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**OPINION, U.S. COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
(JANUARY 22, 2024)**

Note: This disposition is nonprecedential

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PLOTAGRAPH, INC., TROY PLOTA,
SASCHA CONNELLY,

Plaintiffs-Appellants,

v.

LIGHTRICKS, LTD.,

Defendant-Appellee.

2023-1048

Appeal from the United States District Court
for the Southern District of Texas in
No. 4:21-cv-03873, Judge Lee H. Rosenthal.

Before: DYK, SCHALL, and REYNA,
Circuit Judges.

SCHALL, Circuit Judge.

DECISION

Plotagraph, Inc., Troy Plota, and Sascha Connelly
(collectively, “Plotagraph”) sued Lightricks, Ltd.

(“Lightricks”) in the United States District Court for the Southern District of Texas for infringement of five patents related to automated pixel shifting in digital photos or videos. The court dismissed the suit under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim, concluding that the patents claimed subject matter ineligible for patenting under 35 U.S.C. § 101. *Plotagraph, Inc. v. Lightricks Ltd.*, 620 F. Supp. 3d 591, 602 (S.D. Tex. 2022). Because we agree that the patent claims are directed to an abstract idea and lack an inventive concept, we *affirm*.

DISCUSSION

I

Plotagraph owns U.S. Patent No. 10,346,017 (“the ’017 patent”), U.S. Patent No. 10,558,342 (“the ’342 patent”), U.S. Patent No. 10,621,469 (“the ’469 patent”), U.S. Patent No. 11,182,641 (“the ’641 patent”), and U.S. Patent No. 11,301,119 (“the ’119 patent”) (collectively, the “Asserted Patents”). As Plotagraph explained in its Amended Complaint, the Asserted Patents are directed to “technology [that] allows users to animate portions of a digital still photo or a frame of a video file” by “select[ing] a set of pixels within the photo or video file,” which are then “shifted” to “simulat[e] motion.” J.A. 265-66 ¶¶ 6-7. “For example, a still photo showing an individual standing before a waterfall could be animated to have the waterfall in the still photo appear to be flowing.” *Id.* at 265 ¶ 6.

The independent claims of the Asserted Patents all generally recite: (1) a preamble identifying a computer system, computer program product, method, or computer-readable media, for automating the shifting

of pixels; (2) a series of preparatory steps or features initiated by a user; and (3) a final pixel-shifting step. Like the district court, we deem claim 12 of the '641 patent to be representative.¹ It recites:

12. A computer program product comprising one or more non-transitory computer storage media having stored thereon computer-executable instructions that, when transmitted to a remote computer system for execution at a processor, cause the remote computer system to perform a method for automating a shifting of pixels within an image file, the method comprising:

receiving a first indication of a first starting point through a user interface, wherein the first starting point is received through a user selection of a first portion of a first image frame;

receiving, through the user interface, a first direction associated with the first starting point;

¹ On appeal, Plotagraph analyzes claims other than claim 12 of the '641 patent. See Appellants' Br. 6-8 (quoting claim 1 of the '017 patent); Oral arg. at 1:25-2:20, 20:10-22:00, https://oralarguments.cafc.uscourts.gov/default.aspx? fl=23-1048_12052023.mp3 (Dec. 5, 2023) (discussing claim 7 of the '342 patent). Plotagraph did not, however, dispute the district court's reliance on claim 12 of the '641 patent as representative for purposes of determining patent eligibility, nor does Plotagraph meaningfully do so on appeal. Plotagraph, 620 F. Supp. 3d at 597; see also J.A. 507-08 (counsel for Plotagraph acknowledging at the hearing pertaining to Lightricks' Rule 12(b)(6) motion that Plotagraph "didn't respond to" Lightricks' argument that claim 12 of the '641 patent is representative).

creating a first digital link extending in the first direction from the first starting point;

selecting a first set of pixels that are along the first digital link and extend in the first direction away from the first starting point; and

shifting the first set of pixels, in the first image frame, in the first direction.

'641 patent col. 17 ll. 25-44.

II

After Plotagraph filed suit, Lightricks moved to dismiss Plotagraph's complaint under Rule 12(b)(6) for failure to state a claim. Lightricks argued that Plotagraph cannot state a claim for infringement because the claims of the Asserted Patents are patent ineligible under § 101. J.A. 201-05. After briefing and a hearing on the issue, the district court granted Lightricks' motion. The court observed that "[s]hifting pixels to create the illusion of movement within an image is a digital version of animation, which is an abstract idea." *Plotagraph*, 620 F. Supp. 3d at 600. The court concluded that the claims are directed to the abstract idea of "shifting pixels to create the illusion of movement within an image," and do not provide an inventive concept rendering the claims patent-eligible. *Id.* at 601-02.

III

We review a district court's decision to grant a motion to dismiss under the law of the regional circuit. *Trinity Info Media, LLC v. Covalent, Inc.*, 72 F.4th

1355, 1360 (Fed. Cir. 2023). The Fifth Circuit reviews Rule 12(b)(6) dismissals for failure to state a claim *de novo*, accepting all well-pleaded factual allegations in the complaint as true and viewing those facts in the light most favorable to the non-moving party. *Meador v. Apple, Inc.*, 911 F.3d 260, 264 (5th Cir. 2018).

“Patent eligibility is a question of law that may involve underlying questions of fact, but not every § 101 determination contains genuine disputes over the underlying facts material to the § 101 inquiry.” *Trinity Info Media*, 72 F.4th at 1360 (quoting *PersonalWeb Techs. LLC v. Google LLC*, 8 F.4th 1310, 1314 (Fed. Cir. 2021)) (internal quotation marks and brackets omitted). We review a district court’s ultimate conclusion on patent eligibility *de novo*. *Id.* Section 101 disputes can be determined at the Rule 12(b)(6) stage when there are no factual allegations that, taken as true, prevent resolving the eligibility question as a matter of law. *Uniloc USA, Inc. v. LG Elecs., USA, Inc.*, 957 F.3d 1303, 1306 (Fed. Cir. 2020).

