

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Netflix, Inc. v. Broadcom Inc., et al.

Netflix v. Broadcom · No. 24-cv-09324-PCP · Decided August 8, 2025

SUMMARY

The United States District Court for the Northern District of California grants Broadcom Inc. and VMware LLC's motion to dismiss Netflix, Inc.'s first amended patent-infringement complaint, granting leave to amend in part. The court concludes that the asserted claims of Netflix's three Cherkasova patents are inadequately pleaded beyond claim 1 and that claim 1 of each patent is directed to patent-ineligible subject matter under 35 U.S.C. § 101. The opinion addresses patent eligibility under the Alice framework and the pleading standards for patent infringement.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	P. Casey Pitts
JURISDICTION	United States District Court for the Northern District of California
DECIDED	August 8, 2025
DOCKET	24-cv-09324-PCP
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss Netflix's first amended complaint alleging infringement of five software patents, including on the ground that the asserted claims were patent-ineligible under 35 U.S.C. § 101.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts factual allegations as true and construes the pleadings in the nonmovant's favor, but conclusory allegations and threadbare recitals do not suffice. Patent eligibility may be resolved at the pleading stage only when no plausible factual disputes remain after reasonable inferences are drawn for the nonmovant.
PRECEDENTIAL VALUE	unpublished district court decision; persuasive authority only

TOPICS

- patent eligibility
- patent infringement
- motions to dismiss
- pleadings
- civil procedure

PRACTICE AREAS

patent law

patent eligibility

patent infringement

civil procedure

motions to dismiss

QUESTIONS PRESENTED

1. Whether Netflix plausibly pleaded infringement of claims other than claim 1 of the '424, '707, and '891 patents.
2. Whether claim 1 of each of the '424, '707, and '891 patents is directed to a patent-ineligible abstract idea and lacks an inventive concept under the Alice framework.
3. Whether claim 16 of the '893 patent is directed to a patent-ineligible abstract idea and lacks an inventive concept under the Alice framework.
4. Whether claim 10 of the '122 patent is directed to a patent-ineligible abstract idea and lacks an inventive concept under the Alice framework.

HOLDINGS

1. Netflix did not plausibly plead infringement of the other asserted claims because the complaint merely recited their claim elements and offered conclusory allegations without factual allegations explaining how the accused products met the materially different limitations.
2. Claim 1 of each Cherkasova patent is directed to the abstract idea of collecting and analyzing information, and therefore fails Alice step one.
3. Claim 1 of each Cherkasova patent does not contain an inventive concept and fails Alice step two.
4. Claim 16 of the '893 patent is directed to the abstract idea of allocating workload across a plurality of resources and lacks an inventive concept.
5. Claim 10 of the '122 patent is directed to the abstract idea of providing a graphical user interface for remote control and mapping and lacks an inventive concept.

KEY QUOTATIONS

“Such an invention is directed not “to an improvement to computer functionality,” Enfish, 822 F.3d at 1335, but to improving the accuracy of certain information relating to the computer’s operation.” (Analysis I.B)

“the claims for which Netflix has provided factual allegations supporting its claims of infringement—claim 1 of the '424, '707, and '891 patents; claim 16 of the '893 patent; and claim 10 of the '122 patent—are invalid because they are directed to patent-ineligible concepts under 35 U.S.C. § 101.” (Conclusion)

“Dismissal is with prejudice and without leave to amend as to defendants’ alleged infringements of these claims of the asserted patents. Dismissal is with leave to amend as to any other allegedly infringed claims of the asserted patents.” (Conclusion)

FACTUAL BACKGROUND

Netflix alleged that Broadcom and its subsidiary VMWare infringed five software patents involving virtual-machine CPU-usage attribution, virtual-machine load balancing, and remote control of virtual machines. The

claims analyzed by the court concerned collecting and analyzing CPU-usage information, allocating virtual-machine workloads across physical resources, and remotely controlling virtual machines through graphical user interfaces. Netflix relied on alleged technical improvements described in the patent specifications, but the court found that the claims themselves did not recite those specific improvements or mechanisms.

PROCEDURAL HISTORY

Netflix filed the action on December 23, 2024 and later filed a first amended complaint alleging infringement of five patents. Defendants Broadcom Inc. and VMWare LLC moved to dismiss. The court granted the motion, dismissing with prejudice and without leave to amend the specifically analyzed claims, while granting leave to amend as to other asserted claims and staying discovery.

DISPOSITION

other

CASES CITED

- Rowe v. Educ. Credit Mgmt. Corp., 559 F.3d 1028, 1029-30 (9th Cir. 2009)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)
- Cooperative Entertainment, Inc. v. Kollektive Technology, Inc., 50 F.4th 127, 130 (Fed. Cir. 2022)
- Aatrix Software, Inc. v. Green Shades Software, Inc., 882 F.3d 1121, 1125, 1128 (Fed. Cir. 2018)
- Alice Corp. Pty. Ltd. v. CLS Bank International, 573 U.S. 208, 216-18, 223 (2014)
- CardioNet, LLC v. InfoBionic, Inc., 955 F.3d 1358, 1369-70, 1374 (Fed. Cir. 2020)
- ChargePoint, Inc. v. SemaConnect, Inc., 920 F.3d 759, 766, 769-70 (Fed. Cir. 2019)
- Data Engine Technologies LLC v. Google LLC, 906 F.3d 999, 1007-08 (Fed. Cir. 2018)
- Core Wireless Licensing S.A.R.L. v. LG Electronics, Inc., 880 F.3d 1356, 1361-63 (Fed. Cir. 2018)
- Skillz Platform Inc. v. Aviagames Inc., No. 21-CV-02436-BLF, 2022 WL 783338, at *6-7 (N.D. Cal. Mar. 14, 2022)
- BSG Tech LLC v. BuySeasons, Inc., B.S.G. Tech LLC v. Buyseasons, Inc., 899 F.3d 1281, 1290-91 (Fed. Cir. 2018)
- Content Extraction & Transmission LLC v. Wells Fargo Bank, National Ass'n, 776 F.3d 1343, 1347-48 (Fed. Cir. 2015)
- Uniloc USA, Inc. v. LG Electronics USA, Inc., 957 F.3d 1303, 1306-09 (Fed. Cir. 2020)
- Electric Power Group, LLC v. Alstom S.A., 830 F.3d 1350, 1353-55 (Fed. Cir. 2016)
- In re Board of Trustees of Leland Stanford Junior University, 989 F.3d 1367, 1373 (Fed. Cir. 2021)
- Synopsys, Inc. v. Mentor Graphics Corp., 839 F.3d 1138, 1151 (Fed. Cir. 2016)
- SAP America, Inc. v. InvestPic, LLC, 898 F.3d 1161, 1170 (Fed. Cir. 2018)
- In re Killian, 45 F.4th 1373, 1380 (Fed. Cir. 2022)
- Intellectual Ventures I LLC v. Erie Indemnity Co., 850 F.3d 1315, 1331-32 (Fed. Cir. 2017)

