

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

OANDA CORPORATION,)	
)	Civil Action No. 20-05784-ZNQ-DEA
Plaintiff,)	
)	Motion Date: August 16, 2021
v.)	
)	Oral Argument Requested
GAIN CAPITAL HOLDINGS, INC., and GAIN)	
CAPITAL GROUP, LLC,)	<i>Document Filed Electronically</i>
)	
Defendants.)	
)	
)	
)	
)	

**DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE
PLEADINGS PURSUANT TO RULE 12(c)**

Arnold B. Calmann (ACalmann@saiber.com)
Katherine A. Escanlar (KEscanlar@saiber.com)
SAIBER LLC
One Gateway Center, Suite 950
Newark, New Jersey 07102
Telephone: (973) 622-3333

Michael B. Levin (mlevin@wsgr.com)
**WILSON SONSINI GOODRICH &
ROSATI P.C.**
650 Page Mill Road
Palo Alto, CA 94304-1050
Telephone: (650) 493-9300

Aden M. Allen (aallen@wsgr.com)
**WILSON SONSINI GOODRICH &
ROSATI P.C.**
900 S. Capital of Texas Hwy
Las Cimas IV, 5th Floor
Austin, TX 78746
Telephone: (512) 338-5400

Natalie J. Morgan (nmorgan@wsgr.com)
**WILSON SONSINI GOODRICH &
ROSATI P.C.**
12235 El Camino Real
San Diego, California 92130
Telephone: (858) 350-2300

*Attorneys for Defendants GAIN Capital
Holdings, Inc. and GAIN Capital Group, LLC*

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. PRECEDENT FULLY SUPPORTS DISMISSAL WITH PREJUDICE DESPITE OANDA’S PLEADED “FACTS”	1
III. OANDA FAILS TO SHOW THAT THE CLAIMS ARE DIRECTED TO A NON-ABSTRACT IDEA	5
IV. OANDA FAILS TO SHOW AN INVENTIVE CONCEPT	7
1. The Court Need Not Accept OANDA’s Conclusory and Boilerplate Allegations	8
2. OANDA’s Alleged Inventive Concepts Are Not Technical Improvements but Implementations of the Abstract Ideas	9
V. CONCLUSION.....	12

TABLE OF AUTHORITIES**Page(s)****CASES**

<i>Aatrix Software, Inc. v. Green Shades Software, Inc.</i> , 882 F.3d 1121 (Fed. Cir. 2018).....	1, 2, 3
<i>Alice Corp. Pty. Ltd. v. CLS Bank Int'l</i> , 573 U.S. 208 (2014).....	1, 8, 9
<i>BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC</i> , 827 F.3d 1341 (Fed. Cir. 2016).....	2, 10
<i>Berkeley*IEOR v. Teradata Operations, Inc.</i> , 448 F. Supp. 3d 864 (N.D. Ill. 2020)	2
<i>Berkheimer v. HP Inc.</i> , 881 F.3d 1360 (Fed. Cir. 2018).....	1
<i>Boom! Payments, Inc. v. Stripe, Inc.</i> , 839 F. App'x 528 (Fed. Cir. 2021)	2, 3
<i>CardioNet, LLC v. InfoBionic, Inc.</i> , 816 F. App'x 471 (Fed. Cir. 2020)	2
<i>Cellspin Soft, Inc. v. Fitbit, Inc.</i> , 927 F.3d 1306 (Fed. Cir. 2019).....	2
<i>ChargePoint, Inc. v. SemaConnect, Inc.</i> , 920 F.3d 759 (Fed. Cir. 2019).....	2, 3, 5, 9, 10
<i>Cleveland Clinic Found. v. True Health Diagnostics LLC</i> , 760 F. App'x 1013 (Fed. Cir. 2019)	2, 3
<i>Diamond v. Diehr</i> , 450 U.S. 175 (1981).....	8
<i>Enfish, LLC v. Microsoft Corp.</i> , 822 F.3d 1327 (Fed. Cir. 2016).....	6
<i>FairWarning IP, LLC v. Iatric Sys.</i> , 839 F.3d 1089 (Fed. Cir. 2016).....	5, 10
<i>Fast 101 Pty Ltd. v. CitiGroup Inc.</i> , 834 F. App'x 591 (Fed. Cir. 2020)	6
<i>Fitbit Inc. v. AliphCom</i> , No. 16-cv-00118-BLF, 2017 WL 819235 (N.D. Cal. Mar. 2, 2017).....	7

..