Section 101 defines patent-eligible subject matter as “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” 35 U.S.C. § 101. The Supreme Court established a two-step test for examining patent eligibility under § 101 in *Alice Corp. v. CLS Bank International*, 573 U.S. 208 (2014). The first step of the *Alice* analysis is to determine whether the claims at issue are directed to a patent-ineligible concept such as a law of nature, a natural phenomenon, or an abstract idea. *Id.* at 217. If so, *Alice*’s second step is to consider whether the claim nonetheless includes an “inventive concept” sufficient to “transform the nature of the claim into a patent-eligible application.” *Id.*

(internal quotation marks and citation omitted). This inventive concept must do more than simply recite “well-understood, routine, conventional activity.” *Mayo Collaborative Servs. v. Prometheus Lab’ys, Inc.*, 566 U.S. 66, 73 (2012).

IV

On appeal, Plotagraph argues that the district court erred with respect to both steps of the *Alice* test. We address each argument in turn.

A

Plotagraph first objects to the district court’s *Alice* step one analysis. According to Plotagraph, the court overgeneralized the claims of the Asserted Patents as being directed to the concept of “animation.” Plotagraph contends that this determination was “untethered from the actual claim language” and improperly incorporated limitations from the specification into the claims. Appellant’s Br. 27-28; Oral arg. at 20:10-22:08 (“[N]owhere in this claim does it say this exact abstract idea. . . . [E]xamine all of [the independent claims]. It nowhere says ‘shifting pixels to create the illusion of movement.’”), 20:50-22:10 (similar). In addition, Plotagraph appears to take issue with the district court’s reliance on cases in which our court has held claims reciting the automation of manual processes using generic computers to be abstract because Plotagraph contends that pixel-shifting cannot be done by hand. *Id.* at 16, 21-23, 27-28; *see also id.* at 28-29 (discussing an amendment made during the prosecution of the first patent, the ’017 patent, to add the word “automatically” before the pixel-shifting step “specifically to disclaim manual

and mental ‘shifting’ of pixels and the abstract idea of shifting pixels”). Similarly, Plotagraph asserts that the court erroneously over-generalized the claimed invention to a degree that it encompassed mental processes. Appellant’s Br. 16, 27-34, 37-38. In making these arguments, Plotagraph primarily relies on *Enfish LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016), *Research Corp. Technologies v. Microsoft Corp.*, 627 F.3d 859, 868 (Fed. Cir. 2010), and *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1376 (Fed. Cir. 2011). Appellants’ Br. 30-31, 33-34.

We agree with the district court that the claims are directed to an abstract idea. It is immaterial that the claims do not include any form of the word “animation,” or the phrase “illusion of movement” and it was not improper for the court to consider the specification. The first step of the Alice test looks at the focus of the claimed advance over the prior art to determine if a claim’s character as a whole is directed to excluded subject matter. *In re Killian*, 45 F.4th 1373, 1382 (Fed. Cir. 2022). In conducting that inquiry, we must read the claims as a whole and consider them in light of the specification. *Data Engine Techs. LLC v. Google LLC*, 906 F.3d 999, 1011 (Fed. Cir. 2018); *see Yu v. Apple Inc.*, 1 F.4th 1040, 1043 (Fed. Cir. 2021). As noted, the claims of the Asserted Patents recite a series of preparatory steps in which a user selects features within the digital image that will shift and in what direction they will shift before reciting a step of shifting the corresponding pixels. The Asserted Patents’ specifications consistently and unambiguously describe pixel-shifting as a way to create the illusion of movement. For example, the patents state:

Accordingly, disclosed embodiments provide novel and innovative technical methods for automatically shifting pixels within a digital image. The shifted pixels may give a digital image the perception of movement. At least one disclosed embodiment requires only a single digital image to create a perception of movement within the digital image.

'017 patent col. 11 ll. 38-44 (emphasis added);² *see also id.* at col. 1 ll. 50-52 (discussing the desirability of a tool to incorporate movement in a digital image), col. 3 ll. 32-39 (“[D]isclosed embodiments automate the shifting of pixels within a digital photograph of water such that the water appears to be flowing”), col. 8 ll. 64-68 (noting that continuous pixel shifting “results in the impression of motion”). Indeed, the specifications equate pixel-shifting with providing the illusion of motion, i.e., animation:

Once a user is satisfied with their work on an image, a preview output screen 210e allows a user to view the image while the pixels are being shifted. Such a view may give the impression that at least a portion of the static image is animated. In contrast, a user is also given a static preview option 220d that allows the user to view the un-animated image.

Id. at col. 9 ll. 18-24 (emphasis added); *see also* col. 4 ll. 36-37 (noting that a user can “adjust[] animation duration”), col. 7 ll. 36-39 (“In various embodiments, a

² The Asserted Patents largely share a common specification. For simplicity, we cite only to the '017 patent, the first of the Asserted Patents to issue.

user is provided with an animation duration and FPS rate option 220b for determining the step size within the shift and/or the speed at which the shift occurs.”). Indeed, in its Amended Complaint, Plotagraph itself characterized the Asserted Patents as being directed to animation. *See* J.A. 265-66 ¶ 6 (“The Patents-in-Suit relate to novel computer systems and methods for automatically shifting pixels in still digital photos or video files. This technology allows users to animate portions of a digital still photo or a frame of video file.”); *see also id.* at ¶ 7.³

As the district court recognized, considered as a whole and in the context of the specification, the claims of the Asserted Patents are directed to changing the position of components in an image to create the appearance of movement, i.e., animation, which is clearly an abstract idea that is directly tethered to the claim language. *See Solutran, Inc. v. Elavon, Inc.*, 931 F.3d 1161, 1167-68 (Fed. Cir. 2019). Performing animation in the realm of computers, i.e., digital animation, where the components that are moved are pixels, does not render the claims any less abstract.⁴ *See Univ. of Fla. Res. Found., Inc. v. Gen. Elec. Co.*, 916 F.3d 1363, 1367 (Fed. Cir. 2019) (concluding that automating “pen and paper methodologies” using a

³ In addition, at oral argument, counsel for Plotagraph acknowledged that the patents are directed to “the method of how you perform getting to the result that is a digital photo with the perception of movement within it.” Oral arg. 11:30-49.