- Intellectual Ventures I LLC v. Symantec Corp., 838 F.3d 1307, 1322 (Fed. Cir. 2016)
- Ericsson Inc. v. TCL Communication Technology Holdings Ltd., 955 F.3d 1317, 1327 (Fed. Cir. 2020)
- Appistry, Inc. v. Amazon.com, Inc., No. C15-311 MJP, 2015 WL 4210890, at *2 (W.D. Wash. July 9, 2015), aff'd sub nom. Appistry, LLC v. Amazon.com, Inc., 676 F. App'x 1007 (Fed. Cir. 2017)
- Coho Licensing LLC v. Glam Media, Inc., No. C 14-01576 JSW, 2017 WL 6210882, at *6 (N.D. Cal. Jan. 23, 2017), aff'd sub nom. Coho Licensing LLC v. Oath Inc., 710 F. App'x 892 (Fed. Cir. 2018)
- Cirba Inc. v. VMware, Inc., 677 F. Supp. 3d 1010, 1025 (N.D. Cal. 2023)
- CosmoKey Solutions GmbH & Co. KG v. Duo Security LLC, 15 F.4th 1091, 1099 (Fed. Cir. 2021)
- Two-Way Media Ltd. v. Comcast Cable Communications, LLC, 874 F.3d 1329, 1338 (Fed. Cir. 2017)
- Accenture Global Services GmbH v. Guidewire Software, Inc., 728 F.3d 1336, 1345 (Fed. Cir. 2013)
- Broadband iTV, Inc. v. Amazon.com, Inc., No. 6:20-CV-00921-ADA, 2022 WL 4703425, at *13 (W.D. Tex. Sept. 30, 2022), aff'd, 113 F.4th 1359 (Fed. Cir. 2024)
- International Business Machines Corp. v. Zillow Group, Inc., 50 F.4th 1371, 1381 (Fed. Cir. 2022)
- Dropbox, Inc. v. Synchronoss Technologies, Inc., 815 F. App'x 529, 534 (Fed. Cir. 2020)
- Heidary v. Amazon.com, Inc., No. 2024-1580, 2024 WL 4489918, at *3 (Fed. Cir. Oct. 15, 2024)
- AlexSam, Inc. v. Aetna, Inc., 119 F.4th 27, 35, 42 (Fed. Cir. 2024)
- Askan v. FARO Technologies, Inc., No. 2024-2258, 2025 WL 1363303, at *2 (Fed. Cir. May 12, 2025)
- In re Bill of Lading Transmission & Processing System Patent Litigation, 681 F.3d 1323, 1335 (Fed. Cir. 2012)
- Nalco Co. v. Chem-Mod, LLC, 883 F.3d 1337, 1350 (Fed. Cir. 2018)
- Bot M8 LLC v. Sony Corp. of America, 4 F.4th 1342, 1353-55 (Fed. Cir. 2021)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
NETFLIX, INC., Case No. 24-cv-09324-PCP 8 Plaintiff, ORDER GRANTING MOTION TO 9 v.
DISMISS 10 BROADCOM INC., et al., Re: Dkt. No. 49 Defendants. 11 12 13 Plaintiff Netflix,
Inc. alleges that defendants Broadcom Inc. and VMWare LLC infringe 14 five of its software
patents. Defendants move to dismiss Netflix's first amended complaint, 15 contending in part that
the asserted claims of each of the asserted patents are not patent-eligible 16 under 35 U.S.C. § 101.

For the reasons that follow, the Court grants defendants' motion to dismiss 17 with leave to amend
in part. 18 BACKGROUND 19 Netflix brought this suit against Broadcom and its subsidiary
VMWare on December 23, 20 2024 alleging infringement of five software patents: U.S. Patent
Nos. 7,779,424 (the '424 patent); 21 7,797,707 (the '707 patent); 8,799,891 (the '891 patent);
8,185,893 (the '893 patent); and 22 8,863,122 (the '122 patent).

23 I. The '424, '707, and '891 Patents (the "Cherkasova Patents") 24 The '424, '707, and '891
Patents (the "Cherkasova patents") were each filed on March 2, 25 2005 by inventors Ludmila
Cherkasova and Robert D. Gardner.

The '424 patent is titled "System 26 and Method for Attributing to a Corresponding Virtual Machine CPU Usage of an Isolated Driver 27 Domain in Which a Shared Resource's Device Driver Resides." The '707 Patent is titled "System 1 Which a Shared Resource's Device Driver Resides." The '891 patent is titled "System and Method 2 for Attributing CPU Usage of a Virtual Machine Monitor to a Corresponding Machine." 3 All three patents teach systems and methods for attributing the CPU usage of virtual 4 machines (VM) associated with either a virtual machine monitor, a domain, or driver domain.

The 5 three patents cite one another as related applications and contain substantially similar figures and 6 specification descriptions. 7 As explained in the first amended complaint and supported by the patent specification, 8 because some CPU utilization (such as that of shared device drivers) is caused by an individual 9 virtual machine but occurs in the virtual machine monitor or a separate driver domain, simply 10 measuring the CPU allocation of the virtual machines themselves "often fails to reveal the 'true' 11 usage of the CPU that is attributable to different VMs." See, e.g., '424 patent 3:54-60.

Each patent 12 includes an identical recitation of the "desire" it seeks to accomplish: "a system and method for 13 accurately determining CPU utilization that is attributable to VMs on a system." See, e.g., *id.* at 14 3:1-3. 15 The operative complaint alleges infringement under "at least" claims 1–19 of the '424 16 patent, claims 1–28 of the '707 patent, and claims 1–24 of the '891 patent.

17 II. The '893 Patent 18 The '893 patent was filed on October 27, 2006. It is titled "starting up at least one virtual 19 machine in a physical machine by a load balancer." It teaches a system and method for a virtual 20 machine load balancing technique that monitors active virtual machine workloads across multiple 21 physical machines. 22 As explained in the first amended complaint and supported by the patent specification, 23 before the '893 patent, then-existing load balancing techniques would account for the worst-case 24 loading scenario by planning in advance for a sufficient number of servers to be provided.

See 25 '893 Patent, 1:15-21. These techniques left servers idle during periods of low demand, resulting in 26 significant overall power consumption in large networks. *Id.* at 1:23-27, 6:14-19. The patented 27 technique describes using a load balancer to distribute requests to active virtual machines and 1 heavy. It considers both the distribution of the load and conditions in the underlying physical 2 machines or servers.

3 The operative complaint alleges infringement under "at least" claims 1–11 and 16 of the 4 '893 patent. 5 III. The '122 Patent 6 The '122 patent was filed on July 31, 2009. It is titled "remote control of a plurality of 7 virtual machines using actions facilitated through a graphic user interface." It teaches a system and 8 method in which a single, universal interface enables a network administrator to remotely control 9 multiple virtual machines.

The interface enables users to power on, power off, restart, and perform 10 various other actions on each virtual machine. 11 As explained in the first amended complaint and supported by the patent specification, 12 then-existing remote management systems enabled control of only physical server hardware but 13 not of any VMs associated with the server hardware. '122 Patent at 4:4-7.

Complex VM 14 environments often also included a single computer hosting multiple VMs that were designed by 15 different entities and often had different interfaces. *Id.* at 1:16-20, 2:53-63. As a solution to this 16 problem, the '122 Patent discloses “a single, universal interface” used to “control multiple VMs 17 on multiple servers.” 18 The operative complaint alleges infringement under “at least” claims 10–12 of the '122 19 patent.

20 LEGAL STANDARDS 21 I. Rule 12(b)(6) 22 When considering a motion to dismiss an action for failure to state a claim under Rule 23 12(b)(6), the Court must “accept all factual allegations in the complaint as true and construe the 24 pleadings in the light most favorable” to the non-moving party. *Rowe v. Educ. Credit Mgmt. 25 Corp.*, 559 F.3d 1028, 1029–30 (9th Cir.

2009). The pleadings must allege facts that allow the 26 Court “to draw the reasonable inference that the defendant is liable for the misconduct alleged.” 27 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Legal conclusions “can provide the framework of a 1 allegations.” *Id.* at 679. 2 Patent eligibility “may be resolved at the Rule 12 stage only if there are no plausible 3 factual disputes after drawing all reasonable inferences from the intrinsic and Rule 12 record in 4 favor of the non-movant.” *Cooperative Ent., Inc. v. Kollektive Tech., Inc.*, 50 F.4th 127, 130 (Fed.

5 Cir. 2022). “If there are claim construction disputes at the Rule 12(b)(6) stage,” the Court “must 6 proceed by adopting the non-moving party’s constructions,” or the Court “must resolve the 7 disputes to whatever extent is needed to conduct the § 101 analysis, which may well be less than a 8 full, formal claim construction.” *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 9 1121, 1125 (Fed.

Cir. 2018) (cleaned up). Neither party contends that any claim construction is 10 required to resolve this motion. 11 II. Patent Validity Challenges Under 35 U.S.C. § 101 12 35 U.S.C. § 101 makes patentable “any new and useful process, machine, manufacture, or 13 composition of matter, or any new and useful improvement thereof.” This broad provision has an 14 important exception: “Laws of nature, natural phenomena, and abstract ideas are not patentable.” 15 *Alice Corp. Pty.*

Ltd. v. CLS Bank Int’l, 573 U.S. 208, 216 (2014). 16 In *Alice*, the Supreme Court established a two-step framework for assessing the validity of 17 patent claims under § 101. See *id.* At step one, a court must “determine whether the claims at issue 18 are directed to a patent-ineligible concept,” including abstract ideas, natural phenomena, or laws of 19 nature.

