IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

YODLEE, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 14-1445-LPS
	)	
PLAID TECHNOLOGIES INC.,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION

Presently pending before the Court is a "Motion to Dismiss for Failure to State a Claim" under Rule 12(b)(6) of the Federal Rules of Civil Procedure (the "Motion"), filed by Defendant Plaid Technologies Inc. ("Defendant" or "Plaid"). (D.I. 11) Defendant argues that Plaintiff Yodlee, Inc.'s ("Plaintiff" or "Yodlee") asserted patents are directed to non-patent-eligible subject matter pursuant to 35 U.S.C. § 101 ("Section 101"). For the reasons that follow, the Court recommends that Defendant's Motion be GRANTED-IN-PART, in the manner further described below.

I. PROCEDURAL BACKGROUND

Yodlee commenced this patent infringement action on December 1, 2014. (D.I. 1) Chief Judge Leonard P. Stark thereafter referred the case to the Court to resolve any and all matters with regard to scheduling, as well as any motions to dismiss, stay and/or transfer venue. (D.I. 7) Plaid filed the instant Motion in lieu of answering on January 23, 2015, and briefing was completed on March 6, 2015. (D.I. 20) The Court held oral argument on the Motion on May 4, 2015. (D.I. 61 (hereinafter, "Tr.")) The next day, the Court ordered that Plaid submit a letter responding to new cases cited by Yodlee during oral argument; Plaid submitted that letter on

May 6, 2015. (D.I. 24)

Plaid moved to stay the case pending resolution of the instant Motion, (D.I. 30), a request the Court denied on July 20, 2015, (D.I. 51). Thereafter, Chief Judge Stark held a *Markman* hearing on November 17, 2015, and issued a Memorandum Opinion on claim construction on January 15, 2016. (D.I. 96) Trial is scheduled for March 2017. (D.I. 26)

II. STANDARD OF REVIEW

A. Standard of Review Regarding a Rule 12 Motion that Challenges Patent Eligibility Pursuant to Section 101

Pursuant to Rule 12(b)(6), a party may move to dismiss the plaintiff's complaint based on the failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). The sufficiency of pleadings for non-fraud cases is governed by Federal Rule of Civil Procedure 8, which requires "a short and plain statement of the claim showing that the pleader is entitled to relief[.]" Fed. R. Civ. P. 8(a)(2). In order to survive a motion to dismiss pursuant to Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted). In assessing the plausibility of a claim, the court must "construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (internal quotation marks and citation omitted).

Here though, this Motion filed pursuant to Rule 12(b)(6) is used to assert an affirmative defense—that the patents are subject matter ineligible under Section 101. In that scenario, dismissal is permitted only if the well-pleaded factual allegations in the Complaint, construed in

the light most favorable to the plaintiff, suffice to establish the defense. *See Jones v. Bock*, 549 U.S. 199, 215 (2007); *Bristol-Myers Squibb Co. v. Merck & Co., Inc.*, Civil Action No. 15-560-GMS, 2016 WL 1072841, at *1 n.1 (D. Del. Mar. 17, 2016); *Genetic Techs. Ltd. v. Agilent Techs., Inc.*, 24 F. Supp. 3d 922, 927 (N.D. Cal. 2014).

Patentability under Section 101 is a "threshold inquiry" and a question of law. *In re Bilski*, 545 F.3d 943, 950-51 (Fed. Cir. 2008), *aff'd*, *Bilski v. Kappos*, 561 U.S. 593 (2010). Yet this question of law is also one that "may be informed by subsidiary factual issues." *CyberFone Sys., LLC v. Cellco P'ship*, 885 F. Supp. 2d 710, 715 (D. Del. 2012) (citing *In re Comiskey*, 554 F.3d 967, 976 (Fed. Cir. 2009)). Some members of the United States Court of Appeals for the Federal Circuit have suggested that "any attack on an issued patent based on a challenge to the eligibility of the subject matter must be proven by clear and convincing evidence[,]" *CLS Bank Int'l v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1304-05 (Fed. Cir. 2013) (Rader, J., concurring-in-part and dissenting-in-part), but at least one other member of that Court has come to the opposite conclusion, *see Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 720-21 (Fed. Cir. 2014) (Mayer, J., concurring), all of which has led to some uncertainty regarding the appropriate standard of proof in Section 101 cases, *see Intellectual Ventures I LLC v. Symantec Corp.*, 100 F. Supp. 3d 371, 379-80 (D. Del. 2015) (citing cases). However, even to the extent that the "clear and convincing" standard of proof is applicable to Section 101 challenges, it would apply only to the resolution of factual disputes, and not to resolution of pure issues of law. *See TriPlay, Inc. v. WhatsApp Inc.*, Civil Action No. 13-1703-LPS, 2015 WL 1927696, at *5 (D. Del. Apr. 28, 2015)