⁴ There is no dispute that the claimed pixel-shifting is performed using a generic computer. Oral arg. at 1:00-1:40 (counsel for Plotagraph answering “using the computer” and “computer code” when asked how the claimed pixel-shifting was accomplished).

computer, even if “laudable, . . . does not render it any less abstract”).

Enfish and *Research Corp.* do not help Plotagraph. In *Enfish*, claims directed to a “self-referential table for a computer database,” were not abstract because the table “improve[d] the way a computer stores and retrieves data in memory.” *Enfish*, 822 F.3d at 1336-39. Similarly, in *Research Corp.*, the claimed processes provided the technological advance of “produc[ing] higher quality halftone images while using less processor power and memory space.” 627 F.3d at 865. No such technological advance or improvement to computer functionality is evident here. Rather, the claims merely employ generic computers to perform animation—i.e., the computer simply performs more efficiently what could otherwise be accomplished manually. See *Bancorp Servs. LLC v. Sun Life Assur. Co. of Canada*, 687 F.3d 1266, 1279 (Fed. Cir. 2012). This case is thus also distinguishable from *McRO, Inc. v. Bandai Namco Games America*, 837 F.3d 1299, 1306, 1314-16 (Fed. Cir. 2016), where the claims incorporated an in-depth, extensive set of rules that enabled computers to automate phenomes in 3-D animation, eliminating the previous need for human-intermediated judgment and steps.

CyberSource also does not help Plotagraph. In that case, we held claims ineligible that attempted to capture “unpatentable mental processes.” 654 F.3d at 1376-77. The claims held to be ineligible in *CyberSource* recited components corresponding to computer implementation, but this did not preclude our court from finding that the claims were directed to a mental process. *Id.* at 1373-74. Plotagraph, though, points to our observation in *CyberSource* that the claimed method in *Research Corp.*, which “required the

manipulation of computer data structures (e.g., the pixels of a digital image and a two-dimensional array known as a mask),” could not be performed mentally. Appellants’ Br. 33-34 (quoting *CyberSource*, 654 F.3d at 1376). The claims at issue in *Research Corp.*, however, not only required the use of a computer but, as discussed above, also provided a technological advance. See *Bancorp*, 687 F.3d at 1279. Plotagraph’s attempt to use our discussion of *Research Corp.* in *CyberSource* thus fails.

B

Having determined that the claims of the Asserted Patents are directed to the abstract idea of digital animation, we turn now to the second step of the *Alice* test. Plotagraph points to four features of the patents it alleges supply an inventive concept: (a) “the use of paths or digital links and starting and ending points to provide directions for automatic shifting”; (b) “non-linear paths”; (c) “masks which prevent shifting”; and (d) “edges/anchor points for creation of masks.” Appellants’ Br. 23-25 (citing J.A. 266-67 ¶ 9). Pointing to these features, Plotagraph asserts that the inventive concept issue cannot be resolved at the Rule 12(b)(6) stage. *Id.* at 27.

Although patentees who adequately allege their claims contain inventive concepts can survive a § 101 eligibility analysis under Rule 12(b)(6), dismissal is appropriate where the factual allegations are not plausible, are refuted by the record, or are conclusory. See *Aatrix Software v. Green Shades Software, Inc.*, 882 F.3d 1121, 1125 (Fed. Cir. 2018); *Simio, LLC v. FlexSim Software Prods., Inc.*, 983 F.3d 1353, 1365 (Fed. Cir. 2020) (quoting *Aatrix*, 882 F.3d at 1125).

Here, none of the four features Plotagraph points to provides an inventive concept. “An inventive concept that transforms the abstract idea into a patent-eligible invention must be significantly more than the abstract idea itself” *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016). Each of the four features appears to be a feature inherent in non-automated computer animation. Each is a parameter defined by a user through conventional user-interface tools⁵ “specified at a high level of generality.” *Alice*, 573 U.S. at 222 (quoting *Mayo*, 566 U.S. at 82). This is “not enough to supply an inventive concept.” *Id.* (citations and internal quotation marks omitted). And, although Plotagraph’s Amended Complaint contended that “[t]hese features were not previously used with image editing, were not generic computer software or hardware, and were not well-understood, routine, or conventional at the time of invention,” J.A. 266-67 ¶ 9, as the district court correctly observed, such conclusory statements may be disregarded when evaluating a complaint under Rule 12(b)(6) if the complaint and record do not support that conclusion. *See Simio*, 983 F.3d at 1365; *Plotagraph*, 620 F. Supp. 3d at 602. That is the case here. The Amended Complaint’s allegations therefore do not prevent resolving the eligibility question as a matter of law. *Aatrix*, 882 F.3d at 1125; *Simio*, 983 F.3d at 1365.

⁵ *See, e.g.*, ’017 patent col. 5 ll. 1-11, col. 6 ll. 1-16, 19-36, col. 12 ll. 41-50, col. 14 ll. 9-12, 16-19; *id.* at col. 9 ll. 1-12; *id.* at col. 3, ll. 45-47, col. 4 ll. 40-50, col. 16 ll. 18-25, col. 18 ll. 5-9; *id.* at col. 5 ll. 1-14, col. 16 ll. 18-29; Oral arg. at 2:39-2:55, 8:00-9:00 (discussing that a user chooses the pertinent parameters).

CONCLUSION

We have considered Plotagraph's remaining arguments and find them unpersuasive. For the reasons given above, we affirm the court's decision.

AFFIRMED

COSTS

No costs.

**MEMORANDUM AND OPINION,
U.S. DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
(AUGUST 9, 2022)**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PLOTAGRAPH, INC, TROY PLOTA, and SASCHA
CONNELLY,

Plaintiffs,

v.

LIGHTRICKS, LTD,

Defendant.

Civil Action No. H-21-3873

Before: Lee H. ROSENTHAL,
Chief United States District Judge.

MEMORANDUM AND OPINION

A cell phone owner looking at an image of a waterfall on a cell phone or other electronic device screen is looking at digital pixels. Moving those pixels can animate the image. The static image of a waterfall can become a dynamic image of a flowing rush of water. All or part of an image can be made to move or held still. Animating images by manipulating the

pixels on an electronic device is the subject of this patent infringement lawsuit.