Id. at 218. “[S]tep one of the Alice framework does not require an evaluation of the prior art or facts outside of the intrinsic record regarding the state of the art at the time of the invention.” 21 *CardioNet, LLC v. InfoBionic, Inc.*, 955 F.3d 1358, 1374 (Fed. Cir. 2020). While the patent 22 “specification [is] helpful in illuminating what a claim is ‘directed to’” at step one, “reliance on 23 the specification must always yield to the claim language in identifying that focus.” *ChargePoint, 24 Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 766 (Fed.

Cir. 2019). “If the claims are not directed to a 25 patent-ineligible concept under Alice step 1, ‘the claims satisfy § 101 and [the court] need not 26 proceed to the second step.’” *Data Engine Techs. LLC v. Google LLC*, 906 F.3d 999, 1007 (Fed. 27 Cir. 2018) (quoting *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1361 1 without providing details for how that result is to be achieved—to be directed to abstract ideas.

2 Further, the fact that a claimed step can be performed by the human mind or a person with a pencil 3 and paper has often been found to be an indication that the claims are directed to patent ineligible 4 abstract ideas.” *Skillz Platform Inc. v. Aviagames Inc.*, No. 21-CV-02436-BLF, 2022 WL 783338, 5 at *6 (N.D. Cal. Mar. 14, 2022) (collecting cases). 6 At Alice step two, the court “search[es] for an ‘inventive concept’—i.e., an element or 7 combination of elements that is sufficient to ensure that the patent in practice amounts to 8 significantly more than a patent upon the ineligible concept itself.” *Alice*, 573 U.S. at 217–18 9 (cleaned up). “Deciding whether claims recite an ‘inventive concept,’ or something more than 10 ‘well-understood, routine, conventional activities previously known to the industry,’ may turn on 11 underlying ‘question[s] of fact.’” *Skillz Platform Inc.*, 2022 WL 783338, at *6 (quoting *Aatrix*, 12 882 F.3d at 1128, and *Alice*, 573 U.S. at 217–18). “If a claim’s only ‘inventive concept’ is the 13 application of an abstract idea using conventional and well-understood techniques, the claim has 14 not been transformed into a patent-eligible application of an abstract idea.” Id. (quoting *BSG Tech 15 LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290–91 (Fed.

Cir. 2018), and citing *Content Extraction 16 and Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347–48 (Fed. Cir. 17 2014)). 18 “In cases involving software innovations, the Alice step two and frequently the Alice step 19 one inquiry ‘often turns on whether the claims focus on specific asserted improvements in 20 computer capabilities or instead on a process or system that qualifies an abstract idea for which 21 computers are invoked merely as a tool.’” Id. at *7 (quoting *Uniloc USA, Inc. v. LG Electronics 22 USA, Inc.*, 957 F.3d 1303, 1306–07 (Fed.

Cir. 2020)). “[S]oftware can make patent-eligible 23 improvements to computer technology, and related claims are eligible as long as they are directed 24 to non-abstract improvements to the functionality of a computer or network platform itself.” Id. 25 (quoting *Uniloc*, 957 F.3d at 1309, and citing *Customedia Techs., LLC v. Dish Net. Corp.*, 951 26 F.3d 1359, 1365 (Fed.

Cir. 2020)). “The Federal Circuit has found software-related claims eligible 27 where (1) ‘the claimed advance is on a solution to a problem specifically arising in the realm of 1 specific improvement in computer capabilities or network functionality, rather than only claiming 2 a desirable result or function.’” Id. (quoting *TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1293 (Fed.

3 Cir. 2020)) (cleaned up). “The improvement need not be defined by reference to ‘physical 4 components.’” Id. (citing *Uniloc*, 957 F.3d at 1309, and *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 5 1327, 1339 (Fed. Cir. 2016) (“To hold otherwise risks resurrecting a bright-line machine-or- 6 transformation test... or creating a categorical ban on software patents.”)).

But “the Federal 7 Circuit has stated that software patents are invalid where they ‘merely recite generalized steps to 8 be performed on a computer using conventional computer activity.’” Id. (quoting *Uniloc*, 957 F.3d 9 at 1308, and citing *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 10 1350 (Fed. Cir. 2016) (noting that claims would be invalid if they “merely recite[d] the abstract 11 idea ... along with the requirement to perform it on the Internet, or to perform it on a set of generic 12 computer components”)).

13 “In determining whether claims are directed to a patent-eligible improved computer system 14 rather than an abstract idea, courts have found that technical advantages described in the 15 specification can be a significant indication of eligibility.” Id. at *7 (citing *CardioNet*, 955 F.3d at 16 1369–70 (noting that advantages disclosed in the patent specification are “important in our 17 determination that the claims are drawn to a technological improvement”), and *Visual Memory 18 LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1259–60 (Fed.

Cir. 2017)). But technological details set 19 forth only in the specification, and not in the patents’ claims, cannot supply an inventive concept. 20 See *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1322 (Fed. Cir. 2016) (“The 21 district court erred in relying on technological details set forth in the patent’s specification and not 22 set forth in the claims to find an inventive concept.”). “Courts also consider the prosecution 23 history to be relevant to assessing whether the claims are directed to an improvement in computer 24 technology.” *Skillz Platform Inc.*, 2022 WL 783338, at *7 (citing *Ancora Techs., Inc. v. HTC 25 America, Inc.*, 908 F.3d 1343, 1348–49 (Fed.

Cir. 2018)). “And courts also must consider factual 26 allegations in the [c]omplaint.” Id. (citing *Aatrix*, 882 F.3d at 1125). 27 1 ANALYSIS 2 I. Claim 1 of each of the Cherkasova patents is invalid under 35 U.S.C. § 101. 3 A. Netflix’s amended complaint contains plausible allegations that defendants infringe only claim 1 of each of the Cherkasova patents. 4 5 As an initial matter, the parties disagree about whether claim 1 of each Cherkasova patent 6 can be considered representative for the purposes of the Court’s patent eligibility inquiry.

Because 7 the operative complaint fails to plead facts to plausibly allege infringement of any claims of the 8 Cherkasova patents beyond each patent’s first claim, the Court need not resolve the

dispute about 9 representativeness at this time. 10 Although “a court must accept as true all of the allegations contained in a complaint,” 11 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory 12 statements, do not suffice.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

In patent 13 cases, “a plaintiff cannot assert a plausible claim for infringement under the *Iqbal*/*Twombly* 14 standard by reciting the [patent] claim elements and merely concluding that the accused product 15 has those elements.” *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1353 (Fed. Cir. 2021).¹ “A 16 plaintiff is not required to plead infringement on an element-by-element basis.” *Id.* at 1352 (citing 17 *Nalco Co. v. Chem-Mod, LLC*, 883 F.3d 1337, 1350 (Fed.

Cir. 2018)) (emphasis added). But 18 “[t]here must be some factual allegations that, when taken as true, articulate why it is plausible 19 that the accused product infringes the patent claim.” *Id.* at 1353 (emphasis added).² 20 21 1 The Federal Circuit applies its “own law to the specific question of whether a complaint states a claim of patent infringement on which relief may be granted.” *Heidary v. Amazon.com, Inc.*, No. 22 2024-1580, 2024 WL 4489918, at *3 (Fed.

Cir. Oct. 15, 2024) (quoting *AlexSam, Inc. v. Aetna, Inc.*, 119 F.4th 27, 35 (Fed. Cir. 2024)). 23 2 Netflix cites *In re Bill of Lading Transmission & Processing Sys. Pat. Litig.*, 681 F.3d 1323 (Fed. Cir. 2012), for the proposition that “a plaintiff need not even identify which claims it asserts are 24 being infringed.” *Id.* at 1335. But that “portion of the decision in *Bill of Lading* dealt with Federal Rule of Civil Procedure 84 and its attendant Form 18, both of which have been eliminated from 25 the Federal Rules.” *Bot M8 LLC*, 4 F.4th at 1346.

In a post-Form 18 landscape, “[t]he level of detail required in any given case will vary depending upon a number of factors, including the 26 complexity of the technology, the materiality of any given element to practicing the asserted claim(s), and the nature of the allegedly infringing device.” *AlexSam, Inc.*, 119 F.4th at 42. See 27 also *Askan v. FARO Techs., Inc.*, No. 2024-2258, 2025 WL 1363303, at *2 (Fed.

