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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

NATURAL ALTERNATIVES INTERNATIONAL, INC., Plaintiff, v. ALLMAX NUTRITION, INC.; HBS INTERNATIONAL CORP.; and DOES 1- 100, Defendants.
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Case No.: 16-cv-01764-H-AGS

**ORDER DENYING PLAINTIFF'S
MOTION FOR
RECONSIDERATION**

[Doc. No. 67.]

On July 18, 2017, Plaintiff Natural Alternatives International, Inc. filed a motion for reconsideration of the Court's June 26, 2017 order. (Doc. No. 67.) On August 14, 2017, Defendants Allmax Nutrition, Inc. and HBS International Corp. filed an opposition to the motion. (Doc. No. 70.) On August 21, 2017, Plaintiff filed its reply. (Doc. No. 71.) The Court, pursuant to its discretion under the Local Civil Rule 7.1(d)(1), determines the matter to be appropriate for resolution without oral argument, submits it on the parties' papers, and vacates the motion hearing. For the reasons below, the Court denies Plaintiff's motion for reconsideration.

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1 **Background**

2 The following facts are taken from the allegations in Plaintiff’s first amended
3 complaint. Plaintiff NAI is a formulator, manufacturer, marketer, and supplier of
4 nutritional supplements. (Doc. No. 11, FAC ¶ 11.) Plaintiff sells its branded CarnoSyn®
5 beta-alanine product to customers throughout the United States and in other countries. (Id.
6 ¶ 1.) Plaintiff alleges that its CarnoSyn® product is covered by a robust portfolio of
7 trademark, copyright, and patent rights. (Id.)

8 Plaintiff alleges that Defendants Allmax and HBS International Corp. offer to sell
9 and sell dietary supplements containing beta-alanine in the United States, including
10 through retailers located in California. (Id. ¶¶ 1, 8-9, 27-31.) Plaintiff alleged in the FAC
11 that these acts constitute infringement of U.S. Patent No. 5,965,596, U.S. Patent No.
12 7,504,376, U.S. Patent No. 7,825,084, and U.S. Patent No. RE45,947. (Id. ¶¶ 19-26, 61-
13 70, 91-95.)

14 On July 8, 2016, Plaintiff filed a complaint against Defendant Allmax, alleging
15 claims for: (1) violation of the Lanham Act § 32; (2) copyright infringement; and (3) patent
16 infringement. (Doc. No 1.) On October 13, 2016, Defendant Allmax filed a motion to
17 dismiss Plaintiff’s complaint for lack of personal jurisdiction. (Doc. No. 9.) In response
18 to Allmax’s motion to dismiss, on October 19, 2016, Plaintiff filed a first amended
19 complaint adding HBS as an additional defendant, alleging the same causes of action as in
20 the original complaint, and adding a claim for civil conspiracy. (Doc. No. 11.) In light of
21 Plaintiff’s first amended complaint, on October 20, 2016, the Court denied Defendant
22 Allmax’s motion to dismiss Plaintiff’s original complaint as moot. (Doc. No. 13.)

23 On November 16, 2016, Defendant Allmax filed a motion to dismiss Plaintiff’s first
24 amended complaint for lack of personal jurisdiction. (Doc. No. 18.) On February 21, 2017,
25 the Court denied Allmax’s motion to dismiss for lack of personal jurisdiction. (Doc. No.
26 32.)

27 On April 25, 2017, Defendant Allmax filed a motion for judgment on the pleadings
28 pursuant to Federal Rule of Civil Procedure 12(c), and Defendant HBS filed a motion to

1 dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. Nos. 43, 44.) On June
2 26, 2017, the Court granted the Defendants’ motions and granted Plaintiff partial leave to
3 file a second amended complaint. (Doc. No. 64.) In the order, the Court held that the
4 patents-in-suit – the ’596 patent, the ’376 patent, the ’084 patent, and the ’947 patent – all
5 claim ineligible subject matter and, thus, are invalid under 35 U.S.C. § 101, and, therefore,
6 the Court dismissed Plaintiff’s claim for patent infringement with prejudice. (Id. at 10-21,
7 23.)

