

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

QUEST NETTECH CORPORATION,	§	
	§	Case No. 2:19-cv-00118-JRG
	§	
Plaintiff,	§	
	§	
v.	§	<b><u>JURY TRIAL DEMANDED</u></b>
	§	
APPLE INC.,	§	
	§	
Defendant.	§	
	§	

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**QUEST NETTECH CORPORATION'S SUR-REPLY IN FURTHER OPPOSITION  
TO APPLE INC.'S MOTION TO DISMISS UNDER  
FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) (DKT. NO. 19)**

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Plaintiff, Quest NetTech Corporation (“NetTech” or “Plaintiff”), submits this sur-reply brief in further opposition to Defendant Apple Inc.’s (“Apple” or “Defendant”) Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(6) (Dkt. No. 19).

## I. INTRODUCTION

NetTech’s response to Apple’s motion proposes constructions for two limitations of the claims that capture the essence of the innovative concept embodied by the claims, and also relies in part on the specification of the ’137 Patent to demonstrate that the claims are innovative. Rather than address the merits of NetTech’s proposed constructions or dispute the accuracy of the specification’s discussion of innovation, Apple assails NetTech’s reliance on the specification for these purposes without citing any legal support for its arguments—while at the same time relying extensively on the specification to allege the claimed hardware components are generic. NetTech’s analysis is supported by Federal Circuit case law and compels denial of Apple’s motion.

Apple’s reply also offers no substantive response to NetTech’s contention that the abstract concept of “storing financial transaction records in a portable and organized manner” does not support Apple’s argument under *Alice* step 1 because it relates only to a single feature of the claimed invention and not the claimed invention *as a whole*. Apple instead compounds its error by arguing that the claims as construed by NetTech embody not one but *two* abstract concepts—the second being “conducting financial transactions” or “using a credit card” (depending on which portion of Apple’s reply brief one refers to). Not only do these two abstract concepts fail to characterize the claimed invention as a whole, they confirm that Apple has failed to identify a single abstract concept that meets Apple’s burden under *Alice* step 1.

Apple’s argument under *Alice* step 2 relies on the straw man argument that NetTech has supposedly argued that using a credit card was innovative in 1995. As to NetTech’s actual

argument that a “multiple account electronic credit card” was innovative in 1995, Apple has no rebuttal except to argue in essence that since processors and memory were known in 1995, nothing that uses these components can survive *Alice* step 2. This ignores that a novel arrangement of known components can be inventive and non-abstract under *Alice* and demonstrates that Apple has not met its burden under *Alice* step 2.

## **II. ARGUMENT**

### **A. The '137 Patent Is Patent Eligible Under 35 U.S.C. § 101**

Apple’s reply brief confirms that the claims of the '137 Patent are patent-eligible under Section 101. Apple offers no rebuttal to NetTech’s argument that the claims are not directed to the abstract concept of “storing financial transaction records in a portable and organized manner,” as Apple originally contended in its opening brief. Moreover, Apple’s *Alice* step 2 analysis merely repeats the fallacious argument that claims cannot be innovative if they use known computer components regardless of whether those components are implemented in an innovative way. Apple’s motion should be denied.

#### **1. Apple’s Position Is Untenable in Light of Its Own Patent Portfolio**

Apple tried to dismiss the dilemma it has placed itself in by filing a motion contending that the subject matter of the '137 Patent is patent ineligible even though Apple owns many patents which are also directed to mobile payment devices. Instead of arguing why the '137 Patent is distinguishable from the patents listed in NetTech’s response and therefore unpatentable, Apple asks this Court to ignore the issue altogether. *See* Dkt. 37 at 6<sup>1</sup>. It should not.

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<sup>1</sup> The page numbers in citations to docketed documents refer to the page numbers assigned by the ECF system.

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