

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

AMERANTH, INC.,

Plaintiff,

v.

DOORDASH, INC.,
EAT’N PARK RESTAURANTS, LLC, and
EAT’N PARK HOSPITALITY GROUP, INC.,

Defendants.

C.A. No.: 2:23-cv-2165



**BRIEF IN SUPPORT OF DEFENDANTS’ MOTION TO DISMISS
FOR IMPROPER VENUE, OR ALTERNATIVELY, TO TRANSFER,
AND FAILURE TO STATE A CLAIM**

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2	<i>Gesture Tech. Partners, LLC v. Lenovo Grp. Ltd. et al.</i> , No. 6-21-cv-00122, Dkt. 43 (W.D. Tex.) (Dec. 29, 2021)
3	San Francisco Chronicle Article entitled “Work from home, hybrid model adapted by Bay Area’s DoorDash, more,” dated November 7, 2022

Defendants DoorDash, Inc. (“DDI”) and Eat’n Park Restaurants, LLC (“Eat’n Park Restaurants”) and Eat’n Park Hospitality Group, Inc. (“Eat’n Park Hospitality”) (collectively “Eat’n Park”) move to dismiss Plaintiff Ameranth, Inc.’s (“Ameranth”) claims against DDI for improper venue under Fed. R. Civ. P. 12(b)(3), or alternatively, to transfer the claims against DDI to the District of Delaware and stay the claims against Eat’n Park. Additionally, Defendants move to dismiss all claims for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

I. INTRODUCTION

Venue is improper as to Defendant DDI. Under 28 U.S.C. § 1400(b), a patent infringement case may be brought only in the judicial district (1) where the defendant resides, or (2) where the defendant has committed acts of infringement and has a regular and established place of business. There is no dispute as to the first prong, as DDI is a Delaware company and therefore does not “reside” in this District. The second prong is also not met at least because, as demonstrated by the Declaration of Kelsey Merrigan (“Merrigan Decl.”Merrigan Decl.) filed herewith, DDI does not operate or maintain any office or other “regular and established place of business” within this District.

In addition, if the Court declines to dismiss and/or transfer based on lack of venue, the Court should dismiss this case in its entirety pursuant to Rule 12(b)(6) because, like *five* other related Ameranth patents that have already been invalidated under Section 101, the patents asserted in this case likewise claim only high-level, functional, and result-oriented ideas and fail to provide any inventive concepts that transform such ideas into patentable subject matter.¹

II. BACKGROUND

Prior to filing this action, Ameranth filed another action before this Court captioned

¹ On July 26, 2024, the parties met and conferred regarding Defendants’ motion but were unable to resolve their disputes.

Ameranth, Inc. v. DoorDash, Inc., No. 22-cv-01776-WSH (“*Ameranth I*”), in which Ameranth alleges that DDI infringes U.S. Patent No. 11,276,130 (the “’130 patent”). (*Ameranth I*, Dkt. 1.) DDI timely moved to dismiss in *Ameranth I* for improper venue, or alternatively, to transfer, and for failure to state a claim as the ’130 patent is invalid under Section 101. (*Ameranth I*, Dkt. 21.) DDI’s motion in *Ameranth I* is still pending.

The Complaint in this case alleges that DDI infringes two patents related to the ’130 patent at issue in *Ameranth I*—U.S. Patent Nos. 11,842,415 (the “’415 patent”) and 11,847,587 (the “’587 patent”) (collectively, the “Asserted Patents”). Ameranth alleges infringement of claims 1 and 9 of the ’415 patent and claims 1 and 7 of the ’587 patent (collectively, the “Asserted Claims”). The Asserted Patents both relate to the ’130 patent and share a common specification.² These three patents are part of a larger family of patents (Dkt. 1 at ¶ 31; Dkt. 1-1 at (60); Dkt. 1-2 at (60)), and the Southern District of California and the District of Delaware have already concluded that five other patents within this family are invalid under 35 U.S.C. § 101 for claiming patent-ineligible subject matter in decisions affirmed by the Federal Circuit. *See In re Ameranth Cases*, No. 11-cv-1810-DMS, 2018 WL 11433300 (S.D. Cal. Sept. 25, 2018), *aff’d in part, vacated in part on other grounds*, 792 F. App’x 780, 787 (Fed. Cir. 2019); *Natera, Inc. v. ArcherDX, Inc.* (hereinafter, “*Olo*”), No. 20-cv-00518-LPS, 2020 WL 6043929 (D. Del. Oct. 13, 2020) (joint opinion for *Ameranth, Inc. v. Olo Inc.* and two unrelated cases), *aff’d sub nom without opinion, Ameranth, Inc. v. Olo Inc.*, 2021 WL 4699180 (Fed. Cir. Oct. 8, 2021), *cert. denied*, 142 S. Ct. 2814 (2022).

In addition, in a flawed attempt to bolster its position on venue, the Complaint here also alleges infringement by Eat’n Park, a merchant that uses “DDI products and services” comprising the “DoorDash platform” (“the DDI Platform”). *See, e.g.*, Dkt. 1 at ¶¶ 12-13, 17-19, 98.

² References to the specification will only be made to the ’415 patent to avoid cumulative citations.

III. LEGAL STANDARD

A. Improper Venue

Venue in patent infringement actions is governed exclusively under 28 U.S.C. § 1400(b). *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514, 1519-21 (2017). “Any civil action for patent infringement may be brought in the judicial district where [1] the defendant resides, or [2] where the defendant has committed acts of infringement and has a regular and established place of business.” 28 U.S.C. § 1400(b). “The requirement of venue is specific and unambiguous; it is not one of those vague principles which, in the interests of some overriding policy, is to be given a liberal construction.” *In re Cray Inc.*, 871 F.3d 1355, 1360 (Fed. Cir. 2017); *see also In re Google LLC*, 949 F.3d 1338, 1346 (Fed. Cir. 2020) (“[T]he Supreme Court has cautioned against a broad reading of the venue statute.”).