8 By the present motion, Plaintiff moves for partial reconsideration of the Court’s June
9 26, 2017 order. (Doc. No. 67-1.) Specifically, Plaintiff argues that the Court should
10 reconsider the portion of the order dismissing its claim for patent infringement with
11 prejudice on the grounds that the patents-in-suit are invalid under 35 U.S.C. § 101. (Id. at
12 1-2.)

13 **Discussion**

14 **I. Legal Standards**

15 **A. Standards for a Motion for Reconsideration**

16 A district court has inherent jurisdiction to modify, alter, or revoke a prior order.
17 United States v. Martin, 226 F.3d 1042, 1049 (9th Cir. 2000). “Reconsideration [of a prior
18 order] is appropriate if the district court (1) is presented with newly discovered evidence,
19 (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an
20 intervening change in controlling law.” School Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255,
21 1263 (9th Cir. 1993). Reconsideration should be used conservatively, because it is an
22 “extraordinary remedy, to be used sparingly in the interests of finality and conservation of
23 judicial resources.” Carroll v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003); see also Marlyn
24 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009)
25 (“[A] motion for reconsideration should not be granted, absent highly unusual
26 circumstances”). A motion for reconsideration may not be used to relitigate old
27 matters, or to raise arguments or present evidence for the first time that reasonably could
28 have been raised earlier in the litigation. Exxon Shipping Co. v. Baker, 554 U.S. 471, 486

1 n.5 (2008); see Kona Enterprises, Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir.
2 2000) (“A [motion for reconsideration] may not be used to raise arguments or present
3 evidence for the first time when they could reasonably have been raised earlier in the
4 litigation.”). “A party seeking reconsideration must show more than a disagreement with
5 the Court’s decision.” United States v. Westlands Water Dist., 134 F. Supp. 2d 1111, 1131
6 (E.D. Cal. 2001); accord Huhmann v. FedEx Corp., No. 13-CV-00787-BAS NLS, 2015
7 WL 6128494, at *2 (S.D. Cal. Oct. 16, 2015).

8 B. Standards for a Rule 12(b)(6) Motion to Dismiss and a Rule 12(c) Motion for
9 Judgment on the Pleadings

10 In patent cases, a motion to dismiss pursuant to Federal Rule of Civil Procedure
11 12(b)(6) and a motion for judgment on the pleadings pursuant to Federal Rule of Civil
12 Procedure 12(c) are both governed by the applicable law of the regional circuit. K-Tech
13 Telecommunications, Inc. v. Time Warner Cable, Inc., 714 F.3d 1277, 1282 (Fed. Cir.
14 2013); Amdocs (Israel) Ltd. v. Openet Telecom, Inc., 841 F.3d 1288, 1293 (Fed. Cir.
15 2016). Federal Rule of Civil Procedure 8(a)(2) requires that a pleading stating a claim for
16 relief containing “a short and plain statement of the claim showing that the pleader is
17 entitled to relief.” The function of this pleading requirement is to “give the defendant fair
18 notice of what the . . . claim is and the grounds upon which it rests.” Bell Atl. Corp. v.
19 Twombly, 550 U.S. 544, 555 (2007). A motion to dismiss under Federal Rule of Civil
20 Procedure 12(b)(6) tests the legal sufficiency of the pleadings and allows a court to
21 dismiss a complaint if the plaintiff has failed to state a claim upon which relief can be
22 granted. See Conservation Force v. Salazar, 646 F.3d 1240, 1241 (9th Cir. 2011).