Troy Plota and Sascha Connelly are the patentees of the “automated pixel shifting within a video file” system claimed in Patent No. 11,182,641 (the ’641 Patent), and Patent No. 10,621, 469 (the ’469 Patent), and of the “automated pixel shifting within a digital image” system claimed in Patent No. 11,301,119 (the ’119 Patent), Patent No. 10,346,017 (the ’017 Patent), and Patent No. 10,558,342 (the ’342 Patent). (Docket Entry No. 31 at ¶¶ 3-4, 22, 33, 46, 58, 69). The patents are owned by, or assigned to, Troy Plota, Sascha Connelly, and Plotagraph, Inc. The Plotagraph and Plotagraph Pro computer programs were originally sold in 2016. (*Id.* at ¶ 7). The Plotagraph App was available in the Apple App Store beginning in 2017. (*Id.*). The Plotagraph App was a swift success; in 2017, it was the number one app available for download in the Photo and Video category. (*Id.* at ¶ 8). In 2018, Lightricks Ltd. began selling a similar app on the Apple App Store, first using the name “Pixaloop” and later “Motionleap.” (*Id.* at ¶ 5).

Plotagraph, Plota, and Connelly, (together, Plotagraph), sued Lightricks, alleging that the Pixaloop and Motionleap Apps violated Plotagraph’s patents supporting the Plotagraph App. (Docket Entry No. 31). Lightricks has moved to dismiss for failure to state a claim, based on the lack of patent eligibility for what it claims is an abstract idea. (Docket Entry No. 37). Plotagraph responded, and Lightricks replied. (Docket Entry Nos. 43, 46). The court heard arguments on the motion to dismiss and received supplemental briefs from the parties. (Docket Entry Nos. 49, 52, 53). Plotagraph requests another hearing to discuss the

supplemental briefing, (Docket Entry No. 54), but the earlier hearing covered the issues and no additional hearing is needed. Based on the pleadings, the motion and responses, the arguments of counsel, and the applicable law, the court grants the motion to dismiss. The reasons are set out below.

I. Background

Digitized photographic images and video files are made up of small pixels. The Plotagraph App and the related Plotagraph and Plotagraph Pro computer programs enable users to select certain pixels within a photograph or video file and have those pixels shifted and “rendered” in a loop, creating a dynamic image or video made up of the moving pixels. (Docket Entry No. 31 at ¶ 7). The core of the Plotagraph App was technology patented by the ’017 Patent, the ’342 Patent, the ’469 Patent, the ’641 Patent, and the ’119 Patent. (*Id.* at ¶ 2). The ’017 Patent, entitled “Automated Pixel Shifting Within a Digital Image,” was issued in July 2019. (*Id.* at ¶ 46). The ’342 Patent,” entitled “Automated Pixel Shifting Within a Digital Image,” was issued in February 2020. (*Id.* at ¶ 58). The ’469 Patent,” entitled “Automated Pixel Shifting Within a Video File,” was issued in April 2020. (*Id.* at ¶ 69). The ’641 Patent, entitled “Automated Pixel Shifting within a Video File,” was issued in November 2021. (*Id.* at ¶ 22). The ’119 Patent, entitled “Automated Pixel Shifting within a Digital Image,” was issued in April 2022. (*Id.* at ¶ 33).

The patents claim a system that:

allow a user to select a set of pixels within the photo or video file which are then caused by the software to be shifted and rendered in a

loop, simulating motion. A user can also keep portions of the still photo or video file from moving by using an “anchor” or “mask” tool to create a group of stationary pixels which the user does not want to move.

(*Id.* at ¶ 7). The patents claim a system that assumes a computer. The patented claims:

are directed to particular tools or features which integrate the automatic shifting of pixels into a true practical application. These features include the use of paths or digital links and starting and ending points to provide directions for automatic shifting, non-linear paths, masks which prevent shifting, and anchor points for creation of masks.

(*Id.* at ¶ 9).

Troy Plota and Sascha Connelly are the inventors and original owners of all five patents. (*Id.* at ¶¶ 3-4). Plota has assigned to Plotagraph his 50% interest in the '017 Patent, the '342 Patent, and the '469 Patent. (*Id.* at ¶ 3). Plota still has a 50% interest in the '641 Patent and the '119 Patent. (*Id.*). Connelly owns 50% of all five patents. (*Id.* at ¶ 4).

In September 2018, Lightricks began offering for sale in the United States its “Pixaloop” App. (*Id.* at ¶ 5). Through the Pixaloop App, a user can select a set of pixels to be shifted to create the illusion of motion. (*Id.* at ¶ 10). The user can anchor pixels that he or she does not want to be moved. (*Id.*). In 2019, Lightricks changed the name to the “Motionleap” App, replacing the “anchor” tool with a brush-eraser tool allowing users to select which pixels to animate and which to hold stationary. (*Id.* at ¶ 11).

Since 2018, Lightricks has sold its apps on the Apple App Store and the Google Play Store, in competition with Plotagraph's apps. (*Id.* at ¶ 12). The Lightricks Apps were downloaded 1.2 million times in October 2021. (*Id.* at ¶ 13). Plotagraph alleges that, by extrapolation, there have been 33,600,000 downloads of the Lightricks Apps. (*Id.*).

Plotagraph notified Lightricks in September 2018 that it believed Lightricks's Pixaloop App was covered by Plotagraph's then-pending '342 Patent. (*Id.* at ¶ 16). Plotagraph notified Lightricks of its alleged infringement of the '017, '342, and '469 Patents by filing this lawsuit in November 2021. (*Id.* at ¶ 17). In this lawsuit, Plotagraph also alleges that Lightricks made and published several YouTube tutorials to teach the Pixaloop App, and that the tutorials as well as the App infringe the Photagraph patents. The tutorials include "Working from home? Let's move things around!" published in June 2020 by Motionleap, and "How to Make Photos Move with Pixaloop!," published in September 2018 by Motionleap. (*Id.* at ¶ 15).

