IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IDENTITII LIMITED, Plaintiff, v. JPMORGAN CHASE & CO. and JPMORGAN CHASE BANK, N.A., Defendants.	)	C.A. No. 23-1095-GBW

PLAINTIFF IDENTITII LIMITED'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

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I. INTRODUCTION: THE '413 PATENT INVENTED A BLOCKCHAIN BASED, TOKENIZED PAYMENT PROCESSING ARCHITECTURE THAT WAS AN IMPROVEMENT OVER CONVENTIONAL SYSTEMS LIKE "SWIFT"

Paragraphs 11-45 of the First Amended Complaint (FAC) detail how the inventions of the '413 patent defied convention and solved problems associated with the existing, conventional computer architecture for processing financial transactions—most notably the SWIFT system.

The improved computer network architecture was designed to overlay traditional payment rails, such as SWIFT, and it greatly expanded their capabilities. This architecture generates an enriched data record regarding a financial transaction and injects that enriched record into a blockchain. The improved network architecture further includes a token server that generates a token associated with the enriched data record and that token is stored in the blockchain in association with the enriched data record. The token provides a pointer to the enriched data record in the blockchain and can be used to retrieve the enriched data record at any point during the financial transaction. The purpose of storing the token only in the blockchain is to both de-identify the information in the blockchain (which is critical for banks) and enable banks to still use legacy systems, such as the existing SWIFT system, to send the payment information in tokenized format.

The above-described invention is complex, it was in stark contrast to prior art systems, and was a paradigm shift in the industry. Defendants' executive recently went live on Bloomberg Television and extolled the virtues of Identitii's patented technology—***8 years*** after Identitii conceived it:

> I think the kernel of our thinking is that if ***you think about how infrastructure has evolved in financial markets***, . . . ***And I think block-chain tech actually gives us the opportunity to rewrite the infrastructure potentially as a consolidated one with consolidated data structures like tokenization . . . and so I think this can really rewrite how financial markets will work in the future***.

Ex. 14 (video of Bloomberg segment); D.I. 16-17.

While Defendants tell the world one thing on TV and to the Patent Office, in this Court they

deny Identitii's inventions by over-simplifying the claims to "nothing more than traditional recordkeeping." D.I. 19 at 8. Contrary to Defendants' assertions, the claims are not simply about recordkeeping. Rather, they are directed to *how* to create an improved payment processing network architecture that is more secure, more reliable, and more efficient.

II. THE INVENTIONS OF THE '413 PATENT

A. Identitii's '413 Patent Invented a New Computer Network Architecture for Processing Financial Transactions—Specifically Improving Upon the Problems and Drawbacks with Conventional Payment Rails

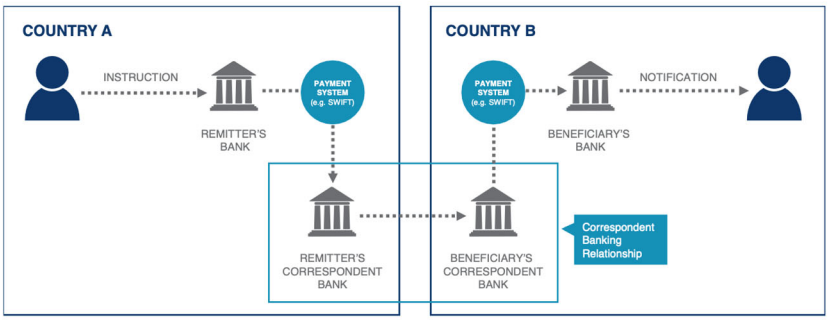
As demonstrated below and in **paragraphs 11-45** of the FAC, the '413 patent solved problems associated with the existing, conventional payment rail architecture with a new and improved network architecture. Identitii was first to create a novel, efficient blockchain based, tokenized payment architecture with enriched data records—the same architecture that Defendants currently tout as revolutionary. D.I. 15, ¶¶ 11-45. Defendants took Identitii's ideas, tout the ideas as groundbreaking, and simultaneously tell this Court that the same ideas were conventional and non-inventive. *Id.* at ¶¶ 11-19, 24, 31, 33, 35, 37, 39-45; Exs. 2-5, 20.

At the time of invention in 2015, the existing technology and infrastructure for executing financial transactions between and among banks and other institutions suffered from numerous problems. D.I. 15, ¶ 21; Ex. 1 at 26:1-2; Ex. 7 at 22-23. At that time, the primary payment rail for processing financial transactions around the globe was the Society for Worldwide Interbank Financial Telecommunications (SWIFT). D.I. 15, ¶ 23. SWIFT was the "internet for financial services" and the "transport network for a large number of major payment and securities infrastructures" that was "responsible for providing the network, standards, products and services that allow member institutions to connect and exchange financial information." *Id.*