(citing cases), *adopted in all substantive respects*, 2015 WL 4730907 (D. Del. Aug. 10, 2015).[1] And as to the instant Motion, which was filed at the pleading stage (a stage at which any facts that are clearly in dispute are to be construed in the light most favorable to the plaintiff), the "clear and convincing" standard of proof should not come into play at all.[2]

B. Need for Claim Construction

Although there is no hard-and-fast rule that a court must construe terms in the claims at issue before it performs a Section 101 analysis, it will ordinarily be desirable (and often necessary) to do so. *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1273 (Fed. Cir. 2012). When a Rule 12 motion is filed on Section 101 grounds, one possible path for a court is to wait to resolve the motion until after claim construction has been decided. *See, e.g.*, *Loyalty Conversion Sys. Corp. v. Am. Airlines, Inc.*, 66 F. Supp. 3d 829, 835 (E.D. Tex. 2014) (Bryson, J., sitting by designation) (noting that "the Court has waited until after the claim construction hearing in this case to rule on the present motion in order to ensure that there are no issues of claim construction that would affect the Court's legal analysis of the patentability issue"); *cf. CertusView Techs., LLC v. S & N Locating Servs., LLC*, 111 F. Supp. 3d

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[1] *See also 01 Communique Lab., Inc. v. Citrix Sys., Inc.*, — F. Supp. 3d —, 2015 WL 9268913, at *6 (N.D. Ohio Dec. 21, 2015); *Listingbook, LLC v. Mkt. Leader, Inc.*, — F. Supp. 3d —, 2015 WL 7176455, at *5-6 (M.D.N.C. Nov. 13, 2015); *Affinity Labs of Tex., LLC v. Amazon.com, Inc.*, No. 6:15-CV-0029-WSS-JCM, 2015 WL 3757497, at *5 (W.D. Tex. June 12, 2015).

[2] *See Blue Spike, LLC v. Google Inc.*, Case No. 14-cv-01650-YGR, 2015 WL 5260506, at *4 (N.D. Cal. Sept. 8, 2015); *Shortridge v. Found. Constr. Payroll Serv., LLC*, Case No. 14-cv-04850-JCS, 2015 WL 1739256, at *7 (N.D. Cal. Apr. 14, 2015); *Modern Telecom Sys. LLC v. Earthlink, Inc.*, No. SA CV 14-0347-DOC, 2015 WL 1239992, at *7-8 (C.D. Cal. Mar. 17, 2015); *cf. Modern Telecom Sys. LLC v. Lenovo (United States) Inc.*, Case No.: SA CV 14-1266-DOC (JEMx), 2015 WL 7776873, at *5 (C.D. Cal. Dec. 2, 2015).

688, 704-05 (E.D. Va. 2015).

The Court chose this path here. That decision was prompted in part by a desire to have as full an understanding as possible of the meaning of key claim terms before resolving the Motion. But it was also driven by the notable breadth of Plaid's Motion. At the time that the Motion was filed, Plaid was seeking the dismissal of all 162 claims of all seven patents-in-suit. That kind of a request, in a case with this many patents and claims at issue, sought a huge early investment of judicial resources—resources that might need to be re-invested at the summary judgment stage (if, for example, the Rule 12 Motion was not well taken as to some or all patents-in-suit). In the Court's view, under the weight of that request, the best practicable path was to first obtain the District Court's decision on claim construction before rendering a decision on the instant Motion—thus narrowing the scope of possible outstanding legal issues that might be relevant to Plaid's Section 101 affirmative defenses.

Although this approach had its costs (including that it delayed resolution of the Motion until a much later stage of the case), it also had its positive aspects. As will be further discussed below, Chief Judge Stark's *Markman* opinion did guide the Court's analysis as to a number of the representative claims discussed herein. And, as will also be seen below, delaying resolution of the Motion dramatically cut down on the need for the Court to assess the eligibility of large swaths of dependent claims that ended up not being asserted in the litigation.

C. Considerations Relevant to Deciding a Rule 12 Motion that Challenges the Eligibility of Multiple Patent Claims, Based on the Analysis of a Single Representative Claim

In *Cronos Techs., LLC v. Expedia, Inc.*, C.A. No. 13-1538-LPS, 2015 WL 5234040 (D. Del. Sept. 8, 2015), Chief Judge Stark noted "several considerations relevant to deciding a Rule

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