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3 UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5 OAKLAND DIVISION

6 FUZZYSHARP TECHNOLOGIES
7 INCORPORATED,

8 Plaintiff,

9 vs.

10 3D LABS INC., LTD.,

11 Defendant.

Case No: C 07-5948 SBA

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Docket 60

12
13 Plaintiff Fuzzysharp Technologies Incorporated (“Fuzzysharp”) brings the instant patent
14 infringement action against Defendant 3D Labs Inc., Ltd. (“3D”) under the Patent Act. The
15 Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338. The parties are
16 presently before the Court on Defendant’s Motion for Summary Judgment of Invalidity under
17 35 U.S.C. § 101 for Non-Patentable Subject Matter (Docket 60). Having read and considered
18 the papers filed in connection with this motion and being fully informed, the Court hereby
19 GRANTS the motion for the reasons set forth below. The Court, in its discretion, finds this
20 matter suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b).

21 **I. BACKGROUND**

22 There are two patents at issue in this case: U.S. Patent No. 6,172,679 (“the ‘679
23 Patent”) and U.S. Patent No. 6,618,047 (“the ‘047 Patent”), which is a continuation of the ‘679
24 Patent. The patents were assigned to Fuzzysharp by its President, Dr. Hong Lip Lim, the
25 inventor. (See Pl.’s Claim Construction Stmt. at 1-2.) Both patents are entitled “Visibility
26 Calculations for 3D Computer Graphics,” and are directed to improving 3D computer graphics
27 “through provision of an improved method for performing visibility calculations.” (Baker
28 Decl. Ex. A at 2:18-21 (‘679 Patent); Ex. B at 2:21-24 (‘047 Patent). The claims in both

1 patents are “method” or “process” claims drawn to mathematical algorithms that can be used to
 2 reduce the number of calculations required to determine whether a 3D surface is visible or
 3 invisible on a display screen. (Pl.’s Opp’n at 5-6.) According to Fuzzysharp, reducing the
 4 number of calculations decreases the processing time necessary to form a digital image,
 5 thereby enhancing the speed with which the image can be displayed. (Id.)

6 On November 26, 2007, Fuzzysharp filed the instant action accusing 3D of infringing
 7 the ‘679 and ‘047 Patents. At issue in this action are: Claims 1 and 12 of the ‘047 Patent; and
 8 Claims 1, 4 and 5 of the ‘679 Patent. Claims 1 and 12 of the ‘047 Patent state:

9 1. *A method of reducing the visibility related computations in*
 10 *3-D computer graphics*, the visibility related computations being
 11 performed on 3-D surfaces or their sub-elements, or a selected set of
 12 both, the method comprising:

13 [a] *identifying grid cells* which are under or related to the
 14 projections or extents of projections associated with at least one
 15 of said 3-D surfaces or their sub-elements;

16 [b] *comparing data* associated with said at least one of 3-D
 17 surfaces or their sub-elements with stored data associated with
 18 the grid cells;

19 [c] *determining which of said at least one of 3-D surfaces or*
 20 *their subelements is always invisible or always visible* to a
 21 viewpoint or a group of viewpoints by projection based
 22 computations prior to a visibility computations; and

23 [d] *ignoring* said determined at least one of the 3-D surfaces or
 24 their subelements during said visibility computation.

25 * * *

26 12. *A method of reducing a step of visibility computations in 3-*
 27 *D computer graphics* from a perspective of a viewpoint, the method
 28 comprising:

[a] computing, before said step and from said perspective, the
 visibility of at least one entity selected from 3-D surfaces and sub-
 elements of said 3-D surfaces, wherein said computing step
 comprises:

[i] *employing* at least one projection plane for generating
 projections with said selected set of 3-D surfaces and said sub-
 elements with respect to said perspective;

[ii] *identifying* regions on said at least one projection plane,
 wherein said regions are related to the projections associated with
 said selected 3-D surfaces, said sub-elements, or bounding
 volumes of said 3-D surfaces or said sub-elements;

[iii] *updating* data related to said regions in computer storage; and

1 [b] *deriving* the visibility of at least one of said 3-D surfaces or
2 said sub-elements from the stored data in said computer storage;
and

3 *skipping*, at said step of visibility computations, at least an
4 occlusion relationship calculation for at least one entity that has
been determined to be invisible in said computing step.

5 (Id. Ex. B, 27:66-28:16, 28:65-29:21 (emphasis added).)

