

Seyfarth PTAB Blog

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



Remote Software Application Survives *Alice* Challenge

By Patrick T. Muffo

Inventions directed to “pure software” have arguably had the most difficult time surviving *Alice* challenges. Software is often characterized as an “abstract idea” without more, and the inventive step requirement in *Alice* seems difficult to prove absent a significant technological advancement. The Northern District of Georgia recently rejected its special master in favor of allowing a network-based software patent survive a patentable subject matter challenge.

The case of *Tridia Corp. v. Sauce Labs, Inc.*, (Case No. 1:15-cv-2284, N.D. Georgia Sept. 28, 2016) analyzed a patent directed to “remote execution of computer programs over a network.” The invention was specifically directed to a problem found in demo programs where a purchaser would like to first sample a computer program before purchasing it. Previously, a user must download the demo program, install it, and then sample the program. The patent at issue allowed the user to remotely execute the program to sample it, removing several steps that may otherwise cause the purchaser’s interest in the program to wane, and therefore cause the purchaser not to buy the program.

The court first discussed how identifying what is an “abstract idea” is not an easy task, something the Supreme Court and lower courts have all had difficulty with. The court noted the patent owner defined the invention differently, as improving “computer function by allowing on demand control of a remote computer without requiring installation of a remote control program on the remote computer.”

Applying the first step of *Alice*, the court noted it is best to analogize the patent at issue against prior inventions determined to be “abstract ideas” based on the difficulty of defining what does, and does not, constitute an abstract idea. The court found no such analogous cases, concluding “Plaintiff’s patent is not directed to a mathematical algorithm or a longstanding fundamental economic or longstanding business challenge, such that its claims are clearly directed to an abstract idea.”

Even assuming the first *Alice* step was met, the court concluded the invention was directed to a “technological advance.” The patent “overcomes a flaw in existing technology—the inability to remotely install software on-demand without pre-installation.” The court therefore found, under either *Alice* step, that the claims are directed to patent-eligible subject matter, at least at the pleadings stage.

Takeaway:

This case involves a fairly typical *Alice* analysis, but emphasizes the point that an “abstract idea” is so poorly defined by

the case law that analogizing to what does, and does not, constitute an abstract idea is likely the best and simplest analysis. This presents somewhat of a “chicken and the egg” problem in that courts must set precedent to allow such analogizing, i.e., a plaintiff or defendant cannot analogize to that which has not been decided. Yet, with no direct comparisons between inventions, analogizing to past cases will allow more examples of the line between patentable and unpatentable subject matter.

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