Cir. May 12, 1 Here, Netflix’s operative complaint contains factual allegations detailing how defendants’ 2 accused products infringe claim 1 of each Cherkasova patent. With respect to the other claims of 3 the Cherkasova patents, Netflix provides details about the claim language of claims 2–19 of 4 the ’424 patent, claims 2–28 of the ’707 patent, and claims 2–24 of the ’891 patent in the 5 background section describing each patent, but includes no factual allegations explaining how 6 defendants’ accused products infringe those claims or any others.

The lack of additional claim-by- 7 claim infringement factual allegations is particularly puzzling because the complaint emphasizes 8 the purportedly “unique limitations [found in these other claims] not found in the others.” FAC ¶¶ 9 29, 68, 43 (discussing the independent claims); see

also, e.g., FAC ¶¶ 29, 33, 43, 46, 69 (alleging 10 that the additional dependent claims “recite additional and specific methods” (emphasis added)).

11 Indeed, in its opposition brief, Netflix argues that its complaint “identifies additional limitations in 12 the independent and dependent claims not found in [claim 1 of each Cherkasova patent] and ... 13 meaningful arguments for meaningful differences [among the claims].” Dkt. No. 50, at 15. Yet the 14 complaint includes specific factual allegations regarding infringement only for claim 1 of each 15 patent, while alleging infringement of the other claims in an entirely conclusory fashion.

16 Accepting Netflix’s allegation that the other claims of the ’424 patent, the ’707 patent, and the ’891 17 patent contain unique limitations, Netflix’s failure to provide any factual allegations explaining 18 how defendants’ accused products infringe those unique claim limitations amounts to a “mere 19 recitation of claim elements and corresponding conclusions, without supporting factual 20 allegations.” *Bot M8*, 4 F.4th at 1355.

Because such a pleading does not state a claim under the 21 *Iqbal*/*Twombly* standard, Netflix’s operative complaint does not plausibly allege infringement of 22 the other claims of the Cherkasova patents identified in the operative complaint. 23 24 25 must do more than ‘recit[e] the claim elements and merely conclud[e] that the accused product has those elements.’” (quoting *Bot M8 LLC*, 4 F.4th at 1353)).

Where, as here, Netflix itself represents 26 that the additional claims contain materially different elements than claim 1 of each patent, Netflix’s lack of factual allegations regarding the infringement of those distinct claims is fatal.

In 27 the absence of any attempt to allege facts regarding those materially different elements, the B. Claim 1 of each of the Cherkasova patents is directed to a patent-ineligible 1 subject matter. 2 Unlike its conclusory allegations regarding other claims, Netflix’s operative complaint 3 does include detailed factual allegations regarding defendants’ infringement of claim 1 of each of 4 the Cherkasova patents which teach: 5 6 ’424 Patent ’707 Patent ’891 Patent 7 1.

A method comprising: 1. A method comprising: 1. A method comprising: 8 observing communication observing, in a computer, observing communication from plurality of communication from a virtual from a given virtual machine 9 paravirtualized virtual machine (VM) to a domain in (VM) of a plurality of VMs, 10 machines (VMs) to driver which a device driver for a to a virtual machine monitor domains that are isolated shared resource resides, (VMM), by observing 11 from the plurality of VMs, wherein the domain is communication from said 12 the communication separate from a virtual VM that is requesting access comprising at least one machine monitor (VMM); to a resource, as an access 13 resource request from the request for said VM by said determining, in the computer plurality of VMs to the driver VMM; and 14 and

based on said domains, comprising communication, CPU determining, based on said 15 observing communication utilization of said domain communication, utilization of from said plurality of VMs 16 requesting access to a shared attributable to said VM; the CPU by said VMM specifically attributable to 17 resource that is accessible by determining, for the VM, said VM, and not attributable the plurality of VMs, wherein CPU utilization allocated by a to any other of the plurality of 18 a device driver for said shared scheduler to the VM; and VMs, wherein the utilization resource is arranged in said 19 determining, for the VM, of the CPU by said VMM is driver domains; and total CPU utilization the utilization of the CPU by 20 determining, based on said attributable to the VM by said VMM performed for 21 communication between the summing the determined processing said access request plurality of VMs and the CPU utilization allocated to for said VM by said VMM.

22 plurality of driver domains, the VM by the scheduler and CPU utilization of said the determined CPU 23 plurality of driver domains utilization of the domain 24 attributable to the plurality of attributable to the VM. VMs, including determining a 25 share of CPU execution 26 attributed to each of the VMs during a predetermined time 27 interval. 1 Despite the more detailed allegations of infringement, defendants contend that the 2 operative complaint nonetheless fails to state a claim for relief because each of these claims is 3 directed to a patent-ineligible subject matter—namely, the abstract idea of “collecting and 4 analyzing information.”³ Defendants argue that the method contained in claim 1 of each patent 5 includes only two steps, both of which are abstract: The method first “observ[es]” 6 communications from each virtual machine requesting resources, and then uses those 7 communications to “determine[]” how much CPU usage is attributable to each virtual machine.

8 Netflix argues that defendants oversimplify the claims, arguing that the claims are directed to 9 “specific and improved methods for attributing CPU utilization based on VM communications.” 10 “If the focus of the claim is a specific and concrete technological advance, for example an 11 improvement to a technological process or in the underlying operation of a machine,” the claim 12 succeeds at Alice step one as patent eligible.

Adasa Inc. v. Avery Dennison Corp., 55 F.4th 900, 13 908 (Fed. Cir. 2022). Netflix points to the patent specification and argues that it reveals that the 14 problem the inventors faced in monitoring the CPU utilization attributable to each of the VMs on 15 the system: pre-existing systems “only considered the amount of CPU allocated by the scheduler 16 for execution of a particular VM,” which “often fails to reveal the ‘true’ usage of the CPU by 17 different VMs.” FAC ¶ 23; ‘424 Patent at 3:54-58, 3:61-4:5.

Netflix says this means that then- 18 existing systems had inaccuracies that affected the operation of the VM architecture. Netflix 19 alleges that the claims solve for this by using a specific type of communication not previously 20 21 3 Defendants analyze claim 1 of each of the patents together,

which they argue is appropriate because the Cherkasova patents were all filed on the same day in 2005, name the same two 22 inventors, and include substantially the same specification and diagrams.

(Defendants also address the claim language of each patent, which demonstrates the de minimis differences between them.) 23 Plaintiffs note in a footnote that they disagree with defendants' characterization "that the claims among [the Cherkasova patents] are nearly identical," but also analyze the three patents together 24 and cite only "to the specification of the '424 Patent, not[ing] the '707 and '891 [p]atents have the same relevant disclosure." Dkt.

No. 50, at 7 n.2. Further, the operative complaint itself describes 25 each patent in a nearly identical manner. FAC ¶¶ 23–25, 37–48, 50–60. The Court therefore follows the parties lead and analyzes these three patents together.

The primary difference between 26 the three claims is simply the type of information analyzed: resource requests from VMs to domain drivers for the '424 Patent; resource requests from a VM to a domain in which a device 27 driver for a shared resource resides for the '707 patent; and resource requests from a given VM of 1 used in attributing CPU usage to VMs—for the '424 Patent, for example, communications from a 2 plurality of VMs to driver domains that are isolated from the plurality of VMs and comprising at 3 least one resource request from the plurality of VMs to the driver domains—as a way of 4 "determining a share of CPU execution attributed to each of the VMs" and improving CPU usage 5 accuracy, which is fundamental to "improving the overall performance of the underlying 6 infrastructure." '424 Patent at 8:43-9:2, 16:58-63.

Netflix argues that each patent's process 7 captures an input never before used in attributing CPU usage to VMs (resource requests from VMs 8 to domain drivers for the '424 Patent; resource requests from a VM to a domain in which a device 9 driver for a shared resource resides for the '707 patent; and resource requests from a given VM of 10 a plurality of VMs to a virtual machine monitor (VMM) for the '891 patent) constituting a non- 11 abstract computing functionality improvement.