6 Claims 1, 4 and 5 of the ‘679 Patent state as follows:

7 1. *A method of reducing the complexity of visibility*
8 *calculations* required for the production of multi-dimensional
9 *computer generated images*, said method *performed on a computer*,
said method comprising the steps of:

10 prior to an occlusion or invisibility relationship computation
(known per se) being carried out on a plurality of surfaces from
each viewpoint to be calculated:

11 for selected ones of said surfaces, determining for said
viewpoint whether each said selected surface is

12 (a) an always unoccluded surface, an always hidden surface, or
a remaining surface; or

13 (b) an always unoccluded surface, or a remaining surface; or

14 (c) an always hidden surface, or a remaining surface;

15 wherein said remaining surface is a surface which is unable to be
determined with certainty as to whether it is either unoccluded or
hidden;

16 exempting from said occlusion or invisibility relationship
17 computation those surfaces which are either always unoccluded or
always hidden;

18 maintaining a record of said remaining surface; and

19 carrying out occlusion or invisibility relationship computations on
said remaining surfaces.

20 * * *

21 4. A method as claimed in Claim I, wherein said images are
22 selected from a group consisting of graphic images, computer vision
data, abstract data and physical data.

23 5. A method as claimed in Claim I, wherein the reduction in
24 complexity involves a reduction in the number and/or visibility of
visibility calculations.

25 (Id. Ex. A, 28:45-48, 28:53-58 (emphasis added).)

26 3D has now filed a motion for summary judgment requesting that “this Court issue an
27 order declaring Claims 1, 4 and 5 of [the ‘679 Patent] and Claims 1 and 12 of [the ‘047 Patent]
28 are invalid for failure to comply with the subject matter eligibility requirements of 35 U.S.C.

1 § 101.” (Mot. at iv.) In particular, 3D argues that the patents-in-suit fail to meet the “machine-
2 or-transformation” set forth in In re Bilski, 545 F.3d 943 (Fed. Cir. 2008) (en banc), cert.
3 granted, --- U.S. ---, 129 S.Ct. 2735 (2009) (“Bilski”) in that the claims are not “tied to a
4 particular machine” and do not “transform[] an article into a different state or thing.” Id.
5 Alternatively, 3D seeks to stay the action pending the United States Supreme Court’s ruling on
6 Bilski.¹

7 **II. LEGAL STANDARD**

8 Rule 56(c) of the Federal Rules of Civil Procedure authorizes summary judgment if
9 there is no genuine issue as to any material fact and the moving party is entitled to judgment as
10 a matter of law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). The
11 moving party bears the initial burden of demonstrating the basis for the motion and identifying
12 the portions of the pleadings, depositions, answers to interrogatories, affidavits, and admissions
13 on file that establish the absence of a triable issue of material fact. Celotex Corp. v. Catrett,
14 477 U.S. 317, 323 (1986). If the moving party meets this initial burden, the burden then shifts
15 to the non-moving party to present specific facts showing that there is a genuine issue for trial.
16 Fed.R.Civ.P. 56(e); Celotex, 477 U.S. at 324; Matsushita Elec. Indus. Co. v. Zenith Radio
17 Corp., 475 U.S. 574, 586-87 (1986).

18 An issue of fact is “material” if, under the substantive law of the case, resolution of the
19 factual dispute might affect the outcome of the claim. See Anderson, 477 U.S. at 248. Factual
20 disputes are genuine if they “properly can be resolved in favor of either party.” Id. at 250.
21 Accordingly, a genuine issue for trial exists if the non-movant presents evidence from which a
22 reasonable jury, viewing the evidence in the light most favorable to that party, could resolve
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24 ¹ The claims construction hearing has not yet taken place, as the previously scheduled
25 date conflicted with a criminal matter. Fuzzysharp suggests in its opposition that “the Court
26 might want to wait until after the Court makes its Claims Construction Ruling” before
27 proceeding with the instant motion. (Pl.’s Opp’n at 3.) Claims construction is not a
28 prerequisite to ruling on the instant motion. However, as will be set forth below, the Court will
construe the claims, if necessary, in the manner advocated by Fuzzysharp. See CyberSource
Corp. v. Retail Decisions, Inc., 620 F. Supp. 2d 1068, 1073 (N.D. Cal. 2009) (ruling on motion
for summary judgment based on the machine-or-transformation test under Bilski utilizing
plaintiff’s proposed claim construction of terms in dispute).

1 the material issue in his or her favor. Id. “If the evidence is merely colorable, or is not
2 significantly probative, summary judgment may be granted.” Id. at 249-50 (internal citations
3 omitted). Only admissible evidence may be considered in ruling on a motion for summary
4 judgment. Fed.R.Civ.P. 56(e); Orr v. Bank of Am., 285 F.3d 764, 773 (9th Cir. 2002).