Lightricks asks this court to dismiss because the Plotagraph patents are invalid attempts to patent the abstract idea of animation in the context of computers, without improving how computers work. Plotagraph argues that the patent claims are directed to digital animation, which is not an abstract idea but rather a "particular manner of shifting pixels within a digital image," that represent a concrete improvement to how computers function. (Docket Entry No. 52 at 5, 9). Each argument is addressed below under the applicable legal standards.

II. The Legal Standards

A. A Motion to Dismiss

Rule 12(b)(6) allows dismissal if a plaintiff fails “to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Rule 12(b)(6) must be read in conjunction with Rule 8(a), 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). “[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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Rule 8 “does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* at 678 (quoting *Twombly*, 550 U.S. at 555). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556).

“A complaint ‘does not need detailed factual allegations,’ but the facts alleged ‘must be enough to raise a right to relief above the speculative level.’” *Cicalese v. Univ. Tex. Med. Branch*, 924 F.3d 762, 765 (5th Cir. 2019) (quoting *Twombly*, 550 U.S. at 555). “Conversely, when the allegations in a complaint, however true, could not raise a claim of entitlement to relief, this basic deficiency should be exposed at the point of minimum expenditure of time and money by

the parties and the court.” *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007) (alterations omitted) (quoting *Twombly*, 550 U.S. at 558).

A court reviewing a motion to dismiss under Rule 12(b)(6) may consider “(1) the facts set forth in the complaint, (2) documents attached to the complaint, and (3) matters of which judicial notice may be taken under Federal Rule of Evidence 201.” *Inclusive Cmty. Project, Inc. v. Lincoln Prop. Co.*, 920 F.3d 890, 900 (5th Cir. 2019).

B. The *Alice* Two-Step Framework

The case law draws a line between a patentable invention of a “new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof,” 35 U.S.C. § 101, and an invention that is not patentable because it is an abstract idea. *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013) (citation omitted). Patent protection does not apply to laws of nature, natural phenomena, and abstract ideas—“the basic tools of scientific and technological work”—because the “[m]onopolization of those tools through the grant of a patent might tend to impede innovation more than it would tend to promote it, thereby thwarting the primary object of the patent laws.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (citations and internal quotation marks omitted). The case law is not clear, however, on precisely where to draw the line in a particular case.

As the Supreme Court has cautioned:

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. [A]pplication[s] of such concepts to a new and useful end, we have said, remain eligible for patent protection.

Accordingly, in applying the § 101 exception, we must distinguish between patents that claim the buildin[g] block[s] of human ingenuity and those that integrate the building blocks into something more, thereby transform[ing] them into a patent-eligible invention. The former would risk disproportionately tying up the use of the underlying ideas, and are therefore ineligible for patent protection. The latter pose no comparable risk of pre-emption, and therefore remain eligible for the monopoly granted under our patent laws.

Id. at 217 (internal quotation marks and citations omitted).

The Supreme Court has established a two-part framework for courts to use in determining patent eligibility. First, a court asks whether the claims are directed to laws of nature, natural phenomena, or abstract ideas. *Id.* If so, the court asks what else makes up the claims, considering “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.* (citation and internal quotation marks omitted). Despite a recent request from the Department of Justice, the Supreme Court has declined to take up and clarify how this two-part

framework works in application. *See Univ. Secure Registry LLC v. Apple, Inc.*, No. 21-1056, (U.S. May 16, 2022) (denying petition for a writ of *certiorari*).

Computers add to the complications. In cases involving computer-related patents, the critical issue is “whether the focus of the claims is on the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335-36 (Fed. Cir. 2016). “[A] claim that merely describes an ‘effect or result dissociated from any method by which [it] is accomplished’ is not directed to patent-eligible subject matter.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1244 (Fed. Cir. 2016) (citations omitted).

III. Analysis

As Lightricks points out, the independent claims in the allegedly infringed patents follow a three-part format: (1) a preamble identifying a computer system, computer program product, method, or computer-readable media, “for automating the shifting of pixels”; (2) a series of preparatory steps or features initiated by a user; and (3) a final pixel-shifting step. Lightricks diagrams these steps, as follows:

- 1 { A computer program product comprising one or more non-transitory computer storage media having stored thereon computer-executable instructions that, when transmitted to a remote computer system for execution at a processor, cause the remote computer system to perform a method for automating a shifting of pixels within an image file, the method comprising:
 - 2 { receiving a first indication of a first starting point through a user interface, wherein the first starting point is received through a user selection of a first portion of a first image frame;
receiving, through the user interface, a first direction associated with the first starting point; creating a first digital link extending in the first direction from the first starting point;
selecting a first set of pixels that are along the first digital link and extend in the first direction away from the first starting point; and
 - 3 { shifting the first set of pixels, in the first image frame, in the first direction.

Transcription

1. A computer program product comprising one or more non-transitory computer storage media having stored thereon computer-executable instructions that 'when transmitted to a remote computer system for execution at a processor. cause the remote computer system to perform a method for automating a shifting of pixels within an image tile, the method comprising:

2. receiving a first indication of a first starting point through a user interface. wherein One tint starting point is received through a user selection of a first portion of a first image frame.

receiving through the user interface, a first direction associated with the first starting point: creating a first digital link extending in the first direction from the rust starting point;

selecting a first set of pixels that arc along Tim am digital link and extend in the first direction may from the first starting point;

and

3. shifting the first set of pixels. in the first image frame in the first direction.

(Docket Entry No. 53 at 8; *see also* Docket Entry No. 31-2 at 21-23; Docket Entry No. 31-3 at 18-20; Docket Entry No. 31-4 at 18-20; Docket Entry No. 31-5 at 18-20; Docket Entry No. 21-6 at 21-22).

Plotagraph does not dispute this three-part characterization. Nor does Plotagraph argue that Claim 12 of the '641 Patent, used as the basis for the diagram, is not representative of the claims for the purpose of deciding whether the claims are directed at patent-eligible subject matter. Nor has Plotagraph pointed to specific claim terms that would have to be construed before the court can assess whether the claims for pixel shifting are directed to an abstract idea or whether they improve computer functioning.