One problem was that the SWIFT architecture and protocol only supported transmission of fix-width messages with limited information. This made it difficult to track data, and even more

difficult to ensure that the integrity of the data was maintained both during, and after, a financial transaction was completed. Similarly, it was difficult to confirm particular data existed at a certain point in the financial transaction process. D.I. 15, ¶¶ 21-22, 24; Ex. 1 at 1:39-51, 26:1-2; Ex. 4 at 3; Ex. 7 at 23; Ex. 20 at 3. ***Another problem*** was that SWIFT supported only one-way transmission of data between banks and financial institutions, meaning there was no support in the network architecture for confirming or requesting additional data regarding the transaction in real time. *Id*. Because of these limitations, there were security issues surrounding the exchange of information concerning financial transactions, which in turn routinely caused delays and failed transactions. As discussed below, these problems were exacerbated by the need to process more information about transactions due to increased regulations. *Id.*

SWIFT's drawbacks created problems with the entire networked infrastructure for a number of reasons, including that most transactions go through numerous banks' network architectures prior to reconciliation (as demonstrated below). Not surprisingly, as transactions go through more banks there are more likely to be issues with data integrity, which directly relates to combating illegal activity and terrorism financing.



D.I. 15, ¶¶ 22, 25, 25; Ex. 1 at 1:25-51, 21:57-22:24; Ex. 7 at 4-5, 18, 22-23.

Due to the problems with SWIFT and because banks are required to comply with numerous regulations such as Anti-Money Laundering (AML) and Counter Terrorism Financing (CTF),

transactions like the one above that go through numerous banks cannot be cleared by traditional payment rails alone, such as SWIFT, because the conventional network architecture does not allow it. D.I. 15, ¶ 26; Ex. 1 at 1:25-51, 21:25-22:24; Ex. 7 at 4, 18, 22-23. Financial institutions are now required to implement Know Your Customer (KYC) processes and conduct further diligence to clear and settle transactions. *Id*. Because of the architectural setbacks with SWIFT, financial institutions instead needed to request additional information and communicate with each other directly, outside of SWIFT, to process transactions. *Id*. This led to security concerns of going outside the payment rail to transmit customers' banking information, making it difficult to conduct risk-based analysis of individual payments. *Id*. SWIFT's problematic architecture led to other issues including a lack of interoperability between banks' back-end systems, difficultly identifying parties to a transaction, no straight-through-processing and time-limited information capture. D.I. 15, ¶¶ 27-28. When transactions go through intermediary banks, as they often do, reconciliation with SWIFT was unreliable and inefficient because of the disjointed architecture. *Id.*

Enter Identitii and the inventions of the '413 patent. The inventors envisioned leveraging nascent blockchain technology—a distributed, immutable ledger that records a constantly growing list of transactions into sequential blocks—as part of a new network architecture to overlay traditional payment rails to securely transmit, track, and verify data. D.I. 15, ¶¶ 29, 32; Ex. 1 at 12:65-13:8, 25:14-46, 28:31-39; Fig. 15; Ex. 7 at 24-26, 33-35. Because blockchain transactions are encrypted and stored in linked blocks, there is a cryptographic audit trail for any transaction that cannot be changed or deleted, and there is a single source of truth for each transaction. *Id*. Identitii utilized underlying blockchain technology as part of a revamped network architecture for payments that uses a tracking token to provide a robust information layer over existing payment rails like SWIFT to

enrich the information about payments (i.e., the enriched data record).[1] This enriched information is accessible at each step of the payment process, enabling banks to clear transactions more quickly, more reliably, and with greater security because the use of blockchain allows for certainty of data that can be viewed at any point in time during the transaction and is verifiably linked to the underlying participants in the transaction vis-à-vis the token. D.I. 15, ¶ 32. The token likewise provides access to information in the blockchain regardless of the legacy system being used, making this "interoperability"—the ability to tie together conventional payment rail architectures—a unique feature of the '413 patent. *Id.*; Ex. 1 at 15:66-16:3, 23:1-5, 25:1-13. The use of a token also enables better straight through processing of financial transactions, which the SWIFT architecture did not support, "permitting essentially real-time settlement across multiple institutions and banks." *Id.*

The structure of Identitii's new architecture and "***how***" it works is described in the '413 patent's specification and is embodied in claim 15 of the '413 patent (Ex. 1):

> 15. A system for processing a financial transaction, the system comprising:
>
> a first intermediary server in a centralized financial system, the first intermediary server being operably connected to a network and a first document store;
> a token server operably connected to the network;
> a messaging bus in the centralized financial system, the messaging bus being operably connected to the network; and
> a blockchain operably connected to the network, the blockchain being a distributed ledger;
> wherein the first intermediary server is configured to:
> transmit one or more documents pertaining to the financial transaction, to the first document store;
> generate an enriched data record from the one or more documents and add the enriched data record into the blockchain;
> request generation of a token corresponding to the financial transaction to identify the one or more documents, to the token server, via the messaging bus; and
> transmit the token to the first document store;
> wherein the token server is configured to:

[1] The specification of the '413 patent explains how the invention includes "better data" than legacy systems such as SWIFT, including, for example, the recipient named, BIC, IBAN, destination country, mobile number etc. Ex. 1 at 27:16-19, 28:31-39 ("it is to be noted that existing systems do not provide enriched information.").

