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Recent Developments in Patent Law (Fall 2020)

Updated through 10/28/2020

Mark Lemley

Mark Lemley
Stanford Law School and Durie Tangri
LLP
Stanford, CA
mlemley@law.stanford.edu
650.723.4605

Tyler Robbins
J.D. Expected 2021
Stanford Law School

RECENT DEVELOPMENTS IN PATENT LAW (Fall 2020)
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Mark Lemley¹ & Tyler Robbins²

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¹ William H. Neukom Professor, Stanford Law School; Partner, Durie Tangri LLP.

² J.D. expected 2021, Stanford Law School.

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PATENTABLE SUBJECT MATTER

Software and Business Method Cases

Unpatentable

***Electronic Communication Technologies, LLC v. ShoppersChoice.com*, 958 F.3d 1178 (Fed. Cir. May 14, 2020)**

In this appeal from the Southern District of Florida, the Federal Circuit affirmed the district court’s finding that the asserted patent claims were not subject matter eligible.³

Electronic Communication Technologies’ ‘261 patent claimed an automated notification system for securely notifying customers in advance of the pickup or delivery of a good.⁴ The district court held the disputed claim had was patent ineligible under § 101 for being directed an abstract idea and did not contain an inventive concept.⁵ The district court reasoned “business practices designed to advise customers of the status of delivery of their goods have existed at least for several decades, if not longer” and the claim recited merely generic computer components performing conventional computer functions.⁶ ECT appealed.

The Federal Circuit affirmed. At step 1 of the *Alice* test, the court agreed the disputed claim was directed towards an abstract idea.⁷ According to the court, two of the identified functions, “monitoring the location of a mobile thing and notifying a party in advance of arrival of that mobile thing” were ultimately just “the fundamental business practice of providing advance notification of the pickup or delivery of a mobile thing.”⁸ The court also held the recited increased security measures using “authentication information” were directed towards an abstract idea.⁹ Supplying order numbers and recording customer information is a longstanding business practice.¹⁰ Furthermore, the recited authentication measures merely involved “gathering, storing, and transmitting information.”¹¹ The court rejected ECT’s arguments that the claim being “unique” and having no issues during patent prosecution made it patent eligible.¹²

³ *Electronic Communication Technologies, LLC v. ShoppersChoice.com*, 958 F.3d 1178 (Fed. Cir. 2020)

⁴ *Id.* at 1180. (citing U.S. Patent No. 9,373,261).

⁵ *Id.*

⁶ *Id.* at 1181 (quoting *Elec. Comm’n Techs., LLC v. ShoppersChoice.com, LLC*, No. 16-81677-CIV-KAM, 2019 WL 1173448, 2019 U.S. Dist. LEXIS 10042, slip op. at 6 (S.D. Fla. Jan. 18, 2019) (“District Court Opinion”))

⁷ *Id.* at 1181.

⁸ *Id.*

⁹ *Id.* at 1182

¹⁰ *Id.*

¹¹ *Id.* (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016)).

¹² *Id.* at 1182-83.

At step two of the *Alice* test the court again agreed with the district court that the claim contained no inventive concept.¹³ Rather, the claimed invention “only entails applying longstanding commercial practices using generic computer components and technology.”¹⁴ ECT argued the claim should be valid because, in another case, the court found a shorter and less enabled claim valid.¹⁵ The court rejected the argument, however, noting the length and enablement of claims and was not indicative of subject matter eligibility.¹⁶

***Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359 (Fed. Cir. March 6, 2020)**

In this appeal of a Covered Business Method (“CBM”) review from the Patent Trial and Appeal Board (“PTAB”), the Federal Circuit affirmed the district court’s finding that the patents were not subject matter eligible.¹⁷

Customedia’s ‘090 and ‘494 patents disclose a data management and processing system for storing and delivering advertising data.¹⁸ The system consisted of “a remote Account-Transaction Server (ATS) and a local host Data Management System and Audio/Video Processor Recorder-player (VPR/DMS), e.g., a cable set-top box.”¹⁹

Dish petitioned the PTAB for a CBM review, arguing the patents were ineligible under § 101.²⁰ CBM review is available for a business method patents claiming a method for “performing data processing or other operations used in the practice, administration, or management of a financial product or service” and is not a technological invention.²¹ Despite the ‘090 and ‘494 patents arguably being a technological invention and not being connected to a financial product or service, the PTAB instituted CBM review.

In the CBM review, the PTAB held the patents’ disputed claims were patent ineligible under § 101.²² On appeal, the Federal Circuit affirmed.²³ At step one of the *Alice* test, the court held “the claimed invention merely improves the abstract concept of delivering targeted advertising using a computer only as a tool.”²⁴ At step two, the court noted “the claims recite only generic computer components” and found no inventive concept.²⁵

¹³ *Id.* at 1183.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359 (Fed. Cir. 2020).

¹⁸ *Id.* at 1360-61.

¹⁹ *Id.*

²⁰ *Id.* at 1362.

²¹ 77 Fed. Reg. 48734, August 14, 2012

²² *CustomediaCustomedi*, 951 F.3d 1359 at 1362.

²³ *Id.* at 1366.

²⁴ *Id.*, at 1363.

²⁵ *Id.* at 1366

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