Cooley

Stephen Smith
T: +1 703 456 8035
stephen.smith@cooley.com

January 11, 2023

By Email

Christian E. Mammen
+1 415 765 6267
Chris.Mammen@wbd-us.com
201 California Street
San Francisco, CA 94111

Dear Mr. Mammen:

Our law firm represents DataDome. DataDome is a global cybersecurity company that provides state-of-the-art bot protection solutions for mobile apps, websites, and APIs. We have analyzed Arkose Labs, Inc.'s ("Arkose") U.S. Patent No. 9,146,917 (the "'917 Patent") and have a number of questions regarding the '917 Patent.

The '917 Patent has serious invalidity concerns under 35 U.S.C. §§ 101 and 102/103. For example, "a combination of known authentication techniques that yields only expected results" is an unpatentable abstract idea under § 101. *Universal Secure Registry LLC v. Apple, Inc.*, 10 F.4th 1342, 1353 (Fed. Cir. 2021). Each limitation in claim 1 of the '917 Patent is a known authentication technique that is readily found in the prior art. Their mere combination does not transform claim 1 into patent eligible subject matter. Additionally, mental processes that "can be performed in the human mind, or by a human using a pen and paper" are unpatentable subject matter under 35 U.S.C. § 101. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372 (Fed. Cir. 2011). Every single limitation in claim 1 of the '917 Patent can be performed by a human using a pen and paper, rendering claim 1 unpatentable.

The '917 Patent also overcame the examiner's prior art rejection by adding the limitation "generating a user question in natural language format, to provide said missing information, based on said first question." Oct. 19, 2014 Applicant Remarks Made in an Amendment at 13. This limitation is common in prior art that the examiner did not cite. For example, EP1139233 discloses a computer system for the provision of information, products, or services that is capable of generating a natural language question asking for missing information. *See* EP1139233 at [0059; 0106]. A combination of EP1139233 with another reference cited by the examiner would most likely render the '917 Patent invalid as obvious under 35 U.S.C. § 103.

Finally, the analysis from your letter, dated October 6, 2022, does not provide a limitation-by-limitation comparison between claim 1 of the '917 Patent and DataDome's CAPTCHA service and therefore it is difficult to assess Arkose's contention that DataDome infringes the '917 patent. Similarly, DataDome is unable to assess Arkose's infringement position without a full claim chart for U.S. Patent Nos. 9,558,340; 10,082,954; and 10,599,330.

Notwithstanding the lack of claim charts, we do not believe DataDome's CAPTCHA service infringes any of the referenced patents including the '917 Patent. As a non-limiting example, claim 1 of the '917 Patent requires that the method of determining that a user is human "identify[] missing information" from the candidate answers to a first question and "generat[e] a user question in natural language format, to provide said missing information". DataDome's CAPTCHA service does not practice or embody either of these limitations.

We are happy to continue discussions regarding Arkose's assertions in its October 6, 2022 letter, but request more detailed information as noted above so we can further assess Arkose's position.

Sincerely

/s/ Stephen Smith