UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

PRESENTED AT

23rd Annual Advanced Patent Law Institute

November 1-2, 2018
Austin, TX

Recent Developments in Patent Law
Fall 2018

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RECENT DEVELOPMENTS IN PATENT LAW (FALL 2018)
UPDATED THROUGH 9/20/2018

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PATENTABLE SUBJECT MATTER

Core Wireless Licensing S.A.R.L. v. LG Electronics, Inc., 880 F.3d 1356 (Fed. Cir. Jan. 25, 2018)

In this appeal from the Eastern District of Texas, the Federal Circuit affirmed the district court's denial of summary judgment that the asserted claims are patent ineligible under § 101.[4] The patents at-issue relate to an improved display interface for electronic devices, where the improved interface permits users "to more quickly access desired data stored in, and functions of applications included in, the electronic devices."[5] More specifically, an application summary window that can be reached directly from the main menu displays the desired data and functions.[6]

The Federal Circuit concluded that "[t]he asserted claims in this case are directed to an improved user interface for computing devices, not to the abstract idea of an index."[7] "[T]hese claims are directed to a particular manner of summarizing and presenting information in electronic devices."[8] For instance, claim 1 of the '476 patent requires that the application summary window can be reached from the menu, specifies how the summary window must be accessed, "requires the application summary window [to] list a limited set of data," and recites that the summary window is displayed while the applications are in an unlaunched state.[9]

The specification teaches that prior art interfaces made it difficult to find the right data and functionality, particularly on small screens.[10] The disclosed invention reduces this problem by coalescing a limited group of commonly accessed data and functions in a single spot.[11] Moreover, displaying certain data and functions in the summary window permits users to see that data and those functions without opening up the application.[12] Accordingly, "the claims are directed to an improvement in the functioning of computers, particularly those with small screens."[13]

Finjan, Inc. v. Blue Coat Systems, Inc., No. 2016-2520, 2018 WL 341882 (Fed. Cir. Jan. 10, 2018)[14]

In this appeal from the Northern District of California, the Federal Circuit affirmed the district court's finding that the '844 patent was patent-eligible under § 101.[15]

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[4] Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc., 880 F.3d 1356, 1359 (Fed. Cir. 2018).
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.* at 1362-63.
[10] *Id.* at 1363.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Full disclosure: Mark Lemley represented Blue Coat in this appeal.
[15] Finjan, Inc. v. Blue Coat Sys., Inc., No. 2016-2520, 2018 WL 341882, at *1 (Fed. Cir. Jan. 10, 2018).

The ’844 patent is directed to an improved virus scanning approach that can proactively detect “*potentially* hostile operations” with a “‘behavior-based’ virus scan.”[16] This novel virus scanning approach is unlike prior art systems, which “are limited to recognizing the presence of previously-identified viruses.”[17]

Although the court has previously found virus screening by itself to be an abstract idea,[18] the court found the asserted claims patent-eligible under *Alice* step one because “the method of claim 1 employs a new kind of file that enables a computer security system to do things it could not do before.”[19] For example, unlike prior art virus scanning approaches, the improved virus scanning approach “can be used to protect against previously unknown viruses” as well as “known viruses that have been cosmetically modified to avoid detection by [prior art] code-matching virus scans.”[20] Moreover, the improved virus scanning approach permits administrators to flexibly apply “different security policies to different users.”[21]

Blue Coat argued that even if the claims are directed to a new idea, they are still abstract because “they do not sufficiently describe how to implement that idea.”[22] The court agreed that the cases Blue Coat cited in support of its argument “hearken back to a foundational patent law principle: that a result, even an innovative result, is not itself patentable.”[23] But here, the Court concluded that the claims do not merely recite a result but rather “recite specific steps” to accomplish that result, though it was awfully vague on what those specific steps were.[24] Furthermore, “there is no contention that the only thing disclosed is the result and not an inventive arrangement for accomplishing the result.”[25]

***Two-Way Media Ltd. v. Comcast Cable Communications, LLC,* 874 F.3d 1329 (Fed. Cir. Nov. 1, 2017)**

In this appeal from the District of Delaware, the Federal Circuit affirmed the district court’s finding that the asserted patents are patent ineligible under § 101.[26] The patents-at-issue describe the invention as a scalable architecture for delivering real-time information that includes a control mechanism to manage users who receive the real-time information.[27]

Under *Alice* step one, the Federal Circuit found that the claims of the ’187 and ’005 patents were directed to an abstract idea.[28] The court reasoned that the claims recite

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[16] *Id.* at *3 (emphasis in original).
[17] *Id.*
[18] *Id.*
[19] *Id.* at *4.
[20] *Id.* at *3.
[21] *Id.*
[22] *Id.* at *4.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC, 874 F.3d 1329, 1332 (Fed. Cir. 2017).
[27] *Id.* at 1333.
[28] *Id.* at 1337-38.

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First appeared as part of the conference materials for the
23rd Annual Advanced Patent Law Institute session
"Federal Circuit and SCOTUS Update"