Under the first prong of § 1400(b), “a domestic corporation ‘resides’ only in its State of incorporation.” *TC Heartland*, 137 S. Ct. at 1517. Personal jurisdiction alone cannot establish residence under § 1400(b). *See id.* Under the second prong, three requirements must be met to show that a defendant has a regular and established place of business in a district: “(1) there must be a physical place in the district; (2) it must be a regular and established place of business; and (3) it must be the place of the defendant” (collectively, the “*Cray Factor(s)*”). *In re Cray*, 871 F.3d at 1360. “If any statutory requirement is not satisfied, venue is improper under § 1400(b).” *Id.*

“[T]he plaintiff has the burden of establishing proper venue under 28 U.S.C. § 1400(b).” *Westech Aerosol Corp. v. 3M Co.*, 927 F.3d 1378, 1381-82 (Fed. Cir. 2019). “[I]n an action involving multiple defendants[,] venue . . . must be met as to each defendant.” *Magnacoustics, Inc. v. Resonance Tech. Co.*, 132 F.3d 49 (Fed. Cir. 1997).

B. Failure to State a Claim Upon Which Relief Can be Granted

A complaint must allege facts “sufficient to show that the plaintiff has a ‘plausible claim

for relief.” *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210-11 (3d Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). A “‘plausible claim for relief’ in a patent infringement case necessarily requires a valid patent; otherwise there can be no infringement.” *Intell. Ventures I LLC v. Erie Indem. Co.*, 200 F. Supp. 3d 565, 569 (W.D. Pa. 2016). “[T]he 12(b)(6) stage is a proper one at which to examine patent eligibility under § 101.” *Id.*

“Whether a claim is drawn to patent-eligible subject matter under § 101 is an issue of law.” *In re Bilski*, 545 F.3d 943, 951 (Fed. Cir. 2008), *aff’d sub nom. Bilski v. Kappos*, 561 U.S. 593 (2010). In *Alice Corp. Pty. v. CLS Bank Int’l*, the Supreme Court established a two-step test for determining eligibility under 35 U.S.C. § 101. 573 U.S. 208, 217 (2014). At *Alice* Step One, the court must “determine whether the claims at issue are directed to . . . patent-ineligible concepts,” such as an abstract idea. *Id.* If this standard is met, then the court proceeds to Step Two, which requires consideration of “the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent eligible application.” *Id.* (citing *Mayo Collaborative Servs. v. Prometheus Lab’ys, Inc.*, 566 U.S. 66, 78–79 (2012)). When the claims are “substantially similar and linked to the same abstract idea,” the court may use a representative claim for its two-step *Alice* analysis. *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1348 (Fed. Cir. 2014); *see also Smart Sys. Innovations, LLC v. Chi. Transit Auth.*, 873 F.3d 1364, 1368 n.7 (Fed. Cir. 2017) (concluding that claims “should rise or fall together” when they “contain only minor differences in terminology but require performance of the same basic process”).

IV. ARGUMENT

A. Venue is Improper for DDI under § 1400(b)

As discussed below, under the two-prong test of § 1400(b), venue is improper for DDI because (1) DDI does not “reside” in this District; and (2) DDI does not “have a regular and

established place of business” in this District.

1. DDI Does Not “Reside” In This District

There is no dispute that DDI is a Delaware company organized and existing under the laws of the State of Delaware. (Dkt. 1 at ¶ 2; Merrigan Decl. at ¶ 4.) Since DDI does not “reside” in the Western District of Pennsylvania, venue is improper under the first prong of § 1400(b). *See TC Heartland*, 137 S. Ct. at 1517 (“[A] domestic corporation ‘resides’ only in its State of incorporation for purposes of the patent venue statute.”).

2. DDI Does Not Have A “Regular And Established Place Of Business” In This District

Venue is also improper under the second prong of § 1400(b) at least because DDI does not have any “regular and established place of business” in this District. Under the second prong, the Plaintiff bears the burden to identify a location that satisfies all three *Cray* Factors: “(1) [it] must be a physical place in the district; (2) it must be a regular and established place of business; and (3) it must be the place of the defendant.” *In re Cray*, 871 F.3d at 1360. There is no location in this District that meets these three requirements.

DDI’s principal place of business is 303 2nd Street South Tower, San Francisco, CA 94107. (Merrigan Decl. at ¶ 5.) DDI does not [REDACTED]

[REDACTED]. (*Id.*, ¶ 6.) Nor does DDI [REDACTED]

[REDACTED]

[REDACTED]. (*Id.*, ¶ 7.)

In view of these undisputed facts, Ameranth alleges that venue is proper based on: (1) activities within the District that are tied to neither a “physical place” nor a “regular and established place of business” (and thus fails *Cray* Factors 1 and 2); and (2) business locations of entities other than DDI (which fails *Cray* Factor 3). Specifically, Ameranth relies on allegations relating to (i)

Dashers (Dkt. 1, ¶¶ 12, 20); (ii) engineers (Dkt. 1, ¶¶ 14-19); (iii) DashMart (Dkt. 1, ¶¶ 2-5, 12, 13); and (iv) Eat'n Park (Dkt. 1, ¶¶ 6-8, 12). For the reasons discussed below, however, none of those allegations establish venue.

a) Dashers Do Not Establish Venue

Ameranth alleges that “DDI . . . employs hundreds of delivery Dashers, throughout the district, all of which use technology that is accused of infringement herein.” (Dkt. 1, ¶ 20.) This sole allegation regarding Dashers cannot establish venue.

