

## Show Me, Don't Tell Me: Conclusory Allegations Not Enough to Stop Dismissal

*Int'l Bus. Machines Corp. v. Zillow Grp., Inc.*, – F.4th – (Fed. Cir. 2024)

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In *IBM Corp. v. Zillow Group, Inc.*, the Federal Circuit affirmed a district court decision dismissing IBM's patent infringement suit despite an alleged claim construction dispute, which district courts are required to resolve (or affirmatively adopt the non-movant's construction). IBM asserted that Zillow infringed two of its patents directed at displaying search results to users, and Zillow moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6) arguing that the claims were directed to ineligible subject matter under 35 U.S.C. § 101.

Zillow argued that the patents were ineligible because they were directed toward an abstract idea: a method of displaying search results that improved only user experience (as opposed to actual technological improvements). IBM argued that there was a claim construction dispute in front of the district court that precluded granting a Rule 12 motion. Specifically, IBM argued that the patent claimed a method that utilized a "user context vector" that allowed the system to "improve in its ability to serve individual needs and evolve to an ability to suggest preferred answers to groups of users." Zillow did not provide an alternative construction to IBM's proposed construction and stated that it "embraced" IBM's construction. Because of that, the district court found there was no claim construction dispute to resolve. The Federal Circuit agreed and affirmed the finding that the patents were invalid under Section 101.

Judge Stoll dissented from the Federal Circuit opinion, however, arguing that if the majority actually applied IBM's proposed claim construction (as opposed to merely taking Zillow's word for it), it would have found that IBM's proposed claim construction would have affected the patent eligibility analysis under Section 101. She noted that the district court (and the majority) viewed the claims as having a different scope than IBM. Thus, the district court erred by taking Zillow's word that there was no dispute instead of analyzing or adopting IBM's proposed construction. This error was prejudicial, Judge Stoll contends, because "IBM ha[d] demonstrated that its claims plausibly recite an inventive concept under its proposed construction." The majority addressed Judge Stoll's dissent in a footnote, explaining that even if the district court erred, it was a harmless error because the underlying concept of the claims merely encompasses the abstract idea of displaying and manipulating data.

This case serves as a cautionary tale when addressing a Section 101 issue early in a matter. Simply alleging that there are claim construction issues, by itself, will likely not be sufficient to avoid dismissal under Rule 12. A patentee needs to provide additional detail as to how its proposed claim construction would result in a favorable Section 101 analysis when opposing a motion to dismiss.

A challenger, despite Zillow's ability to merely state it "embraced" the patentee's claim construction here, may want to heed Judge Stoll's dissent and be prepared to explain why adopting a patentee's claim construction (if the patentee does raise that issue) would not affect a Section 101 argument brought on a Rule 12 motion, rather than merely stated in a conclusory fashion that they have adopted it.