12 Netflix asserts these claims constitute an "improvement to VM technology" and their 13 underlying infrastructure. But the specification makes clear that any alleged improvement to the 14 overall performance of the underlying infrastructure is due to that fact the information about CPU 15 utilization generated through the method can then be used to permit "migration" of VMs from one 16 physical node to another when the current physical node capacity is insufficient.

Id. at 8:43-9:2. 17 This improvement is not recited in the claims themselves—claim 1 makes no mention of 18 migrating VMs. Rather, the claims merely focus on improving the accuracy of resource usage 19 monitoring. Even by Netflix's own definition, the claims are directed to "specific and improved 20 methods for attributing CPU utilization based on VM

communications”—not any subsequent steps 21 using said attribution to improve the VMs, the VMMs, or their infrastructure.

Dkt. No. 50, at 2; 22 see, e.g., ’424 Patent, 3:1-3 (stating that each patents’ accomplishment is “a system and method 23 for accurately determining CPU utilization that is attributable to VMs on a system”). 24 Such an invention is directed not “to an improvement to computer functionality,” Enfish, 25 822 F.3d at 1335, but to improving the accuracy of certain information relating to the computer’s 26 operation.

As the Federal Circuit has explained, such inventions do not involve a patent-eligible 27 subject matter: Information [] is an intangible. See *Microsoft Corp. v. AT & T Corp.*, 1 550 U.S. 437, 451 n.12 (2007); *Bayer AG v. Housey Pharm., Inc.*, 340 2 F.3d 1367, 1372 (Fed. Cir. 2003).

Accordingly, we have treated collecting information, including when limited to particular content 3 (which does not change its character as information), as within the realm of abstract ideas. See, e.g., *Internet Patents*, 790 F.3d at 1349; 4 *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015); *Content Extraction & Transmission LLC v. Wells Fargo Bank*, 5 *Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed.

Cir. 2014); *Digitech Image 6 Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014); *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 7 1366, 1370 (Fed. Cir. 2011). In a similar vein, we have treated analyzing information by steps people go through in their minds, or 8 by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.

See, e.g., *TLI Commc’ns*, 9 823 F.3d at 613; *Digitech*, 758 F.3d at 1351; *SmartGene, Inc. v. 10 Advanced Biological Labs., SA*, 555 Fed.Appx. 950, 955 (Fed. Cir. 2014); *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Canada* 11 (U.S.), 687 F.3d 1266, 1278 (Fed. Cir. 2012); *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372 (Fed. Cir. 2011); *SiRF 12 Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319, 1333 (Fed.

Cir. 2010); see also *Mayo [Collaborative Servs. v. Prometheus Lab’ys]*, 13 566 U.S. 66, 84–85 (2012)]; *Parker v. Flook*, 437 U.S. 584, 589–90 14 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972). And we have recognized that merely presenting the results of abstract processes of 15 collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an 16 ancillary part of such collection and analysis.

See, e.g., *Content Extraction*, 776 F.3d at 1347; *Ultramercial, Inc. v. Hulu, LLC*, 772 17 F.3d 709, 715 (Fed. Cir. 2014). 18 19 *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016). 20 Netflix cites several cases that it argues establish the eligibility of its claims, but each is 21 distinguishable. See *SRI International, Inc. v. Cisco Systems, Inc.*, 930 F.3d 1295, 1301, 1303–04 22 (Fed.

Cir. 2019) (finding a computer security software patent eligible where the claims prevented 23 the normal, expected operation of a conventional computer network, overrode the routine and 24 conventional sequence of events by detecting suspicious network activity, generated reports of 25 suspicious activity, and received and integrated the reports using one or more hierarchical 26 monitors); Cirba Inc. v. VMware, Inc., No. CV 19-742-GBW, 2023 WL 2989049, at *2 (D.

Del. 27 Apr. 18, 2023) (finding a non-abstract technological improvement where the software patent 1 Inc., 677 F. Supp. 3d 1010, 1025 (N.D. Cal. 2023) (finding claims eligible where they were 2 directed to efficiently managing and deploying virtual machines within a complex distributed 3 computing environment). This case instead most closely resembles Electric Power Group, in 4 which the Federal Circuit found a patent that claimed “a process of gathering and analyzing 5 information of a specified content, then displaying the results, and not any particular assertedly 6 inventive technology for performing those functions” was directed to an abstract idea and 7 therefore ineligible.

Elec. Power Grp., 830 F.3d at 1354. 8 Netflix attempts to distinguish Electric Power by arguing that the claims here recite a 9 method that utilizes data never before used to determine CPU usage. That argument fails because 10 “collecting information, including when limited to particular content (which does not change its 11 character as information), [is] within the realm of abstract ideas.” Id. at 1353.

The claimed method 12 simply incorporates certain existing data into existing CPU usage monitoring.⁴ Like in Electric 13 Power, the claims “do not even require a new source or type of information, or new techniques for 14 analyzing it.” Id. at 1355. “Even accepting the argument that the claimed process results in 15 improved data,” that does not salvage it from being directed to an ineligible abstract idea.

In re Bd. 16 of Trs. of Leland Stanford Junior Univ., 989 F.3d 1367, 1373 (Fed. Cir. 2021) (citing Synopsys, 17 Inc. v. Mentor Graphics Corp., 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“[A] claim for a new 18 abstract idea is still an abstract idea.”); SAP Am., Inc. v. InvestPic, LLC, 898 F.3d 1161, 1170 19 (Fed. Cir. 2018) (“[P]atent law does not protect such claims, without more, no matter how 20 groundbreaking the advance.”).

21 Accordingly, claim 1 of the Cherkasova patents is directed to an ineligibly abstract subject 22 matter at Alice step 1. 23 24 25 4 The patent prosecution history, of which Netflix itself asks the Court to take judicial notice, reveals that prior art had identified the source of the observed data. See, e.g., Dkt. No. 50-2, at 4 26 (explaining that the prior art references “a guest operating system communicating with a device driver running within an isolated driver domain ... [but not] determining, based on the 27 communication ... CPU utilization of the domain attributable to the virtual machine”).

Netflix, in C. Claim 1 of each of the Cherkasova patents does not recite an inventive concept. 2 Because claim 1 of the Cherkasova patents fails at Alice step one, the Court must “search 3 for an ‘inventive concept,’” an element that ensures the patent “amounts to significantly more than 4 a patent upon the [abstract idea] itself.” Alice, 573 U.S. at 217–18 (quoting Mayo, 566 U.S. at 72– 5 73).

6 A claim does not pass muster at step two by “[s]tating an abstract idea while adding the 7 words ‘apply it with a computer.’” In re Killian, 45 F.4th 1373, 1380 (Fed. Cir. 2022). Notably, 8 claim 1 of each patent neither requires, nor results in, any specialized technology.

The 9 specifications explain that they can be implemented using existing open-source Xen virtual 10 machine. ’424 Patent, 2:45-55, 9:55-60, 10:10-14, 15:10-14. 11 Netflix argues that its complaint contains factual allegations that the claims recite an 12 inventive concept sufficient to create an issue of fact at Alice step 2. Specifically, Netflix argues 13 that the claims provide technical improvements by: 14 provid[ing] an unconventional use of incorporating resource requests 15 data into attributing CPU usage to certain VMs. ’424 Patent at 16:53- 56, 16:58-62.

Prior art systems only considered “the amount of CPU 16 allocated by the scheduler for execution of a particular VM” (’424 Patent at 3:54-58), whereas the claimed invention describes 17 attributing CPU utilization by the isolated driver domains in servicing VM resource requests (which previous systems ignored) by 18 monitoring and assessing these specific resource requests.

Because 19 this data had not previously been integrated into a CPU utilization analysis, its unconventional use and arrangement of components to 20 attribute CPU usage to certain VMs in the claimed methodology is not “well-understood, routine, and conventional” activity, but 21 inventive. 22 Dkt. No. 50, at 12.

In essence, Netflix contends that incorporating a different source of preexisting 23 and available technological information to inform a preexisting metric is sufficiently inventive at 24 Alice’s second step. But this merely describes the method’s use of the abstract concept addressed 25 at step 1, and an invention cannot survive step 2 by merely claiming use of a patent-ineligible 26 concept.