“Dashers” are individuals who facilitate the delivery of goods via the DDI Platform. (Merrigan Decl. at ¶ 11.) [REDACTED]

[REDACTED] (See Merrigan Decl. at ¶ 11.) As such, for that reason alone, their activities in this District cannot establish venue for DDI. *Talsk Rsch., Inc. v. Evernote Corp.*, No. 16-cv-2167, 2017 WL 4269004, at *4 (N.D. Ill. Sept. 26, 2017) (“The Federal Circuit’s decision in *Cray* leaves no room for Plaintiff to argue that the handful of non-employee, independent contractors present in this District constitute a ‘regular and established place of business’ for Defendant within the meaning of § 1400(b).”); *Correct Transmission LLC v. ADTRAN, Inc.*, No. 20-cv-00669-ADA, 2021 WL 1967985, at *3 (W.D. Tex. May 17, 2021) (“[S]ince ADTRAN engaged Palco as an independent contractor, its facility cannot be ADTRAN’s regular and established place of business.”); *AptusTech LLC v. Trimfoot Co., LLC*, 2020 WL 1190070 at *5 (E.D. Tex. Mar. 12, 2020) (“[T]he Court joins the vast number of other district courts . . . that have held an independent retailer, or a distributor, does not satisfy the requirement that the defendant has a regular and established place of business in the forum.”). In addition, Dashers do not operate out of any “regular and established” physical business location but instead provide delivery services moving from place to place. For this **additional** reason, Dashers cannot establish venue. See *In re Cray*, 871 F.3d at 1362 (“the place in question must be settled certainly, or fixed

permanently”) (internal quotation marks omitted); *see also Silicon Tech., Inc. v. United Refractories, Inc.*, 632 F. Supp. 1, 2 (W.D. Pa. 1985) (sales activity within the district insufficient to establish venue without a regular and established place of business).

b) Engineers Residing In Pittsburgh Do Not Establish Venue

Ameranth alleges that “the individual and collective activities [of engineers residing in Pittsburgh] at DDI’s direction separately establish venue over DDI.” (Dkt. 1, ¶ 19.) Ameranth is wrong again.

Initially, out of nearly [REDACTED] [REDACTED]. (Merrigan Decl. at ¶ 8.) Regardless of the number, however, the mere presence of these employees within the District cannot establish venue because [REDACTED]. (Merrigan Decl. at ¶¶ 7, 8.) [REDACTED] (Merrigan Decl. at ¶ 8) and thus cannot be used to establish venue under § 1400(b). *See, e.g., IngenioShare, LLC v. Epic Games, Inc.*, No. 21-cv-00663-ADA, 2022 WL 827808, at *4 (W.D. Tex. Mar. 18, 2022) (finding no venue where twenty remote employees were located in the district without any office of the defendant); *see also Pers. Audio, LLC v. Google, Inc.*, 280 F. Supp. 3d 922, 936 (E.D. Tex. Dec. 1, 2017) (“The fact that [Defendant] may allow its employees to work from the Eastern District of Texas does not establish proper venue in this district.”).

Ameranth alleges that, because “the employees work at their own homes in the Pittsburgh area and not in an office provided by DDI, DDI has established or ratified the employees’ homes as DDI’s places of business.” (Dkt. 1, ¶ 18.) However, the Federal Circuit has made clear that, to satisfy § 1400(b), a home from which a remote employee works “must be a place *of the defendant*, not solely a place of the defendant’s employee.” *In re Cray*, 871 F.3d at 1363 (emphasis added). And courts have consistently found that employees’ home offices are not business locations of

their employer and do not establish venue under § 1400(b). *See, e.g., id.* (affirming that defendant’s employees’ homes are “not places of the defendant”); *Celgene Corp. v. Mylan Pharms. Inc.*, 17 F.4th 1111, 1123-25 (Fed. Cir. 2021) (same); *X2Y Attenuators, LLC v. Intel Corp.*, No. 17-cv-00164, Dkt. 71 at 2 (W.D. Pa) (June 25, 2018) (no venue based on employee’s home office) (Ex. 1); *Galderma Lab’ys, L.P. v. Teva Pharms. USA, Inc.*, 290 F. Supp. 3d 599, 610 (N.D. Tex. 2017) (same); *GreatGigz Sols., LLC v. Maplebear Inc.*, No. W-20-cv-00737-ADA, 2021 WL 4691145, at *2 (W.D. Tex. Oct. 6, 2021) (same); *Gesture Tech. Partners, LLC v. Lenovo Grp. Ltd. et al.*, No. 6-21-cv-00122, Dkt. 43 at 4-5 (W.D. Tex.) (Dec. 29, 2021) (finding no venue where, despite having fifty remote employees working within the district, the “facts of th[e] case d[id] not justify a finding that the referenced work-from-home employees [were] working from a place of the Defendants.”) (Ex. 2). This is particularly true when the defendant does not “condition[] employment on an employee’s continued residence in the district.” *In re Cray*, 871 F.3d at 1363 (“if an employee can move his or her home out of the district at his or her own instigation, without the approval of the defendant, that would cut against the employee’s home being considered a place of business of the defendant.”); *see also Celgene*, 17 F.4th at 1123-1124. [REDACTED]

[REDACTED] (Merrigan Decl. at ¶ 8.) Ameranth’s baseless allegation that “DDI requires its engineering team members to be located in the Pittsburgh area” (Dkt. 1, ¶¶ 18-19) is simply untrue.

Ameranth also alleges, citing a YouTube video, that “one Pittsburgh team member, Matt Ranney, . . . has used his home office . . . to publicly represent DDI nationwide on technical subject matter . . . thus clearly establishing his home office location as a DDI physical place of business in this district.” (Dkt. 1, ¶ 18.) However, nothing in that video establishes Mr. Ranney’s home office as a DDI physical place of business. Instead, as demonstrated by the screen shot below, the

video shows Mr. Ranney giving an interview from a rock-and-roll themed room decorated with guitars, string lights, and a Led Zeppelin poster, and free of any DoorDash logo or the look and feel of a DoorDash office.



[REDACTED]

[REDACTED] (Merrigan Decl. at ¶ 8.) [REDACTED]

[REDACTED] (*Id.*, ¶¶ 8, 10.)

[REDACTED] (*Id.*, ¶

8.) There is simply no basis to find venue under § 1400(b) based on the home office of any DDI employee. *In re Cray*, 871 F.3d at 1363; Ex. 1 at 2.

