

Federal Circuit Patent Bulletin: *Affinity Labs of Texas, LLC v. DirecTV, LLC*

September 26, 2016

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On September 23, 2016, in *Affinity Labs of Texas, LLC v. DirecTV, LLC*, the U.S. Court of Appeals for the Federal Circuit (Prost, Bryson,* Wallach) affirmed the district court's dismissal of Affinity's suit alleging infringement of U.S. Patent No. 7,970,379, which related to streaming regional broadcast signals to cellular telephones located outside the region served by the regional broadcaster, due to patent ineligible subject matter under 35 U.S.C. § 101. The Federal Circuit stated:

The Supreme Court has devised a two-stage framework to determine whether a claim falls outside the scope of section 101. The prescribed approach requires a court to determine (1) whether the claim is directed to a patent-ineligible concept, i.e., a law of nature, a natural phenomenon, or an abstract idea, and if so, (2) whether the elements of the claim, considered "both individually and 'as an ordered combination,'" add enough to "'transform the nature of the claim' into a patent-eligible application." In the context of claims that are challenged as containing only abstract ideas, those two stages are typically referred to as the "abstract idea" step and the "inventive concept" step.

The "abstract idea" step of the inquiry calls upon us to look at the "focus of the claimed advance over the prior art" to determine if the claim's "character as a whole" is directed to excluded subject matter. The "inventive concept" step requires us to look with more specificity at what the claim elements add, in order to determine "whether they identify an 'inventive concept' in the application of the ineligible subject matter" to which the claim is directed. We have acknowledged that "precision has been elusive in defining an all-purpose boundary between the abstract and the concrete." The inquiry is not an unbounded one, however. This court has applied the two-stage *Mayo/Alice* inquiry in numerous cases during the four years since the Supreme Court's decision in *Mayo*, and those decisions have provided substantial guidance in determining whether claims are unpatentable under the "abstract idea" rubric. Viewing this case in light of the principles set forth by the Supreme Court and applied by this court, we are persuaded that the claims at issue in this case fall on the unpatentable side of the line.

The concept of providing out-of-region access to regional broadcast content is an abstract idea, as that term is used in the section 101 context. It is a broad and familiar concept concerning information distribution that is untethered to any specific or concrete way of implementing it. The practice of conveying regional content to out-of-region recipients has been employed by nearly every form of media that has a local distribution. It is not tied to any particular technology and can be implemented in myriad ways ranging from the low-tech, such as by mailing copies of a local newspaper to an out-of-state subscriber, to the high-tech, such as by using satellites to disseminate broadcasts of sporting events. As the magistrate judge noted, such out-of-region broadcasts have been commonplace since the late 20th century, in the form of systems delivering local radio and television broadcasts of sporting events to a national audience. . . .

[N]othing in claim 1 . . . is directed to how to implement out-of-region broadcasting on a cellular telephone. Rather, the claim is drawn to the idea itself. To be sure, the '379 patent claims the wireless delivery of regional broadcast content only to cellphones. In that sense, the claims are not as broad as the abstract idea underlying them, which could apply to the delivery of out-of-region content to any electronic device. That restriction, however, does not alter the result. All that limitation does is to confine the abstract idea to a particular technological environment—in this case, cellular telephones. [M]erely limiting the field of use of the abstract idea to a particular existing technological environment does not render the claims any less abstract. . . . The patent in this case is not directed to the solution of a “technological problem,” nor is it directed to an improvement in computer or network functionality. Instead, it claims the general concept of out-of-region delivery of broadcast content through the use of conventional devices, without offering any technological means of effecting that concept. . . .

In applying step two of the *Mayo/Alice* analysis, our task is to “determine whether the claims do significantly more than simply describe [the] abstract method” and thus transform the abstract idea into patentable subject matter. We look to see whether there are any “additional features” in the claims that constitute an “inventive concept,” thereby rendering the claims eligible for patenting even if they are directed to an abstract idea. Those “additional features” must be more than “well-understood, routine, conventional activity.”

Upon examining claim 1 and the specification of the '379 patent, we find no “inventive concept” that transforms the abstract idea of out-of-region delivery of regional broadcasting into a patent-eligible application of that abstract idea. The claim simply recites the use of generic features of cellular telephones, such as a storage medium and a graphical user interface, as well as routine functions, such as transmitting and receiving signals, to implement the underlying idea. That is not enough. “[G]eneric computer implementation” is insufficient to transform a patent-ineligible abstract idea into a patent-eligible invention. More generally, “simply appending conventional steps specified at a high level of generality” to an abstract idea does not make that idea patentable. The '379 patent does not provide an inventive solution to a problem in implementing the idea of remote delivery of regional broadcasting; it simply recites that the abstract idea of remote delivery will be implemented using the conventional components and functions generic to cellular telephones. . . .

In applying the principles emerging from the developing body of law on abstract ideas under section 101, this court has noted that claims that are “so result-focused, so functional, as to effectively cover any solution to an identified problem” are frequently held ineligible under section 101. That is true in this case, as the claims are drafted in a way that would effectively cover any wireless delivery of out-of-region broadcasting content to a cellular telephone via a network. The only limitations on the breadth of the result-focused, functional claims in this case are (1) that the application used by the cellular telephone must be wirelessly downloadable, and (2) that the cellular telephone must have a graphical user interface display that allows the user to select the regional broadcasting channel. Those additional limitations describe purely conventional features of cellular telephones and the applications that enable them to perform particular functions. They therefore do not meaningfully limit the scope of the claims. We conclude that the claims of the ‘379 patent are drawn to an abstract idea and therefore fail to meet the standard for eligibility under section 101.