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RECENT DEVELOPMENTS IN PATENT LAW (FALL 2017)

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PATENTABLE SUBJECT MATTER

Amdocs (Israel) Ltd. v. Openet Telecom, Inc., 841 F.3d 1288 (Fed. Cir. Nov. 1, 2016)

In this appeal from the Eastern District of Virginia, the Federal Circuit held that claims in Amdocs's patents are eligible under § 101.[4]

Amdocs sued Openet for infringing the '065, '510, '984, and '797 patents. The patents together disclose a system for creating accounting and billing records reflecting network activity.[5] The system is based on "distributed architecture," which "minimizes network impact by collecting and processing data" in multiple locations.[6] This architecture "thereby reduc[es] congestion in network bottlenecks, while still allowing data to be accessible from a central location"—an advantage over prior art systems that stored information in one location.[7] Although the invention's distributed architecture is not specifically mentioned or described in the claims at issue, the Federal Circuit had affirmed, in a prior appeal, claim constructions that read the limitation into the claims.[8] The district court granted Openet's motion for judgment on the pleadings, holding that the asserted claims in all four patents failed under § 101.[9]

The Federal Circuit reversed the district court's judgment, providing similar reasons for all four patents. The court's analysis for the '065 patent is representative. The court bypassed step one of the *Alice* framework, holding that even if claims are directed to ineligible abstract ideas under step one, the claims are eligible under step two because they contain sufficient inventive concepts.[10] In particular, the court focused on the claim requirement, as construed, that data processing occur on distributed architecture.[11] The court found that such distributed processing is an unconventional technological solution to a technological problem of "massive record flows which previously required massive databases" found in the prior art.[12] Although this technological solution requires the use of generic components, like network devices, the court found that these generic components must operate in combination in an unconventional (i.e. distributed) manner to improve computer performance.[13] Moreover, the court noted that the claims are narrowly drawn as not to unduly preempt "any and all generic enhancements of data."[14]

Judge Reyna dissented.[15] He first criticized the majority for avoiding step one of the *Alice* framework.[16] More importantly, Judge Reyna argued that the majority's reliance on the distributed architecture of the invention is misplaced, given that the

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[4] Amdocs (Israel) Ltd. v. Openet Telecom, Inc., 841 F.3d 1288, 1307 (Fed. Cir. 2016).
[5] *Id.* at 1291-92.
[6] *Id.* at 91.
[7] *Id.* at 92.
[8] Amdocs (Israel) Ltd. v. Openet Telecom, Inc., 761 F.3d 1329, 1340 (Fed. Cir. 2014).
[9] Amdocs (Israel) Ltd. v. Openet Telecom, Inc., 56 F. Supp. 3d 813, 815 (E.D. Va. 2014).
[10] Amdocs, 842 F.3d at 1300.
[11] *Id.*
[12] *Id*. at 1300.
[13] *See Id.* at 1300-01.
[14] *Id.* at 1301.
[15] *Id.* at 1307 (Reyna, J., dissenting).
[16] *Id.*

limitation does not literally appear in the claim.[17] He emphasized that § 101 inquiry is "not whether the specifications disclose a patent-eligible system, but whether the claims are directed to a patent ineligible concept."[18] Even as construed, he highlighted that the limitation "has no meaning in the context" of the claim; for example, the representative claim in the '650 patent "recites no components or structure over which the work might be 'distributed.'"[19] Judge Reyna would find the '065 and '797 patents ineligible, but he ultimately agreed with the majority on the eligibility of the '510 and '984 patents on other grounds.[20]

Thales Visionix, Inc. v. United States, 2017 WL 914618 (Fed. Cir. Mar. 8, 2017)

In this appeal from the Court of Federal Claims, the Federal Circuit held that claims of the '159 patent are patent-eligible under § 101.[21]

The '159 patent discloses "an inertial tracking system for tracking the motion of an object relative to a moving reference frame."[22] When mounted on a moving object, inertial sensors can calculate the position, orientation, and velocity of an object relative to a known starting position.[23] The inertial sensor system disclosed in the '159 patent improves on prior art by specifying a particular configuration of multiple sensors to better calculate the position of an object.[24] The lower court held that all claims were directed to patent-ineligible subject matter under § 101.[25] It specifically found that the claims were directed to the abstract idea of using "mathematical equations for determining the relative position of a moving object to a moving reference frame."[26]

The Federal Circuit reversed and remanded, finding that the claims are not directed to an abstract idea under *Alice* step one.[27] The court first cautioned that although claims of the '159 patent do "utilize mathematical equations to determine the orientation of the object,"[28] that a "mathematical equation is required to complete the claimed method and system does not doom the claims to abstraction."[29] The court found the Supreme Court's decision in *Diehr* to be particularly relevant.[30] There, the Court explained that claims are patent eligible under § 101 "when a claim containing a mathematical formula implements or applies that formula in a structure or process which, when considered as a whole, is performing a function which the patent laws were

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[17] *Id.*
[18] *Id.* at 1312.
[19] *Id.* at 1314.
[20] *Id.* at 1307.
[21] Thales Visionix, Inc. v. United States, 2017 WL 914618, at *1 (Fed. Cir. Mar. 8, 2017).
[22] *Id.* at *1 (citing U.S. Patent No. 6,474,159).
[23] *Id.*
[24] *Id.*
[25] *Id.* at *2 (citing Thales Visionix, Inc. v. United States, 122 Fed. Cl. 245 (2015)).
[26] Thales, 122 Fed. Cl. at 252.
[27] *Id.* at *5.
[28] *Id.* at *4.
[29] *Id.* at *5.
[30] Diamond v. Diehr, 450 U.S. 175 (1981).

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