23 Federal Rule of Civil Procedure 12(c) provides: “[a]fter the pleadings are closed—
24 but early enough not to delay trial—a party may move for judgment on the pleadings.”
25 The Ninth Circuit has explained that the standard for deciding a Rule 12(c) motion “is
26 ‘functionally identical’” to the standard for deciding a motion to dismiss under Federal
27 Rule of Civil Procedure 12(b)(6). Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.,
28 637 F.3d 1047, 1055 n.4 (9th Cir. 2011) (quoting Dworkin v. Hustler Magazine Inc., 867

1 F.2d 1188, 1192 (9th Cir. 1989)); accord Chavez v. United States, 683 F.3d 1102, 1108
2 (9th Cir. 2012).

3 A complaint will survive a Rule 12(b)(6) motion to dismiss if it contains “enough
4 facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly,
5 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads
6 factual content that allows the court to draw the reasonable inference that the defendant is
7 liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). “A
8 pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of
9 a cause of action will not do.” Id. (quoting Twombly, 550 U.S. at 555). “Nor does a
10 complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual
11 enhancement.’” Id. (quoting Twombly, 550 U.S. at 557). Accordingly, dismissal for
12 failure to state a claim is proper where the claim “lacks a cognizable legal theory or
13 sufficient facts to support a cognizable legal theory.” Mendiondo v. Centinela Hosp.
14 Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008).

15 In reviewing a Rule 12(b)(6) motion to dismiss, a district court must accept as true
16 all facts alleged in the complaint, and draw all reasonable inferences in favor of the
17 plaintiff. See Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am., 768 F.3d
18 938, 945 (9th Cir. 2014). But, a court need not accept “legal conclusions” as true. Iqbal,
19 556 U.S. at 678. Further, it is improper for a court to assume the plaintiff “can prove
20 facts which it has not alleged or that the defendants have violated the . . . laws in ways
21 that have not been alleged.” Associated Gen. Contractors of Cal., Inc. v. Cal. State
22 Council of Carpenters, 459 U.S. 519, 526 (1983).

23 C. Standards for Patent Eligibility under § 101

24 Section 101 of the Patent Act defines patent-eligible subject matter as “any new
25 and useful process, machine, manufacture, or composition of matter, or any new and
26 useful improvement thereof.” 35 U.S.C. § 101. The Supreme Court has “‘long held that
27 this provision contains an important implicit exception[:] Laws of nature, natural
28 phenomena, and abstract ideas are not patentable.’” Ass’n for Molecular Pathology v.

1 Myriad Genetics, Inc., 133 S. Ct. 2107, 2116 (2013). “The concern underlying these
2 judicial exclusions is that ‘patent law not inhibit further discovery by improperly tying up
3 the future use of these building blocks of human ingenuity.’” Rapid Litig. Mgmt. Ltd. v.
4 CellzDirect, Inc., 827 F.3d 1042, 1047 (Fed. Cir. 2016).

5 “The Supreme Court has devised a two-stage framework to determine whether a
6 claim falls outside the scope of section 101.” Affinity Labs of Texas, LLC v. DIRECTV,
7 LLC, 838 F.3d 1253, 1257 (Fed. Cir. 2016); see Alice Corp. Pty. v. CLS Bank Int’l, 134
8 S. Ct. 2347, 2355 (2014). “The prescribed approach requires a court to determine (1)
9 whether the claim is directed to a patent-ineligible concept, i.e., a law of nature, a natural
10 phenomenon, or an abstract idea, and if so, (2) whether the elements of the claim,
11 considered both individually and as an ordered combination, add enough to transform the
12 nature of the claim into a patent-eligible application.” Affinity Labs, 838 F.3d at 1257
13 (internal quotation marks omitted) (citing Alice, 134 S. Ct. at 2355).

