Federal Circuit Holds a Business Method Claim Directed to a GUI to be Patent-Eligible ? Will the PTO Agree'

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PRACTICES Intellectual Property, Patents, Patent Office Trials

It's no secret the Federal Circuit and the United States Patent and Trademark Office ("PTO") have been inconsistent when it comes to determining the patent eligibility of claims directed to software, leaving patent practitioners guessing as to whether their software-based inventions are patentable. As it stands today, some district court judges and Federal Circuit panels have been very willing to find software-related inventions patent ineligible. Recently, in the *Trading Techs. Int'l, Inc. v. CQG, Inc.*("CQG") decision, the Federal Circuit dealt, yet again, with the question of whether software claims were patent-eligible.

In *CQG*, the CQG companies appealed the decision of the United States District Court for the Northern District of Illinois, which held the asserted claims of U.S. Patents No. 6,772,132 ('132 patent) and No. 6,766,304 ('304 patent) recited patent-eligible subject matter under 35 U.S.C. § 101. The dispute originally arose when patent owner Trading Technologies International, Inc. ("TT") asserted the '132 and '304 patents against CQG. CQG moved for a judgment as a matter of law, asserting the claims of the patents were directed to patent-ineligible subject matter. Denying CQGs motion, the district court held that the claims were not directed to an abstract idea, and also that the claims recited an inventive concept that was patent-eligible under § 101. *See Trading Techs. Int'l, Inc. v. CQG, Inc.*, No. 05-cv-4811, 2015, WL 774655 (N.D. Ill. Feb. 24, 2015)("Dist. Ct. op.").

The '132 and '304 patents claim methods and systems for the electronic trading of stocks, bonds, futures, options and similar products. *CQG* at 3. The patents are directed to solving problems that arise when a trader attempts to enter an order at a particular price but misses that price due to market movement before the order is entered and executed, as well as when trades are executed at different prices than intended due to rapid market movement. *Id*.

Accordingly, the '132 and '304 patents describe a trading system in which a graphical user interface displays the market depth of a commodity traded in a market, including a dynamic display for bids and asks in the market for the commodity, and a static display of prices corresponding to the bids and asks. *See* '132 patent col. 3, ll. 11–16; '304 patent col. 3, ll. 15–20.

The Federal Circuit considered claim 1 of the '304 patent as illustrative to the invention. In the patented method of claim 13, bid and ask prices are displayed dynamically along the static display, and the method includes displaying paired orders with the static display of prices. *See* '304 patent, claim 1.

Applying the two part test set forth in *Alice*, the Federal Circuit confirmed the district court. The district court found that these two patents improve upon existing graphical user interfaces that have no "pre-electronic trading analog," and "recite more than 'setting, displaying, and selecting' data or information that is visible on the [graphical user interface] device." Dist. Ct. op at *4.

Finding the claims were patent eligible under *Alice* Step 1, the district court determined that these patents solve problems with prior graphical user interface devices in the computerized trading area,

specifically improving speed, accuracy and usability. The district court explained the patents do not merely claim displaying information on a graphical user interface, but rather require a specific, structured graphical user interface paired with a prescribed functionality in order to address and resolve a specifically identified problem. *Id*.

The Federal Circuit agreed with the district court's step 1 analysis, but added further that the graphical user interface does not represent a long known idea, which is a threshold criterion of abstract idea ineligibility.

After having found the claims of the '132 and '304 patents patent eligible under *Alice* Step 1, the district court continued the analysis under *Alice* Step 2, agreeing with the district court determination that the recited claims recite an inventive concept. Dist. Ct. op at *8. Specifically, the district court identified the static price index as an inventive concept that allows traders to more accurately and efficiently place trades. *Id*. Further, the district court concluded that the specific structure and associated functionality of the graphical user interface removed the claims from being abstract ideas.

Finally, the Federal Circuit found "the district court's rulings [to be] in accord with precedent", juxtaposing precedent favorable and precedent non favorable to CQG. CQG at 7–9.

This case solidifies the line drawn by *DDR Holdings* that claims "necessarily rooted in computer technology" will be deemed patent-eligible. This is so even if the underlying business, like that of TT, is rooted in an area that might otherwise be deemed a covered business method. In fact, the PTO seems to agree that the '304 patent is just that, and has granted institution of CBM review on these patents. *See, e.g.*, CBM2015–00161.

CQG is an interesting opinion for multiple reasons. First, given the non-precedential nature of this opinion, it's possible that the Federal Circuit thought it of no consequence with respect to the current body of law surrounding *Alice*. If that is true, it brings into question whether the precedential cases relied on by *CQG* provide sufficient guidelines. Another possibility is whether the Federal Circuit was simply concerned with the conflict that might arise if it issued a precedential opinion that reached a conclusion opposite that of the PTO. Presumably, the Federal Circuit was aware of the PTO's decisions to institute trial over the '304 patent at the time of drafting—perhaps then the Federal Circuit wanted to send an advisory message to the PTO, which inherently found no technological invention given the CBM institution. Indeed, the Federal Circuit recently admonished the PTO for using an inappropriate definition of what constitutes a CBM patent. *See, e.g., Unwired Planet, LLC v. Google Inc.*, 841 F.3d 995 (Fed. Cir. 2016).

Regardless of the motivations of the Federal Circuit, it will be interesting to see whether the PTO continues its CBM review of these patents and, if so, how these two decisions will be rectified. While *CQG* is only a non-precedential opinion, practitioners will be watching and hoping for more guidance from both the PTO and the Federal Circuit as to subject-matter eligibility of software—especially in more business-method oriented technology. Reconciliation between these two decisions would be a good start.