Alice Still Decimating "Groundbreaking" Developments

Cardionet, LLC v. Infobionic, Inc., 2020-2123, 2020-2150 (Fed. Cir. Oct. 29, 2021) & _USADATA Inc., v. DataWidget LLC_, cv-21-00526 (D. Ariz. November 2, 2021)

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The Supreme Court's 2014 decision in *Alice Corp. v. CLS Bank International* continues to trip up patentees, as the Federal Circuit, ("CAFC"), and the District of Arizona invalidated two separate patents for claiming unpatentable subject matter last week.

Cardionet involved U.S. Patent No. 7,099,715 ("the '715 patent"), which was generally "directed to an improved heart monitoring device." The district court entered summary judgment that defendant did not infringe the claims of the '715 patent but denied judgment on the pleadings that the '715 patent was invalid under §101 finding an inventive concept under step two of *Alice*. The parties filed cross appeals, and the CAFC reversed on both grounds. Regarding *Alice* Step Two, the CAFC analyzed the district court's determination that the '715 patent recited an inventive concept because it satisfied the machine-or-transformation test, but, citing to past decisions, the CAFC determined that "[s]atisfying the machine-or-transformation test, by itself, is not sufficient to render a claim patent-ineligible" because not all "transformations or machine implementations infuse an otherwise ineligible claim with an 'inventive concept.'" Because the '715 patent, though tied to a machine, focuses on "preprocessing a cardiac signal" using a "T wave filter," the CAFC found that "[a]t bottom, filtering the data requires only basic mathematical calculations . . . calculations, even if 'groundbreaking,' are still directed to an abstract idea."

DataWidget invalidated U.S. Patent No. 10,102,557 ("the '557 patent"), which is directed to a software plugin, and claims a "system for searching and purchasing data subsets from a data seller" and comprises three main components: "(1) an ecommerce vendor, (2) a data seller, and (3) a data extraction widget." The district court invalidated the patent under §101 stating "[t]he Court detects no inventive concept in Defendants' claims" where "[t]he Patent essentially computerizes a longstanding economic practice." In contrast to the CAFC, the district court focused its analysis on novelty and the '557 patent's lack thereof. The court found that the patents claimed "conventional protocols," that are "well-known in the art" and perform "generic functions" which are "not new . . . [because a]s far back as the pre-Civil War era, humans have acquired geographic and demographic data and used a printing service to reach a targeted audience."

Patentees continue to urge the courts and Congress to stop the carnage flowing from *Alice*. While the Supreme Court has denied certiorari in several high-profile eligibility cases since its *Alice* decision, as recently as November 1, 2021 (*see e.g. ENCO Systems v. DaVincia*, No. 2021-456 (Fed. Cir. 2021) (see cert denied here)), patentees remain hopeful that the Supreme Court will take cert in *Am. Axle & Mfg. v. Neapco Holdings*, 2018-1763 (Fed. Cir. Oct. 3, 2019) where the CAFC was evenly divided on whether to grant rehearing *en banc* and the six dissenting judges stated that "[t]he court's rulings on patent eligibility have become so diverse and unpredictable as to have a serious effect on the innovation incentive in all fields of technology." *Id.* And, Representative Massey just introduced a bill (Restoring America's Leadership in Innovation Act of 2021) that, among other things, would abolish *Alice* and the abstract idea exclusion for patent eligibility. We shall see if these efforts to stem the *Alice* decision flow.