5 **III. DISCUSSION**

6 The Patent Act provides that: “Whoever invents or discovers any new and useful
7 *process*, machine, manufacture, or composition of matter, or any new and useful improvement
8 thereof, may obtain a patent thereof, subject to the conditions and requirements of this title.”
9 35 U.S.C. § 101 (emphasis added). “Whether a claim is drawn to patent-eligible subject matter
10 under § 101 is a threshold inquiry, and any claim of an application failing the requirements of
11 § 101 must be rejected even if it meets all of the other legal requirements of patentability.”
12 Bilski, 545 F.3d at 950; Parker v. Flook, 437 U.S. 584, 593 (1978). The question of whether a
13 claim satisfies the requirements of § 101 presents a question of law. Bilski, 545 F.3d at 951.

14 “The term ‘process’ means process, art, or method, and includes a new use of a known
15 process, machine, manufacture, composition of matter, or materials.” 35 U.S.C. § 100(b). The
16 Federal Circuit has characterized this definition as “‘unhelpful’ because the definition itself
17 uses the term ‘process.’” Prometheus Labs., Inc. v. Mayo Collaborative Servs., 581 F.3d 1336,
18 1342 (Fed. Cir. 2009). Thus, in Bilski, the Federal Circuit sought to clarify the applicable test
19 for determining whether a process or method patent is patentable under section 101. The court
20 began its analysis by observing that “the Supreme Court has held that the meaning of ‘process’
21 as used in § 101 is narrower than its ordinary meaning,” and that “a claim is not a patent-
22 eligible ‘process’ if it claims ‘laws of nature, natural phenomena, [or] abstract ideas.’” Bilski,
23 545 F.3d at 952 (citing cases) (alterations in original). Following those principles, Bilski
24 confirmed that the key issue in determining the patentability of a particular process is “whether
25 a process claim is tailored narrowly enough to encompass only a particular application of a
26 fundamental principle rather than to pre-empt the principle itself.” Id. at 954. To answer that
27 question, the court summarized the “definitive test” for patentability of a process claim as
28 follows: “A claimed process is ... patent-eligible under § 101 if: (1) it is tied to a *particular*

1 *machine* or apparatus, or (2) it *transforms* a particular article into a different state or thing.”
2 Bilski, 545 F.3d at 961. The court added that “[t]he machine-or-transformation test has two
3 further aspects: ‘the use of a specific machine or transformation of an article must impose
4 meaningful limits on the claim’s scope to impart patent-eligibility,’ and ‘the involvement of the
5 machine or transformation in the claimed process must not merely be insignificant extra-
6 solution activity.’” Prometheus Labs., 581 F.3d at 1342 (quoting Bilski, 545 F.3d at 961-62).

7 In the instant case, the parties dispute whether the patent claims meet the machine-or-
8 transformation test under Bilski. 3D contends that the claims in the patents-in-suit are nothing
9 more than “mathematical formulas and algorithms that fail Bilski’s machine-or-transformation
10 test.” Mot. at 4. Fuzzysharp concedes that its patent claims are *not* transformative, but
11 nevertheless argues that they are tied to a particular machine; to wit, a computer. (Pl.’s Opp’n
12 at 7-9.) As support, Fuzzysharp highlights language in the preamble of Claim 1 of the ‘047
13 Patent, which articulates “[a] method of reducing the indivisibility related computations in 3-D
14 graphics,....” (Baker Decl. Ex. B at 27:66-67), as well as the reference in Claim 12 to
15 “**computer storage**” (id. at 29:17). (Pl.’s Opp’n at 8 (emphasis in original).) Similarly,
16 Fuzzysharp points to the parties’ agreed upon construction of certain claim terms, which
17 reference “using a data structure in a **computer**,” along with a reference to projecting 3D
18 images “on a **computer screen**.” (Id. at 8 (emphasis in original).) According to Fuzzysharp,
19 3D’s concurrence in these proposed constructions demonstrates that 3D previously agreed that
20 “a device such as a computer is tied to the claims....” (Id. (citing Docket 43-2).)

21 Fuzzysharp’s arguments miss the mark. The salient question is not whether the claims
22 are tied to *a* computer. Rather, as Bilski makes clear, the question is whether the claims are
23 “tied to *a particular machine*.” 545 F.3d at 961 (“an applicant may show that a process claim
24 satisfies § 101 either by showing that his claim is tied to *a particular machine*”) (emphasis
25 added). Aside from the passing reference to “computer storage,” neither of the disputed claims
26 in the ‘047 Patent make any reference to any machine or apparatus. As for the ‘679 Patent, the
27 claims are not tied to a particular computer, but simply make a generally reference to “a”
28 computer. Courts applying Bilski have concluded that the mere recitation of “computer” or

