

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	6
Core Wireless Licensing S.A.R.L. v. LG Electronics, Inc., 880 F.3d 1356 (Fed. Cir. Jan. 25, 2018).....	6
Finjan, Inc. v. Blue Coat Systems, Inc., No. 2016-2520, 2018 WL 341882 (Fed. Cir. Jan. 10, 2018).....	6
Two-Way Media Ltd. v. Comcast Cable Communications, LLC, 874 F.3d 1329 (Fed. Cir. Nov. 1, 2017)	7
Voter Verified, Inc. v. Election Systems & Software LLC, 887 F.3d 1376 (Apr. 20, 2018)	8
BSG Tech LLC, v. Buyseasons, Inc., 899 F.3d 1281 (Fed. Cir. Aug. 15, 2018)	9
SAP Am. Inc., v. Investpic, LLC, 898 F.3d 1161 (Fed. Cir. Aug. 2, 2018).....	11
Interval Licensing LLC v. AOL, Inc., 896 F.3d 1335 (Fed. Cir. July 20, 2018).....	11
Praxair Distrib. Inc. v. Mallinckrodt Hosp. Prods. IP Ltd., 890 F.3d 1024 (Fed. Cir. May 16, 2018).....	13
Berkheimer v. HP Inc., 881 F.3d 1360 (Fed. Cir. Feb. 8, 2018)	14
Aatrix Software, Inc. v. Green Shades Software, Inc., 882 F.3d 1121 (Fed. Cir. Feb. 14, 2018)	15
Exergen Corp. v. Kaz USA, Inc., 2018 WL 1193529 (Fed. Cir. Mar. 8, 2018)	16
Vanda Pharmaceuticals Inc. v. West-Ward Pharmaceuticals International Ltd., 887 F.3d 1117 (Fed. Cir. Apr. 13, 2018)	17
DISCLOSURE	19
Definiteness.....	19
BASF Corp. v. Johnson Matthey Inc., 2016-1770, 2017 WL 5559629 (Fed. Cir. Nov. 20, 2017)	19
MasterMine Software, Inc. v. Microsoft Corp., 874 F.3d 1307 (Fed. Cir. Oct. 30, 2017)	20
Intellectual Ventures I LLC v. T-Mobile USA, Inc., Nos. 2017-2434 & 2017-2435, 2018 U.S. App. LEXIS 24997 (Fed. Cir. Sept. 4, 2018)	20
Diebold Nixdorf, Inc. v. Int'l Trade Comm'n, 899 F.3d 1291 (Fed. Cir. Aug. 15, 2018)	21
Zeroclick, LLC, v. Apple Inc., 891 F.3d 1003 (Fed. Cir. June 1, 2018)	22
Enablement and Written Description	23
Knowles Electronics LLC v. Cirrus Logic, Inc., 883 F.3d 1358 (Fed. Cir. Mar. 2, 2018)	23

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General Hosp. Corp. v. Sienna Biopharms. Inc., 888 F.3d 1368 (Fed. Cir. May 4, 2018)	24
Trustees of Boston Univ. v. Everlight Elecs. Co., 896 F.3d 1357 (Fed. Cir. July 25, 2018)	25
SECTION 102	27
On-Sale Bar	27
Helsinn Healthcare S.A. v. Teva Pharm. USA, Inc., 138 S.Ct. 2678 (June 25, 2018).	27
The Medicines Co. v. Hospira Inc., 881 F.3d 1347 (Fed. Cir. Feb. 6, 2018)	28
Standard of Review.....	29
Microsoft Corp. v. Biscotti, Inc., 878 F.3d 1052 (Fed. Cir. Dec. 28, 2017).....	29
Experimental Use	30
Polara Eng'g Inc. v. Campbell Co., 894 F.3d 1339 (Fed. Cir. July 10, 2018).....	30
Priority	31
Regents of the Univ. of California v. Broad Inst., Inc., No. 2017-1907, 2018 WL 4288968 (Fed. Cir. Sept. 10, 2018).....	31
OBVIOUSNESS	34
Droplets, Inc. v. E*Trade Bank, 887 F.3d 1309 (Fed. Cir. Apr. 19, 2018)	34
Acorda Therapeutics, Inc. v. Roxane Labs., Inc., Nos. 2017-2078 & 2017-2134, 2018 WL 4288982 (Fed. Cir. Sept. 10, 2018)	34
PTAB Burdens	36
E.I. DuPont de Nemours & Co. v. Synvina C.V., No. 2017-1977, 2018 WL 4390796 (Fed. Cir. Sept. 17, 2018).....	36
DSS Technology Management, Inc. v. Apple Inc., No. 2016-2523, 2018 WL 1439893 (Fed. Cir. Mar. 23, 2018)	37
Obviousness and Inherency	38
Monsanto Technology LLC v. E.I. DuPont de Nemours & Co., 878 F.3d 1336 (Fed. Cir. Jan. 5, 2018).....	38
Endo Pharm. Sols. Inc. v. Custopharm Inc., 894 F.3d 1374 (Fed. Cir. July 13, 2018)	39
Motivation to Combine.....	40
Bayer Pharma AG v. Watson Laboratories, Inc., 874 F.3d 1316 (Fed. Cir. Nov. 1, 2017)	40
Arctic Cat Inc. v. Bombardier Recreational Products Inc., 876 F.3d 1350 (Fed. Cir. Dec. 7, 2017).....	41