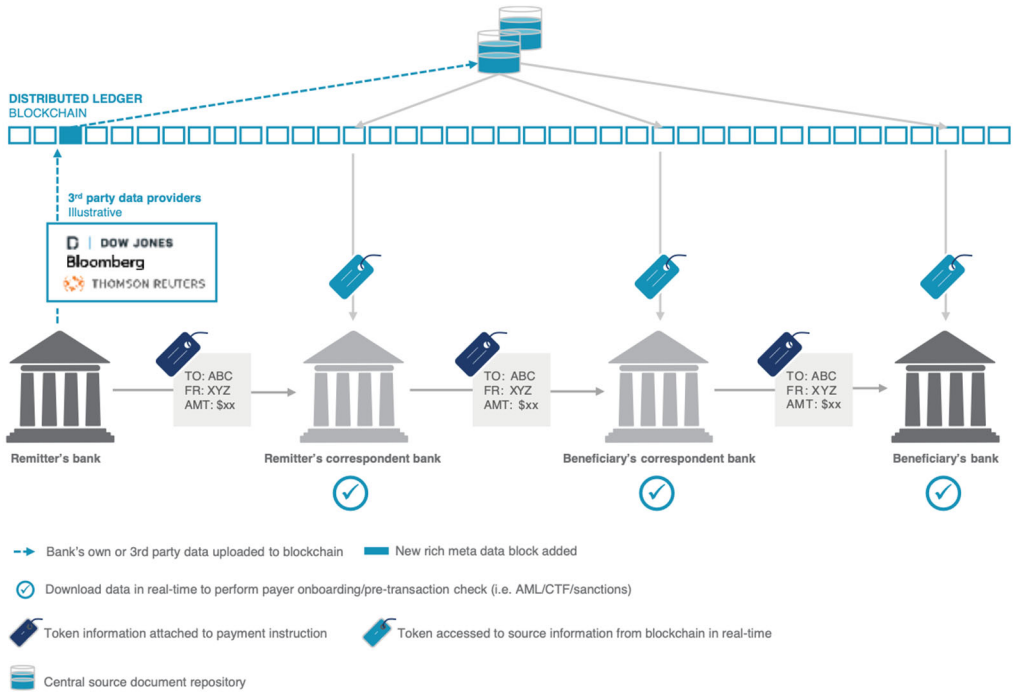
generate the token and add the token into the blockchain in association with the enriched data record; and
transmit the token to the first intermediary server, via the messaging bus.

In accordance with the claimed invention, Identitii invented a server-system that generates an enriched data record from documents regarding a financial transaction and that enriched data record is inserted on a blockchain. D.I. 15, ¶ 34; Ex. 1, claim 15. The additional information is used to enrich payments with more information given the inability of existing payment systems such as SWIFT to communicate enriched information. Ex. 1 at 26:34-38. The system also has a token server [which] generates a token associated with the enriched data record and that token is stored in the blockchain in association with the enriched data record. *Id.* at 13:9-14. The token provides a pointer to the enriched data record in the blockchain and can be used to retrieve the enriched data record at, for example, the time of an audit. *Id.* at 2:12-15; 16:1-3; 22:45-57; 22:61-67; 23:19-29; 23:66-24:2; 28:66-29:7. The purpose of storing the token only in the blockchain is to both de-identify the information in the blockchain (which is critical for banks) and enable use of existing SWIFT/ACH/RTGS systems or new messaging systems to send the payment information in tokenized format. *Id.* at 26:46-50. The system leverages blockchain and tokenization technology to create an unconventional architecture that is a departure from prior architectures like SWIFT. D.I. 15, ¶ 34. Now banks transmit, receive, and confirm sensitive banking information securely and without any need to contact other banks or access their internal data stores. Instead, banks can gather the information using the tokens and enriched data records by directly accessing the blockchain which is secure and centralized. *Id*. The financial institutions involved in the transaction may communicate in real-time and ensure, for example, that the payer, the beneficiary and all the parameters corresponding to the financial transaction are validated. *Id.*; Ex. 1 at 31:46-50.

At a high level, the novel architecture is depicted in Figure 14 of the ’413 patent (Ex. 1), as

well as industry-publications depicting the invention (Ex. 7[2] at 34, reproduced below). D.I. 15, ¶ 33.

FIGURE 15: IDENTITII TOKENS



This unconventional architecture created numerous technological advances and benefits as explained in the '413 patent (Ex. 1 at 31:36-57) and industry publications (Ex. 7 at 25, 35). Indeed, Identitii explained these benefits to Defendants before they adopted Identitii's technology. Ex. 4 at 3, 4, 15; D.I. 15, ¶ 35. Because banks could now access the token information (e.g., via SWIFT) and in turn access the enriched data records on the blockchain, the banks had access to secure, encrypted, and decentralized records, regarding transactions that enabled straight through payment processing where each bank in a transaction had access to reliable and more detailed records. D.I. 15, ¶¶ 21-35, The novel network architecture also created tamperproof records for AML and CTF checking and

[2] Defendants complain that the FAC "adds extraneous matter such as third-party marketing material." D. I. 19 at 1. What Defendants apparently overlook is that "when deciding a 12(b)(6) motion, a court considers "documents that are attached to or submitted with the complaint." *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3rd Cir. 2006). Hardly extraneous, these materials explain the state of the art and how the '413 patent was a departure from convention.

allowed institutions to conduct KYC diligence more quickly and effectively because each institution had access to the same, reliable and more detailed information concerning a transaction. *Id.*

The '413 patent's specification and the FAC clearly identify the problems with legacy payment processing architectures and the benefits of the claimed solutions in the '413 patent. Ex. 1 at Figs. 8, 11, 13, 1:27-54, 24:36-25:13, 26:1-33, 28:31-39, 29:44-60, 31:38-57; D.I. 15, ¶¶ 21-45.

