

# Seyfarth PTAB Blog



A legal look at Patent Trial and Appeal Board decisions and trends

## Information Network Patent Survives Motion to Dismiss Based on *Alice*

By Christopher A. Baxter

Treehouse Avatar LLC sued Valve Corporation in the District Court of Delaware, alleging infringement of U.S. Patent No. 8,180,858 (“the ‘858 patent”), titled “Method and System for Presenting Data Over a Network Based on Network User Choices and Collecting Real-Time Data Related to Said Choices.” Valve Corporation moved for dismissal of the suit alleging that the ‘858 patent is invalid as directed to an abstract idea under *Alice Corp. v. CLS Bank*. The court disagreed, and denied the motion to dismiss.

The ‘858 patent addresses the need for increasing network site loyalty by presenting users with audio and visual image data “indicative of the individuality of the network user and for collecting market research data in real-time.” *Treehouse Avatar LLC v. Valve Corp.*, No. 15-427-SLR, at \*20 (D. Del. Mar. 22, 2016). According to the ‘858 patent, data is presented to a user based on user choices made when the user is utilizing a character-enabled network site. Simply put, the ‘858 patent allows a user of a character-enabled network site to customize a virtual character (i.e., avatar) based on the user’s preferences. Claim 1 of the ‘858 patent recites:

A method of collecting data from an information network in response to user choices of a plurality of users made while accessing said information network and navigating character-enabled (CE) network sites on said information network, said method comprising:

storing a plurality of character data in a database accessible by said CE network site;

storing a plurality of character-attribute data in said database;

linking the character attribute data with one or more of the character data;

presenting to a user interface, one or more character data defining one or more characters for selection by the user;

upon selection of a character by the user, presenting in real time to the user interface, the selected character along with at least one of the character-attribute data linked to the selected character for selection by the user;

upon selection of a character attribute by the user, presenting in real time to the user interface, the selected character including the selected character attribute; and

tallying the number of times the selected character attribute has been selected by a plurality of users.

The court applied the two-step analytical framework of *Alice Corp. v. CLS Bank* to decide whether Treehouse Avatar plead a claim (i.e., infringement of the '858 patent) upon which relief could be granted. In other words, the court analyzed whether the '858 patent was valid under *Alice* to determine whether the case should be dismissed.

First, the court determined whether the claims of the '858 patent are directed to an abstract idea. Valve Corp. argued the '858 patent's claims are directed to the abstract idea of providing current and potential customers with the opportunity to customize a character (i.e., an avatar) by selecting attributes and, thereafter, keeping a list of selected character attributes. In addition, Valve Corp. analogized the claimed subject matter of the '858 patent to "participating in a mall focus group, wherein a person present choices of brands or products to potential customers and tallies the choices." The court disagreed. The court disposed of Valve Corp.'s analogy, stating it failed to represent the claims as a whole and, therefore, the analogy failed to encompass the paramount Internet aspects of the claims. In addition, the court reasoned the '858 patent's claims "are directed to users selecting and modifying customizable characters (avatars) in real time on [character enabled] sites, as well as storing and retrieving such characters within an information network." The court concluded the claims of the '858 patent are similar to those of *DDR Holdings v. Hotels.com* in that the claims of the '858 patent are "necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks."

Next, the court determined whether the claims of the '858 patent add significantly more to any underlying abstract idea. The court determined the claims are innovative and do not merely implement a computer in a routine and conventional manner. Specifically, the court stated the claims of the '858 patent "provide a specific series of steps used to customize a character to users' choices in real time (claims 1 and 9), communicate with other users through an information network including [character enabled] sites (claim 15), navigate to a different site with the customized character (claim 18), and operate [character enabled] sites for a plurality of users (claim 21)."

## Takeaways

It may be desirable for a patent holder to argue the claims as a whole, rather than individually addressing individual features of the claims. More often than not, it is the combination of claim elements that is patentable; it is rarely the case that a single element makes a claim patentable. By focusing on the claims as a whole, a patent holder may be able to discourage or dissuade the decision maker from analyzing each element separately in a manner that usually leads to the claims being deemed directed to an abstract idea and therefore invalid/unpatentable.

[Christopher A. Baxter](#) is an author of the Seyfarth PTAB Blog and Staff Attorney in the firm's Boston office. For more information, please contact a member of the [Patent Practice Group](#), your Seyfarth Shaw LLP attorney or Christopher A. Baxter at [cbaxter@seyfarth.com](mailto:cbaxter@seyfarth.com).

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