

Federal Circuit Patent Bulletin: *Advanced Ground Info. Sys., Inc. v. Life360, Inc.*

July 28, 2016

"In the case of computer-implemented functions, we require that the specification 'disclose an algorithm for performing the claimed function' [to satisfy the definiteness requirement of 35 U.S.C. § 112, ¶ 2 with respect to a means-plus-function element]."

On July 28, 2016, in *Advanced Ground Info. Sys., Inc. v. Life360, Inc.*, the U.S. Court of Appeals for the Federal Circuit (Moore, Mayer, Wallach*) affirmed the district court's judgment following the parties' stipulation that U.S. Patents No. 7,031,728 and 7,672,681, which related to a cellular communication system allowing users to visualize the locations and statuses of other users, were indefinite under 35 U.S.C. § 112, ¶ 2. The Federal Circuit stated:

If a claim element "contains the word 'means' and recites a function," this creates a presumption that the claim is in means-plus-function form under 35 U.S.C. § 112, ¶ 6. "That presumption falls, however, if the claim itself recites sufficient structure to perform the claimed function." "[T]he failure to use the word 'means' also creates a rebuttable presumption—this time that § 112, para. 6 does not apply." However, "if the challenger demonstrates that the claim term fails to recite sufficiently definite structure or else recites function without reciting sufficient structure for performing that function," this presumption maybe rebutted. "The standard is whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure." In determining whether this presumption has been rebutted, the challenger must establish by a preponderance of the evidence that the claims are to be governed by § 112, ¶ 6.

Here, although the asserted claims do not include the word "means," the district court determined that AGIS intended to invoke § 112, ¶ 6. . . . The term "symbol generator" invokes the application of § 112, ¶ 6 because it fails to describe a sufficient structure and otherwise recites abstract elements "for" causing actions, or elements "that can" perform functions. . . . The term is not used in "common parlance or by persons of skill in the pertinent art to designate structure," such that it connotes sufficient structure to avoid the application of 35 U.S.C. § 112, ¶ 6. . . . Irrespective of whether the terms "symbol" and "generator" are terms of art in computer science, the combination of the terms as used in the context of the relevant claim language suggests that it is simply an abstraction that describes the function being performed (i.e., the generation of symbols). Finally, the claim term "symbol generator," by itself, does not identify a structure by its function, nor do the asserted

claims suggest that the term “symbol generator” connotes a definite structure. Accordingly, because the term “symbol generator” does not describe anything structural, the district court was correct to conclude that the asserted claims which recite the term “symbol generator” are subject to 35 U.S.C. § 112, ¶ 6.

Because the claim term “symbol generator” is a means-plus-function term as described by paragraph 6 of § 112, we must “construe the disputed claim term by identifying the corresponding structure, material, or acts described in the specification to which the claim term will be limited.” If a patentee “employs means-plus-function language in a claim, [the patentee] must set forth in the specification an adequate disclosure showing what is meant by that language.” “If the specification does not contain an adequate disclosure of the structure that corresponds to the claimed function, the patentee will have failed to particularly point out and distinctly claim the invention [under § 112, ¶ 2], which renders the claim invalid for indefiniteness.”

We agree with the district court’s determination that the “term ‘symbol generator’ is indefinite.” . . . “[I]n a means-plus-function claim in which the disclosed structure is a computer[] or microprocessor[] programmed to carry out an algorithm, [as is the case here], the disclosed structure is . . . [a] special purpose computer programmed to perform the disclosed algorithm.” In the case of computer-implemented functions, we require that the specification “disclose an algorithm for performing the claimed function.” The specification can express the algorithm “in any understandable terms including as a mathematical formula, in prose, . . . as a flow chart, or in any other manner that provides sufficient structure.”

The specifications of the patents-in-suit do not disclose an operative algorithm for the claim elements reciting “symbol generator.” The function of generating symbols must be performed by some component of the patents-in-suit; however, the patents-in-suit do not describe this component. Although the specification of the ’728 patent suggests that these symbols are generated via “a map database and a database of geographically referenced fixed locations . . . with a specified latitude and longitude[,] . . . [and] [a] database with the constantly updated GPS location,” this only addresses the medium through which the symbols are generated. A patentee cannot claim a means for performing a specific function and subsequently disclose a “general purpose computer as the structure designed to perform that function” because this “amounts to pure functional claiming.” Accordingly, because the specifications of the patents-in-suit do not disclose sufficient structure for the “symbol generator” function and the asserted claims include this term, the asserted claims are indefinite under 35 U.S.C. § 112, ¶ 2.