14 The first step of the Alice inquiry requires courts “to look at the ‘focus of the
15 claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is
16 directed to excluded subject matter.” Id. at 1257. “The [second] step requires [courts] to
17 look with more specificity at what the claim elements add, in order to determine ‘whether
18 they identify an “inventive concept” in the application of the ineligible subject matter’ to
19 which the claim is directed. Id. at 1258. “This inventive concept must do more than
20 simply recite ‘well-understood, routine, conventional activity.’” FairWarning IP, LLC v.
21 Iatric Sys., Inc., 839 F.3d 1089, 1093 (Fed. Cir. 2016). “The accused infringer bears the
22 burden of proof on both steps.” InsideSales.com, Inc. v. SalesLoft, Inc., No.
23 2:16CV859DAK, 2017 WL 2559932, at *2 (D. Utah June 13, 2017); see Microsoft Corp.
24 v. i4i Ltd. P’ship, 564 U.S. 91, 95 (2011).

25 The Federal Circuit has expressly recognized that “it is possible and proper to
26 determine patent eligibility under 35 U.S.C. § 101 on a Rule 12(b)(6) motion [or a Rule
27 12(c) motion].” Genetic Techs. Ltd. v. Merial L.L.C., 818 F.3d 1369, 1373 (Fed. Cir.
28 2016); see, e.g., Amdocs, 841 F.3d at 1293 (reviewing eligibility under § 101 on an appeal

1 from a grant of judgment on the pleadings under Rule 12(c)); see also Bascom Glob.
2 Internet Servs., Inc. v. AT&T Mobility LLC, 827 F.3d 1341, 1347 (Fed. Cir. 2016)
3 (“Courts may . . . dispose of patent-infringement claims under § 101 whenever procedurally
4 appropriate.”). Further, the Federal Circuit has explained that where there is “no claim
5 construction dispute relevant to the eligibility issue,” evaluation of a patent claim’s subject
6 matter eligibility under § 101 can proceed before claim construction. Genetic Techs., 818
7 F.3d at 1373; see Cleveland Clinic Found. v. True Health Diagnostics LLC, 859 F.3d 1352,
8 1360 (Fed. Cir. 2017) (“[W]e have repeatedly affirmed § 101 rejections at the motion to
9 dismiss stage, before claim construction or significant discovery has commenced.”); see
10 also Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada (U.S.), 687 F.3d 1266, 1273
11 (Fed. Cir. 2012) (“[C]laim construction is not an inviolable prerequisite to a validity
12 determination under § 101.”).

13 **II. Analysis**

14 Plaintiff argues that the Court should reconsider and modify its June 26, 2017 order
15 dismissing Plaintiff’s patent infringement claim with prejudice. (Doc. No. 67-1 at 7-13.)
16 Plaintiff argues that the Court clearly erred in concluding that the patents-in-suit are invalid
17 under 35 U.S.C. § 101 for claiming ineligible subject matter. (Id. at 13-22; Doc. No. 71 at
18 1-2.)

19 In response, Defendants argue that Plaintiff’s motion for reconsideration should be
20 denied because the motion offers only arguments and evidence that Plaintiff either already
21 presented to the Court or could have presented to the Court prior to the Court’s June 26,
22 2017 order. (Doc. No. 70 at 5-12.) Defendants further argue that the motion should be
23 denied because all of the new arguments presented in the motion for reconsideration lack
24 merit. (Id. at 12-22.) The Court agrees with Defendants.

25 All of the arguments and evidence presented in Plaintiff’s motion for reconsideration
26 either were presented or could have been presented during the briefing and oral arguments
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28

1 Plaintiff made in response to Defendant's Alice motions.¹ (See Doc. No. 67-1.) A motion
2 for reconsideration may not be used to relitigate old matters, or to raise arguments or
3 present evidence for the first time that reasonably could have been raised earlier in the
4 litigation. See Exxon, 554 U.S. at 486 n.5; Kona, 229 F.3d at 890. Accordingly, Plaintiff's
5 attempt to relitigate Defendants' Alice motions through a motion for reconsideration is
6 improper, and the Court denies Plaintiff's motion for reconsideration on this basis. See id.
7 Further, even if the Court were to consider the substantive arguments in Plaintiff's motion
8 for reconsideration, the Court would still deny the motion as Plaintiff has failed to show
9 any error, let alone clear error, in the Court's June 26, 2017 order.

