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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DIALWARE COMMUNICATIONS, LLC, a	)	CASE NO.: CV 16-9012-R
California Limited Liability Company,	)	
	)	ORDER GRANTING DEFENDANT’S
Plaintiff,	)	MOTION TO DISMISS
	)	
v.	)	
	)	
HASBRO, INC.,	)	
	)	
Defendant.	)	
	)	

19 Before the Court is Plaintiff’s Motion to Dismiss for Failure to State a Claim (Dkt. No.  
20 18), which was filed on January 13, 2017. Having been thoroughly briefed by both parties, this  
21 Court took the matter under submission on February 15, 2017.

22 Dismissal under Federal Rule of Civil Procedure 12(b)(6) is proper when a complaint  
23 exhibits either “(1) lack of a cognizable legal theory or (2) the absence of sufficient facts alleged  
24 under a cognizable legal theory.” *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir.  
25 1988). Under the heightened pleading standards of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544  
26 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), a plaintiff must allege “enough facts to state a  
27 claim to relief that is plausible on its face,” so that the defendant receives “fair notice of what  
28 the...claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 570. The plaintiff must

1 plead factual content that allows the court to draw the reasonable inference that the defendant is  
2 liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678. Courts will not accept “threadbare  
3 recitals of the elements of a cause of action, supported by mere conclusory statements. . . .” *Id.*

4 Plaintiff alleges that Hasbro’s Furby toys infringe on five patents: U.S. Patent Nos.  
5 7,183,929 (the “‘929 Patent”), 7,383,297 (the “‘297 Patent”), 7,568,963 (the “‘963 Patent”),  
6 9,039,482 (the “‘482 Patent”), and 9,275,517 (the “‘517 Patent”). According to the Complaint,  
7 Hasbro’s Furby is a toy that communicates with human users and electronic devices. Furby can be  
8 controlled either by voice commands or by commands sent from a smartphone or tablet app.  
9 Furbys can also perform various actions such as moving their ears or feet. Plaintiff alleges that  
10 these features, among others, infringe the Patents-In-Suit.

11 As a whole, the Patents-In-Suit generally claim methods of interacting, controlling, or  
12 communicating with toys via acoustic sounds generated by either a human or another device. In  
13 its Motion to Dismiss, Defendant contends that each of the Patents-In-Suit claim unpatentable  
14 subject matter and are therefore invalid. More specifically, Defendant argues that the Patents-In-  
15 Suit are directed towards the abstract idea of communication. In its Opposition, Plaintiff argues  
16 that the Patents-In-Suit are generally directed at devices or toys, not simply communication.

17 The ‘929 Patent generally relates to a method of controlling a device by sound. Claim 45  
18 of the ‘929 Patent details a method comprising “generating a sound; receiving the sound” by a  
19 second device; “analyzing” the sound based on three possible features; and “responding” with a  
20 “physical response.” The ‘297 Patent relates generally to a method of communicating between an  
21 electronic device and computer by “providing” a computer with a sound receiving and generating  
22 system; “transmitting from the electronic device at least one first acoustic signal” to the computer;  
23 “receiving” the sound by the computer; and “processing” the received sound. (‘297 Patent, cl. 1).  
24 The ‘963 Patent generally relates to two toys communicating by: a first toy with “an acoustic  
25 sound transmitter,” a second toy which has a “microphone adapted to receive the acoustic signals,”  
26 an “analyzer adapted to analyze the received acoustic signal and decide a response,” and an  
27 “actuator adapted to control” the toy’s performance of a responsive function. (‘963 Patent, cl. 1).  
28 The ‘482 patent claims a “method for interactive communication with a toy . . . comprising:

1 receiving by the toy . . . at least one first signal including an embedded code;” “analyzing” the  
2 code; “determining” a response such as “transmitting” the data elsewhere, “processing the code to  
3 obtain a coupon,” and various other responses. (‘482 Patent, cl. 7). Finally, the ‘517 Patent relates  
4 to a method of interactive play between two toys comprising: “programming a first toy,”  
5 “generating a first signal,” “transmitting the first signal,” “receiving the first signal,” and  
6 “producing” an acoustic or visual response by the second toy. (‘517 Patent, cl. 19).