Ameranth also erroneously alleges that DDI “directs, ratifies or establishes in person/team meetings” by encouraging employees within this District to gather in person for “moments that matter.” (Dkt. 1, ¶ 17.) These allegations are based on statements made by a former employee of DDI in an article published in the San Francisco Chronicle. (*Id.*) However, those statements were about DDI’s employees generally— [REDACTED]. (Merrigan Decl. at ¶ 9; *see also* Ex. 3 at 3-4.) In addition, nowhere was it stated that DDI “directs, ratifies or establishes” any such in-person meetings as alleged in the Complaint. (Merrigan Decl. at ¶ 9; *see also* Ex. 3 at

3-4.) In fact, according to that same article, DDI encourages employees to gather *in DoorDash offices* [REDACTED]. (Ex. 3 at 4 (“We’ve been encouraging teams to take advantage of our beautiful office space rather than rent conference rooms in some hotels.”); Merrigan Decl. at ¶¶ 6-7.) Indeed, as discussed above, [REDACTED] [REDACTED] (Merrigan Decl. at ¶¶ 6-7) and thus could not have established or ratified any place of business in the District. *See In re Cray*, 871 F.3d at 1361 (explaining that, to determine whether the defendant has “establish[ed] or ratif[ied] the place of business . . . [r]elevant considerations include whether the defendant owns or leases the place, or exercises other attributes of possession or control over the place”).

Finally, Ameranth alleges that DDI engineers’ “individual and collective activities at DDI’s direction separately establish venue over DDI.” (Dkt. 1, ¶ 19.) As explained above, however, activities taking place without a regular and established DDI place of business cannot establish venue, [REDACTED]. (Merrigan Decl. at ¶ 9.) *See In re Cray*, 871 F.3d at 1362 (“[T]he place in question must be settled certainly, or fixed permanently”).

c) The DashMart In This District Does Not Establish Venue

Ameranth alleges that “DDI’s staff operating at and from its DashMart store in Pittsburgh use products and services that are accused of infringement herein.” (Dkt. 1, ¶ 12.) However, this allegation cannot establish venue for DDI.

DashMarts are physical stores and warehouses that sell consumer goods commonly found in convenience stores, grocery stores and takeaway restaurants, such as pre-packaged or prepared foods, beverages and household items. (Merrigan Decl. at ¶ 14.) The DashMart store to which the Complaint refers—like all DashMart stores—[REDACTED] DoorDash Essentials LLC (“DDE”), [REDACTED] (Merrigan Decl. at ¶¶ 12-19.) [REDACTED] [REDACTED] (*Id.*, ¶ 15.) Rather, [REDACTED]

[REDACTED]

[REDACTED] (*Id.*, ¶ 16.) [REDACTED]

[REDACTED]

(*Id.*, ¶¶ 17, 18.) [REDACTED]

[REDACTED] (*Id.*, ¶ 18.)

Under these facts, Ameranth cannot impute the DashMart location in this District to DDI unless Ameranth demonstrates that DDE and DDI have not maintained “corporate separateness”:

A threshold inquiry when determining whether the place of business of one company can be imputed to another, related company is *whether they have maintained corporate separateness*. If corporate separateness has not been maintained, the place of business of one corporation may be imputed to the other for venue purposes. But where related companies have maintained corporate separateness, the place of business of one corporation is not imputed to the other for venue purposes.

Andra Grp., LP v. Victoria’s Secret Stores, L.L.C., 6 F.4th 1283, 1289 (Fed. Cir. 2021) (emphasis added). Ameranth cannot make such a showing because [REDACTED]

[REDACTED] (Merrigan Decl. at ¶ 20.)

[REDACTED]

[REDACTED] (*Id.*, ¶ 21-22.) [REDACTED]

[REDACTED] (*Id.*, ¶ 23.) Therefore, the DashMart location in this District, [REDACTED]

[REDACTED] (*Id.*, ¶ 23), cannot be “imputed to [DDI] for the purposes of patent venue statute.” *Andra Grp.*, 6 F.4th at 1289 (finding no venue where the entities “have maintained corporate separateness”); *see also Xodus Med., Inc. v. Allen Med. Sys., Inc.*, No. 17-cv-00581, 2018 WL 2338763, at *3 (W.D. Pa. May 22, 2018) (“Plaintiff has not demonstrated that the existing and formal corporate distinctions between the Defendant and its parent should be disregarded here for compelling equitable reasons so as to permit the Hill-Rom facility in Monroeville be treated as a ‘physical presence’ of its subsidiary, the Defendant.”);

Eat'n Park is a merchant customer that uses the DDI Platform. (Merrigan Decl. at ¶ 25.) In other words, Eat'n Park permits its own customers to place orders using the DDI website (www.doordash.com) and/or mobile application. However, the Complaint is devoid of any allegation of Eat'n Park being a regular and established place of business of defendant DDI. In fact, Ameranth admits that each Eat'n Park location in the District is *not* “a place of business of DoorDash.” (Dkt. 20, ¶ 2.) Thus, venue is improper under § 1400(b) for failure to meet *Cray* Factor 3. *In re Volkswagen Grp. of Am., Inc.*, 28 F.4th 1203, 1208 (Fed. Cir. 2022) (“If any of these statutory requirements are not satisfied, venue is improper under § 1400(b).”). In addition, the mere allegation that Eat'n Park uses DDI's software within the District cannot give rise to venue for DDI. *See Talsk Rsch.*, 2017 WL 4269004 at *5 (improper to rely on “customer use of Defendant's software within the district” as a substitute for a fixed physical location).