10 First, Plaintiff argues that the Court erred by failing to accept the facts alleged in the
11 FAC as true. (Doc. No. 67-1 at 13-15.) Plaintiff is incorrect. In deciding Defendants'
12 Rule 12 motions, the Court noted the correct legal standards for Rule 12(b)(6) and 12(c)
13 motions and accepted the factual allegations set forth in Plaintiff's FAC as true in
14 performing its analysis.² (See Doc. No. 64 at 5.) Indeed, in its motion, Plaintiff fails to
15 identify any specific factual allegation contained in the FAC that the Court purportedly
16 failed to accept as true.³ (See Doc. No. 67-1 at 13-15; Doc. No. 71 at 8-9.) Instead, Plaintiff
17 generally argues that the scientific evidence in the FAC and the patents-in-suit confirm that
18 the inventive concept of the patents-in-suit is to unnaturally over-supplement the
19 normal/natural levels of beta-alanine in the diet of an individual unnaturally over time to
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21 ¹ Indeed, in its reply, Plaintiff concedes that its motion for reconsideration is not based on any newly
22 discovered evidence or a change in intervening law. (Doc. No. 71 at 2.)

23 ² The Court also rejects Plaintiff's assertion that the Court somehow improperly shifted the burden
24 from Defendants to prove invalidity to Plaintiff to prove the validity of the patents-in-suit. (Doc. No.
25 67-1 at 2, 8; Doc. No. 71 at 1.) No such burden shifting occurred.

26 ³ Plaintiff only identifies an argument that it made in its opposition to Defendants' Alice motions
27 that the Court rejected in the June 26, 2017 order. (Doc. No. 71 at 8 (citing Doc. No. 64 at 14 n.13).)
28 But an argument presented in an opposition to a Rule 12 motion is not an allegation in a complaint.
Further, the Court notes that with respect to this specific argument, the Court not only rejected the
argument, but also explained that even if the Court accepted the argument as correct, Plaintiff's assertion
was still insufficient to alter the Court's § 101 analysis. (Doc. No. 64 at 14 n.13.)

1 achieve an unnatural high level of carnosine synthesis in the individual. (Id. at 14.) But
2 even assuming this is true, the determination of whether the patents-in-suit identify an
3 “inventive concept” sufficient to transform a natural phenomenon and/or law of nature into
4 patentable subject matter is a legal conclusion. See In re Bilski, 545 F.3d 943, 951 (Fed.
5 Cir. 2008) (en banc) (“Whether a claim is drawn to patent-eligible subject matter under §
6 101 is an issue of law that we review de novo.”); Berkheimer v. Hewlett-Packard Co., 224
7 F. Supp. 3d 635, 643 n.4 (N.D. Ill., 2016) (“[T]he ‘abstract idea’ and ‘inventive concept’
8 analyses speak to matters of law.”). (See Doc. No. 67-1 at 16.) In deciding a Rule 12(b)(6)
9 motion or a Rule 12(c) motion, a court need not accept legal conclusions as true. See Iqbal,
10 556 U.S. at 678.

11 Moreover, even if the Court were to accept Plaintiff’s argument that the inventive
12 concept of the patents-in-suit is to “unnaturally over-supplement the normal/natural level
13 of beta-alanine in the diet of an individual over time to force an override [in] the
14 homeostatic nature of the individual’s muscle tissue to achieve an unnatural high level of
15 carnosine synthesis,” (Doc. No. 67-1 at 14), this “inventive concept” would still be
16 insufficient to render the patents-in-suit subject matter eligible under § 101. This
17 “inventive concept” as described by Plaintiff still only describes a natural law: the
18 relationship between supplementing the level of beta-alanine in an individual’s diet with
19 the carnosine synthesis that occurs in the individual’s tissue. Plaintiff contends that if the
20 patents are directed to achieving an unnaturally high level of carnosine synthesis, then the
21 patents are not directed to a natural law and are subject matter eligible. (Doc. No. 67-1 at
22 14-15; Doc. No. 71 at 4-7.) Plaintiff is wrong. Even if the patents-in-suit relate to
23 achieving an unnaturally high level of carnosine synthesis, the relationship between beta-
24 alanine supplements in one’s diet and the achievement of an unnaturally high level of
25 carnosine synthesis is still a natural process that exists in principle apart from any human
26 action and, thus, is a natural law.