B. Identitii's Novel Computer Architecture for Processing Financial Transactions Was Lauded by the Industry, Led to Awards and Was Taken by Defendants

In 2015-16, shortly after initially seeking patent protection for its novel architecture, Identitii provided Defendants with slide decks disclosing the architecture and its benefits while noting that the invention was patent pending. D.I. 15, ¶¶ 11, 13, 37; Ex. 2-5, 20. These materials also explained to Defendants the drawbacks of traditional payment rails such as SWIFT (as discussed above) and why Identitii's new network architecture was an improvement. D.I. 15, ¶¶ 24, 31, 33, 35; Ex. 4 at 3, 4, 9, 15; Ex. 20 at 3 of presentation. Identitii also demoed the architecture for Defendants, including showing how it could be used to set up and settle transactions. D.I. 15, ¶ 37. At the same time, Identitii was winning awards based on its novel architecture, including the 2016 SWIFT Innotribe Compliance Challenge and KPMG's 2016 Fintech100 Emerging Stars. *Id.* at ¶ 37; Ex. 7 at 33; Ex. 8; Ex. 9. Rather than work with Identitii, Defendants, using the architecture that Identitii invented, created their own infringing systems. D.I. 15, ¶¶ 11-20, 39-82.

On April 20, 2021, the '413 patent issued. *Id.* at ¶ 17. Identitii then informed Defendants that the payment processing architecture that they implemented while the '413 patent was pending was infringing. When Defendants did not abate their infringement, Identitii filed suit. *Id.* at ¶¶ 18-20.

Contrary to Defendants' unsupported statement, Defendants did not "mentor" Identitii. D.I. 19 at 3-4. Rather, they took Identitii's ideas, implemented them, and now are touting to customers, news outlets, and even the Patent Office that blockchain based, tokenized payment architectures are

unconventional, novel and transformative technologies. D.I. 15, ¶¶ 39-42, 44-45; Ex. 6 at 3; Ex. 14-19, 22. These statements simply cannot be reconciled with Defendants' arguments in their motion.

III. THE '413 PATENT IS SUBJECT MATTER ELIGIBLE

A. Step One: The '413 patent is "directed to" a blockchain based, tokenized computer architecture for processing payments that was a departure from conventional systems, not an abstract idea

As discussed in **paragraphs 11-45 of the FAC** and in Section II above, the '413 patent is eligible because it is directed to a new blockchain based, tokenized, computer network architecture for processing payments. The improved computer architecture generates an enriched data record from documents regarding a financial transaction and inserts that record on a blockchain. The improved architecture also has a token server that generates a token associated with the enriched data record and that token is stored in the blockchain in association with the enriched data record. The token provides a pointer to the enriched data record in the blockchain and can be used to retrieve the enriched data record at, for example, the time of an audit. The purpose of storing the token only in the blockchain is to both de-identify the information in the blockchain (which is critical for banks) and enables banks to still use legacy systems, such as the existing SWIFT system, to send the more detailed payment information in tokenized format. This is a "new and useful" improvement to computer-implemented payment processing technology under § 101 and patent eligible.

That this is true is confirmed by Defendants' statements outside this lawsuit. In addition to Defendants' statements made on Bloomberg Television as stated above (*see* Section I, Ex. 14; D.I. 16-17), Defendants have made similar statements to the Patent Office, resulting in the issuance of patents related to this same architecture (albeit after Identitii's conception), including the following:

> Applicant's claim provides a way in which to aggregate non-standard financial data. This financial data currently resides in each bank's proprietary and private system. The claimed embodiment allows sharing of the banks' financial data through a distributed ledger network [i.e., blockchain] that provides visibility to this data to any member bank. Thus, the claimed interbank information network standardizes this

> information . . . Accordingly, there is precedent for a claim such as claim 1 here, to be considered subject matter eligible under §101.
> ***
> the entire method and system exists only in a digital realm. The problem addressed by the claimed embodiment deals with digital fraud and verification through a blockchain enabled system of sharing between financial institutions…Thus, the problem is not simply reciting the performance of a business practice known from the pre-internet world along with the requirement to perform it on the internet.

