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EDVA Judge Rules That Geolocation Patents Are Invalid Under 35 U.S.C. § 101

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On September 18, in identical opinions issued in separate cases against Google and Apple, EDVA District Judge Michael Nachmanoff ruled that four patents directed toward geolocation of mobile devices claimed patent-ineligible subject matter under 35 U.S.C. § 101. ***Geoscope Technologies PTE, LTD. v. Apple Inc., Case No. 1:22CV1373, 2023 U.S. Dist. LEXIS 165795 (E.D.Va. Sept. 18, 2023); Geoscope Technologies PTE, LTD. v. Google LLC, Case No. 1:22CV1331, 2023 U.S. Dist. LEXIS 165802 (E.D.Va. Sept. 18, 2023).***

Geoscope Technologies sued Apple and Google for infringement of a total of six patents addressing geolocation of a mobile device. Geolocation is the ability of a mobile device to determine its own location in order for a user to take advantage of location-based internet services. After the court conducted claim construction of disputed claim terms, the parties in both cases agreed to stipulated judgments of noninfringement and invalidity that resolved the claims on two patents. Apple and Google then moved for judgment on the pleadings under Fed. R. Civ. P. 12(c), arguing that the asserted claims of the remaining four patents were directed to abstract ideas that were not eligible for patenting under 35 U.S.C. § 101.

Patent eligibility under Sec. 101 is assessed under the well-known two-set approach set forth in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014). First, the court determines whether the patents are directed to a patent-ineligible concept, such as a law of nature or an abstract idea, by asking what the patent asserts to be the focus of the claimed advance over existing technology. If the patent is directed to patent-ineligible subject matter, the court then looks to the claim limitations to determine whether the claims contain an "inventive concept" that "transforms" the claimed abstract idea into patent eligible subject matter.

Three of the patents asserted by Geoscope were in the same patent family because they shared the same patent specification, and Geoscope asserted infringement of nine different claims from those three patents. As often occurs in a Sec. 101 challenge, Apple and Google alleged that one claim was representative of all nine asserted claims, and so the court need only address whether the representative claim satisfied Sec. 101.Geoscope pushed back on that argument, identifying three categories of claims that were distinct from the representative claim identified by the defendants. Judge Nachmanoff agreed with Geoscope, ruling that while the nine claims were "substantially similar," references to mathematical components, circuitry and grid points distinguished some claims from the representative claim. Accordingly, the court addressed the distinguishing categories of each claim in its analysis.

Applying step one of the *Alice* test, the court found that the principal steps of all of the claims were "broad and generic," claiming the basic steps of providing a database of previously-collected data, collecting and modifying other data and comparing the modified data with data in the database. The court noted that such activities were directed to the basic function of collecting and analyzing data to determine location, which humans have done throughout history and that the Federal Circuit has consistently concluded that merely collecting and analyzing of data is directed to an abstract concept.

The shortcoming in the Geoscope patents was the lack of any specificity in the claim language. Throughout the opinion, the court faulted Geoscope for failing to identify how the patent claims recited a specific technological improvement. Unlike patent claims that the Federal Circuit has found satisfy Sec. 101, the Geoscope patents failed to recite a specific, concrete improvement in technology.

Geoscope pointed to statements in the patent specification that the patents improved on conventional geolocation methods by modifying data to account for disparities between data collected outdoors with data collected indoors. The problem with that argument, the court held, was that the claim language itself was not so limited. Rather, the claims were written in extremely broad terms without any specificity regarding how to carry out the claimed steps. "[B]y its plain language, the claim would accord patent protection to any method of collecting, modifying and comparing data to determine the location of a mobile device." The court criticized each category of claims as written with "result-oriented generality" that did not explain *how* to accomplish the claimed steps.

On *Alice* step two, Geoscope primarily argued that the modification of data supplied the required inventive concept. The court rejected that argument, ruling that Geoscope had failed to identify facts showing that modifying data as recited in the claims required any specific technological improvement. The references to mathematical concepts, grid points, circuitry or transmitters outside the network in some claims likewise did not supply an inventive concept because the patents did not specify how those items provided a specific technological improvement. In short, Geoscope identified no claim element that amounted to "significantly more" than the abstract idea of determining location based on data.

There are a couple of takeaways from the *Geoscope* cases for litigants in the EDVA. First, the opinion's analysis is a good example of an application of the *Alice* test, particularly in the context of computer technology. In the course of his opinion, Judge Nachmanoff discusses virtually every significant Federal Circuit opinion in this area. The case is likely to be appealed, but Judge Nachmanoffs's opinion will serve as a good roadmap to any patent litigator bringing or facing a Sec. 101 motion.

Second, the *Geoscope* cases are a good example of the use of Rule 12(c). A Rule 12(c) motion is reviewed under the same standard as a Rule 12(b)(6) motion but can be brought later in the case, after responsive pleadings have been filed. It is a good procedural tool for raising legal defenses after preliminary issues, such as claim construction in a patent case, have been decided, without waiting to complete full discovery to bring a motion for summary judgment.

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