27 The Supreme Court’s decision in Mayo Collaborative Servs. v. Prometheus Labs.,
28 Inc., 566 U.S. 66 (2012) is instructive on this point. In Mayo, the Supreme Court found

1 the patents at issue invalid under § 101 because they effectively only claimed laws of
2 nature. See id. at 78-82. The Supreme Court explained: “Prometheus’ patents set forth
3 laws of nature—namely, relationships between concentrations of certain metabolites in the
4 blood and the likelihood that a dosage of a thiopurine drug will prove ineffective or cause
5 harm.” Id. at 77. Similarly, here, Plaintiff’s proposed inventive concept merely sets forth
6 a law of nature—the relationship between a diet containing beta-alanine supplements and
7 the level of carnosine synthesis in the individual’s tissue. In Mayo, the Supreme Court
8 further explained:

9 While it takes a human action (the administration of a thiopurine drug) to
10 trigger a manifestation of this relation in a particular person, the relation itself
11 exists in principle apart from any human action. The relation is a consequence
12 of the ways in which thiopurine compounds are metabolized by the body—
13 entirely natural processes. And so a patent that simply describes that relation
14 sets forth a natural law.

15 Id. Similarly, here, while it takes some human action (the incorporation of beta-alanine
16 supplements into one’s diet) to trigger a manifestation of the high level of carnosine
17 synthesis in the individual, “the relation itself exists in principle apart from any human
18 action.” Id. The relation is a consequence of the ways in which the body reacts to the beta-
19 alanine supplements an “entirely natural process[.]. And so a patent that simply describes
20 that relation sets forth a natural law.” Id. Thus, Plaintiff’s own description of the inventive
21 concept of the patents-in-suit is insufficient to render the claims subject matter eligible
22 under § 101. See id. (“If a law of nature is not patentable, then neither is a process reciting
23 a law of nature, unless that process has additional features . . .”).

24 Second, Plaintiff argues that the Court erred by refusing to adopt its proposed claim
25 constructions. (Doc. No. 67-1 at 16-18.) Plaintiff is incorrect. In the June 26, 2017 order,
26 the Court expressly acknowledged that the Defendants stated that for the purposes of
27 deciding their Alice motions they accepted Plaintiff’s proposed claim constructions, and
28 the Court adopted those claim construction in performing its Alice analysis. (See Doc. No.
64 at 12 n.9, 19 n.17.) Plaintiff’s claim construction argument is based on its incorrect