3. If The Court Decides To Transfer The Case Against DDI, It Should Be Transferred To The District of Delaware

To the extent the Court decides to transfer the case against DDI, the case should be transferred to the District of Delaware. DDI is a Delaware corporation and, thus, the claims against DDI “could have been brought” in Delaware. 28 U.S.C. § 1406(a). Delaware is also a convenient forum for both parties because both Ameranth and DDI are Delaware companies. (Dkt. 1, ¶¶ 1, 2.) Indeed, in its response to DDI's motion in *Ameranth I*, Ameranth agreed that any transfer of the case should be to Delaware. *Ameranth I*, Dkt. 28 at 3.³

4. If The Court Transfers The Case Against DDI, The Case Against Eat'n Park Should Be Stayed

In the event that the Court transfers the case against DDI, the Court should sever and stay the claims against Eat'n Park pending the resolution of the claims against DDI under the

³ To be sure, in the past, Ameranth filed a patent infringement lawsuit in Delaware based on a patent in the same family as the Asserted Patents. *Olo*, 2020 WL 6043929

“customer-suit exception.” The customer-suit exception is generally treated as an exception to the “first to file” rule—“[w]hen a patent owner files an infringement suit against a manufacturer’s customer and the manufacturer then files an action of noninfringement or patent invalidity, the suit by the manufacturer generally take precedence” despite being filed later. *In re Nintendo of Am., Inc.*, 756 F.3d 1363, 1365 (Fed. Cir. 2014). The customer-suit exception also applies where, like here, a patent owner files a single patent infringement suit against both a defendant that provides the accused product or service (i.e., DDI), as well as its customer. *Id.* (finding that the district court should have granted the motion to transfer the claims against Nintendo and stay the claims against Nintendo’s clients); *see also Dali Wireless, Inc. v. Ericsson Inc.*, No. 22-CV-01313-ADA, 2023 WL 1423990, at *1 (W.D. Tex. Jan. 30, 2023) (“Where suit is brought against a manufacturer and its customers, the action against the customers should be stayed pending resolution of the case against the manufacturer to promote judicial economy.”).

In determining whether claims against a defendant should be stayed under the customer-suit exception, courts consider three factors: “(1) whether the customer-defendant in the earlier-filed case is merely a reseller; (2) whether the customer-defendant agrees to be bound by any decision in the later-filed case that is in favor of the patent owner; and (3) whether the manufacturer is the only source of the infringing product.” *Dali Wireless*, 2023 WL 1423990 at *2; *CyWee Group Ltd. v. Huawei Device Co. Ltd.*, No. 17-cv-495-WCB, 2018 WL 4002776, at *5 (E.D. Tex. Aug. 22, 2018). Here, all three factors favor a stay.

Regarding the first factor, Eat’n Park is a “mere end-user[.]” of the accused DDI Platform. *See GreatGigz Sols., LLC v. Costco Wholesale Corp.*, No. 6-21-CV-00807, 2022 WL 1037114, at *3 (W.D. Tex. Apr. 6, 2022) (finding the first factor favors stay “because [the] Complaint is predicated entirely on Defendants’ use of the supplier’s product”). As in *GreatGigz*, the only

infringement allegation against Eat'n Park is that its staff “use and integrate with DDI products and services that are accused of infringement herein.” (Dkt. 1, ¶ 12.) Therefore, resolving the claims against DDI will also resolve the claims against Eat'n Park and, thus, a stay is warranted. *See Dali Wireless*, 2023 WL 1423990, at *3.

The second and third factors also favor a stay, as Eat'n Park agrees to be bound by the findings in the case against DDI, and Ameranth's infringement allegations are directed solely at Eat'n Park's use of DDI's products and services and do not identify any other accused products and services (Dkt. 1, ¶ 12). *See Dali Wireless*, 2023 WL 1423990, at *4.

B. The Asserted Claims Are Invalid Under § 101

As discussed above, courts perform a two-step analysis to determine whether claims are invalid as directed to patent ineligible subject matter, such as an abstract idea: *first*, the court must “determine whether the claims at issue are directed to . . . patent-ineligible concepts,” such as an abstract idea; and, *second*, the court determines whether additional elements exist which ‘transform the nature of the claim’ into a patent eligible application.” *Alice Corp. Pty.*, 573 U.S. at 217-18 (citing *Mayo*, 566 U.S. at 72–73). The Asserted Claims in this case are invalid because they are directed towards an abstract idea, and the claim elements—individually and as an ordered combination—fail to provide an inventive concept that amounts to “significantly more” than the abstract idea itself. *See id.* at 217-218.

1. Alice Step One: The Asserted Claims Are Directed to an Abstract Idea

At step one, a determination is made as to “whether the claims ‘focus on a specific means or method that improves the relevant technology’ or are ‘directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.’” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016). “Where the focus of the claimed advance over the prior art shows that the claim's character as a whole is directed to steps that can be performed in the

human mind, or by a human using a pen and paper, the claim is for a patent-ineligible abstract idea.” *Ficep Corp. v. Peddinghaus Corp.*, No. 2022-1590, 2023 WL 5346043, at *3 (Fed. Cir. Aug. 21, 2023) (internal quotations omitted), *cert. denied*, 144 S. Ct. 1115 (2024).

Here, the Asserted Claims are clearly directed to abstract ideas, just like the related claims of U.S. Patent Nos. 6,384,850 (the “’850 patent”), 6,871,325 (the “’325 patent”), 6,982,733 (the “’733 patent”), 8,146,777 (the “’777 patent”) and 9,747,651 (the “’651 patent”) held ineligible in earlier cases (collectively, “the Related Claims”). *See Apple*, 842 F.3d at 1240-41 (concluding that the ’850, ’325 and ’733 patents were directed to the abstract idea of “generating menus on a computer,” which “could be described in other ways, including, as indicated in the specification, taking orders from restaurant customers on a computer.”); *Ameranth, Inc. v. Domino’s Pizza, LLC*, 792 Fed. App’x 780, 786 (Fed. Cir. 2019) (holding that claims for configuring and transmitting menus in the ’777 patent were directed to the abstract idea of “synchronous communications and automatic formatting for different handheld devices.”); *Olo*, 2020 WL 6043929, at *7 (holding that the asserted claims of the ’651 patent were directed to the abstract idea of “communicating hospitality-related information using a system that is capable of synchronous communications and messaging.”).

