

RECENT DEVELOPMENTS IN PATENT LAW (Fall 2024)

UPDATED THROUGH 9/29/2024

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PATENTABLE SUBJECT MATTER

Software and Business Method Cases

Unpatentable

***International Business Machines Corporation v. Zillow Group, Inc.*, 2024 WL 89642 (Fed. Cir. Jan. 9, 2024)**

In this appeal from the Western District of Washington, the Federal Circuit affirmed the district court’s finding that all the claims in two patents held by appellant IBM were subject matter ineligible.⁴ The first patent was directed to a “graphical user interface for a customer self-service system that performs resource search and selection” and the second to a method of “annotating resource results obtained in a customer self-service system”⁵ With regards to the first patent, the court found that its claims did nothing more than “[i]dentify[], analyz[e], and present[] certain data to a user,” which is not a computer-specific technical improvement.⁶ Therefore, it found that this claim was “directed to a patent-ineligible abstract idea” under *Alice* step one.⁷ The court also found that IBM failed to prove inventiveness under *Alice* step two, as it merely offered conclusory allegations of inventiveness that did not connect to specific portions of the patent.⁸

With regards to the second patent, the court found it was directed to the “abstract idea of displaying and organizing information” under *Alice* step one, as it addressed “improving a user’s experience when viewing search results but [did] not contain any specific mechanism for doing so.”⁹ At *Alice* step two, IBM again failed to allege any inventive concept sufficient to make the claims patent-eligible, as the patent contained no “specific, discrete implementation of the abstract ideas” it was directed towards.¹⁰ Therefore, the district court’s finding that both patents were directed towards ineligible subject matter was upheld.¹¹

***AI Visualize, Inc. v. Nuance Communications, Inc.*, 97 F.4th 1371 (Fed. Cir. Apr. 4, 2024)**

In this appeal from the District of Delaware, the Federal Circuit affirmed a finding that four patents owned by plaintiff AI Visualize and directed to the advanced

⁴ *International Business Machines Corporation v. Zillow Group, Inc.*, 2024 WL 89642 (Fed. Cir. 2024).

⁵ *Id.* at *1.

⁶ *Id.* at *4.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at *5.

¹⁰ *Id.*

¹¹ *Id.* at *6

visualization of medical scans via a web application were subject matter ineligible.¹² The court explained that, for computer-based technologies, the “claimed advances over the prior art” must be focused on “an improvement in computer technologies, rather than the mere use of computers” to avoid being categorized as directed to an abstract idea under *Alice* step one.¹³ It concluded that the claims at issue did not meet this test and were merely directed to the “abstract idea of data manipulation,” as they recited the idea of “creating” visualizations based on an existing dataset, rather than explaining how to create those views from a technological perspective.¹⁴

Having found the claims directed to an abstract idea under *Alice* step one, the court proceeded to analyze whether the claims recited something “significantly more” than that abstract idea to make them patent-eligible under *Alice* step two.¹⁵ In order for a claim to recite “significantly more” than an abstract idea, the nature of the claim must be “transformed” by elements or combinations thereof that go beyond “elements that are routine, conventional, or well-known” in the art.¹⁶ Here, however, the Federal Circuit found that AI Visualize made no arguments for inventive concepts in its claims that reached beyond the creation of “a virtual view,” which itself was the abstract idea addressed under step one and was a well-known concept in the art.¹⁷ Thus, the claims failed at both steps of the *Alice* test and were ultimately deemed patent ineligible.¹⁸

***Beteiro, LLC v. Draftkings Inc.*, 104 F.4th 1350 (Fed. Cir. June 21, 2024)**

In this appeal from the District of New Jersey, the Federal Circuit affirmed a finding that four patents owned by Beteiro were subject matter ineligible.¹⁹ The patents were all directed at facilitating live, remote gambling activity via communication devices based on a user’s GPS-determined location.²⁰ At *Alice* step one, the Federal Circuit held that the claims were directed to an abstract idea because they recited generic steps for retrieving information based on location,²¹ used “result-focused functional language” without specificity on how the invention achieved those results,²² and were rooted in a “fundamental and longstanding economic activity.”²³ In so holding, the Federal Circuit rejected Beteiro’s contention that the claims improved computer technologies; instead, the claims merely involved the use of computers as a tool, without any improvement in the computer-related technology itself.²⁴

¹² *AI Visualize, Inc. v. Nuance Communications, Inc.*, 97 F.4th 1371 (Fed. Cir. 2024).

¹³ *Id.* at 1378.

¹⁴ *Id.* at 1379.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 1380.

¹⁸ *Id.* at 1381.

¹⁹ *Beteiro, LLC v. Draftkings Inc.*, 104 F.4th 1350 (Fed. Cir. 2024).

²⁰ *Id.* at 1353-54.

²¹ *Id.* at 1355-56.

²² *Id.* at 1356.

²³ *Id.* at 1356-57.

²⁴ *Id.* at 1357.

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First appeared as part of the conference materials for the 29th Annual Advanced Patent Law Institute session "Year in Review"