Lightricks argues that “shifting pixels” is an abstract idea, amounting to no more than a digital extension of animating static images into moving images. The idea of showing a swift succession of changes in the position of component lines or points on a drawing to create the appearance of movement is an old idea. Extending that idea to showing changes in the position of pixels making up an electronic image is, Lightricks contends, also an abstract idea. *See Animation*, Cambridge Dictionary, *available at* <https://dictionary.cambridge.org/us/dictionary/english/animation>. Lightricks argues that because the claims “involve only routine activity for animating an image, namely: picking a starting point, a direction, and a portion of the image to move, and then moving that

portion,” the claims fail step one of *Alice*. (Docket Entry No. 37 at 11). Lightricks also argues that under step two of *Alice*, none of the claims contains an inventive concept to improve computer functioning, as needed for patent eligibility. The result, according to Lightricks, is that the asserted patent claims are not directed to patent-eligible subject matter.

Plotagraph responds that pixel shifting is not an abstract idea, but even if it was, the “claimed automatic shifting of pixels is an improvement in computer functionality because it addresses a computer-specific problem which has no counterpart in the ‘brick and mortar’ world.” (Docket Entry No. 43 at 7). Plotagraph also argues that the presumption of validity applies, requiring Lightricks to prove that the claims are invalid by clear and convincing evidence. (Docket Entry No. 43 at 10). Although the burden is correctly identified, *see Polara Eng’g Inc. v. Campbell Co.*, 894 F.3d 1339, 1348 (Fed. Cir. 2018) (citation omitted), the parties do not argue that there are factual disputes material to determining patent eligibility. The legal issue is whether this claimed invention, which directs users to choose a digital starting point and a direction to shift pixels, is patent eligible.¹

Under step one of *Alice*, the court must determine whether “shifting pixels” is an abstract idea. Ideas

¹ Plotagraph argues that the claims include patent eligible subject matter because the patent office withdrew a section 101 rejection during prosecution of the patents after the claims were amended to include “automating” or “automatically” shifting pixels. (Docket Entry No. 43 at 9-10). “The Examiner’s decision, on an original or reissue application, is never binding on a court.” *Fromson v. Advance Offset Plate, Inc.*, 755 F.2d 1549, 1555 (Fed. Cir. 1985).

that can be performed in the human mind or by using pen and paper tend to be abstract, and the computer equivalents of these ideas are also abstract. Under step two of *Alice*, the court must determine whether “the elements of each claim both individually and as an ordered combination . . . transform the nature of the claim into a patent-eligible application.” 573 U.S. at 217. “When claims . . . are ‘directed to an abstract idea’ and ‘merely requir[e] generic computer implementation,’ they ‘do[] not move into section 101 eligibility territory.’” *Smart Sys. Innovations, LLC v. Chi. Transit Authority*, 873 F.3d 1364, 1374 (Fed. Cir. 2017).

In *Ericsson Inc. v. TCL Commc’n Tech. Holdings Ltd.*, 955 F.3d 1317 (Fed. Cir. 2020), a patent holder sued for infringement of a patent that claimed “a method and system for limiting and controlling access to resources in a telecommunications system.” The defendant’s products “include[d] ‘a security system that can grant apps access to a subset of services on the phone, with the end user controlling the permissions granted to each app.’” *Id.* at 1320. The Federal Circuit concluded that the method and system for receiving an access request and determining whether access should be granted were abstract ideas. *Id.* at 1326. The Federal Circuit reasoned that “[c]ontrolling access to resources is exactly the sort of process that ‘can be performed in the human mind, or by a human using a pen and paper,’ which we have repeatedly found unpatentable.” *Id.* at 1327 (citation omitted).

The plaintiff in *Ericsson* argued that because the claimed resource-access method was limited to mobile telephone systems, the method was not an abstract idea. The court rejected the argument, finding that that the limit to that system did not make the claimed

method any less abstract. *Id.* Because the claims did not “recite an inventive concept sufficient to transform that idea into patent-eligible subject matter,” failing step two, they were not patent eligible. *Id.* at 1331.

In *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044 (Fed. Cir. 2017), the patent involved maintaining a database of a seller’s inventory, gathering financial information from a consumer, and presenting financing options to the consumer for each item of available inventory. *Id.* at 1047. Using an approach similar to *Ericsson*, the Federal Circuit held that the claimed invention was an abstract idea, noting that the “mere automation of manual processes using generic computers does not constitute a patentable improvement in computer technology.” *Id.* at 1055, 1057. The patent failed at *Alice* step two. The court concluded that the “use and arrangement of conventional and generic computer components recited in the claims—such as a database, user terminal, and server—do not transform the claim, as a whole, into ‘significantly more’ than a claim to the abstract idea itself.” *Id.* at 1056.

Ericsson and *Credit Acceptance* are examples of cases in which a claimed invention that relies on a computer to improve a mental, manual, or mechanical human process is abstract unless it claims a specific set of rules that improves computer functionality itself. *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), is another example. The issue in *McRO* was a method that used “multiple 3–D models of a character’s face to depict various facial expressions made during speech.” *Id.* at 1303. The claimed method related to a pre-existing animation method in which a 3-D image of the face of an animated character had “morph target” models made

up of identified points that would make the character's face appear to be making a sound, referred to as a "phoneme." *Id.* at 1303. In the pre-existing method, animators had to set morph weights at certain key points with the help of the computer, using their judgment. *Id.* at 1305. The patentee argued that "the claimed process is technological because it provides 'a method for getting a computer to automatically generate video of a 3-D animated character speaking in sync with pre-recorded dialogue—without requiring an artist's constant intermediation.'" *Id.* at 1309-10. The Federal Circuit held that the claims were not directed at an abstract idea, because the patent claimed a "meaningful" set of rules to carry out an automated process of setting the morph weights and the transitions between phonemes. *Id.* at 1313. In other words, "[i]t is the incorporation of the claimed rules, not the use of the computer, that 'improved [the] existing technological process' by allowing the automation of further tasks." *Id.* at 1314.