Specifically, the Asserted Claims of the ’415 and ’587 patents are directed to the abstract idea of communicating hospitality-related information using a system that is capable of multiple modes of communication. Claim 1 of the ’415 patent is representative and recites the use of “at least one web server computer,” a “hospitality software application,” a “master database,” a “Middleware/Framework Communications Control Software (MFCCS)” and an “external software API” to communicate with handheld computers to perform certain tasks, such as receiving reservation requests or ordering food. (’415 patent (Dkt. 1-2) at cl. 1; *see also id.* at cls.

2, 4.) Claim 9 of the '415 patent is materially similar to claim 1 but requires a network of “web server computers” instead of “at least one web server computer.” Claim 1 of the '587 patent similarly recites the use of a “network” of “backoffice servers,” a “hospitality software application,” a “master database,” a “Middleware/Framework Communications Control Software (MFCCS)” and an “external software API” to receive requests from handheld devices. ('587 patent (Dkt. 1-3) at cl. 1; *see also id.* at cls. 2-3.) Claims 1 and 7 of the '587 patent are also materially similar, but claim 1 recites the generic use of “entities” and “time constraints” to perform an unspecified “task” if the first entity does not complete the task while claim 7 instead describes the use of “alerts” to communicate information. “[T]hese components merely place the abstract idea in the context of a distributed networking system, which in the context of the claimed invention as described in the specification does not change the focus of the asserted claims from an abstract idea.” *Trinity Info Media, LLC v. Covalent, Inc.*, 72 F.4th 1355, 1365 (Fed. Cir. 2023).

The claims are “not directed to a patent-eligible improvement to computer functionality.” *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359, 1365 (Fed. Cir. 2020) (citation omitted). To be sure, the claims “do not enable computers to operate more quickly or efficiently, nor do they solve any technological problem.” *Id.* Rather, the claims “recite systems comprising an unordered list of generically named elements . . . each associated with high-level, broadly articulated, **result-defined** information-processing functionality. . . and not any improved **concrete** tools or methods by which that processing functionality is achieved.” *Impact Engine, Inc. v. Google LLC*, No. 2022-2291, 2024 WL 3287126, at *6 (Fed. Cir. July 3, 2024) (emphasis added).

Like the Related Claims already found invalid under Section 101, the Asserted Claims in this case “do not claim a particular way of programming or designing the software . . . but instead merely claim the resulting systems” and “are not directed to a specific improvement in the way

computers operate.” *Apple*, 842 F.3d at 1241 (citations omitted). Indeed, as with the related claims in *Domino’s Pizza*, the Asserted Claims provide only “essentially result-focused and functional language” without “specifics of a particular conception of *how* to carry out” their desired goals as a technical matter. *Domino’s Pizza*, 792 F. App’x at 786 (emphasis added) (citations omitted). And while the Asserted Claims purport to recite various functions to be performed with software, “the claims do not describe the software other than results sought to be achieved.” *Id.* at 787.

Additionally, the specification confirms that the patent is directed to an abstract idea as opposed to a concrete improvement to computer functionality. *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 767 (Fed. Cir. 2019) (“While the § 101 inquiry must focus on the language of the Asserted Claims themselves,” the specification may be useful “to understand the problem facing the inventor and, ultimately, what the patent describes as the invention.”) (citation and internal quotation marks omitted). The specification explains that hospitality services such as restaurants have long operated using “pen and paper,” such as when managing reservations or receiving orders by phone for delivery or in person in the restaurant. (’415 patent at 1:33-41.) The specification proposes automating such “pen and paper” activities using an “information management and synchronous communication system” with various communication features. (*See, e.g., id.* at 1:33-5:43.)

In *Olo*, the Court considered these *same* disclosures with respect to a patent having the *same* specification as the ’415 and ’587 patents and concluded that “the patent’s description of the problem being solved as one of computerizing the traditional pen-and-paper ordering and reservation system practiced in the hospital and restaurant industries, but we know that automation of [a] business practice is *not patent eligible*.” 2020 WL 6043929 at *9 (emphasis added). Indeed, rather than describing any patent-eligible new device or technology, the specification concedes

that the system disclosed and claimed simply uses “typical” hardware components and would be programmed with “commonly known” software programming steps that are omitted from the patent’s disclosure. (*Id.* at 6:60-7:15, 13:10-15.) And where the specification discusses claimed features such as “parallel operational capabilities” and “multi-modes of contact,” it states only desired functional results without describing any specific inventive underlying hardware or software programming, if they are described at all. (*See, e.g., id.* at 16:8-21, 16:30-33; *see generally id.* at 13:36-18:62.)

Thus, the claims and the specification state only “result-based” functional aspirations, devoid of any details on “*how* to engineer or program” a system to achieve the results stated in the Asserted Claims. *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1343-45 (Fed. Cir. 2018) (emphasis added); *In re TLI Commc’ns LLC Pat. Litig.*, 823 F.3d 607, 612 (Fed. Cir. 2016) (finding claims impermissibly abstract where the specification “fail[ed] to provide any technical details for the tangible components, but instead predominately describe[d] the system and methods in purely functional terms.”). As such, the Asserted Claims recite abstract ideas and fail *Alice* step one.

2. *Alice* Step Two: The Asserted Claims Do Not Recite an Inventive Concept

“To save a patent at step two, an inventive concept must be evident in the claims.” *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017). The inventive concept must provide “significantly more” than the abstract idea itself. *BSG Tech*, 899 F.3d at 1289-90. Claim elements which are “well-understood, routine, conventional” or “purely functional” cannot supply an inventive concept. *See Alice*, 573 U.S. at 224-6 (citation omitted); *TLI*, 823 F.3d at 611-12; *BSG Tech*, 899 F.3d at 1290.

The Asserted Claims recite nothing more than a “[w]holly generic computer implementation” with “purely functional” elements to computerize the “pen and paper” operations

of a hospitality business, such as a restaurant. *See Alice*, 573 U.S. at 222-6; *TLI*, 823 F.3d at 612. As the *Olo* court concluded with respect to the related '651 patent (which shares the same specification), “it is important to understand just how repeatedly the specification describe[s] the invention as using typical hardware and commonly known software programming steps.” *Olo*, 2020 WL 6043929 at *9; *see also* '415 patent at 6:60-7:15, 13:10-15. “[N]either the claims, nor the specification describe[s] any specific programming step . . . nor do they claim an improvement to computer functionality.” *Id.* at *8.

