

1 Frank E. Scherkenbach (CA SBN 142549)
scherkenback@fr.com
2 Adam J. Kessel (*pro hac vice*)
kessel@fr.com
3 Jeffrey Shneidman (*pro hac vice*)
shneidman@fr.com
4 FISH & RICHARDSON P.C.
5 One Marina Park Drive
Boston, MA 02210
6 Tel: 617-542-5070 / Fax: 617-542-8906

7 Michael R. Headley (CA SBN 220834)
headley@fr.com
8 FISH & RICHARDSON P.C.
9 500 Arguello Street, Suite 500
Redwood City, CA 94063
10 Tel: 650-839-5070
Facsimile: (650) 839-5071

11 Attorneys for Plaintiffs
12 BYTEDANCE LTD., BYTEDANCE, INC.
TIKTOK, INC., and TIKTOK PTE. LTD,

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 (OAKLAND DIVISION)

17 BYTEDANCE LTD., BYTEDANCE, INC.
18 TIKTOK, INC., and TIKTOK PTE. LTD.,

19 Plaintiffs,

20 v.

21 TRILLER, INC.,

22 Defendant.

Case No. 4:20-cv-07572-JSW

**OPPOSITION TO TRILLER'S MOTION
FOR JUDGMENT ON THE PLEADINGS
REGARDING SECOND, THIRD, AND
FOURTH CLAIMS FOR RELIEF IN
SECOND AMENDED COMPLAINT
(DKT. NO. 58)**

Hon. Jeffrey S. White

Date: November 5, 2021

Time: 9:00 AM

Courtroom: 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

STATEMENT OF THE ISSUES TO BE DECIDED 1

SUMMARY OF ARGUMENT 1

STATEMENT OF RELEVANT FACTS AS PLEADED 2

LEGAL STANDARD 4

 A. Judgment on the Pleadings 4

 B. Subject Matter Eligibility 5

ARGUMENT 6

 A. The Facts as Pleaded in TikTok’s SAC Preclude Judgment on the Pleadings 6

 B. Open Factual and Legal Issues Prevent Resolution of the § 101 Inquiry 6

 1. Factual Disputes Prevent Resolution of the § 101 Inquiry 7

 2. Claim Construction Disputes Prevent Resolution of the § 101 Inquiry 8

 C. Triller’s Motion Fails on the Merits 10

 1. The Asserted Patents Are Patent-Eligible Under *Alice* Step 1 10

 2. The Asserted Patents Are Also Patent-Eligible Under *Alice* Step 2 14

; OPP. TO TRILLER’S MOT. FOR JUDGMENT ON THE PLEADINGS

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Aatrix Software, Inc. v. Green Shades Software, Inc.</i> , 882 F.3d 1121 (Fed. Cir. 2018).....	5, 6, 8
<i>Alice Corp. Pty. Ltd. v. CLS Bank Int'l</i> , 573 U.S. 208 (2014).....	<i>passim</i>
<i>Enfish, LLC v. Microsoft Corp.</i> , 822 F.3d 1327 (Fed. Cir. 2016).....	10, 11, 12, 13
<i>Ancora Techs., Inc. v. HTC Am., Inc.</i> , 908 F.3d 1343 (Fed. Cir. 2018).....	13
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	4, 6
<i>Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Canada (U.S.)</i> , 687 F.3d 1266 (Fed. Cir. 2020).....	6, 8
<i>BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC</i> , 827 F.3d 1341 (Fed. Cir. 2016).....	13, 15
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	4, 6
<i>Berkheimer v. HP Inc.</i> , 881 F.3d 1360 (Fed. Cir. 2018).....	5, 7, 8
<i>BSG Tech LLC v. Buyseasons, Inc.</i> , 899 F.3d 1281 (Fed. Cir. 2018).....	5
<i>Cellwitch Inc. v. Tile, Inc.</i> , No. 4:19-cv-01315-JSW, 2019 WL 10734767 (N.D. Cal. Nov. 21, 2019).....	5
<i>Chavez v. U.S.</i> , 683 F.3d 1102 (9th Cir. 2012).....	5, 8
<i>Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass'n</i> , 776 F.3d 1343 (Fed. Cir. 2014).....	14
<i>Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.</i> , 880 F.3d 1356 (Fed. Cir. 2018).....	10, 11
<i>Data Engine Techs. LLC v. Google LLC</i> , 906 F.3d 999 (Fed. Cir. 2018).....	10, 11, 15
<i>FairWarning IP, LLC v. Iatric Sys., Inc.</i> , 839 F.3d 1089 (Fed. Cir. 2016).....	5

:: OPP. TO TRILLER'S MOT. FOR JUDGMENT ON THE PLEADINGS

1 *Finjan, Inc. v. Blue Coat Sys., Inc.*,
879 F.3d 1299 (Fed. Cir. 2018)..... 10

2

3 *Fleming v. Pickard*,
581 F.3d 922 (9th Cir. 2009)..... 5, 6

4 *Koninklijke KPN N.V. v. Gemalto M2M GmbH*,
942 F.3d 1143 (Fed. Cir. 2019)..... 10

5

6 *McRO, Inc. v. Bandai Namco Games Am. Inc.*,
837 F.3d 1299 (Fed. Cir. 2016)..... 10, 11, 13

7

8 *NetSoc, LLC v. Match Grp., LLC*,
838 F. App’x 544 (Fed. Cir. 2020)..... 14

9

10 *Packet Intelligence LLC v. NetScout Sys., Inc.*,
965 F.3d 1299 (Fed. Cir. 2020)..... 10, 11

11 *Pebble Tide LLC v. Arlo Techs., Inc.*,
No. 19-769-LPS, 2020 WL 509183 (D. Del. Jan. 31, 2020) 8

12

13 *RideApp, Inc. v. Lyft, Inc.*,
No. 18-cv-07152-JST, 2019 WL 7834759 (N.D. Cal. Aug. 15, 2019)..... 6, 8, 9, 10

14

15 *Ryko Mfg. Co. v. Nu-Star, Inc.*,
950 F.2d 714 (Fed. Cir. 1991)..... 7

16 *Salwan v. Iancu*,
825 F. App’x 862 (Fed. Cir. 2020)..... 14

17

18 *In re Salwan*,
681 F. App’x 938 (Fed. Cir. 2017)..... 14

19 *Search & Social Media Partners, LLC v. Facebook, Inc.*,
346 F. Supp. 3d 626 (D. Del. 2018)..... 13, 14

20

21 *Silver State Intellectual Techs. v. Facebook Inc.*,
314 F. Supp. 3d 1041 (N.D. Cal. 2018) 13

22

23 *SRI Int’l, Inc. v. Cisco Sys., Inc.*,
930 F.3d 1295 (Fed. Cir. 2019)..... 13

24 *Tele-Publishing, Inc. v. Facebook, Inc.*,
252 F. Supp. 3d 17 (D. Mass. 2017) 14

25

26 *Ultramercial, Inc. v. Hulu, LLC*,
722 F.3d 1335 (Fed. Cir. 2013)..... 7

27

28 *Uniloc USA, Inc. v. LP Elecs. USA, Inc.*,
957 F.3d 1303 (Fed. Cir. 2020)..... 11

1 *Visual Memory LLC v. NVIDIA Corp.*,
2 867 F.3d 1253 (Fed. Cir. 2017)..... 12

3 *Zkey Investments, LLC v. Facebook Inc.*,
4 225 F. Supp. 3d 1147 (C.D. Cal. 2016)..... 14

5 **Statutes**

6 35 U.S.C. § 101 *passim*

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.