Ex. 16 at 18-20

> Thus, when looking at these additional elements as an ordered combination, the claim as a whole amounts to significantly more than simply organizing and comparing data. When the "middleware communication application at the payment originator bank determines that an internal payment originator bank non-distributed banking ledger is unavailable," which indicates that it cannot confirm that funds are available for the payment instruction, it posts the payment instruction to the distributed ledger on a peer-to-peer network as an unconfirmed payment instruction. When the non¬ distributed banking ledger is available, it then posts the payment instruction to the distributed ledger on a peer-to-peer network as a confirmed payment instruction so that the payment instruction may be processed. These are meaningful limitations that add more than generally linking the use of the alleged abstract idea to the Internet, because they solve an Internet-centric problem with a claimed solution that is necessarily rooted in computer technology, similar to the additional elements in *DDR Holdings*.

Ex. 17 at 11. It is thus clear that the claimed system leverages blockchain and tokenization technology to create an unconventional architecture that is a departure from prior architectures like SWIFT which had numerous shortcomings. *See also* Section II *supra*.

The Step One inquiry involves "understand[ing] the problem facing the inventor and, ultimately, what the patent describes as the invention." *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 767 (Fed. Cir. 2019). Here, the patent's specification and the FAC (D.I. 15, ¶¶ 11-45) identify the problems/drawbacks with existing payment processing systems like SWIFT and describe how the '413 patent was a technological leap. Claim 15 therefore recites a "specific improvement" in the art. *Id.* at 1293; *Core Wireless Licensing S.A.R.L. v. LG Elecs. Inc.*, 880 F.3d 1356, 1362 (Fed. Cir. 2018) ("[C]laims focused on various improvements of systems [are] directed to patent eligible

subject matter.").

Numerous cases confirm that claim 15 of the '413 patent is directed to eligible subject matter. In *Ancora*, for example, the Federal Circuit held that a computer functionality that departs from the earlier approaches to solve a computer problem is directed to non-abstract subject matter. *Ancora Techs., Inc. v. HTC Am., Inc.*, 908 F.3d 1343, 1348 (Fed. Cir. 2018) ("Improving security . . . can be a non-abstract computer-functionality improvement if done by a specific technique that departs from earlier approaches to solve a specific computer problem").[3] The invention—which concerned operating software within the limits of a software license—was technologically simple: rather than store the license information in a computer's hard drive memory (which was easier to hack), store that same information in the BIOS memory which was "typically used for storing programs that assist in the start-up of a computer" and "much harder" to hack than "the memory used by the prior art to store license-verification information." *Id.* at 1345. The *Ancora* case held that simply moving the location of *where* licensing information was stored (from the hard drive memory to the BIOS memory) meant the claims at issue were not directed to abstract ideas because this change was an improvement in security over the prior art. *Id.* ("The asserted innovation of the patent relates to where the license record is stored in the computer and the interaction of that memory with other memory to check for permission to run a program that is introduced into the computer.").

The '413 patent's inventions provide the same improvements as *Ancora*—and much more. As demonstrated in Section II above, banks' sensitive customer information needed to clear transactions was moved to secure blockchain based network infrastructure. Banks requiring the data did not need access to other banks' internal document stores—the required information was instead

[3] While the claims must cover the improvement, the "[c]laims need not articulate the advantages of the claimed combinations to be eligible." *Uniloc USA, Inc. v. LG Elecs. USA, Inc.*, 957 F.3d 1303, 1309 (Fed. Cir. 2020). The advantages of the inventions here are outlined in Section II above.

stored securely in the blockchain network architecture. The ’413 patent was a departure from conventional payment rails. It constituted a new blockchain based, tokenized architecture that was more secure, reliable, and efficient than the conventional system. *Id.* Thus, the invention is not directed to an abstract idea.

Other Federal Circuit cases demonstrate that technologically simple solutions are not directed to abstract ideas provided they overcome an identifiable problem in the art like the ’413 patent. For example, in *Data Engine Techs. LLC v. Google LLC*, 906 F.3d 999, 1007-8 (Fed. Cir. 2018), the Federal Circuit found the claims concerning an electronically tabbed spreadsheet were not directed to an abstract idea, but “[r]ather, the claim is directed to a specific method for navigating through three-dimensional electronic spreadsheets.” “The Tab Patents solved this known technological problem in computers in a particular way—by providing a highly intuitive, user-friendly interface with familiar notebook tabs for navigating the three-dimensional worksheet environment.” *Id*. at 1008.

Likewise, in *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1359 (Fed. Cir. 2018), the Federal Circuit found claims directed to “improved display interfaces . . . [that] allow a user to more quickly access desired data stored in, and functions of applications included in, the electronic devices” were not abstract. *See* inset showing FIG. 4 of the ’476 patent in *Core Wireless*.



Finally, this Court also has recognized that where, as here, an invention “does more than merely collect, analyze, and display available information,” and advances the relevant art, it is eligible at step one. *Cirba Inc. v. VMware*, *Inc*., C.A. No. 19-742-GBW, 2023 WL 2989049, at *2 (D. Del. April 18, 2023). Claim 15 of the ’413 patent is not directed to an abstract idea under controlling Federal Circuit law and this Court’s recent decision in *Cirba*. It is an improvement to existing

technology—a new computer network architecture for payment processing that improved upon the prior art as detailed in the specification, the well-pled allegations of the FAC, and even statements from Defendants' executive. D.I. 15, ¶¶ 21-45. As such, it is patent eligible at Step One under *Ancora*, *Data Engine*, *Core Wireless* and other similar cases.

