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A. Patent Eligibility (35 U.S.C. § 101)

1. Treatment Claims Reciting Specific and Unconventional Dosage Not Patent Ineligible

In *Natural Alternatives International, Inc. v. Creative Compounds, LLC*, 918 F.3d 1338 [No. 18-1295] (Fed. Cir. Mar. 15, 2019), the Federal Circuit reversed the district court's decision granting a motion for judgment on the pleadings, holding that claims in this case reciting methods of treatment were not directed to a natural law as the particular claims in this case require specific and unconventional dosage of a natural substance.

Natural Alternatives asserted several patents related to using a natural substance to "increase[e] the anaerobic working capacity of muscle and other tissues." Creative Compounds moved for judgment on the pleadings, alleging that the asserted claims were directed to a natural law and were thus patent ineligible under § 101. The district court granted Creative Compounds' motion.

On appeal, the Federal Circuit disagreed. The panel found that, under Natural Alternatives' proposed claim construction, the claims-at-issue embody not only the benefit of natural substances, but also actual administration of the substances in the specific dosage and manner claimed. As such, the claims in this case are treatment claims and are patent eligible. In addition, the panel held that the district court erroneously granted the motion for judgment on the pleadings under § 101, when there was no basis to conclude that the claimed methods of treatment in this case were well-understood, routine, and conventional under step two of the *Mayo/Alice* analysis.

Judge Reyna concurred in part and dissented in part. He agreed with the panel's decision to remand the case, but disagreed with the claim construction that the panel used, suggesting that the district court in this case should have independently construed the claimed methods of treatment before deciding § 101 issues at the pleading stage. (Ruohan (Jack) Li)

2. Claims Reciting Specific Method for Treating Specific Patients Found Patent Eligible

In *Endo Pharmaceuticals Inc. v. Teva Pharmaceuticals USA, Inc.*, 919 F.3d 1347 [No. 17-1240] (Fed. Cir. Mar. 28, 2019), the Federal Circuit reversed a decision of invalidity under 35 U.S.C. § 101, holding instead that the method of treatment claims were patent eligible for claiming an application of a natural relationship and not the natural relationship itself.

Endo's asserted patent taught a method for adjusting the oxymorphone dose in patients with renal impairment. Actavis, a co-defendant in the case, moved to dismiss Endo's infringement claims, arguing that the claims were ineligible as directed to a natural law under 35 U.S.C. § 101. The district court dismissed after finding the claims ineligible using the two-step *Alice/Mayo* framework.

On appeal, the Federal Circuit held that the claims were not directed to a natural law because they required using the results of kidney function testing to adjust the oxymorphone dose administered. That is, the claims were "directed to a specific method of treatment for specific patients using a specific compound at specific doses to achieve a specific outcome." The Court rounded out its analysis by comparing the claims to method claims from other cases (*CellzDirect*, *Ariosa*, *Mayo*) and found there was "no room for a different outcome"—the claims were directed to patent eligible subject matter. (Ryan V. McDonnell)

3. Trading Screen Displaying "Profits & Loss" Data Not Eligible for Patenting

In *Trading Technologies International, Inc. v. IBG LLC*, 921 F.3d 1378 [No. 17-2323] (Fed. Cir. April 30, 2019), the Federal Circuit affirmed the Board's decision, holding that Trading Technologies' U.S. Patent No. 7,783,556 was eligible for CBM review and the challenged claims were not patent eligible under 35 U.S.C. § 101.

The '556 patent relates to displaying market information on a screen and generating values that are derivatives of price, including profit and loss information, and then displaying these values along an axis on the display. IBG and others filed for CBM review of the '556 patent. The Board issued a final written decision finding the challenged claims are not patent eligible under § 101. Trading Technologies appealed.

On appeal, the Federal Circuit agreed that the '556 patent was eligible for CBM review. The Court explained that the challenged claims were directed to a "business problem" to provide traders additional information, such as profit and loss data, on an existing trading screen. The Court held that this was not a technological solution because it "improv[ed] the trader, not the functioning of the computer."

The Court also affirmed the Board's conclusion that the claims were directed to an unpatentable abstract idea of calculating and displaying information that "is nothing more than 'mere automation of manual processes using computers.'" The Court also held that the claims failed to recite an inventive concept because the claimed trading screen simply took the prior art trading screen and added profit and loss values along the axis. Accordingly, the Court concluded the claims were ineligible under § 101. (Marcus A.R. Childress)

4. Plausible, Specific Factual Allegations of Inventiveness Can Preclude Rule 12 Dismissal for Patent Ineligibility

In *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306 [No. 18-1817] (Fed. Cir. June. 25, 2019), the Federal Circuit vacated and remanded the district court's dismissal finding four patents ineligible under 35 U.S.C. § 101, instead holding that the patent owner's plausible, specific factual allegations of inventiveness precluded Rule 12 dismissal.

Cellspin asserted four patents, generally related to connecting a data capture device to a mobile device to allow a user can automatically publish content to a website, against several defendants. The defendants moved to dismiss under Rule 12, arguing that all four patents were patent ineligible under § 101. The district court granted the motions, finding that the asserted claims were directed to the abstract idea of "acquiring, transferring, and publishing data" and did

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