



Federal Circuit Affirms Rule 12(b)(6) Dismissal Because the Patent Was Directed to the Patent-Ineligible Abstract Idea of Teaching a User to Play the Guitar

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Plaintiff Ubisoft sued Yousician Oy for infringing U.S. Patent No. 9,839,852. The patent is directed to an interactive game for learning to play the guitar, which Ubisoft developed and published as “Rocksmith.” The sole independent claim recites a computer program that provides a visual representation of a song; receives an audio signal of the user playing that song on a guitar; assesses the user’s performance; and, based on that assessment, changes the difficulty level of the representation and generates a “mini-game” to improve the user’s performance. The district court found that this claim was directed to the abstract idea “of teaching guitar by evaluating a user’s performance and generating appropriate exercises to improve that performance.” It also found that the “only arguable inventive concept” was recited in a dependent claim—“changing the difficulty level of a song, in real time, in response to an assessment of the user’s performance,” but that concept was vague and lacked innovation.

On appeal, the Federal Circuit analyzed patent eligibility using the two-step *Alice* framework. In step one, the court determines whether a claim, as a whole, is “directed to” patent-ineligible subject matter, such as an abstract idea. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014). If it is, the court then considers whether the claim contains an “inventive concept” sufficient to “transform the nature of the claim into a patent-eligible application.” *Id.* at 217-18. Patent eligibility, however, may only be determined on a Rule 12(b)(6) motion if there are no factual allegations that “prevent resolving the eligibility question as a matter of law.”

Under step one, Ubisoft argued that the district court “overgeneralized” the asserted claims as directed to the functionality of teaching the guitar when their “true focus” was a specific improvement in computer capabilities. The Federal Circuit disagreed because the claims do not recite a particular way of programming or designing software. Instead, the claims recite steps in functional terms and not what process or machinery is required to achieve those functions. The specification states that “the processes presented [] are not inherently related to any particular computer.” Thus, the claims do not focus on a “specific asserted improvement in computer capabilities,” but rather on a process that qualifies as an abstract idea from which computers are invoked merely as a tool.

The Federal Circuit also noted that the asserted claims are directed to an abstract idea because they recite nothing more than gathering, analyzing and displaying certain results without any particular inventive technology for performing those steps. For example, without more, the mini-game generation step is the same as the ordinary mental processes of a guitar instructor teaching a student how to play the guitar.

Turning to step two, Ubisoft argued that the district court failed to accept as true the factual allegations that the claimed invention was “an improvement over the prior art.” Again, the Federal Circuit disagreed. In deciding a Rule 12(b)(6) motion, courts are not required to accept unreasoned conclusions and arguments in the absence of specific plausible allegations of supporting facts. And here, the court found that neither the claims nor the specification discloses a technological improvement over conventional methods. The patent, instead, makes clear that the claims merely apply common guitar instruction techniques using conventional computer technology—e.g., a generic computer.

Accordingly, the Federal Circuit agreed that the claims were patent-ineligible under § 101 and affirmed the district court’s Rule 12(b)(6) dismissal.

Practice Tip: When defending computer-implemented process claims under § 101, patent owners may be required to show that the claims focus on a specific asserted improvement in computer capabilities rather than a process that qualifies as an abstract idea for which computers are invoked merely as a tool. Patent owners should therefore ensure that the specification explains how the process is an improvement over the prior art and highlight the inventive technology, such as a particular machine or a particular way of programming or designing the software required to implement the process.

Ubisoft Entertainment, S.A. v. Yousician Oy, No. 2019-2399 (Fed. Cir. June 11, 2020) (nonprecedential).

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