The patent at issue in *Visual Memory LLC v. NVIDIA Corp.*, 867 F. 3d 1253 (Fed. Cir. 2017), also related to computer memory systems. Computers often use a tiered memory system. *Id.* at 1255. In the past, the memory systems had to be designed for, and tailored to, a specific type of computer processor. *Id.* The patent at issue overcame that deficiency by "creating a memory system with programmable operational characteristics that can be tailored for use with multiple different processors without the accompanying reduction in performance." *Id.* Although the patent relied on conventional computer components, it was not an abstract idea because the claims were "directed to an

improvement in the functioning of a computer.” *Id.* at 1262 (citation omitted).

Similarly, in *In Data Engine Techs. LLC v. Google LLC*, 906 F.3d 999 (Fed. Cir. 2018), the court concluded that a claim directed to “a specific method for navigating through three-dimensional electronic spreadsheets” was not directed at an abstract idea because it was an improvement that allowed “computers, for the first time, to provide rapid access to and processing of information in different spreadsheets, as well as easy navigation in three-dimensional spreadsheets.” *Id.* at 1007-08. Importantly, the claimed method recited more than just “the idea of navigating through spreadsheet pages using buttons or a generic method of labeling and organizing spreadsheets.” *Id.* at 1008-09. The court held that a different claim, which “merely recite[d] partitioning cells to be presented as a spreadsheet, referencing in one cell of a page a formula referencing a second page, and saving the pages such that they appear as being stored as one file,” was directed at the abstract idea of “identifying and storing electronic spreadsheet pages” and offered no improvement in computer functioning. That claim was not patent eligible under § 101. *Id.* at 1012-13.

Contrary to *McRo*, *Visual Memory*, and *Data Engines Tech.*, in *Yu v. Apple Inc.*, 1 F.4th 1040, 1045 (Fed. Cir. 2021), *cert. denied*, 142 S. Ct. 1113 (2022), the Federal Circuit affirmed a district court’s dismissal of an infringement claim on the basis that the claimed improvement in digital cameras was “directed to ‘the abstract idea of taking two pictures and using those pictures to enhance each other in some way,’” and was not patentable. *Id.* at 1042. *See also In re Sturgeon*, 839 Fed. Appx. 517 (Fed. Cir. Jan. 12, 2021) (a claimed

method of creating a floral arrangement on an electronic screen was not a patentable subject matter because “creating a floral arrangement using a computer” was an abstract idea and selecting an image from a library and displaying it on the screen required only generic computer processes); *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322 (Fed. Cir. 2017) (the process of creating a facial image composite by encoding was directed at the abstract idea of “encoding and decoding image data,” and the specific algorithm that enabled the encoding process did not add sufficient inventive process to make the abstract idea patentable); *MyMail Ltd. v. OoVoo, LLC*, Case No. 2020-1825, 2021 WL 3671364 (Fed. Cir. Aug. 19, 2021) (a claimed process for automatically updating an internet toolbar over a network without user intervention was directed at a patent-ineligible concept because it used a computer to collect, analyze, and present information, which did not improve existing computer functionality).

Under this case law, a claim for a process or method to perform a task that can be done in the human mind, or by a human using a pen and paper, is a claim directed to an abstract idea. Using a computer for the process or method does not make the claim less abstract. Such a claim may be patentable if it sets out and incorporates specific rules to carry out the claimed automated process or method that improves how computers function. If the claim simply uses existing computer functions to perform a process or method, then the claim is still directed at an abstract idea. *See Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343,1347-48 (Fed. Cir. 2014) (alteration in original) (“For the role of a computer in a computer-implemented invention to be

deemed meaningful in the context of this analysis, it must involve more than performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” (quoting *Alice*, 573 U.S. at 225)).

Shifting pixels to create the illusion of movement within an image is a digital version of animation, which is an abstract idea. The process of animation has been done by humans using paper and pencil for at least the last century. Plotagraph’s complaint refers to animation to describe what the patents at issue allow the user to accomplish. The complaint alleges that the “Patents-in-Suit relate to novel computer systems and methods for automatically shifting pixels in still digital photos or video files,” and that this “technology allows a user to animate portions of a digital still photo or a frame of a video file.” (Docket Entry No. 31 at ¶ 6). The claims for automatically shifting pixels is similar to the claims in *Ericsson* for a digital security system for deciding when and whether to grant mobile applications access to other services on a cell phone. Although the process of granting access in *Ericsson* was performed by a computer, and although the access granted was itself electronic and automatic, the claim was for an abstract idea that the human mind could perform, and the process for using the computer relied on existing functions and did not improve them.

The process of shifting pixels to animate static images claimed in the Plotagraph patents takes place within a computer, but it is a process that can be performed by the human mind, or, historically, by a human using pen and paper. Moving pixels around to create an illusion of movement is an abstract idea that is not transformed into a nonabstract idea merely because it takes place in the digital space. In *Yu v. Apple*

Inc., 1 F.4th 1040, 1045 (Fed. Cir. 2021), *cert. denied*, 142 S. Ct. 1113 (2022), the Federal Circuit rejected a claimed invention that was “directed to ‘the abstract idea of taking two pictures and using those pictures to enhance each other in some way,’” despite the fact that the invention added a feature to digital cameras. As the Federal Circuit noted, “[c]onventional computer equipment can be ‘vital’ to an advance that is still abstract, but not suffice to avoid ineligibility.” *Id.* at 1045. The independent claims in the Plotagraph patents all state that the claims are directed to automating a shifting of pixels, then identify four steps, each initiated by a user: to select a starting point; to select the direction of movement from that point; to create a link from the starting point; and to select the size of the set of pixels along the link. The claims are directed to the abstract idea of moving pixels to animate an image and use existing computer tools to achieve that result. Under step 1 of *Alice*, moving pixels to animate an image is an abstract idea. The facts that the process of moving pixels is done on the computer, and that the term “automating” is included in the claim language, does not make the process less abstract under *Alice* step one.

