

# Seyfarth PTAB Blog



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

## Data Transmission Patent Not Invalid Under *Alice*

By Christopher A. Baxter

Since the decision of *Alice v. CLS Bank*, courts have routinely invalidated patents for being directed to nothing more than abstract ideas with no inventive concept. However, there is light at the end of the tunnel for patent holders as recent decisions have begun to pull back the habitual invalidation of patents on § 101 grounds. One decision, *Core Wireless Licensing S.a.r.l. v. LG Electronics, Inc.* out of the Eastern District of Texas, found a patent directed to data transmission techniques not invalid based on the first step of the *Alice* framework.

Core Wireless Licensing asserted a single claim of U.S. Patent No. 7,804,850 (the “’850 Patent”) against LG Electronics, Inc. (“LG”). The ’850 Patent discloses techniques to minimize interference from multiple devices transmitting data simultaneously. The sole asserted claim recites:

21. An apparatus comprising:

a memory adapted to store computer program instructions and a virtual transmission time interval;

a wireless transceiver;

a processor adapted to:

check to determine whether the apparatus is transmitting data packets in a current air interface transmission time interval; and

for the case where it is determined that the apparatus is not transmitting in the current air interface transmission time interval, to cause the transmitter to transmit a next data packet after a predetermined period associated with the virtual transmission time interval has elapsed, wherein the next data packet comprises at least one protocol data unit and the virtual transmission time interval is an integer multiple of the current air interface transmission time interval.

LG contended the modification of time between subsequent transmissions by an integer multiple, as recited in claim 21 above, is nothing more than the abstract idea of traffic metering, similar to that performed at freeway onramps via traffic lights. The Court disagreed and held claim 21 passed the first step of the *Alice* framework, and was therefore not invalid under § 101.

The Court analyzed whether claim 21 is directed to an abstract idea or, instead, is directed to a concrete improvement in the functionality of the claimed device itself. The Court held claim 21 improves the functionality of the computer itself because it is directed to a specific type of packet traffic metering that is confined to, and solves problems arising in, mobile device networks.

In addition, the Court's holding rested upon a non-preemption finding. The Court concluded claim 21 is directed to a specific type of packet traffic metering confined to, and solving problems arising in, mobile device networks. To support this conclusion, the Court noted claim 21 is restricted to a wireless device with a processor and a memory, and is also restricted to the transmission of a protocol data unit by exactly an integer multiple of the current air interface transmission time interval.

## Takeaway

Courts are more routinely finding computer-related patents valid in the face of *Alice* challenges. If a patent holder is to succeed against an *Alice* challenge, the patent holder would be well served to paint the challenged claims in a narrow fashion and draw specific attention to preemption limiting factors in the claims.

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