See, e.g., Killian, 45 F.4th at 1380 (finding patent ineligible at step 2 because “[t]he 27 additional steps in [] claim 1 do no more than instruct the practitioner to perform the abstract 1 F.3d at 1355 (“Merely requiring the selection and manipulation of information—to provide a 2 ‘humanly comprehensible’ amount of information useful for users,... by itself does not transform 3 the otherwise-abstract processes of information collection and analysis.”); EcoFactor, Inc. v. 4 Google LLC, 757 F. Supp. 3d 978, 988 (N.D.

Cal. 2024) (“[Plaintiff] argues that the patent 5 improved conventional [technology systems] by applying the abstract idea of calculating and 6 accounting for [certain data] in operating efficiency

comparisons. But “[a] claim’s ‘use of the 7 ineligible concept to which it is directed cannot supply the inventive concept.’” (quoting *Caselas, 8 LLC v. VeriFone, Inc.*, No. 2023-1036, 2024 WL 2720092, at *3 (Fed.

Cir. May 28, 2024)). 9 Netflix also argues that the “the claimed methods improve computer capabilities by more 10 accurately attributing CPU utilization to each VM, thereby improving the operation of VMs 11 themselves,” citing the specification’s suggestion that more accurate CPU utilization could allow 12 the VM architecture to adapt to changes better and earlier, creating a more reactive system that is 13 less prone to overload and capacity issues.

It is certainly the case that, in the software patent 14 context, a claim may often survive at step 2 if it offers a “technical solution to a problem unique to 15 [a particular technological context].” See *BASCOM*, 827 F.3d at 1351. But, as previously 16 explained, claim 1 of each patent speaks only to the gathering of information and the CPU 17 utilization analysis itself, not to any subsequent steps that might be taken to solve a technical 18 problem based on the information generated through the claimed method.

Claim 1 of each patent 19 provides no specific technical solution beyond the information gathering itself. The alleged 20 inventive qualities recited in the specification are unclaimed and properly disregarded as 21 untethered to the claim language. See *Intell. Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 22 1331–32 (Fed. Cir. 2017) (“Without an explanation [in the claims] of the ‘mechanism’ for ‘how 23 the result is accomplished,’ this purported feature of the invention cannot supply an inventive 24 concept.”); *Intell.*

Ventures I LLC, 838 F.3d at 1322 (suggesting that technological details set forth 25 in the patent’s specification and not set forth in the claims do not supply an inventive concept). 26 Claim 1 of each the Cherkasova patents attempts to patent “an abstract idea implemented 27 on generic computer components, without providing a specific technical solution beyond simply 1 reason, claim 1 of each of the Cherkasova patents fails at both of Alice’s steps.

2 Defendants’ motion to dismiss Netflix’s claims of infringement of the ’424 patent, ’707 3 patent, and ’891 patent is therefore granted. Dismissal is with prejudice and without leave to amend 4 as to defendants’ alleged infringement of claim 1 of each of the Cherkasova patents. Dismissal is 5 with leave to amend as to the other allegedly infringed claims of the Cherkasova patents.

6 II. Claim 16 of the ’893 patent is invalid under 35 U.S.C. § 101. 7 Defendants contend that Netflix also fails to state a claim for relief under the ’893 patent 8 because claim 16 is directed to a patent-ineligible subject matter.⁵ That claim recites: 9 A method for use in a system having plural physical machines that 10 contain active virtual machines, comprising: 11 receiving, at a load balancer, a request from a client; 12 in response to the request, determining whether at least one additional virtual machine should be started up; 13 14 in response to determining that at least one

additional virtual machine should be started up, the load balancer sending at least one command 15 to start up the at least one additional virtual machine in at least one of the physical machines; 16 determining, by the load balancer, whether a workload loading of the 17 active virtual machines and the [sic] at least one additional virtual 18 machine has fallen below a threshold; 19 in response to determining that the workload loading has fallen below the threshold, disabling a particular one of the active virtual machines 20 and the at least one additional virtual machine; 21 a placement controller selecting placement of the active virtual 22 machines and the at least one additional virtual machines on the 23 5 The parties again disagree about whether the court can treat claim 16 as representative.

For the 24 same reasons discussed above, the Court need not reach the question. Although the operative complaint alleges infringement under “at least” claims 1–11 and 16 of the ’893 patent, it only 25 contains factual infringement allegations regarding claim 16.

The complaint itself alleges “[e]ach independent claim recites unique limitations not found in the others”, FAC ¶ 68; and that “the 26 dependent claims of the ’893 Patent ... recite additional and specific methods for optimizing the placement of virtual machines and accounting for changing ‘conditions in physical machines that 27 may benefit from virtual machines migrating between or among physical machines,’” id. ¶ 69.

But physical machines to achieve a predefined policy; 1 2 computing, by the placement controller, indicators associated with corresponding plural different layouts of the active virtual machines 3 and the at least one additional virtual machine on the physical machines, where the indicators provide information regarding 4 performances of the corresponding layouts, and wherein each of the indicators is computed based on parameters associated with a 5 corresponding one of the plural layouts; 6 comparing, by the placement controller, the indicators; and selecting, 7 by the placement controller, one of the plural layouts based on the comparing.

8 9 A. Claim 16 of the ’893 patent is directed to a patent-ineligible subject matter. 10 Defendants argue that claim 16 of the ’893 Patent is “directed to the abstract idea of 11 allocating a workload across a plurality of resources.”⁶ 12 The Federal Circuit has held that “controlling access to resources is exactly the sort of 13 process that ‘can be performed in the human mind, or by a human using a pen and paper,’ which 14 we have repeatedly found unpatentable.” *Ericsson Inc. v. TCL Commc’n Tech.*

Holdings Ltd., 955 15 F.3d 1317, 1327 (Fed. Cir. 2020) (citation omitted). Other software patents relating to allocating a 16 workload have been found abstract and thus patent-ineligible. See *Appistry, Inc. v. Amazon.com, 17 Inc.*, No. C15-311 MJP, 2015 WL 4210890, at *2 (W.D. Wash. July 9, 2015), *aff’d sub nom.* 18 *Appistry, LLC v. Amazon.com, Inc.*, 676 F. App’x 1007 (Fed.

Cir. 2017) (“The patents-in-suit 19 recite the abstract idea of distributed processing akin to the military’s command and control 20 system, a longstanding and intuitive practice used by many large hierarchical organizations that 21 value speed, efficiency, reliability, and accountability.”); Coho Licensing LLC v. Glam Media, 22 Inc., No. C 14-01576 JSW, 2017 WL 6210882, at *6 (N.D.

Cal. Jan. 23, 2017), aff’d sub nom. 23 Coho Licensing LLC v. Oath Inc., 710 F. App’x 892 (Fed. Cir. 2018) (“[S]ubject patents lack any 24 inventive concept that transforms the abstract idea of divide-and-conquer distributive computer 25 processing into patentable subject matter.”). 26 27 1 Defendants argue that claim 16 merely recites turning virtual machines on and off based on 2 load and choosing a “layout” that determines which virtual machines run on which physical 3 computers.

Defendants argue that the abstract idea of managing a workload (such as virtual 4 machines and the requests they handle) across a system of computing resources is the sort of 5 technique that can be done mentally by a person or using pen and paper, and that a human user 6 could monitor requests to a system and increase or decrease the number of virtual machines used 7 to process those requests and decide where to place them.

8 Netflix responds that “[n]either bakeries nor humans could track and assess the layout of 9 VMs in even a simple system as well as the performance and characteristics of the underlying 10 physical machines simultaneously and migrate VMs accordingly.” As Netflix points out, the ’893 11 Patent itself explains that, even for preexisting computers, “the computation time for identifying 12 the optimal placement of virtual machines can be very large.” ’893 Patent at 6:23-25.

13 Netflix further argues that 14 The ’893 Patent provides a technical solution to [the patent’s identified] power-consumption and “placement” problem by 15 identifying “an optimal solution for placement of virtual machines on physical machines.” To solve those problems, the ’893 Patent 16 recognized that not all physical servers have the same properties, 17 power, use, or efficiency, and the claimed invention solved for these disparities by accounting for the conditions of the underlying 18 machinery itself.

Id. at 6:14-17. For example, migrating VMs between physical machines improved load conditions and enabled reduced 19 power consumption. The ’893 Patent Claims achieve this by reciting “selecting placement of the active virtual machines and the at least 20 one additional virtual machines on the physical machines to achieve 21 a predefined policy,” using “indicators associated with corresponding plural different layouts” of VMs that “provide information regarding 22 performances of the corresponding layouts,” and then comparing the indicators in selecting a layout.

