

Adam Fowles in Law360 on Patent Indefiniteness in *MasterMine v. Microsoft*

By Adam C. Fowles | December 18, 2017

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At the end of October, in *MasterMine Software Inc. v. Microsoft Corp.*, the Federal Circuit Court of Appeals reversed a district court's determination that a system claim was invalid for indefiniteness. The Federal Circuit disagreed with the district court's conclusion that certain claims were indefinite for improperly claiming two different classes of subject matter. The court found that the claims informed those skilled in the art with "reasonable certainty" in conformity with the *Nautilus* guidance, specifically on the basis that one can determine when infringement occurs. ...

The Supreme Court's *Nautilus* decision did not purport to overturn all of the tools the Federal Circuit uses to determine indefiniteness. Rather, it overturned the standard to which the facts resulting from those tools is compared. The Federal Circuit has demonstrated in at least the *MasterMine* and *UltimatePointer* decisions that the tool of looking at whether a claim covers both an apparatus and a method of using the apparatus is still useful in answering the "reasonable certainty" question post-*Nautilus*. ...

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