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September 29, 2020

The Honorable Leonard P. Stark
J. Caleb Boggs Federal Building
844 N. King Street
Wilmington, Delaware 19801

Re: **Ameranth, Inc. v. Olo Inc., C.A. No. 20-518-LPS**

Dear Chief Judge Stark:

Defendant Olo Inc. (“Olo”) respectfully submits this further supplemental letter brief pursuant to the parties’ stipulation (D.I. 23) in advance of the September 30, 2020 Hearing on Olo’s Motion To Dismiss (D.I. 8). The proposed amended complaint of Plaintiff Ameranth, Inc. (“Ameranth”) (D.I. 23-1, 23-2) does nothing to confer eligibility under § 101 to newly asserted claims 9 and 10, or to previously asserted claims 1, 3, 6, and 11 of U.S. Patent No. 9,747,651.

As discussed in Olo’s motion briefing, all asserted claims of the ’651 patent are directed to the abstract idea of communicating hospitality-related information using a system that is capable of synchronous communications and messaging. (D.I. 9 at 8-10 (claims 1, 3, 6, and 11); D.I. 20-1 (dependent claims 9 and 10).) The patent admits that restaurants and other “hospitality” services previously used humans with “pen and paper” to take orders and reservations. (D.I. 9 at 5-6; ’651, col. 1:38-41, 2:52-55.) The patent proposes an idea for automating this process with an “information management and synchronous communications system,” but does not teach *how* to program the system. (D.I. 9 at 5-6; ’651, col. 3:1-24, 3:28 *et seq.*) The patent explicitly admits that it does not provide any improved new hardware or software, but merely uses conventional components and programming. (’651, col. 6:63-7:18, 13:12-17; D.I. 9 at 7-8, 11-13; D.I. 20-1 at 2.) The same is true for the mobile applications and handheld wireless devices of dependent claims 9 and 10. (’651, col. 1:47-51, 2:13-16, 6:35-39, 6:63-7:18, 12:12-17, 12:28-38.) As such, the focus of the claimed invention is not a “specific means or method that improves the relevant technology” but merely a “result or effect that itself is the abstract idea and merely invokes generic processes and machinery.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016). The asserted claims do not recite transformative elements that provide significantly more than the abstract idea itself. (D.I. 9 at 13-15.)

Ameranth’s new allegations do nothing to avoid ineligibility. First, Ameranth appears now to argue that the claims are patentable because they are focused on “the hospitality industry” and that the industry, including Olo, were not early adopters of mobile or smartphone applications. (D.I. 24.) But none of Ameranth’s new allegations contradict or undermine any of Olo’s positions. In fact, the ’651 patent itself states that “pen and paper have prevailed in the hospitality industry” due to the slow adoption of handheld devices in that industry. (D.I. 9 at 5; ’651, 1:38-59.) The

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same background applied to the four related Ameranth patents the Federal Circuit held invalid, which were all directed to ineligible “hospitality” related ideas. *Apple*, 842 F.3d at 1235-42; *Ameranth, Inc. v. Domino’s Pizza, LLC*, 792 Fed.Appx. 780, 788 (Fed. Cir. Nov. 1, 2019) (invalidating claims directed to the idea of “configuring and transmitting hospitality menu related information using a system that is capable of synchronous communications and automatic formatting”). Regardless of their field, the asserted claims are impermissibly result-oriented and abstract. *In re TLI Comm’ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016) (“although the claims limit the abstract idea to a particular environment — a mobile telephone system — that does not make the claims any less abstract”).

Furthermore, because the abstract idea itself relates to the hospitality field—an idea for automating hospitality-related communications, such as restaurant orders and reservations, that previously used pen-and-paper—limiting the idea to the hospitality field cannot supply an inventive concept. *Domino’s Pizza*, 792 Fed.Appx. at 787 (“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.”) (quoting *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018)); see also *Elec. Power Grp., LLC v. Alstom SA*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (“obviously, limiting the claims to the particular technological environment of power-grid monitoring is, without more, insufficient to transform them into patent-eligible applications of the abstract idea at their core”).