The Plotagraph patents fail at *Alice* step one because they are directed at the abstract idea of shifting pixels to create the illusion of movement within an image. The Plotagraph patents also fail at *Alice* step two because the elements of each claim in the Plotagraph patents, considered individually and in combination, do not show the required improvement of computer functioning, but rather the use of existing and generic computer tools—“a computer system,” with “processors,” “computer-readable media,” and a

“user interface.” (See Docket Entry No. 31-2 at 22 (“A computer program comprising one or more non-transitory computer storage media having stored thereon computer executable instructions that, when transmitted to a remote computer system for execution at a processor, cause the remote computer system to perform a method for automating a shifting of pixels within an image file, the method comprising: receiving a first indication of a first starting point through a user interface . . . ”)).

The claimed language calls for the user to initiate the steps to achieve the result by shifting certain pixels using existing and generic computer tools. The steps in the Plotagraph patents do not add sufficiently inventive steps that improve computer functionality. Under *McRO*, *Visual Memory*, and *Data Engine Techs.*, in order to transform an otherwise abstract idea claimed in a patented process or method for use on a computer, the claimed process or method must improve the computer functionality through meaningful and specific rules, methods, or processes. Shifting pixels using existing computer capabilities is not an improvement in computer functionality. The steps set out in each of the independent claims in the Plotagraph patents are not like the in-depth extensive set of rules in *McRO* that enabled computers to automate phenomes in 3-D animation models, eliminating the previous need for human-intermediated judgment and steps. See *McRO*, 837 F.3d at 1313 (a court “look[s] to whether the claims in these patents focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.”); see also *Core Wireless Licensing*

S.A.R.L. v. LG Electronics, Inc., 880 F.3d 1356, 1363 (Fed. Cir. 2018) (claims directed to an improvement in the functioning of computers with small screens were patent eligible). There are no detailed rules similar to *McRo* in the Plotagraph patents. Instead, the claims describe general user-initiated steps, beginning with selecting a particular pixel to be a starting point, then picking a direction and length for the digital link that the user will create, and then picking the set of pixels along that link. (Docket Entry No. 52 at 6). Nor are the claimed processes for shifting pixels like the claimed invention in *Visual Memory*, 867 F.3d at 1255, which created a new computer memory system for use with multiple processors. Such a memory system could not have been implemented with preexisting computer technology.

The claims for shifting pixels at issue here are more like the claims the Federal Circuit found unpatentable in *Data Engine Techs.*, 906 F.3d at 1012-13. The unpatentable claim was directed at the abstract idea of identifying and storing electronic spreadsheet pages, and “merely recite[d] partitioning cells to be presented as a spreadsheet, referencing in one cell of a page a formula referencing a second page, and saving the pages such that they appear as being stored as one file.” This claim was not patent eligible under § 101. *Id.* at 1012-13. The *Data Engine Techs* claim is similar to the Plotagraph patent claims for shifting pixels to animate a static image on a computer: an abstract idea achieved by user-initiated steps through existing computer technology to pick the pixels to be moved and the direction and speed of movement.

Although Plotagraph alleges that the automatic shifting of pixels and associated features “were not

previously used with image editing, were not generic computer software or hardware, and were not well-understood, routine, or conventional in the art at the time of invention,” (Docket Entry No. 31 at ¶ 9), the court need not accept conclusory allegations if the complaint and record do not otherwise support that conclusion. What is claimed in the patents, and described throughout the complaint, are digital environments in which a user chooses a starting point, the direction, and the size of the pixel group to be moved along that direction. “Simply appending conventional steps, specified at a high level of generality, to a method already well known in the art is not enough to supply the inventive concept . . . [T]he introduction of a computer into the claims does not alter the analysis.” *Alice*, 573 U.S. at 209.

The asserted claims of the ’017, ’342, ’469, ’641, and ’119 Patents are directed to an abstract idea, provide no inventive concept, and are ineligible under § 101. No claim for patent infringement can be asserted.

IV. Conclusion

Lightricks’s motion to dismiss Plotagraph’s first amended complaint, (Docket Entry No. 37), is granted. Lightricks’s motion to dismiss Plotagraph’s original complaint, (Docket Entry No. 30), is moot. Because Plotagraph already had an opportunity to amend, and because further amendment would be futile, Plotagraph’s claims are dismissed with prejudice. Plotagraph’s motion for leave to file second supplemental disclosures, (Docket Entry No. 42), is moot. A dismissal order is separately entered.

App.36a

SIGNED on August 9, 2022, at Houston, Texas.

/s/ Lee H. Rosenthal
Chief United States District Judge

**ORDER, U.S. DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
(AUGUST 9, 2022)**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PLOTAGRAPH, INC, TROY PLOTA,
and SASCHA CONNELLY,

Plaintiffs,

v.

LIGHTRICKS, LTD,

Defendant.

Civil Action No. H-21-3873

Before: Lee H. ROSENTHAL,
Chief United States District Judge.

ORDER OF DISMISSAL

For the reasons stated in the court's August 9, 2022, Memorandum and Opinion, this action is dismissed with prejudice.

SIGNED on August 9, 2022, at Houston, Texas.

/s/ Lee H. Rosenthal
Chief United States District Judge

**ORDER DENYING PETITION FOR
REHEARING, U.S. COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
(MARCH 26, 2024)**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PLOTAGRAPH, INC., TROY PLOTA,
SASCHA CONNELLY,

Plaintiffs-Appellants,

v.

LIGHTRICKS, LTD.,

Defendant-Appellee.

2023-1048

Appeal from the United States District Court
for the Southern District of Texas in
No. 4:21-cv-03873, Judge Lee H. Rosenthal.

Before: MOORE, Chief Judge, LOURIE, SCHALL¹,
DYK, PROST, REYNA, TARANTO, CHEN,
HUGHES, STOLL, CUNNINGHAM, and
STARK, Circuit Judges.²

¹ Circuit Schall participated only in the decision on the petition for panel rehearing.

² Circuit Judge Newman did not participate.

PER CURIAM.

ORDER

Plotagraph, Inc., Troy Plota and Sascha Connelly filed a petition for rehearing en banc. The petition was first referred as a petition to the panel that heard the appeal, and thereafter the petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue April 2, 2024.

FOR THE COURT

Jarrett B. Perlow

Clerk of Court

March 26, 2024

Date