Sanofi v. Watson Laboratories Inc., No. 2016-2722, 2017 WL 5180716 (Fed. Cir. Nov. 9, 2017)	42
Secondary Considerations.....	43
American Innotek, Inc. v. United States, 706 Fed. Appx. 686 (Fed. Cir. Dec. 19, 2017)	43
Obviousness-Type Double Patenting.....	44
In re Janssen Biotech, Inc., No. 2017-1257, 2018 WL 503335 (Fed. Cir. Jan. 23, 2018)	44
UCB, Inc. v. Accord Healthcare, Inc., 890 F.3d 1313 (Fed. Cir. May 23, 2018).....	45
CLAIM CONSTRUCTION	48
In re Nordt Dev. Co., LLC, 881 F.3d 1371 (Fed. Cir. Feb. 8, 2018).....	48
Blackbird Tech LLC v. ELB Elecs., Inc., 895 F.3d 1374, (Fed. Cir. July 16, 2018). .	48
INFRINGEMENT.....	50
Divided Infringement.....	50
Travel Sentry, Inc. v. Tropp, 877 F.3d 1370 (Fed. Cir. Dec. 19, 2017)	50
DEFENSES	52
Implied Waiver and Standard-Setting Organizations	52
Core Wireless Licensing S.A.R.L. v. Apple Inc., 899 F.3d 1356 (Fed. Cir. Aug. 16, 2018)	52
Prosecution History Estoppel.....	53
Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc., Nos. 2016-2691 & 2017-1875, 2018 WL 4501536 (Fed. Cir. July 3, 2018, modified Sept. 20, 2018)	53
Inequitable Conduct	54
Gilead Sciences, Inc. v. Merck & Co., Inc., 888 F.3d 1231 (Fed. Cir. Apr. 25, 2018)	54
Energy Heating, LLC v. Heat On-The-Fly, LLC, 889 F.3d 1291 (Fed. Cir. May 4, 2018)	55
REMEDIES	58
Damages.....	58
Promega Corp. v. Life Techs. Corp., 2013-1011, 2017 WL 5242434 (Fed. Cir. Nov. 13, 2017)	58