Ameranth similarly misses the mark with its allegations that the claims recite non-routine and non-conventional ideas that were not previously implemented. (D.I. 24.) It is well-settled that alleged novelty does not confer eligibility. (D.I. 9 at 18 (citing cases).) Indeed, the Court may assume that the claimed ideas were “groundbreaking, innovative, or even brilliant,” but that is not enough for eligibility. *Domino’s Pizza*, 792 Fed.Appx. at 788 (“[t]hat some of the steps were not previously employed is not enough—standing alone—to confer patent eligibility”) (citations and internal ellipses omitted). The Federal Circuit held invalid the similar ’077 patent claims over similar allegations of novelty and non-conventionality in several declarations submitted by Ameranth. *Id.* (discussing declarations). Likewise here, the asserted claims fail the *Alice* test because they are “essentially result-focused” and “describe a desired result but do not instruct *how* to accomplish that result.” *Id.* at 787 (emphasis added) (citation omitted).

Ameranth’s allegations about “intelligent automated assistants (IAA)” similarly fail to demonstrate any patent-eligible invention. (D.I. 24 at 2.) As explained in Olo’s motion briefing, the claims and specification do not describe *how* to program an “intelligent automated assistant.” The patent merely proposes an ineligible high-level idea: instead of a human who uses pen and paper, it would be nice to have an “automated” assistant, and to somehow create it using only conventional hardware and software such as existing voice recognition systems—but the “programming details” are omitted. (D.I. 9 at 7, 11-13, 14; ’651, col. 6:63-7:18, 13:12-17, 14:66-15:51.) As the Federal Circuit noted when holding invalid three related Ameranth patents, “[i]t is not enough to point to conventional applications and say ‘do it on a computer.’” *Apple*, 842 F.3d at 1243 (citation omitted).

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Finally, the proposed amended complaint does not demonstrate any eligible invention in newly asserted dependent claims 9 and 10. Ameranth's allegations that these claims "improve the use of computers" and conclusory expert opinions (D.I. 24 at 2) are not "plausible and specific" assertions grounded in the patent itself. *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1316-19 (Fed. Cir. 2019); *Glasswall Solutions v. Clearswift Ltd.*, No. 2018-1407, 2018 U.S. App. LEXIS 35818, at *5 (Fed. Cir. Dec. 20, 2018); *Move, Inc. v. Real Estate Alliance Ltd.*, 721 F. App'x 950, 957 (Fed. Cir. 2018). Claims 9 and 10 also recite only high-level desired functional results for the communication system of claim 1. ('651 claim 9 ("The system of claim 1, wherein a mobile application operating on a wireless handheld computing device is used to interface with the back office hospitality software application"), claim 10 ("The system of claim 1, wherein a frequent customer mobile application operating on a wireless handheld computing device is used to interface with the back office hospitality software application").) Claims 9 and 10 recite only open-ended functional aspirations that mobile applications are somehow, in some unspecified way, "used to interface" with back office software. The specification admits that wireless handheld devices and mobile device software such as Windows CE, an operating system with communication tools, were "common" in the prior art. ('651, 1:50-51 ("Also in common use are portable laptop and handheld devices."), 2:13-16 ("With the advent of the Palm® and other handheld wireless devices, however, the efforts to make such devices ubiquitous have begun to bear fruit at least in some areas"), 6:35-39 (discussing "common" software such as "Windows CE® for handheld wireless devices"), 12:28-38.) The patent admits that it does not provide any new software programming or devices, whether for mobile applications or otherwise, as noted previously. (D.I. 9 at 7-8; '651, col. 6:63-7:18, 13:12-17.)

In sum, in view of the claim language and the specification's admissions, the allegations in Ameranth's proposed amended complaint cannot change the fundamental § 101 defect: the asserted claims fail to provide "the specificity required to transform [the] claim from one claiming only a result to one claiming a way of achieving it." *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, No. 18-1763, at 16-17 (Fed. Cir. 2020) (citation omitted).

Respectfully,

/s/ Karen Jacobs

Karen Jacobs (#2881)

cc: All Counsel of Record (by e-mail)