For example, the preamble of claim 1 of the '415 patent recites an “improved and intelligent web server computer with multi-modes of contact, multi-communications protocols, multi-user and parallel operational capabilities.” To the extent that the preamble is limiting, it simply recites a “web server computer” and the purported functionality of the “web server computer” without explaining *how* any of those functions are implemented. *See, e.g., Univ. of Fla. Res. Found., Inc. v. Gen. Elec. Co.*, 916 F.3d 1363, 1368–69 (Fed. Cir. 2019) (holding claims relating to format conversion ineligible where the “drivers [were] described in purely functional terms” and the claims did not “explain[] how the drivers do the conversion that [the patent owner] points to”).

Claim 1 additionally recites “at least one web server computer which can be accessed [and] controlled,” and which can be used to perform functions that are conventionally performed with a web server, namely “provid[ing] results, statistics and/or reports to a system administrator via a web based interface.” Claim 1 further recites the use of a “master database comprising data and parameters” that is “integrated” with the “web server computer,” “accessible” via an interface and able to be “update[d]” with new/additional parameters and information. But the use of a web server and database to store and access information is conventional. *See, e.g., Chewy, Inc. v. Int’l Bus. Machs. Corp.*, 94 F.4th 1354, 1366–67 (Fed. Cir. 2024) (“Using a generic database to store the

information used in correlating advertisements with search results is not an inventive concept . . . The concept of data collection, recognition, and storage is undisputedly well-known.”); *Audatex N. Am., Inc. v. Mitchell Int’l, Inc.*, 703 F. App’x 986, 990 (Fed. Cir. 2017) (describing “a database” and “a web server” as “indisputably conventional features”); *Intell. Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1368, 1370-71 (Fed. Cir. 2015) (holding that the use of a “generic web server with attendant software, tasked with providing web pages to and communicating with the user’s computer” and a “database” was insufficient to provide an inventive concept).

Claim 1 additionally recites the use of “Middleware/Framework Communications Control Software” to allow different devices and software to “communicate” with each other using different modes of contact and communications protocols and an “external software API” (i.e., an interface) to perform searches and access information; and requires the “web server computer” to select a “mode of contact” to execute task requests received from “handheld computers” and “automatically choos[ing]” a communication mode or protocol “*if needed and appropriate . . . and/or apply rule based intelligence to not attempt again*” in order to enable the “web server computer” to “improve its efficiency.” However, these elements cannot provide an inventive concept as they are recited in purely functional terms and fail to explain *how* these functions are performed. *See, e.g., Univ. of Fla. Res. Found.*, 916 F.3d at 1368–69 (holding that components described in “purely functional terms” did not provide an inventive concept where the claims did not “explain[] how” to perform the claimed function); *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1337 (Fed. Cir. 2017) (claim directed to ineligible abstract idea where “[t]he claim require[d] the functional results of ‘converting,’ ‘routing,’ ‘controlling,’ ‘monitoring,’ and ‘accumulating records,’ but d[id] not sufficiently describe how to achieve these results in a non-abstract way”); *VeriPath, Inc. v. Didomi*, 842 F. App’x 640, 643 (Fed. Cir. 2021)

(claim found ineligible as it was directed to “no more than an improvement to the abstract notion of exchanging privacy for functionality that utilizes an API to achieve the desired result.”).

As stated by the Federal Circuit in *Domino’s Pizza* (addressing the claims of the related ’077 patent), “[c]laims fall short of an inventive concept when they ‘simply instruct the practitioner to implement the abstract idea with routine, conventional activity.’” *Domino’s Pizza*, 792 F. App’x at 787 (quoting *Ultramerical, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014)). As in the related ’077 patent, the common specification of the Asserted Patents “acknowledges that the ‘functions falling within the described invention’ can be based on ‘commonly known’ programming steps and the claim limitations describe a desired result but do not instruct how to accomplish that result.” *Domino’s Pizza*, 792 F. App’x at 787. “It is not enough to point to conventional applications and say ‘do it on a computer.’” *Apple*, 842 F.3d at 1243 (citing *Alice*, 134 S.Ct. at 2358).

Moreover, considering each claim as an “ordered combination” of elements does not reveal any inventive concept that is “significantly more” than the abstract idea and would be sufficient to “transform the nature of the claim” into a patent-eligible improvement to an underlying technology. *BSG Tech*, 899 F.3d at 1289-90. The claims recite result-oriented features such as “multi-modes of contact,” “parallel operational capabilities” and “intelligently” performed functions, but those are nothing more than desired results—high-level, purely functional ideas for communication—within the abstract idea of communicating hospitality-related information using a system that is capable of multiple modes of communication. And it is well-settled that “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.” *Domino’s Pizza*, 792 F. App’x at 787 (quoting *BSG Tech*, 899 F.3d at 1290).

In sum, whether “taken individually or in combination, the recited limitations neither improve the functions of the computer itself, nor provide specific programming, tailored software, or meaningful guidance for implementing the abstract concept.” *Intell. Ventures I LLC v. Capital One Corp.*, 850 F.3d 1332, 1342 (Fed. Cir. 2017). Thus, the Asserted Claims fail *Alice* step two.