Id. at 12:26-58; 12:44-47. The 23 predefined criteria according to the predefined policy includes physical characteristics of the underlying servers, such as criteria 24 related to loading, balancing, cooling, or power. Id. at 4:19-31.

After 25 selecting the layout of the VMs, the claims recite migrating the VMs from one physical machine to another. Id. at 4:40-46. In this way, the 26 '893 Patent Claims provide a technical solution to the technical problem of managing VMs operating on the underlying physical 27 machines, which optimizes power consumption and load balancing, 1 Dkt. No. 50, at 16.

2 The problem with Netflix's argument is that the "optimal" placement is not claimed by the 3 invention, nor are any of the specific criteria related to loading, balancing, cooling, or power that 4 might be used to determine the optimal placement of virtual machines. Though the claim itself 5 refers to "indicators", "thresholds", "predefined policy", and "parameters", it includes no specifics 6 and does not require any optimization of the placement of VMs on servers.

Netflix points to the 7 specification, which it says discloses and informs the "indicators", "thresholds", "predefined 8 policy", and "parameters" that are referenced in claim 16. But, as defendants correctly explain: 9 Although the specification identifies a "placement problem," its 10 discussion of how to solve this problem refers to specific techniques, including a "simulated annealing algorithm" that uses a "cost 11 function" and weights to iteratively adjust placements until an "approximated optimal solution is identified." None of these 12 techniques are recited in any of the claims of the patent.

Nor are the "loading, balancing, cooling, or power" criteria Netflix relies on 13 recited in the claim[]. 14 "Ultimately, the § 101 inquiry must focus on the language of the Asserted Claims 15 themselves, and the specification cannot be used to import details from the specification if those 16 details are not claimed. Even a specification full of technical details about a physical invention 17 may nonetheless conclude with claims that claim nothing more than the broad law or abstract idea 18 underlying the claims." ChargePoint, 920 F.3d at 769 (cleaned up).

Given the lack of detail in 19 claim 16 itself, the claim could preempt load-balancing or workload management of virtual 20 machines based on any "indicators", "thresholds", "predefined policy", or "parameters", not just 21 those detailed in the specification.

The claims other courts found patent ineligible in *Coho* and 22 *Appistry* similarly lacked "specific or detailed ideas about the mechanism" of the distributed 23 computing approach. *Coho, Inc.*, 2017 WL 6210882, at *6.7 24 Because claim 16 of the '893 patent recites nothing more specific than the abstract idea of 25 26 7 Even the claim found eligible at issue in *Cirba Inc. v. VMware, Inc.*, No. CV 19-742-GBW, 2023 27 WL 2989049 (D.

Del. Apr. 18, 2023), the case that lends Netflix the most support, recited 1 allocating virtual machine work across a plurality of physical resources, it is directed to a patent- 2 ineligible subject

matter at Alice step 1. 3 B. Claim 16 of the '893 patent does not recite an inventive concept. 4 In arguing that claim 16 survives Alice's second step, Netflix relies heavily on the 5 unclaimed criteria and policies described only in the patent specification.

According to Netflix, 6 that claim: 7 go[es] beyond merely claiming "generic computer functions" ... 8 recit[ing] a nine-step process for implementing a specific and technical solution to address the power consumption and placement 9 problems that preexisted in load-balancing VM systems, including previously unknown techniques to do so.

For instance, the claimed 10 placement controller uses parameters to set "an unconventional or unbalanced layout of virtual machines" and provides an inventive 11 concept by addressing "changes in conditions in the physical 12 machines that may benefit from virtual machines migrating between or among physical machines." The '893 Patent Claims do not preempt 13 all ways of implementing the so-called focus of "managing the workload of physical machines running VMs," but provide a specific 14 process and novel criteria for doing so.

15 The patent specification explains how the claims provide a technical 16 improvement over then-existing methods of VM management. The specification explains the invention addresses a "complex problem" 17 that is solved by, in part, using a "cost function," i.e., a "goodness factor," that considers multiple criteria to find a more optimal VM 18 configuration. ... In the '893 Patent, claim terms like the "predefined policy," "indicators," and "threshold," are important elements of the 19 technical solution and should be considered in light of the 20 specification.

21 Dkt. No. 50, at 19–20 (cleaned up). As Netflix's discussion makes clear, criteria and techniques 22 contained only in the patent specification are critical to the claimed invention's alleged technical 23 solution, which purportedly "address[ed] the power consumption and placement problems that 24 preexisted in load-balancing." Netflix asks the Court to consider the details in the specification in 25 identifying the inventive concept, citing CosmoKey Sols.

GmbH & Co. KG v. Duo Sec. LLC, 15 26 F.4th 1091 (Fed. Cir. 2021), which noted that "whether particular claim limitations are abstract or, 27 as an ordered combination, involve an inventive concept that transforms the claim into patent 1 limitations, patent specification, and invention at issue." Id. at 1099. 2 Although the specification is relevant in determining inventiveness, CosmoKey illustrates 3 how the patent specification should be considered in the Alice inquiry.

In that case, the Court 4 referenced the patent specification's description of "how the particular arrangement of steps in 5 claim 1 provides a technical improvement over conventional" methods. CosmoKey Sols. GmbH & 6 Co. KG, 15 F.4th at 1099; see also Skillz Platform Inc., 2022 WL 783338, at *7 ("[C]ourts have 7 found that technical advantages described in the specification can be a significant indication of 8 eligibility.").

Contrary to Netflix's position here, the CosmoKey court did not read details from the 9 specification into the claim language. To the contrary, the Federal Circuit has held that "[t]o save a 10 patent at [Alice] step two, an inventive concept must be evident in the claims." *Two-Way Media 11 Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1338 (Fed. Cir.

2017) (citing 12 *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017)) (emphasis added). See 13 also *Intell. Ventures I LLC*, 838 F.3d at 1322; *Accenture Glob. Servs., GmbH v. Guidewire 14 Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013) ("[T]he level of detail in the specification 15 does not transform a claim reciting only an abstract concept into a patent-eligible system or 16 method.").

17 Here, the inventive concept identified by Netflix in support of its step 2 argument is not 18 evident in the claim language, and the Court cannot read the specification's unclaimed details into 19 the claim. The claim language itself merely recites generalized steps for allocating virtual machine 20 work across a plurality of physical resources to be performed on a computer using conventional 21 computer activity.

For that reason, claim 16 of the '893 patent does not contain an inventive 22 concept. 23 Defendants' motion to dismiss Netflix's claims of infringement of the '893 patent is 24 therefore granted. Dismissal is with prejudice and without leave to amend as to defendants' 25 alleged infringement of claim 16. Dismissal is with leave to amend as to other allegedly infringed 26 claims of the '893 patent.

27 III. Claim 10 of the '122 patent is invalid under 35 U.S.C. § 101. 1 because claim 10 is directed to a patent-ineligible subject matter.⁸ That claim recites: 2 A method, comprising: 3 providing a first graphical user interface (GUI) from a host computer to a remote computer, the first GUI displaying on the remote 4 computer a list of a plurality of virtual machines and to enable a user of the remote computer to select one of the virtual machines from the 5 list as well as an action to be performed on the selected virtual machine, the selected action to be performed on the selected virtual 6 machine independent of the other of the plurality of virtual machines; 7 receiving user input from the remote computer via the first GUI, the user input including a selection of a virtual machine and an action to 8 be performed on the selected virtual machine; 9 in accordance with the user input, performing the action using the host computer on the selected virtual machine; and 10 generating a second GUI to enable the user of the remote computer 11 to select a virtual machine from the plurality of virtual machines to which a hardware peripheral device accessible to the remote 12 computer is to be mapped; 13 wherein said action is selected from the group consisting of starting, stopping, re-booting and shutting down.

14 A. Claim 10 of the '122 patent is directed to ineligible abstract subject matter. 15 Defendants argue that claim 10 is directed to "the abstract idea of providing a graphical 16 user interface" (GUI). Netflix argues that this description is overbroad, and that the claim is 17 instead directed to

“specific technological methods for establishing a network interface between a 18 host computer and remote VMs to facilitate the management and control of remote VMs using a 19 GUI provided by a host computer, and further, generating a GUI that allows mapping of a 20 hardware peripheral device to the remote computer.” 21 To support its description, Netflix argues that the claim recites specific technical solutions 22 and improvements addressing technical problems associated with controlling remote VMs.

