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Recent Developments in Patent Law (Fall 2021)

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PATENTABLE SUBJECT MATTER

Software and Business Method Cases

Unpatentable

***In re Bd. of Trs. of the Leland Stanford Junior Univ.*, 991 F.3d 1245 (Fed. Cir. March 25, 2021)**

In this appeal from the Patent Trial and Appeal Board ("PTAB"), the Federal Circuit affirmed the claimed statistical methods were subject matter ineligible under § 101 for being directed to an abstract idea.[4]

Stanford University's '982 application is "directed to computerized statistical methods for determining haplotype phase."[5] The PTAB rejected the application for being subject matter ineligible under § 101.[6] At *Alice* step 1, the PTAB found the representative claim was directed to the patent ineligible abstract ideas of mathematical concepts and abstract mental processes.[7] Furthermore, the PTAB noted the steps were merely implemented in generic computer hardware and that the claims did not include any steps to apply the computed information towards a purpose.[8] At *Alice* atep 2, the PTAB identified no inventive conception which would make the claim directed towards abstract ideas patent eligible.[9] Stanford appealed.[10]

On appeal, the Federal Circuit affirmed the district court's findings.[11] At *Alice* step 1, the court found the "the claims are directed to the use of mathematical calculations and statistical modeling" that "without more, are patent ineligible under § 101" and well-established precedent.[12] As with the district court, the Federal Circuit found claims contained no application and recited generic steps of implementing the steps with a computer.[13] The court also noted "[t]he different use of a mathematical calculation, even one that yields different or better results, does not render patent eligible subject matter."[14] At

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[4] In re Bd. of Trs. of the Leland Stanford Junior Univ., 991 F.3d 1245 (Fed. Cir. 2021).
[5] *Id.* at *6
[6] Id.
[7] *Id.* at *7
[8] *Id.*at *8.
[9] *Id.* at *9.
[10] *Id.* at *10.
[11] *Id.* at *14.
[12] *Id.* at *10-11. (citing , Parker v. Flook, 437 U.S. 584, 595, 98 S. Ct. 2522, 57 L. Ed. 2d 451 (1978)).
[13] *Id.* at *12.
[14] *Id.* at *14.

Alice step 2, the court also could not identify any inventive concept that saved the claims' subject matter eligibility.[15]

***Simio, LLC v. Flexsim Software Prods.*, 983 F.3d 1353 (Fed. Cir. Dec. 29, 2020)**

In this appeal from the District of Utah, the Federal Circuit affirmed an invention which used graphics rather than text for object-oriented simulation was patent ineligible under § 101 for being directed to an abstract idea.[16]
Simio's '468 patent discloses an invention "for making object-oriented simulation easier and more accessible by letting users build simulations with graphics instead of programming."[17] Simio filed suit against FlexSim for allegedly infringing its patent.[18] FlexSim argued the claimed invention as patent ineligible under § 101. Applying the *Alice* test, the district court concluded at step one that the claims were directed to the abstract idea of substituting text-based computer programming with graphics.[19] At step two, the district court found no inventive concept making the claims patent eligible.[20]

On appeal, the Federal Circuit agreed the patent claims were subject-matter ineligible under § 101.[21] At step one of the *Alice* test, the court identified the patent's asserted advance as "using graphics instead of programming to create object-oriented simulations."[22] The patent itself conceded the practice of using graphics to simplify simulation building had been common for decades.[23] The court held "simply applying the already-widespread practice of using graphics instead of programming to the environment of object-oriented simulations is no more than an abstract idea."[24] At step two of the *Alice* test, the court acknowledged claimed invention may present a new idea, but it ultimately lacked any meaningful application of that idea to warrant patent eligibility.[25]

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[15] *Id.* at *14-15.
[16] Simio, LLC v. Flexsim Software Prods., 983 F.3d 1353 (Fed. Cir. 2020).
[17] *Id.* at 1356 (citing U.S. Patent No. 8,156,468).
[18] *Id.* at 1357.
[19] *Id.* at 1358.
[20] Id.
[21] *Id.* at 1356.
[22] Id.
[23] *Id.* at 1360.
[24] Id.
[25] *Id.*at 1364.

Title search: Recent Developments in Patent Law (Fall 2021)

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