3. Ameranth’s Conclusory Allegations And Proposed Constructions Confirm That The Asserted Claims Are Directed To Ineligible Subject Matter

Recognizing that the intrinsic record and prior court decisions confirm the invalidity of the Asserted Claims, Ameranth includes numerous allegations, including an expert declaration by Dr. Goodrich (“Goodrich Decl.” (Dkt. 1-4)), as a basis to argue that the Asserted Claims are directed to eligible subject matter. (*See* Dkt. 1; Dkt. 1-4) But, “[i]n ruling on a 12(b)(6) motion, a court need not accept as true allegations that contradict matters properly subject to judicial notice or by exhibit, such as the claims and the patent specification.” *Secured Mail Sols. LLC v. Universal Wilde, Inc.*, 873 F.3d 905, 913 (Fed. Cir. 2017) (cleaned up). And that is precisely the case here. Dr. Goodrich’s conclusory allegations regarding the purported unconventional nature of the claimed elements are contradicted by the patent itself as well as his own declaration. *See Domino’s*, 792 F. App’x at 787 (citing *BSG Tech*, 899 F.3d at 1290). For example, Dr. Goodrich alleges that a person of ordinary skill in the art (POSITA) “would understand that a ‘web server’ is a term of art that connotes a specialized computing device with specialized software” based on a definition of the term in a dictionary published in 2002. (Dkt. 1-4 at ¶ 38.) But this is contradicted by the concessions in the specification, which state that the system disclosed and claimed simply uses “typical” hardware components and would be programmed with “commonly known” software programming steps that are omitted from the patent’s disclosure. (’415 patent at 6:60-7:15, 13:10-15.) The conventional and routine nature of a “web server” is confirmed by its inclusion in Dr. Goodrich’s cited dictionary, which was published *three years* before the claimed 2005 priority

date for the Asserted Patents. (Dkt. 1-4 at ¶ 38.)

In another attempt to save the Asserted Claims, Ameranth includes proposed constructions in the Complaint for numerous terms in the Asserted Claims. (Dkt. 1, ¶ 29.) These constructions, however, do not preclude the Court from granting a motion to dismiss based on Section 101. *See, e.g., Pebble Tide LLC v. Arlo Techs., Inc.*, No. 19-769-LPS, 2020 WL 509183, at *2 (D. Del. Jan. 31, 2020) (granting § 101 motion to dismiss assuming plaintiff’s proposed constructions); *3G Licensing, S.A. v. HTC Corp.*, No. 17-83-LPS, 2019 WL 2904670, at *8 (D. Del. July 5, 2019) (same); *Glob. Locating Sys., LLC v. ShadowTrack 247, LLC*, 2020 WL 3513535, at *3-*4 (W.D. N.C. 2020) (explaining that the court would consider Defendant’s motion to dismiss “if the Defendant accepts the Plaintiff’s proposed constructions of terms for the limited purpose of determining patentability under § 101”). Indeed, should the Court adopt Ameranth’s proposed constructions for purposes of this motion—these constructions **confirm** that each of the claimed components is “well-understood, routine, conventional” or “purely functional,” and thus cannot supply an inventive concept. *See Alice* at 2359-60 (citation omitted); *TLI*, 823 F.3d at 611-12; *BSG Tech*, 899 F.3d at 1290.

For example, Ameranth’s expert concedes that the specification “does not contain the words ‘intelligence’ or ‘intelligent’” but contends that the claim terms “intelligent web server computer” and “wherein the API intelligently learns, updates and stores multiple communication modes of contact and related operational parameters” should be construed consistent with a technical dictionary which defines “intelligence” as “[t]he ability of a program to monitor its environment and initiate appropriate actions to achieve a desired state.” (Dkt. 1-4 at ¶¶ 35-37.) Specifically, Ameranth’s expert contends that the term “intelligent web server computer” should be construed as “hav[ing] the ability to monitor its environment and initiate **appropriate** actions to

achieve a *desired* state.” (*Id.*, ¶ 36.) In other words, Ameranth contends that the claimed “intelligent web server computer” simply monitors information and performs unstated actions to achieve an unstated result. Even if such a construction were appropriate, such “high-level, broadly articulated, result-defined information-processing functionality” is insufficient to supply an inventive concept. *See Impact Engine*, 2024 WL 3287126 at *6-7 (Fed. Cir. July 3, 2024).

Ameranth also proposes that the term “parallel operational capabilities” should be construed to mean “parallel processing of related operational parameters to improve the performance of the web server.” (Dkt. 1, ¶ 29.) Ameranth contends such “parallel computing has the advantage of improving the speed in which tasks can be completed while increasing the volume of tasks that can be completed at a given time” and that “employing parallel operational capabilities effectively in 2005 required new insights and new techniques, e.g., for *intelligently* coordinating and synchronizing the multiple computations, instructions, and data transactions that are going on at the same time.” (Dkt. 1-4 at ¶¶ 44, 46.) But “neither the claims nor the specification call for any parallel processing architectures different from those available in existing systems. Rather, to the extent that parallel processing is discussed in the specification, it is characterized as generic parallel processing components . . . on which the claimed [system] could run.” *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1170 (Fed. Cir. 2018).⁴

* * *

For at least these reasons, the Asserted Claims are invalid as they are directed to patent ineligible subject matter. Accordingly, the Court should dismiss the Complaint with prejudice for failure to state a claim.

⁴ These same deficiencies apply to most of the constructions proposed by Ameranth in its Complaint. To the extent that Ameranth relies on any such constructions in its responsive brief, DoorDash will address the same in its reply brief.

Dated: August 6, 2024

GREENBERG TRAURIG, LLP

/s/ A. Michael Pratt

A. Michael Pratt (PA 44793)
1717 Arch Street, Suite 400
Philadelphia, PA 19103
Tel: 215-972-5916
Fax: 215-988-7801
Email: prattm@gtlaw.com

Joshua Raskin (*pro hac vice*)
Vimal Kapadia (*pro hac vice*)
Wen Xue (*pro hac vice*)
One Vanderbilt Avenue
New York NY 10017
(212) 801-9200
joshua.raskin@gtlaw.com
vimal.kapadia@gtlaw.com
xuew@gtlaw.com

*Attorneys for Defendants DoorDash, Inc., Eat 'n
Park Restaurants, LLC and Eat 'n Park
Hospitality Group, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Western District of Pennsylvania by using the CM/ECF system. I certify that I caused the foregoing to be served on the counsel of record by electronic mail.

/s/ A. Michael Pratt
A. Michael Pratt (PA 44793)