1. Defendants' Flawed Step One Analysis

Defendants' Step One analysis (D.I. 19 at 8-15) rests on a series of analytical errors. Indeed, Defendants' primary argument is that the '413 patent is "nothing more than traditional record keeping." *Id.* at 8. To argue this, Defendants water down and grossly over-simplify claim 15 of the '413 patent in a manner that is untethered from any language in the claim. The Federal Circuit has repeatedly cautioned against such arguments by accused infringers. *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1313 (Fed. Cir. 2016) ("We have previously cautioned that courts 'must be careful to avoid oversimplifying the claims' by looking at them generally and failing to account for the specific requirements of the claims."); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016) ("describing the claims at such a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule"). In their brief, Defendants even admit that the claims are much more than "traditional record keeping": Defendants argue that Identitii only reached the claims after a longstanding "mentorship" by Defendants. D.I. 19 at 4. Just like Defendants statements to the world on television, and in further statements to the Patent Office, Defendants' "mentorship" argument cannot be reconciled with its argument that the claims are directed only to traditional record keeping, as no mentoring would have been required.

Defendants commit other analytical errors to support their improper characterization of the patent at too high a level of abstraction. One such error is dissecting the claim into individual limitations and arguing that because each individual piece is "conventional" or "known," the entire

claim is abstract. *See* D.I. 19 at 9-15 ("courts have already held each limitation in claim 15 to be an abstract idea using generic computer technology"). This is not the test for whether a claim is ***directed to*** an abstract idea; one must discern whether the claim "as a whole" is directed to an abstract idea. *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016) (finding patent eligible the non-conventional and non-generic arrangement of known, conventional pieces); *Attentive Mobile Inc. v. 317 Labs, Inc.*, C.A. No. 22-1163-CJB, 2023 WL 6215825, at *8 (D. Del. Sept. 25, 2023) ("Defendants seem to ignore this instruction from *BASCOM*. Instead, they continually note that each [ ] claim element . . ., standing alone [was] well known at the time. But *BASCOM's* point is that even claims that use individual technological components that themselves were conventional can still be patent eligible if the particular *ordered combination* of those known elements are used in an unconventional way.").

Defendants never perform the proper analysis. *Packet Intelligence LLC v. NetScout Sys., Inc.*, 965 F.3d 1299, 1309 (Fed. Cir. 2020) ("In our eligibility analysis, we consider the claim as a whole . . . and read it in light of the specification."; "In informing our understanding of the technology and its relationship to the art, we relied on statements in the specification that the claimed invention purported to solve weaknesses in the prior art . . ."). Instead, they set forth a chart arguing that each individual limitation was known and follow that with a narrative section arguing that individual elements were known. D.I. 19 at 9-15. When viewed as a whole however, the claims recite a novel, non-abstract network architecture that provides technological improvements to conventional payment rails—and as Defendants performed an incorrect analysis, they do not provide argument otherwise.

The principal cases Defendants rely upon are inapposite because the patents in those cases are not anything like the '413 patent. The claims in *Management Science*, were "directed to a series of steps that can be performed in the human mind with pen and paper" and there was no indication from

the record evidence that the claims covered "technical improvements to computer technology in order to not be directed to an abstract idea." *Mgmt. Sci Assoc. v. Datavant, Inc.*, 510 F. Supp. 3d 238, 248-49 (D. Del. 2021). As set forth in Section II above and paragraphs 11-45 of the FAC, the exact opposite is true here because the '413 patent concerns a new computer network architecture.

In *PersonalWeb*, the claims covered functions that were "mental processes that can be performed in the human mind or using a pencil and paper" and did not "overcome a problem specifically arising in the realm of computer networks." *PersonalWeb Techs., LLC v. Google LLC*, 8 F.4th 1310, 1316 (Fed. Cir. 2021). Again, the exact opposite is true here. Finally, *Content Extraction* had nothing to do with computer architecture or improvements to computers. *Content Extraction v. Wells Fargo*, 776 F.3d 1343, 1345 (Fed. Cir. 2014). It concerned storing information from hard copy documents, categorizing them, and storing portions of the documents based on the categorization. *Id.*

The claims here solve technological problems, in a particular way, and are patent eligible.

B. Step Two: The ordered combination of elements that form Identitii's blockchain based, tokenized payment architecture that solved problems with the conventional architecture, supply an inventive concept

The inventive concept of the '413 patent is the same as what the claim is directed to—a blockchain based, tokenized computer architecture for processing payments that (1) generates an enriched data record from documents regarding a financial transaction and inserts that record on a blockchain and (2) generates a token associated with the enriched data record and that token is stored in the blockchain in association with the enriched data record. This new architecture was more secure, reliable, and efficient than the conventional payment rails such as SWIFT.

