IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MAXUS STRATEGIC SYSTEMS, INC., PLAINTIFF,	§	
V.	§	CAUSE NO. A-11-CV-073-LY
AQUMIN LLC, DEFENDANT.	§	

ORDER ON SUMMARY JUDGMENT MOTIONS

Before the court are Defendant's Motion for Summary Judgment of Invalidity Under 35 U.S.C. § 101 filed December 31, 2014 (Doc. #97); Plaintiff's Response to Defendant Aqumin LLC's Motion for Summary Judgment of Invalidity Under U.S.C. § 101 field January 14, 2015 (Doc. #98); and Reply Brief in Support of Aqumin LLC's Motion for Summary Judgment of Invalidity Under 35 U.S.C. § 101 filed January 20, 2015 (Doc. #99). Also before the court are Maxus's Motion for Summary Judgment against Aqumin filed February 19, 2015 (Doc. #100); Defendant's Motion to Strike Maxus Strategic Systems, Inc.'s Motion for Summary Judgment Against Aqumin, LLC filed March 5, 2015 (Doc. #102); Plaintiff's Response to Motion to [Strike] filed May 14, 2015 (Doc. #107); and Reply to Response to Aqumin LLC's Motion to Strike Maxus Strategic Systems, Inc.'s Motion for Summary Judgment filed May 15, 2015 (Doc. #108).

I. BACKGROUND

Plaintiff Maxus Strategic Systems, Inc. ("Maxus") brings this suit against Defendant Aqumin LLC ("Aqumin"), alleging infringement of United States Patents No. 5,774,878 (the "'878 Patent") and 6,073,115 (the "'115 Patent") (collectively, the "patents-in-suit"). The '115 Patent is a continuation-in-part of the '878 Patent, and both patents share a common specification and drawings.

The patents generally relate to an apparatus and method for displaying information in a virtual-reality environment to facilitate the viewing of otherwise unmanageable amounts of data.

II. DISCUSSION

Under Federal Rule of Civil Procedure 56(a), summary judgment may be granted only if all the submissions of the parties taken together "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (internal citation and quotation marks omitted); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). The moving party bears the initial burden of demonstrating "the absence of a genuine issue of material fact." *Celotex*, 477 U.S. at 323. Mere conclusory allegations are not competent summary judgment evidence and are insufficient to defeat a motion for summary judgment. *Eason v. Thaler*, 73 F.3d 1322, 1325 (5th Cir.1996). A court must draw all reasonable inferences in favor of the nonmoving party. *BMC Res., Inc. v. Paymentech, L.P.*, 498 F.3d 1373, 1378 (Fed. Cir.2007).

"Whether a claim is drawn to patent-eligible subject matter under [Section] 101 is a threshold inquiry[.]" *In re Bilski*, 545 F.3d 943, 950 (Fed. Cir. 2008) ("*Bilski I*"), *affirmed sub nom. Bilski v. Kappos*, 561 U.S. 593 (2010) ("*Bilski II*"). If a claim is not drawn to patent-eligible subject matter, it "must be rejected even if it meets all the other legal requirements of patentability." *Id.* The determination of whether a claim is drawn to patent-eligible subject matter is a pure question of law. *See Fort Properties, Inc. v. Am. Master Lease LLC*, 671 F.3d 1317, 1320 (Fed. Cir. 2012); *see also Bilski I*, 545 F.3d at 951 (explaining that patent validity under Section 101 is "issue of law").

The Patent Act defines patentable subject matter: "Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful

improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." 35 U.S.C. § 101 ("Section 101"). However, Section 101 also "contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice*, 134 S. Ct. at 2354 (internal quotations and citation omitted). "[T]he concern that drives this exclusionary principle [is] one of pre-emption." *Id.* (citing *Bilski II*, 561 U.S. at 611).

The Supreme Court has stressed the need to "tread carefully in construing this exclusionary principle lest it swallow all of patent law. At some level, all inventions embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas. Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept." *Alice Corp. Pty. Ltd. v. CLS Bank, Int'l*, 134 S. Ct. 2347, 2354 (2014) (internal citations omitted).