Finjan, Inc. v. Blue Coat Systems, Inc., No. 2016-2520, 2018 WL 341882 (Fed. Cir. Jan. 10, 2018).....	59
Exmark Manufacturing Co. Inc. v. Briggs & Stratton Power Products Group, LLC, No. 2016-2197, 2018 WL 385497 (Fed. Cir. Jan. 12, 2018).....	60
Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc., Nos. 2016-2691 & 2017-1875, 2018 WL 4501536 (Fed. Cir. July 3, 2018, modified Sept. 20, 2018)	61
WesternGeco LLC v. Ion Geophysical Corp., 138 S.Ct. 2129 (June 22, 2018).....	62
Attorneys' Fee Awards.....	63
Inventor Holdings, LLC v. Bed Bath & Beyond, Inc., 876 F.3d 1372 (Fed. Cir. Dec. 8, 2017)	63
In re Rembrandt Techs. LP Patent Litigation, 899 F.3d 1254 (Fed. Cir. decided July 27, 2018, public opinion issued Aug. 15, 2018)	64
Stone Basket Innovations, LLC v. Cook Med. LLC, 892 F.3d 1175 (Fed. Cir. June 11, 2018)	65
NantKwest, Inc. v. Iancu, 898 F.3d 1177 (Fed. Cir. July 27, 2018) (en banc).....	67
PRACTICE AND PROCEDURE	69
Exclusive Jurisdiction.....	69
Xitronix Corp. v. KLA-Tencor Corp., 882 F.3d 1075 (Fed. Cir. Feb. 9, 2018), rehearing en banc denied 892 F.3d 1194 (Fed. Cir. June 15, 2018).....	69
Real Party in Interest.....	70
Applications in Internet Time, LLC v. RPX Corp., 897 F.3d 1336 (Fed. Cir. July 9, 2018)	70
Sovereign Immunity.....	73
Saint Regis Mohawk Tribe v. Mylan Pharmas. Inc., 896 F.3d 1322 (Fed. Cir. July 20, 2018)	73
Piercing the Corporate Veil	74
Mercasia USA, Ltd. v. Zhu, No. 3:17-CV-718 JD, 2018 WL 3833520 (N.D. Ind. Aug. 13, 2018)	74
Venue.....	75
In re Micron Technologies Inc., No. 2017-138, 2017 WL 5474215 (Fed. Cir. Nov. 15, 2017)	75
In re BigCommerce, Inc., No. 2018-120, 2018 WL 2207265 (Fed. Cir. May 15, 2018)	76
In re HTC Corp., No. 2018-130, 2018 WL 2123357 (Fed. Cir. May 9, 2018).....	78
In re ZTE (USA) Inc., No. 2018-113, 2018 WL 2187782 (Fed. Cir. May 14, 2018)	78
Privilege	79
In re Silver, 540 S.W.3d 530 (Tex. Sup. Ct. Feb. 13, 2018).....	79

PLEADING	81
Declaratory Judgment Standing.....	81
AIDS Healthcare Foundation, Inc. v. Gilead Sciences, Inc., No. 2016-2425, 2018 WL 2168658 (Fed. Cir. May 11, 2018)	81
Twombly/Iqbal	82
Nalco Co. v. Chem-Mod, LLC, 883 F.3d 1337 (Fed. Cir. Feb. 27, 2018)	82
PATENT TRIAL AND APPEAL BOARD	84
Oil States Energy Services, LLC v. Greene's Energy Group, LLC, 2018 WL 1914662 (U.S. Apr. 24, 2018).....	84
SAS Institute Inc. v. Iancu, No. 16-969, 2018 WL 1914661 (U.S. Apr. 24, 2018)....	86
Inter Partes Review Procedure: Interpreting SAS Institute.....	88
Adidas AG v. Nike, Inc., 894 F.3d 1256 (Fed. Cir. July 2, 2018).....	88
Alcatel-Lucent USA Inc. v. Oyster Optics, LLC, No. IPR2018-00070, 2018 WL 4191599 (P.T.A.B. Aug. 31, 2018).....	89
Inter Partes Review Procedure: Other	89
Wi-Fi One, LLC v. Broadcom Corp., 878 F.3d 1364 (Fed. Cir. Jan. 8, 2018) (en banc)	89
CRFD Research, Inc. v. Matal, 876 F.3d 1330 (Fed. Cir. Dec. 5, 2017).....	91
Knowles Electronics LLC v. Iancu, 886 F.3d 1369 (Fed. Cir. Apr. 6, 2018).....	92
Ericsson Inc. v. Intellectual Ventures I LLC, No. 2017-1521, 2018 WL 4055815 (Fed. Cir. Aug. 27, 2018)	92
In re Hodges, 882 F.3d 1107 (Fed. Cir. Feb. 12, 2018)	94
Effect of PTAB Ruling.....	95
Exmark Manufacturing Co. Inc. v. Briggs & Stratton Power Products Group, LLC, No. 2016-2197, 2018 WL 385497 (Fed. Cir. Jan. 12, 2018).....	95
Standing on Appeal.....	96
E.I. DuPont de Nemours & Co. v. Synvina C.V., No. 2017-1977, 2018 WL 4390796 (Fed. Cir. Sept. 17, 2018).....	96
JTEKT Corp. v. GKN Automotive Ltd., 898 F.3d 1217 (Fed. Cir. Aug. 3, 2018)....	97
DESIGN PATENTS	98
Design Patent Claim Construction	98
In re Maatita, No. 2017-2013, 2018 WL 3965892 (Fed. Cir. Aug. 20, 2018).....	98

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

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

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"