

## Castles Made of Sand

**Free Stream Media Corp., v. Alphonso Inc., No. 2019-1506, (Fed. Cir. May 11, 2021)**

By: Ifti Zaim & Peter Danos | May 28, 2021

The Court of Appeals for the Federal Circuit ("CAFC") held a patent directed to delivering targeted advertising via bypassing mobile devices' security systems was directed to an abstract idea, and thus invalid under 35 U.S.C. §101. This decision reinforces that neither unclaimed functionalities, nor vague, results-centric descriptions give rise to patentability. Free Stream Media Corporation, d/b/a Samba TV ("Samba"), a major player in the digital advertising industry, owns U.S. Pat. No. 9,386,356 ("the '356 Patent"), titled "Targeting with Television Audience Data Across Multiple Screens." The system targets advertisements to a user's mobile phone based on data gathered from a user's television. The District Court had previously found the claims to be patent-eligible. Alphonso then obtained summary judgment of noninfringement, and the parties each appealed.

The Supreme Court's two-step *Alice* framework for evaluating patent eligibility under § 101 considers (1) whether the challenged claims are directed to a patent ineligible concept, and if so; (2) whether the challenged elements of the claim individually or as an ordered combination transform the nature of the claim into a patent-eligible application. Samba asserted that the patent's claimed advance was its "ability to pierce the sandbox of a mobile device" without action or intervention by the user. *Id.* at 16. Normally, having a software application pass information between a user's mobile phone and another networked device (e.g. a smart TV) would be prevented by a "security sandbox," which is a software construct within which each application runs. The sandbox is designed to prevent applications from accessing off-limits parts of the device they are running on, and often tightly restricts network access. An application could request the user's permission to access functions outside the sandbox, but a cornerstone of Samba's system seems to be that it only requests the user's permission once, from their Smart TV, necessitating piercing the sandbox of the user's mobile device. However, the claims neither identified any particular or novel mechanism for doing so (presumably because they are trade secrets), nor any improvement to the computers' functionality, and thus the claims were held directed to an abstract idea.

The '356 Patent fared no better at *Alice* step two. Samba argued that the claims enabled the devices to function in an unconventional manner patent by overriding their "routine and conventional inability to share information with each other." However, the Court reinforced that "an abstract idea is not patentable if it does not provide an inventive solution to a problem in implementing the idea," but the claims "simply recite[d] that the abstract idea will be implemented using conventional components and functions generic to the technology." Likewise, the Court held that the patent's methods of bypassing the security sandbox relied on generic computing components in a conventional arrangement. Thus, like so many Internet-related patents, Samba's turned out to be just another castle made of sand, swept away with the first tide.