In order to guide courts in this inquiry, the Supreme Court established a "framework for distinguishing patents that claim . . . abstract ideas from those that claim patent-eligible applications of those concepts. First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, 'what else is there in the claims before us?'. . . to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." *Id.* at 2355 (internal citations omitted). Step two of the analysis is a "search for an 'inventive concept'—i.e., an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the ineligible concept itself." *Id.* (internal quotations and citations omitted).

A. Aqumin's Motion for Summary Judgment

Aqumin contends that the asserted claims of the patents-in-suit are invalid under Section 101 for failing to claim patentable subject matter. Specifically, Aqumin contends that the asserted claims

are directed to the abstract idea of the virtual display of financial information and that Maxus's improvements on the computer hardware and software that run the virtual-reality technology fails to provide the required "inventive concept" necessary to "transform the claimed abstract idea into a patent-eligible application." *Alice*, 134 S. Ct. at 2358.

Maxus asserts that the inventions as claimed in the patents-in-suit describe a system to manage, display, and analyze large volumes of complex data through the unique use of computers, the Internet, and virtual reality software as described in the patents-in-suit. Maxus contends that the use of the phrase "abstract information" throughout the patents-in-suit refers to the massive volume of financial data that Maxus inventions manage through the use of preexisting technologies in unique ways described by the patents-in-suit that have never been accomplished before the Maxus inventions. The court agrees.

> On a fundamental level, the creation of new compositions and products based on combining elements from different sources has long been a basis for patentable inventions. *See, e.g., Parks v. Booth,* 102 U.S. 96, 102 ("Modern inventions very often consist merely of a new combination of old elements or devices, where nothing is or can be claimed except the new combination."); *KSR Int'l Co. v. Teleflex Inc.,* 550 U.S. 398, 418–19 ("[I]nventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.").

DDR Holdings, LLC v. Hotels.com, L.P., 773 F.3d 1245, 1258, n.5 (Fed. Cir. 2014). Therefore, the court will deny Aqumin's motion for summary judgment.

IT IS THEREFORE ORDERED that Defendant's Motion for Summary Judgment of Invalidity Under 35 U.S.C. § 101 filed December 31, 2014 (Doc. #97) is **DENIED**.

B. Maxus's Motion for Summary Judgment

Maxus asserts that because no factual disputes exist over the way Aqumin's accused product works, Maxus is entitled to summary judgment on the issue of infringement in light of this court's Memorandum Opinion and Order Regarding Claims Construction rendered July 8, 2014 (Doc. #72). In response, Aqumin has filed a motion to strike Maxus's summary-judgment motion. Because the court will now consider Maxus's summary-judgment motion,

IT IS FURTHER ORDERED that Defendant's Motion to Strike Maxus Strategic Systems, Inc.'s Motion for Summary Judgment Against Aqumin, LLC filed March 5, 2015 (Doc. #102) is **DENIED**.

With regard to Maxus's infringement claims, the court finds that based on the summary-judgment evidence submitted one or more genuine issues of material fact exists as to whether Aqumin's product infringes the patents-in-suit. Therefore, summary judgment on the issue of infringement is inappropriate.

IT IS FINALLY ORDERED that Maxus's Motion for Summary Judgment against Aqumin filed February 19, 2015 (Doc. #100) is **DENIED**.

The court observes that throughout the pendency of this case the parties have continuously engaged in pointless procedural posturing, doing little to move this case to resolution. They argue that by filing numerous poorly drafted motions comprised of little more than conclusory statements, this court somehow is assisted in resolving this matter. Both sides engage in this practice, one accusing the other of it, while ignoring that its own pleadings are no better than those accused. It is the parties that are driving the cost of resolving this case to whatever height is ultimately reached.

It is time that the parties cease wasting the court's time with their seemingly endless bickering and prepare the case for trial.

SIGNED this 18th day of August, 2015.

LEE YEAKEL
UNITED STATES DISTRICT JUDGE