Gottschalk v. Benson,
409 U.S. 63 (1972).....7

Intellectual Ventures I LLC v. Symantec Corp.,
838 F.3d 1307 (Fed. Cir. 2016).....9

Interactive Wearables, LLC v. Polar Electro Oy,
501 F.Supp.3d 162 (E.D.N.Y. 2020)2

Ipa Techs, Inc. v. Amazon.com, Inc.,
352 F. Supp. 3d 335 (D. Del. 2019).....8

King Pharm., Inc. v. Eon Labs, Inc.,
616 F.3d 1267 (Fed. Cir. 2010).....5, 6

Koninklike KPN NV v. Gemalto M2M GmbH,
942 F.3d 1143 (Fed. Cir. 2019).....6

Money Suite Co. v. 21st Century Ins. & Fin. Servs., Inc., No. 13-984-GMS,
2015 WL 436160 (D. Del. Jan. 27, 2015).....4

Mortg. Application Techs., LLC v. MeridianLink, Inc.,
839 F. App’x 520 (Fed. Cir. 2021)2

SAP Am. Inc. v. InvestPic, LLC,
898 F.3d 1161 (Fed. Cir. 2018).....6

Secured Mail Sols., LLC v. Universal Wilde, Inc.,
873 F.3d 905 (Fed. Cir. 2017).....11

Sensormatic Elecs., LLC v. Wyze Labs, Inc., No. 2020-2320,
2021 U.S. App LEXIS 20789 (Fed. Cir. July 14, 2021).....2

Simio, LLC v. FlexSim Software Prods., Inc.,
983 F.3d 1353 (Fed. Cir. 2020).....2, 3, 4, 8, 11

Trading Techs. Int’l, Inc. v. CQG, Inc.,
675 F. App’x 1001 (Fed. Cir. 2017)6

Ubiquitous Connectivity, LP v. City of San Antonio, No. 18-cv-00718-XR,
2019 U.S. Dist. LEXIS 165197 (W.D. Tex. Sept. 26, 2019).....5

I. INTRODUCTION

OANDA's Opposition (D.I. 79) ("Opp'n") attempts to prop up its patent-ineligible claims by asserting that its conclusory and insufficient allegations in the First Amended Complaint (D.I. 59) ("FAC") preclude dismissal under Federal Circuit precedent. However, OANDA fails to address or overcome the numerous Federal Circuit decisions that compel dismissal.

With respect to the merits, OANDA has not adequately rebutted GAIN's detailed showing how each claim is abstract and fails to include an inventive concept. Under *Alice*¹ step one, OANDA tries to analogize its claims to ones the Federal Circuit found were not abstract. Such a comparison fails because, unlike the patent-eligible claims in those cases, OANDA's claims viewed as a whole do not improve upon computer technology. Under *Alice* step two, OANDA fails to show an inventive concept, since neither the specification nor the claims recite any non-generic technical components, or any combination thereof, that amount to significantly more than the abstract ideas themselves. Moreover, the Court may reject OANDA's attempt to insulate the asserted patents based on the FAC's allegations because such allegations are either conclusory, insufficient as a matter of law, or inconsistent with the intrinsic record.

Because no additional allegations can overcome these deficiencies, judgment on the pleadings and dismissal with prejudice is appropriate.

II. PRECEDENT FULLY SUPPORTS DISMISSAL WITH PREJUDICE DESPITE OANDA'S PLEADED "FACTS"

Contrary to OANDA's suggestion, GAIN is not "inviting the Court to commit reversible error by dismissing the FAC." Opp'n at 12. Post-*Berkheimer*² and *Aatrix*³ Federal Circuit

¹ *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014).

² *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018).

³ *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121 (Fed. Cir. 2018).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.