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SYSTEM FOR FILTERING INTERNET CONTENT MAY BE PATENT-ELIGIBLE SUBJECT MATTER UNDER 35 U.S.C. §101

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The Court of Appeals for the Federal Circuit has found that a system for filtering Internet content may be patent-eligible under 35 U.S.C. §101. In *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, No. 15-1763 (Fed. Cir. June 27, 2016), the Court of Appeals for the Federal Circuit held that BASCOM adequately alleged that the claims satisfy the two-step Alice test for determining whether subject matter is patent-eligible under 35 U.S.C. §101. The Federal Circuit vacated the district court's order granting AT&T's motion to dismiss, and remanded so that the case can proceed at the district court.

Background

BASCOM Global Internet Services, Inc. (BASCOM) sued AT&T Mobility LLC (AT&T) in the U.S. District Court for the Northern District of Texas for infringement of claims of U.S. Patent No. 5,987,606. AT&T moved to dismiss BASCOM's complaint, on the basis that each claim of the '606 patent was invalid under 35 U.S.C. §101. The district court found that, under step one of the two-step Alice test, the claims were "directed to the abstract idea of filtering content on the Internet." Also, the district court found that, under step two of the Alice test, "the claims do not recite a sufficiently inventive concept to make them much more than an attempt to monopolize the abstract idea itself." The district court granted AT&T's motion to dismiss, and held that claims of the '606 patent were invalid as a matter of law under 35 U.S.C. §101. BASCOM appealed.

Claim 1 of the '606 Patent is:

> 1. A content filtering system for filtering content retrieved from an Internet computer network by individual controlled access network accounts, said filtering system comprising:
> a local client computer generating network access requests for said individual controlled access network accounts;
> at least one filtering scheme;
> a plurality of sets of logical filtering elements; and
> a remote ISP server coupled to said client computer and said Internet computer network, said ISP server associating each said network account to at least one filtering scheme and at least one set of filtering elements, said ISP server further receiving said network access requests from said client computer and executing said associated filtering scheme utilizing said associated set of logical filtering elements.

AT&T argued that the claims of the '606 patent are directed to the abstract idea of "filtering content" or "filtering Internet content," which are well-known methods of organizing human activity. AT&T argued that the idea of "filtering content" or "filtering Internet content" is similar to the idea of intermediated settlement which was held to be an abstract idea in *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014).

BASCOM argued that the claims of the '606 patent are not directed to an abstract idea, because they address a problem regarding computer networks and provide a solution rooted in computer technology, similar to the claims at issue in *DDR Holdings, LLC v. Hotels.com*, L.P., 773 F.3d 1245 (Fed. Cir. 2014).

Discussion

35 U.S.C. §101 indicates that a patent may be obtained for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." The three judicially recognized exceptions are laws of nature, natural phenomena, and abstract ideas. *Diamond v. Diehr*, 101 S. Ct. 1048 (1981).

The present framework regarding patent eligibility determinations is derived from *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289 (2012) and *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014).

In *Mayo* and *Alice*, the Supreme Court explained a two-step test for determining whether subject matter is patent-eligible, now known as the Alice test. The Alice test is utilized by the Federal Circuit in *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*.

Step one is to determine if claims are directed to one of the judicially recognized exceptions: laws of nature; natural phenomena; and abstract ideas. *See Alice*, 134 S. Ct. at 2355, and *Mayo*, 132 S. Ct. at 1296-1297.

If the answer to step one is in the affirmative, step two is to "search for an inventive concept – *i.e.*, an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the ineligible concept itself." *Alice*, 134 S. Ct. at 2355. In step two, "consider the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." *Id*. (quoting *Mayo*, 132 S. Ct. at 1298, 1297). If a claim contains an inventive concept sufficient to transform a claimed law of nature, natural phenomena, or abstract idea into a patent-eligible application, then the claim recites patent-eligible subject matter under 35 U.S.C. §101.

Utilizing the *Mayo* and *Alice* principles, the Federal Circuit in *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC* noted that the claims of the '606 patent "do not readily lend themselves to a step-one finding that they are directed to a nonabstract idea. We therefore defer our consideration of the specific claim limitations' narrowing effect for step two." The Federal Circuit found that: (Step 1) the claims at issue are directed to an abstract idea of filtering content; and (Step 2) the claims at issue "carve out a specific location for the filtering system … and require the filtering system to give users the ability to customize filtering," and do not preempt the use of the abstract idea of filtering content on the Internet.

The Federal Circuit found nothing on the record that refutes BASCOM's allegations that the claims transform the abstract idea of filtering content into a practical application of that abstract idea. The Federal Circuit vacated the district court's order granting AT&T's motion to dismiss, and remanded so that the case can proceed at the district court. In view of the above, a claim directed to a computer-related abstract idea may be patent-eligible subject matter under 35 U.S.C. §101, when the claim sets forth an ordered combination of limitations which transform the abstract idea into a particular, practical application of that abstract idea.

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