1 assumption that its proposed construction for the term “human dietary supplement” renders
2 the claims patent eligible and valid under § 101. (See Doc. No. 67-1 at 17.) Plaintiff is
3 wrong. Plaintiff’s proposed claim construction for the term “human dietary supplement”
4 is insufficient to render the claims at issue patent eligible. As the Court explained in the
5 June 26, 2017 order, the patents-in-suit acknowledge in their specifications that placing a
6 natural substance into a dietary supplement to increase the function of tissues is
7 conventional activity. See, e.g., ’084 Patent at 1:37-44 (“Natural food supplements are
8 typically designed to compensate for reduced levels of nutrients in the modern human and
9 animal diet. In particular, useful supplements increase the function of tissues when
10 consumed.”). Because placing a natural substance into a human dietary supplement to
11 increase the function of tissues is a conventional activity, employing a dietary supplement
12 to administer beta-alanine – a natural phenomenon – to achieve a high level of carnosine
13 synthesis in a human – applying a natural law – is insufficient to render the claims at issue
14 patent eligible even accepting Plaintiff’s proposed construction for the term “human dietary
15 supplement.”⁴ See, e.g., *Ariosa*, 788 F.3d at 1377 (holding that utilizing routine and
16 convention methods for amplifying and detecting cffDNA, a natural phenomenon, was
17 insufficient to render the claims at issue patent eligible); *Alice*, 134 S. Ct. at 2357-58
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20 ⁴ Plaintiff proposed that the term “human dietary supplement” be construed as “an addition to the
21 human diet, ingested as a pill, capsule, powder or liquid, which is not a natural or conventional food,
22 meat or food flavoring or extract, or pharmaceutical product which effectively increases the function of
23 a tissue when administered to the human over a period of time. (Doc. No. 56 at 20-21; Doc. No. 67-1 at
24 17.) Even if a “human dietary supplement” is itself not a natural or conventional food, that fact does not
25 alter the specification’s disclosure that placing a natural substance into a human dietary supplement to
26 increase the function of tissues is conventional activity.

27 In addition, Plaintiff argues that under its construction for the term “human dietary supplement,”
28 the claimed dietary supplement containing beta-alanine boosts the beta-alanyl-L-histidine in the muscle
tissue well above natural homeostatic levels when an effective amount is administered over time.
(Doc. No. 71 at 4; see also Doc. No. 67-1 at 17-18.) But, as previously explained, even if the patents-in-
sue relate to achieving an unnaturally high level of carnosine synthesis in the human body, the
relationship between beta-alanine supplements in one’s diet and the achievement of an unnaturally high
level of carnosine synthesis is still a natural process that exists in principle apart from any human action
and, thus, is an ineligible natural law. See *Mayo*, 566 U.S. at 77.

1 (holding that the introduction of a general-purpose computer to implement an abstract idea
2 was insufficient to render the claims at issue patent eligible); Mayo, 566 U.S. at 78-82
3 (finding the steps of administering a drug and then reconsidering the dosage in light of a
4 natural law insufficient to render the claims at issue patent eligible).

5 Third, Plaintiff argues that the Court erred by refusing to consider and apply PTO
6 guidance regarding claim construction and subject matter eligibility. (Doc. No. 67-1 at 18-
7 21; Doc. No. 71 at 9-10.) The Court disagrees. The PTO guidance related to subject matter
8 eligibility that Plaintiff identifies in its motion for reconsideration, the PTO’s “Nature-
9 Based Products” guidance, was not cited or otherwise referenced in Plaintiff’s opposition.
10 (Compare Doc. No. 67-1 at 19-20 with Doc. No. 56 at 23.) The Court could not have erred
11 by failing to consider PTO guidance that Plaintiff failed to present to the Court. Further,
12 the Court could not have erred by failing to consider the guidance because PTO guidance
13 is not binding on the Court. See In re Smith, 815 F.3d 816, 819 (Fed. Cir. 2016) (“[PTO]
14 Guidance is ‘not binding on this Court.’” (quoting In re Fisher, 421 F.3d 1365, 1372 (Fed.
15 Cir. 2005))); Enzo Biochem, Inc. v. Gen-Probe Inc., 323 F.3d 956, 964 (Fed. Cir. 2002).

16 In addition, the Court did not err by failing to consider the PTO’s guidelines
17 regarding claim construction. In performing claim construction, the PTO utilizes the
18 “broadest reasonable interpretation” standard. See In re Am. Acad. of Sci. Tech Ctr., 367
19 F.3d 1359, 1364 (Fed. Cir. 2004); Cuozzo Speed Techs., LLC v. Lee, 136 S. Ct. 2131,
20 2142 (2016). As Plaintiff itself acknowledges, this standard is different from and broader
21 than the claim construction standard utilized by district courts. (See Doc. No. 56 at 23
22 (“the BRI is a broader standard than that utilized by the courts”).) See Power Integrations,
23 Inc. v. Lee, 797 F.3d 1318, 1326 (Fed. Cir. 2015); Am. Acad. of Sci. Tech Ctr., 367 F.3d
24 at 1369 (“[T]he Board is required to use a different standard for construing claims than that
25 used by district courts.”).