7 Section 101 of the Patent Act defines the subject matter eligible for patent protection.  
8 “Whoever invents or discovers any new and useful process, machine, manufacture, or composition  
9 of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the  
10 conditions and requirements of this title.” 35 U.S.C. § 101. Specifically excluded from patentable  
11 subject matter are laws of nature, natural phenomena, and abstract ideas. *Ass’n of Molecular*  
12 *Pathology v. Myriad Genetics, Inc.*, 569 U.S. –, 133 S. Ct. 2107, 2116 (2013). Courts apply a  
13 two-step analysis for distinguishing laws of nature, natural phenomena, and abstract ideas from  
14 patent-eligible subject matter. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355  
15 (2014). The first step is to determine whether the claims at issue are directed to patent-ineligible  
16 subject matter. *Id.* If the claims are directed to an ineligible subject matter, then a court proceeds  
17 to the second step. The second step is to look to the claims individually and “as an ordered  
18 combination” for an “inventive concept” which “‘transform[s] the nature of the claim’ into a  
19 patent eligible application.” *Id.* (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*,  
20 566 U.S. –, 132 S. Ct. 1289, 1297-98 (2012)). Courts may properly conduct the patent-eligibility  
21 analysis on a motion to dismiss. *In Re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 610 (Fed.  
22 Cir. 2016) (affirming dismissal under Rule 12(b)(6) on § 101 grounds); *In Re Bilski*, 545 F.3d  
23 943, 951 (Fed. Cir. 2008) (patent eligibility under § 101 “is an issue of law”).

24 The Supreme Court declined to “delimit the precise contours of the ‘abstract ideas’  
25 category.” *Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2357. Rather, in determining whether a claim is  
26 directed to an abstract idea, both the Supreme Court and the Federal Circuit “have found it  
27 sufficient to compare claims at issue to those claims already found to be directed to an abstract  
28 idea in previous cases.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016).

1 Here, the Patents-In-Suit involve toys that communicate or interact amongst one another,  
2 with humans, or with computers. The toys generate, receive, and analyze sounds. ('929 Patent, cl.  
3 45). They transmit, receive, and respond to a signal. ('517 Patent, cl. 1). They generate acoustic  
4 signals, receive the acoustic signals, analyze the signal, and then perform a responsive function.  
5 ('963 Patent, cl. 1). At core, the patents attempt to state methods for toys to communicate by  
6 sending, receiving, and responding to signals. The claims do not state a means by which to  
7 communicate, but rather are directed at the abstract process of communication itself.

8 The Federal Circuit upheld a district court's finding that a method of communicating data  
9 containing the sender's identity was an abstract idea. *Morales v. Square, Inc.*, 75 F. Supp. 716  
10 (W.D. Tex. 2014), *aff'd*, 621 F. App'x 660 (Fed. Cir. 2015). In *Morales*, the court held that the  
11 patent "broadly described the claimed process as a 'method of data communication,' and the steps  
12 of the process [did] little to circumscribe the breadth of the claim's stated purpose." *Id.* at 725.  
13 Similar to the claims here, the *Morales* patent focused on "generating" a signal, "relaying" the  
14 signal, and "processing" the signal. *Id.* Likewise, in *Intellectual Ventures I LLC v. Symantec*  
15 *Corp.*, the Federal Circuit held that "receiving e-mail (and other data) identifiers, characterizing e-  
16 mail based on the identifiers, and communicating the characterization—in other words, filtering  
17 files/email—is an abstract idea." 838 F.3d 1307, 1313 (Fed. Cir. 2016). The court reasoned, in  
18 part, that because people have received mail and sorted it based on certain characteristics for  
19 decades, the patent was directed to an abstract idea. *Id.* at 1314.