1 reference to using a computer in a patent claim is insufficient to tie a patent claim *to a*
2 *particular machine*. For example, in DealerTrack, Inc. v. Huber, -- F. Supp. 2d ---, 2009 WL
3 2020761 at *3 (C.D. Cal., July 07, 2009), the patent-in-suit pertained to a “computer aided
4 method” of managing credit applications. The patentee argued that the claims in dispute were
5 tied to a *central processor* “consisting of a *specially programmed computer hardware and*
6 *database*” and a “remote application entry and display device,” and a “remote funding source
7 terminal device.” Id. at *4 (emphasis added). In finding that the claim failed to meet the Bilski
8 machine implementation test, the court noted that the claim “does not specify precisely how the
9 computer hardware and database are ‘specially programmed,’ and the claimed central
10 processor is nothing more than a general purpose computer that has been programmed in some
11 unspecified manner.” Id. at *4; see also CyberSource, 620 F. Supp. 2d at 1077 (claim which
12 disclosed “[a] method for verifying the validity of a credit card transaction *over the Internet*”
13 was not tied to a particular machine) (emphasis added).

14 Likewise, the PTO Board of Patent Appeals and Interferences has reached the same
15 conclusion, and consistently ruled that the mere fact that a claim references the use of a
16 computer is, standing alone, insufficient to meet the machine implementation requirement. See
17 Ex Parte David Myr, 2009 WL 3006497 at * 8-9(Bd. Pat. App. & Interf., Sept. 18, 2009)
18 (“computer-implemented” process for valuing real estate was not tied “to any particular
19 computer” and therefore was not patentable under 35 U.S.C. § 101); Ex Parte Nick M. Mitchell
20 and Gary S. Sevitsky, 2009 WL 460662 at *6 (Bd. Pat. App. & Interf., Feb. 23, 2009) (“the use
21 of a general ‘processor’ and ‘memory’ is insufficient to render an otherwise ineligible claim
22 patent eligible.”); Ex Parte Sandeep Nawathe and Vaishali Angal, 2009 WL 327520 at *4 (Bd.
23 Pat. App. & Interf., Feb. 9, 2009) (“We note that the recited method, while being computerized,
24 is not tied to a particular machine for executing the claimed steps. We find that the
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1 computerized recitation purports to a general purpose processor ..., as opposed to a particular
2 computer specifically programmed for executing the steps of the claimed method.”).²

3 The above authorities—none of which are addressed by Fuzzysharp—persuade the
4 Court that the claims in dispute are *not* tied to any particular machine. The claim language
5 clearly states that these claims are drawn to mathematical calculations and algorithms for
6 calculating whether certain surfaces are visible or invisible in 3D computer graphics. This is
7 exemplified by the language of the claims, which specify a sequence of calculations that
8 involve “identifying,” “comparing,” “determining,” and “ignoring” data. See Baker Decl. Ex.
9 B, 27:66-28:16, 28:65-29:21. Though the calculations may be “performed on a computer,”
10 they are not tied to any *particular* computer. For these reasons, the claims of the ‘047 and
11 ‘679 Patent fail to pass muster under the Bilski machine implementation test for patentability
12 under 35 U.S.C. § 101. E.g., Research Corp. Techs. v. Microsoft Corp., 2009 WL 2413623 at
13 *12 (D. Ariz., July 28, 2009) (granting summary judgment on ground that claim which
14 involved use of “formulas and numbers to determine the placement of a dot [i.e., pixel] at a
15 location” on a video display was “not tied to a particular machine); DealerTrack, 2009 WL at
16 2020671 at *4 (claim that disclosed a “computer-aided method” was not tied to a particular
17 computer).³

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² The Board of Patent Appeals and Interferences (“Board”) has the authority to “review
23 adverse decisions of examiners upon applications for patents....” 35 U.S.C. § 6(b).
24 Fuzzysharp fails to address any of the Board decisions cited above and, without citation to any
25 authority, simply dismisses those cases as having “no weight.” (Opp’n at 7.) However,
although Board decisions are not binding, they nonetheless may be considered persuasive
authority. See Noelle v. Lederman, 355 F.3d 1343, 1350 (Fed. Cir. 2004).

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³ Finally, even if the patent claims were tied to a particular machine, the reference to
“computer” does not impose any meaningful limit on the claim scope, as the computer merely
serves to perform the computation. Bilski, 545 F.3d at 961; Cybersource Corp., 620 F. Supp.
2d at 1077-1078. Tellingly, Fuzzysharp’s opposition offers no meaningful response to this
point. (Pl.’s Opp’n at 8-9.)


1 **IV. CONCLUSION**

2 For the reasons stated above,

3 IT IS HEREBY ORDERED THAT Defendant's Motion for Summary Judgment of
4 Invalidation under 35 U.S.C. § 101 for Non-Patentable Subject Matter (Docket 60) is
5 GRANTED. Judgment shall be entered accordingly.

6 IT IS SO ORDERED.

7 Dated: December 11, 2009


8 SAUNDRA BROWN ARMSTRONG
9 United States District Judge

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