26 Finally, Plaintiff argues that the Court should grant its motion for reconsideration so
27 that the Court’s § 101 determination can be based on an expanded record. (Doc. No. 67-1
28 at 21.) The Court disagrees. The Federal Circuit has expressly recognized that “it is

1 possible and proper to determine patent eligibility under 35 U.S.C. § 101 on a Rule 12(b)(6)
2 motion [or a Rule 12(c) motion].”⁵ Genetic Techs., 818 F.3d at 1373; see, e.g., Amdocs,
3 841 F.3d at 1293; see also Bascom Glob., 827 F.3d at 1347 (“Courts may . . . dispose of
4 patent-infringement claims under § 101 whenever procedurally appropriate.”). In opposing
5 Defendants’ Alice motions, Plaintiff was free to present the evidence it now attaches to its
6 motion for reconsideration and argue that the Court needed to consider this evidence prior
7 to analyzing the subject matter eligibility of the patents-in-suit. Plaintiff did not do so.
8 Thus, the Court did not err by determining the subject matter eligibility of the patents-in-
9 suit without considering the evidence Plaintiff now presents to the Court.

10 Moreover, the evidence presented by Plaintiff in its motion for reconsideration
11 would not have altered the Court’s conclusion that the patents-in-suit are invalid under §
12 101 for claiming ineligible subject matter. Plaintiff presents this evidence to support its
13 assertion that the inventive concept of the patents-in-suit is to unnaturally over-supplement
14 the normal/natural levels of beta-alanine in the diet of an individual unnaturally over time
15 to achieve an unnatural high level of carnosine synthesis in the individual. (See Doc. No.
16 67-1 at 4-6, 9-12; Doc. No. 71 at 4-7.) As explained above, even if the Court were to accept
17 that this is the inventive concept of the patents-in-suit, this inventive concept merely sets
18 forth a natural law and is insufficient to render the claims subject matter eligible. See
19 Mayo, 566 U.S. at 77. Accordingly, the Court denies Plaintiff’s motion for
20 reconsideration.⁶

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23 ⁵ Plaintiff criticizes the Defendants for failing to submit any scientific evidence in support of their
24 assertion that the patents-in-suit are invalid under § 101. (Doc. No. 67-1 at 1-2, 4, 7-8, 13.) But there is
25 no requirement that an accused infringer must submit scientific evidence in order to attack the validity of
26 a patent under § 101. Indeed, it is possible and proper for an accused infringer to attack the validity of a
27 patent under § 101 through a Rule 12(b)(6) or a Rule 12(c) motion. See Genetic Techs., 818 F.3d at
28 1373; see, e.g., Amdocs, 841 F.3d at 1293.

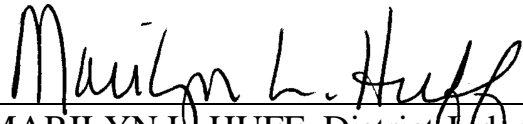
⁶ Plaintiff also argues that the Court should grant its motion for reconsideration on public policy
grounds and contends that the Court’s prior ruling represent a tectonic shift in the law. (Doc. No. 67-1
at 21-22.) The Court disagrees. The Court’s prior order simply followed Supreme Court and Federal
Circuit precedent regarding subject matter eligibility under 35 U.S.C. § 101.

1 **Conclusion**

2 For the reasons above, the Court denies Plaintiff's motion for reconsideration of the
3 Court's June 26, 2017 order. Plaintiff's claim for patent infringement remains dismissed
4 with prejudice.

5 **IT IS SO ORDERED.**

6 DATED: August 28, 2017

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8 MARILYN L. HUFF, District Judge
9 UNITED STATES DISTRICT COURT
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