20 Here, the Patents-In-Suit are directed to the communicative process of generating sounds,  
21 receiving the sounds, analyzing the sounds, and responding to the sounds. Of course, like the  
22 practice of sorting mail in *Intellectual Ventures I LLC*, communication is a practice which has  
23 long been used by both people and devices. Furthermore, as was the case in *Morales*, the claims  
24 here do little to limit or describe the stated communication beyond their basic general terms. The  
25 claims lack technical descriptions or solutions. Plaintiff attempts to characterize the patents as  
26 "tangible toys or devices" and therefore not abstract. However, this Court acknowledges that the  
27 Patents-In-Suit do involve tangible toys and devices, but they do so in the same way that *Morales*  
28 involved telephone lines and data centers, 75 F. Supp. at 725 n.2, and *Intellectual Ventures I LLC*

1 involved a “processing system,” 838 F.3d at 1313. The mere inclusion of tangible elements in an  
2 otherwise abstract idea does not render the subject matter any less abstract. *Alice Corp. Pty. Ltd.*,  
3 134 S. Ct. at 2358-59 (“The fact that a computer ‘necessarily exist[s] in the physical, rather than  
4 purely conceptual, realm is beside the point.”). Accordingly, this Court finds that the subject  
5 matter of the Patents-In-Suit is directed to an abstract idea.

6 Having found that the Patents-In-Suit are directed to an abstract idea, the Court must now  
7 determine whether they contain an inventive concept which transforms the nature of the claim into  
8 one which is patent eligible. “Stating an abstract idea while adding the words ‘apply it’ is not  
9 enough for patent eligibility. Nor is limiting the use of an abstract idea to a particular  
10 technological environment.” *Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2358 (internal citations and  
11 quotations omitted). However, an inventive concept may result from using conventional  
12 components so long as they are combined in an unconventional manner. *Amdocs (Israel) Ltd. v.*  
13 *Openet Telecom, Inc.*, 841 F.3d 1288, 1300 (Fed. Cir. 2016).

14 The Patents-In-Suit generally rely upon generic descriptors rather than technical elements  
15 to carry out the communication between toys and humans or computers. On the whole, the  
16 Patents-In-Suit state claims for “generating,” “receiving,” “analyzing,” “responding,”  
17 “processing,” and “transmitting” with very little technical specificity. What few technical  
18 components are included in the Patents-In-Suit are common speakers, microphones, and motors.  
19 In its Opposition, Plaintiff predominately argues that the conventional components found in the  
20 Patents-In-Suit are combined for unconventional purposes. Specifically, Plaintiff argues that the  
21 Patents-in-Suit “teach[] the use of audio hardware, which is designed for *human* communications,  
22 for the unconventional purpose of *computer* communications.” However, simply limiting or  
23 converting the abstract idea of communication to a particular technological environment, in this  
24 case computers, is insufficient to transform the nature of the claim into one which is patent  
25 eligible. Finally, like the ineligible claims in *Alice* which did “no more than require a generic  
26 computer to perform generic computer functions,” the claims here do no more than require basic  
27 microphones and speakers to perform basic functions of microphones and speakers. The Patents-  
28 In-Suit do nothing more than apply basic technology contained in other devices existing at the

1 time the patent was created to carry out their abstract idea. *See* '297 Patent, Fig. 1, col. 14 II. 8-24  
2 ("Most computers currently on sale include a sound system 24, usually a sound card, connected to  
3 at least one microphone 26 and at least one speaker 28. Many electronic devices include a  
4 microphone 34 and a speaker 36.") Accordingly, the asserted claims fail to disclose any inventive  
5 concept which would transform the claims' abstract idea into a patent-eligible subject matter.

6 "Monopolization of [laws of nature, natural phenomena, and abstract ideas] through the  
7 grant of a patent might tend to impede innovation more than it would tend to promote it,' thereby  
8 thwarting the primary object of the patent laws." *Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2354.  
9 Plaintiff's patents seek to monopolize the abstract idea of communication between devices using  
10 signals containing information. This broad concept could preempt an even broader array of  
11 technological and scientific innovation. The Patents-In-Suit contain no inventive concept which  
12 would transform this broad abstract idea into an innovation properly within the scope of 35 U.S.C.  
13 § 101. As such, the asserted claims of the Patents-In-Suit are invalid under 35 U.S.C. § 101.

14 **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss is GRANTED. (Dkt.  
15 No. 18).

16 Dated: March 22, 2017.



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19 MANUEL L. REAL  
20 UNITED STATES DISTRICT JUDGE  
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