As discussed in **paragraphs 11-45 of the FAC** and in Section II above, this new architecture was not well-understood, routine, or conventional at the time of invention. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 217-18 (2014). On this point, the *Amdocs* case is highly instructive. *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1299-1302 (Fed. Cir. 2016). In *Amdocs*,

the claims were found eligible as having an inventive concept because—per the specification—the claims covered an enhancement over the prior art despite using "generic components." *Id.* ("Here, claim 1 solves a technological problem (massive data flows requiring huge databases) . . . Claim 1 involves some arguably conventional components (e.g. gatherers), but the claim also involves limitations that when considered individually and as an ordered combination ***recite an inventive concept through the system's distributed architecture***.") (emphasis added). Here too, the '413 patent involves a new computer architecture for overcoming the problems of prior computer architectures for processing payments. *See* Section II *supra*.

The claims in *Amdocs* were technologically simple—they were directed to combining particular information from two different sources to enhance a network accounting record. *Id.* at 1299. The Federal Circuit found the claim patent eligible because it entailed enhancing data using a distributed architecture. *Id.* at 1300-1301. This is no different than Identitii's claims, which invoke a new architecture that makes payment processing more secure, reliable and efficient.

Amdocs rebuts Defendants' entire Step Two argument—which is that "every component is conventional." D.I. 19 at 15-18. Indeed, as the *Amdocs* court found, it does not matter if a claim uses purportedly "generic" components if the ordered combination employs a technological solution to advance the art. *Amdocs*, 841 F.3d at 1299-1302. Accordingly, in light of the teachings of the specification and the well-pled facts in the FAC, it is irrelevant if the claims of the '413 patent arguably make use of so-called "generic components." Defendants again eschew the correct inquiry by providing a chart arguing the limitations one by one rather than ever engaging with the claimed invention as a whole. D.I. 19 at 15-16.

Similarly, *CosmoKey* also demonstrates that the '413 patent is patent eligible because it claims a specific improvement to existing technology and thus supplies an inventive concept. In *CosmoKey*,

the claim-at-issue recited authenticating a user to a transaction at a terminal comprising the steps of transmitting a user identification, providing an authentication step, and ensuring the status of the authentication function. *CosmoKey Solutions GmbH & Co. KG v. Duo Security LLC*, 15 F.4th 1091, 1094 (Fed. Cir. 2021). The Federal Circuit decided that the claims had an inventive concept because the "claims and specification recite a specific improvement to authentication that increases security, prevents unauthorized access by a third party, is easily implemented, and can advantageously be carried out with mobile devices of low complexity." *Id.* at 1098. The claimed solution in *CosmoKey* also was simple and departed from convention because, per the specification, it required "transmitting the user identification via a first communication channel and checking via a second communication channel that an authentication function is activated in the user's mobile phone." *Id.* at 1094.

Likewise *BASCOM* held that an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces. *BASCOM*, 827 F.3d at 1350. In *BASCOM*, the patent described the filtering system as a novel advance over prior art computer filters because no one had previously provided customized filters at a remote server. *Id*. Although filtering content on the Internet was already a known concept, the claim was not directed to an abstract idea because the patent described how its particular arrangement of elements improved the prior art. *Id.* Specifically, the claims were found inventive because they carved out a specific location for the filtering system (a remote ISP server) and required the filtering system to give users the ability to customize filtering for their individual network accounts. *Id.* at 1352. Accordingly, *BASCOM* supports finding that a blockchain based, tokenized computer architecture for processing payments, which advanced the art and departed from convention, supplies an inventive concept.

Another inquiry often addressed at Step Two is preemption, a "concern that undergirds our § 101 jurisprudence." *Alice*, 573 U.S. at 223. Even assuming the '413 patent is directed to an abstract

idea (it is not), the question becomes whether the inventive concept ties up or preempts too much of the claimed abstract idea. *Attentive Mobile*, 2023 WL 6215825, at *9. The scope of the claims of the ’413 patent does not raise preemption concerns. Indeed, they claim a specific payment processing computer architecture (and not all techniques and architectures). The claimed architecture is limited to a blockchain based, tokenized computer architecture for processing payments that generates an enriched data record from documents regarding a financial transaction and inserts that record on a blockchain. Ex. 1, claim 15. The claimed architecture is also limited by use of a token server that generates a token associated with the enriched data record and that token is stored in the blockchain in association with the enriched data record. *Id.* There can be no preemption concern.

IV. FACTUAL DISPUTES REGARDING INVENTIVENESS REQUIRE DENIAL OF THE MOTION

Identitii establishes with reference to claim 15 of the ’413 patent, the specification and other well-pled facts in paragraphs 11-45 of the FAC that the inventions of the ’413 patent, among other things, (1) were not well-understood, routine, or conventional at the time of invention; (2) are not unduly preemptive of computer payment processing systems; and (3) claim numerous benefits that demonstrate ***why*** this invention is a technological advancement. These are all issues of fact with which Defendants disagree. But such disputes are not ripe for adjudication on a motion to dismiss. Identitii’s factual allegations regarding the inventiveness of the ’413 patent are plausible on their face under *Twombley Bell Atl. Corp. v. Twombley*, 550 U.S. 544, 570 (2000). Moreover, “plausible and specific factual allegations that the aspects of the claim are inventive” will defeat a motion to dismiss on § 101 grounds. *Cellspin Soft, Inc. v. Fitibt, Inc.*, 927 F.3d 1306,1317 (Fed. Cir. 2019).

