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Plaintiff AGIS Software Development LLC (“AGIS” or “Plaintiff”), by and through its undersigned counsel, hereby submits this sur-reply in further opposition to Defendant Uber Technologies, Inc., d/b/a Uber’s (“Defendant” or “Uber”) Motion for Summary Judgment of Ineligibility of U.S. Patent Nos. 7,031,728 and 7,630,724 Under 35 U.S.C. § 101 (Dkt. 250) (the “Motion”).

Uber repeats the same assertion—that the claims “simply provide methods of collecting, organizing, and displaying information,” and alleges the ’728 and ’724 Patents are directed to abstract ideas. Uber’s attempts to describe the inventive concepts at such a high level of abstraction divorces the inventive concept of the ’728 and ’724 Patents from the claims and specification. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (“However, describing the claims at such a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule.”); *id.* at 1335 (“The ‘directed-to’ inquiry, therefore, cannot simply ask whether the claims *involve* a patent-ineligible concept, because essentially every routinely patent-eligible claim involving physical products and actions *involves* a law of nature and/or natural phenomenon—after all, they take place in the physical world.”). The claims of the ’728 and ’724 Patents are not directed to merely storing and organizing information and displaying information. *See* Dkt. 323 (“Reply”) at 1-2. Uber’s arguments demonstrate that there remain genuine disputes of material fact that preclude summary judgment. Accordingly, Uber’s Motion should be denied.

I. THE PREAMBLE AND SPECIFICATION OF THE ’724 AND ’728 PATENTS BOLSTERS THE INVENTIVE CONCEPT OF THE CLAIMS OF THE PATENTS

Uber does not acknowledge the inventive concept of the ’724 and ’728 Patents. Uber submits that the preamble cannot be used to determine whether the claims of the ’728 and ’724 Patents are directed to ineligible subject matter. Uber attempts to backtrack from its own proposed

constructions where it proposed that the preamble of the '724 Patent, Claim 16 is limiting. *See* Dkt. 213 at 12 (holding that the entire preamble of Claim 16 of the '724 Patent is limiting); *id.* at 36 (holding that the entire preamble of Claim 7 of the '728 Patent is limiting). Uber cannot now argue that the preamble is *not* limiting in contradiction of the Court's construction and the parties' agreement. Nonetheless, in accordance with the Court's construction, AGIS submits that the preamble recites the essential structure of the claims. *See NTP, Inc. v. Research In Motion, Ltd.*, 418 F.3d 1282, 1305-06 (Fed. Cir. 2005) (holding a preamble is generally construed to be limiting if it "recites essential structure or steps, or if it is necessary to give life, meaning, and vitality to the claim," "helps to determine the scope of the patent claim," or "limitations in the body of the claim rely upon and derive antecedent basis from the preamble"). Here, the preamble recites the essential structure of the invention, and the Court has construed the entire preambles of Claim 7 of the '728 Patent and Claim 16 of the '724 Patent are limiting.

Uber itself argued that "preambles provide the antecedent bases for limitations in the claim body," arguing that, for example, "providing or establishing a network is fundamental to the alleged invention described in the patents." *See* Dkt. 156 at 4-5 ("Indeed, the title of the '724 Patent is a 'method of providing a cellular phone/PDA communication system.'"); *id.* at 5 ("Because providing and establishing a communications network is fundamental to 'this invention,' the preamble must be limiting as it gives life, meaning, and vitality to the claim."). Claim 16 of the '724 Patent recites, in whole

A method of providing a cellular phone communication network for designated participating users, each having a similarly equipped PDA cellular phone that includes a CPU, a GPS navigational system and a touch screen display comprising

Dkt. 300-2, Claim 16. Similarly, the preamble of the '728 Patent recites, in whole:

A method of establishing a cellular phone communication network for designated participants, each having a similarly equipped cellular phone that includes voice communication, free and operator selected text messages, photograph and video, a

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