As 23 24 8 The parties again dispute whether the Court can treat claim 10 as representative and, again, the 25 Court need not reach the question. Although the operative complaint alleges infringement under “at least” claims 10–11 of the ’122 patent, it contains factual infringement allegations relating only 26 to claim 10.

The complaint alleges that “the dependent claims of the ’122 Patent ... recite additional and specific for managing and controlling virtual machines,” FAC ¶ 79, but there are 27 no factual allegations suggesting how defendants’ accused products infringe these “additional and 1 explained by the patent specification, then-existing remote management systems enabled control 2 of only physical server hardware but not any VMs associated with the server hardware. ’122 3 Patent at 4:4-7.

Complex VM environments could include a single computer hosting multiple 4 VMs that were designed by different entities and often had different interfaces. *Id.* at 1:16-20, 5 2:53-63. As a solution to this problem, the ’122 Patent discloses “a single, universal interface” 6 used to “control multiple VMs on multiple servers.” See, e.g., *id.* at 2:24-33, 4:15-24; 6:12-24.

7 Netflix asserts that the ’122 Patent claims are not abstract because they recite improvements to 8 prior art systems by providing “an improved GUI to remotely control the server, thereby enabling 9 improved control of multiple remote VMs and providing for ‘hardware peripheral devices to be 10 mapped to a server.’” Defendants respond that “the broad idea of providing a user interface to 11 remotely control multiple virtual machines or map hardware peripheral devices is not a technical 12 improvement to computer functionality.” 13 Even under Netflix’s construction, in which Claim 16 is directed to “providing a user 14 interface to remotely control multiple virtual machines or map hardware peripheral devices,” the 15 claim is directed to an abstract and patent-ineligible subject matter.

Claims directed to generic 16 GUIs are often found be abstract. See *Broadband iTV, Inc. v. Amazon.com, Inc.*, No. 6:20-CV- 17 00921-ADA, 2022 WL 4703425, at *13 (W.D. Tex. Sept. 30, 2022), *aff’d*, 113 F.4th 1359 (Fed. 18 Cir. 2024).

The fact that this claim is directed to a GUI that can permit particular functions, such 19 as remote management or hardware mapping, makes it no less abstract. First, remotely controlling 20 (i.e., starting up and shutting down devices) and mapping/connecting peripherals involve abstract 21

concepts, as does performing those functions through a GUI. Cf. *ChargePoint*, 920 F.3d at 770, 22 766 (finding abstract the “idea of communication over a network to interact with a device” even 23 where the claim recited using the remote server to “turn electric supply on and off”).

While the 24 claim allegedly improves on the prior art by allowing remote management and mapping of VMs, 25 “limiting the use of an abstract idea”—here GUIs, mapping, and remote management—“to a 26 particular technological environment” is not enough for patent eligibility. *Alice*, 573 U.S. at 223. 27 Second, looking to the claim language, it is apparent that the recited remote control and 1 to the host computer of the selected VM to perform an “action [] selected from the group 2 consisting of starting, stopping, re-booting and shutting down,” but there is no claimed detail for 3 how such actions will actually be performed on the VM.

Additionally, the claim merely recites 4 that VMs are “to be mapped.” This results-oriented language renders said remote-control and 5 mapping abstract. See *Int’l Bus. Machines Corp. v. Zillow Grp., Inc.*, 50 F.4th 1371, 1381 (Fed. 6 Cir. 2022); *Skillz Platform Inc.*, 2022 WL 783338, at *6. 7 The cases *Netflix* cites in support of eligibility are inapposite.

The claim at issue here does 8 not involve a specific improvement to the user interface itself, such as a change to the size and 9 location of the user interface, *Core Wireless Licensing S.A.R.L.*, 880 F.3d at 1362–63, or recite a 10 “specific method for navigating through three-dimensional electronic spreadsheets,” *Data Engine 11 Techs.*, 906 F.3d at 1008.

The claim does not recite any improved structure or function within the 12 GUI, VMs, or technology, but rather a results-oriented abstract idea. See *Broadband iTV, Inc.*, 113 13 F.4th at 1368–69. For that reason, claim 10 of the ’122 patent is directed to a patent-ineligible 14 subject matter. 15 B. Claim 10 of the ’122 patent does not recite an inventive concept.

16 *Netflix* argues that the claim is sufficiently inventive at step two because “[u]nlike other 17 remote management systems, the embodiments ... enable a remote user to use the GUIs to control 18 not only the physical hardware of the server, but also the VMs.” ’122 Patent at 4:4-14. “[A]n 19 inventive concept exists when a claim recites a specific, discrete implementation of the abstract 20 idea where the particular arrangement of elements is a technical improvement over the prior art.” 21 *Dropbox, Inc. v. Synchronoss Techs., Inc.*, 815 F. App’x 529, 534 (Fed.

Cir. 2020) (quoting 22 *BASCOM*, 827 F.3d at 1350) (cleaned up). Claim 10 contains no such specific, discrete 23 implementation of the abstract idea. As discussed above, it merely claims abstract results with no 24 specified details for accomplishing the results, reciting, for example, that “a hardware peripheral 25 device accessible to the remote computer is to be mapped,” and that “wherein said action is 26 selected from the group consisting of starting, stopping, re-booting and shutting down”.

As 27 defendants point out, the specification makes clear that “service processing logic communicat[ing] 1 between the service processing logic and the agent enables GUIs generated by the service 2 processing logic to be usable to control the VMs.” Id. at 4:11-14; see also id. at 2:28-33; 6:60- 3 7:14, 8:25-30. But these features are not included in claim 10, which makes no mention of the 4 “service processing logic” at all and includes no other detail for how the functions it recites are 5 carried out. “‘Without an explanation [in the claim] of the ‘mechanism’ for ‘how the result is 6 accomplished,’ this purported feature of the invention cannot supply an inventive concept.” See 7 *Intell.*

Ventures I LLC, 850 F.3d at 1331–32. 8 Additionally, the patent specification makes clear that remote management systems and 9 mapping existed and were conventional activities in the prior art. ’122 Patent at 4:4-7; 8:29-30 10 (discussing use of “known techniques”).

As explained above, limiting the use of an conventional, 11 abstract idea—here, GUIs, mapping, and remote management—“to a particular technological 12 environment” (here, VMs) is not enough for patent eligibility. *Alice*, 573 U.S. at 223.

Accordingly, 13 the claim does not recite an inventive concept. 14 Defendants’ motion to dismiss Netflix’s claims of infringement of the ’122 patent is 15 therefore granted. Dismissal is with prejudice and without leave to amend as to defendants’ 16 alleged infringement of claim 10. Dismissal is with leave to amend as to other allegedly infringed 17 claims of the ’122 patent.

18 CONCLUSION 19 For the reasons discussed herein, the claims for which Netflix has provided factual 20 allegations supporting its claims of infringement—claim 1 of the ’424, ’707, and ’891 patents; 21 claim 16 of the ’893 patent; and claim 10 of the ’122 patent—are invalid because they are directed 22 to patent-ineligible concepts under 35 U.S.C. § 101. Dismissal is with prejudice and without leave 23 to amend as to defendants’ alleged infringements of these claims of the asserted patents.

Dismissal 24 is with leave to amend as to any other allegedly infringed claims of the asserted patents. Any 25 amended complaint shall be filed within 28 days of this order. 26 Because there is no longer an operative complaint pending before the Court, the Court 27 stays all discovery until such time as defendants file an answer to any amended complaint.

The 1 deadlines—except the deadline for an amended complaint—set forth in the Federal Rules of Civil 2 Procedure, this Court’s Local Civil or Patent Rules, or any order of this Court. The August 14, 3 || 2025 hearing on defendants’ motion for a reduction of asserted claims is vacated. Defendants may 4 || re-notice that motion for hearing after the stay on discovery has been lifted.

5 6 IT IS SO ORDERED. 7 Dated: August 8, 2025 Ay beo~ 9 P. Casey Pitts 10 United States District Judge 11 12 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28