Indeed, at this stage, the statements in the FAC, the specification and all other well-pled facts must all be read in a light most favorable to Identitii and accepted as true. *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1126-28 (Fed. Cir. 2018). In light of the record to date

and the disputes regarding inventiveness outlined above, the controlling law mandates denying Defendants' motion. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018) ("The improvements in the specification, to the extent they are captured in the claims, create a factual dispute regarding whether the invention describes well-understood, routine, and conventional activities."); *BASCOM*, 827 F.3d at 1350 ("the specific method of filtering internet content cannot be said, as a matter of law, to have been conventional or generic."); *Weisner v. Google LLC*, 51 F.4th 1073, 1084-1088 (Fed. Cir. 2022); *Eos Positioning Sys., Inc. v. ProStar Geocorp, Inc.*, 2023 WL 2709037, *6–*7 (D. Del. Mar. 30, 2023) (finding that patentee sufficiently pled that the claims had an inventive concept by "include[ing] a number of allegations that plausibly suggest the real time and precision integration functionality into the moving or scrolling maps was accomplished in an unconventional way"); *Nielsen Co. (US), LLC v. HyphaMetrics, Inc.*, 2022 WL 3211915, *4-7 (D. Del. Aug. 9, 2022) (finding issues of fact with respect to § 101 based on patentee's allegations).

V. IDENTITII PLAUSIBLY PLED THAT JPMORGAN CHASE & CO. AND JPMORGAN CHASE BANK, N.A. ARE LIABLE, COLLECTIVELY AND INDIVIDUALLY, FOR DIRECT, INDIRECT AND WILLFUL INFRINGEMENT

Defendants' arguments (D.I. 19 at 18-20) fail. The FAC plausibly alleges that Defendants collectively and individually infringe because that is how the two entities operate and refer to themselves in the world, including with respect to the infringing acts. This is confirmed by, for example, ¶ 50 of the FAC—a webpage advertising the infringing product—where it says variations of "JPMorgan" "are marketing names for certain businesses of ***JPMorgan Chase & Co.*** and its subsidiaries worldwide (collectively, 'JPMC'). Products or services may be marketed and/or provided by commercial banks such as ***JPMorgan Chase Bank, N.A.***." Given that a website for the accused products ties itself directly to both entities, both are properly charged with infringement. *See also id.* at ¶¶ 48, 49 (the authorship of website that is offering the infringing product is owned by JPMorgan Chase & Co.). The notion that both Defendants infringe is further supported by the fact that the

LinkedIn bio for the "JPMC" executive who received notice of infringement and who is the "CEO" touting the benefits of the infringing product states that he works for both entities. *Id.* at ¶ 18, n. 1; Ex. 21.

In light of the foregoing, and all the marketing collateral, technical documents and webpages regarding the infringing product published by "JPMC," and the pre-suit communications between Identitii and "JPMC" (D.I. 15, ¶¶ 9, 11, 13-16, 18-20, 24, 31, 33, 35, 37, 39-82), Identitii plausibly pled that both entities (1) directly infringe "individually and collectively"; and (2) had notice of their infringement well prior to suit from Identitii such that they are indirect and willful infringers as well. Moreover, under circumstances like these, Judge Bryson held that alleging "that the defendants have committed each of the infringing acts 'individually and collectively,' provides sufficient notice to survive a motion to dismiss." *IOENGINE, LLC v. PayPal Holdings, Inc.*, C.A. No. 18-452-WCB, 2019 WL 330515, at *11 (D. Del. Jan. 25, 2019). He further disagreed with cases like *T-Jat* and *M2M* and found that later cases that held the "individually and collectively" pleading was sufficient were "more persuasive." *Id.* at *12.[4]

VI. CONCLUSION

The Court should deny Defendants' motion.

[4] With regard to Defendants' "copyright" argument, copyrighting an offer to sell ***does*** support a basis to allege it is "your" offer to sell. The allegations in the FAC go well beyond "the bare assertion that the holding company owns the copyright for the Onyx website." *See* D. I. 15 at 20. The well pled facts far exceed the threshold of supporting "the reasonable inference that [JPMorgan Chase & Co.] is liable for the misconduct" of infringement. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). *TriDinetwork*—a case that had nothing to do with infringement and concerned whether a website was sufficient to confer personal jurisdiction—is inapposite. *See TriDinetworks Ltd. v. NXP USA, Inc.*, C.A. No. 19-1062-CFC-CJB, 2020 WL 2220152, at *4 (D. Del. May 7, 2020) (finding that a defendant's passive website was insufficient to satisfy the "purposeful direction/availment" requirement for personal jurisdiction). Here, personal jurisdiction is not contested, and Identitii has sufficiently pled that JPMorgan Chase & Co., among other things, offers for sale the Accused Instrumentalities, rendering it liable for infringement.

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