and stored address on the date and time that corresponds to that address.

Id., Col. 10, ll. 54-61; *see also id.*, col. 10, ll. 2-4 (user may "enter a location into the client application which the user would like to receive route guidance for subsequently.").

Claim 13 sets forth this requirement in the following language, which has three important sub-parts (numbered here for ease of reference):

> wherein (1) the server receives a time and date associated with the requested at least one location and (2) transmits the associated time and date with the determined address to the positional information device and (3) the positional information device displays the determined address at the associated time and date.

Id., Col. 14, ll. 43-48.

GLI does not allege facts from which it would be plausible to conclude that Dollar Tree's website satisfies any of the three sub-parts of this limitation. (Nor could it, because Dollar Tree's website does not allow users to submit a date and time associated with a request for store locations or to schedule when their devices will display the requested locations.) GLI does not even try to allege facts about the second or third sub-parts. *See* Dkt. No. 1, ¶ 22.

What GLI alleges with respect to the first—the requirement for the server to "receive[] a time and date associated with the requested at least one location"—is equally deficient. As to that sub-part, GLI alleges that "the time and date of the request must be sent to the server(s) so that the server(s) can determine traffic conditions associated with varying routes to the requested location and display location and route conditions corresponding to the time and date of the request." *Id.* As pointed out in Safeway's motion, this allegation suffers from two fatal flaws. Ex. A at 10.

First, it is a non-sequitur. Claim 13's final limitation is about something completely different—the ability to tell the server when in the future to display the requested location. Even if Dollar Tree's website were capable of determining and displaying traffic conditions associated with varying routes at a given point in time, it would not follow that a user must be supplying, or that the server must be receiving, a time—let alone a time *and date*—associated with the requested location. The presence of such functionality would merely mean that the server is able to tell the current traffic conditions when it performs its calculation and supplies results (whenever that is).

Second, the allegation is baseless. Dollar Tree's website does not have this functionality. GLI asserts that Dollar Tree's servers "determine traffic conditions associated with varying routes to the requested location and display location and route conditions," Dkt. No. 1, ¶ 22, but the complaint cites no factual support for this proposition.

Instead, GLI includes a screen shot purportedly taken from Dollar Tree's website. *Id.* But the screen shot shows a single route—not varying routes—and it shows nothing about traffic conditions. The screen shot reflects a "total time." *Id.* But this could be (and is) calculated as a function of the distance and speed limit without any reference to the current time or traffic conditions.

In short, Dollar Tree's website does not allow users to provide, or a server to receive, a time and date associated with requested store location information. And no server, in turn, provides an associated date and time to a user's device so that the device will display an address at that time. The complaint cites no facts that would make a contrary conclusion colorable, let alone plausible. As a result, GLI has not and cannot allege infringement in a manner that satisfies *Iqbal/Twombly*.

Moreover, to permit GLI to amend would be futile, because Dollar Tree's website simply does not have the requisite functionality. By virtue of the "time and date" limitation, claim 13 is a round hole. Dollar Tree's accused website is a square peg. The complaint should be dismissed.

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V. CONCLUSION

The Asserted Patent recites the abstract idea of address retrieval using well-known technology, and is therefore ineligible for patentability. In any event, GLI has not alleged facts that make its infringement claim against Dollar Tree plausible. For either (or both) of these reasons, Dollar Tree respectfully asks the Court to grant its motion and dismiss GLI's complaint with prejudice.

Dated: March 20, 2017

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT DOLLAR TREE STORES, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on March 20, 2017, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Brendan S. Maher
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