The Few, The Proud, The Patent-Eligible Software Claims

By Adam C. Fowles, Gavin D. George | October 31, 2016

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It is no secret that it is difficult for software technology patent claims to be deemed subject matter eligible under 35 U.S.C. § 101 on appeal, as only a handful of cases involving software technology have passed § 101 scrutiny by the Federal Circuit since the Supreme Court's decision in *Alice v. CLS Bank* : Until recently, there have been only three such cases: *DDR Holdings, LLC v. Hotels.com, L.P., Enfish LLC v. Microsoft Corp.*, and *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*. However, now a fourth case may be added to those ranks. On September 13, 2016, the Federal Circuit decided *McRO, Inc. v. Bandai Namco Games America Inc.*, ruling that claims directed to automating part of a preexisting 3-D animation method were patent-eligible under § 101. Below is a review of the McRO case facts, the legal reasoning of the Federal Circuit in reaching its conclusion, and some new practical takeaways for claim drafting and prosecution before the U.S. Patent Office.

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