



District Court Granted Summary Judgment of Invalidity Because the Patent for Cochlear Implants Recited the Patent Ineligible Abstract Idea of Communicating Information Wirelessly

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Judge Wolson in the District of Delaware recently granted a motion for summary judgment of invalidity for patent-ineligible subject matter under 35 U.S.C. § 101. The patent is directed to cochlear implants. A single dependent claim remained at issue in the case after other claims were invalidated in an *inter partes* review (IPR) proceeding. The court found that the claim-at-issue recited the abstract idea of wireless communication between a computer and hearing devices.

MED-EL Elektromedizinische Gerate GES.M.B.H. v. Advanced Bionics, LLC, No. 1:15-cv-1530-JDW (D. Del. Feb. 23, 2023).

Plaintiffs MED-EL Elektromedizinische Gerate GES.M.BH. and MED-EL Corporation, USA (collectively, MED-EL) sued Defendants Advanced Bionics, LLC, Advanced Bionics AG and Sonova AG (collectively, AB) for infringing patents related to cochlear implants. In response, AB asserted its own patents, including U.S. Patent No. 8,155,747 (the “747 Patent”). The ‘747 Patent is directed to systems for fitting cochlear implants and hearing aids. Clinicians “fit” these components by modifying parameters for electrical and acoustic stimulation to ensure comfortable sound ranges.

Claim 1 of the ‘747 Patent was invalidated in an IPR proceeding. See IPR2020-00190, Paper 45 (P.T.A.B. June 2, 2021). Claim 3, which depends from claim 1 and survived the IPR proceeding, recites that “the computer is configured to communicate directly with at least one of the hearing aid, the cochlear implant speech processor, the electric elements of the electric-

acoustic processor, and the acoustic elements of the electric-acoustic processor through wireless communications.” MED-EL argued that claim 3 recites patent-ineligible subject matter under 35 U.S.C. § 101.

The court analyzed eligibility using the U.S. Supreme Court’s two-step *Alice* framework. In step one, a court determines whether the claims are “directed to” a patent-ineligible concept, such as an abstract idea. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014). If they are, the court proceeds to step two and considers “the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Id.*

Addressing step one, the court asked “what the patent asserts to be the focus of the claimed advance over the prior art.” *TecSec, Inc. v. Adobe, Inc.*, 978 F.3d 1278, 1292 (Fed. Cir. 2020). The court recognized that, “[i]n cases involving software innovations, this inquiry often turns on whether the claims focus on specific asserted improvements in computer capabilities or instead on a process or system that qualifies as an abstract idea for which computers are invoked merely as a tool.” *Id.* at 1293. The court determined that the focus of the ’747 Patent was fitting a cochlear implant and hearing aid in a patient’s ear. The court found that claim 3 recites “well-known and conventional” components and that the inventive aspect is “wireless communication between a computer and the other components for fitting.”

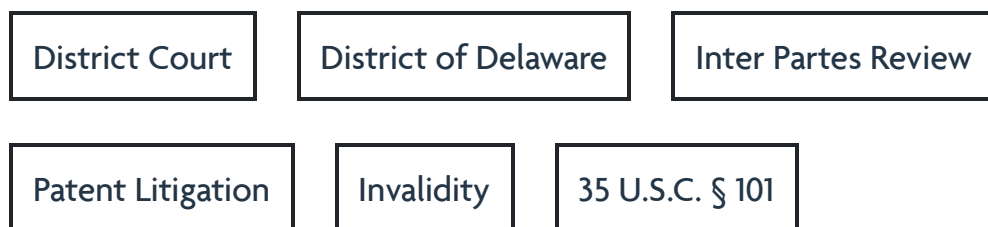
The court concluded that claim 3 does not resolve any problem regarding a computer’s communication with hearing devices and does not identify any specific improvements to the device’s capabilities or functionalities. The court noted that wireless communication between a computer and various devices, without more, is an abstract concept. See *Chamberlain Grp., Inc. v. Techtronic Indus. Co.*, 935 F.3d 1341, 1347 (Fed. Cir. 2019). AB argued that the specification clarifies that the system of claim 3 necessitates changes to the hardware, but the court found that claim 3 focused on the wireless communication between a computer and hearing devices, and not the inner workings of those devices.

Addressing step two, the court determined that claim 3 is not sufficiently inventive for two reasons. First, the claim “is recited at a high level of generality and merely invokes well-understood, routine, conventional components to apply the abstract idea.” *Yu v. Apple Inc.*, 1 F.4th 1040, 1043 (Fed. Cir. 2021). The court found that the simple recitation of a computer wirelessly connecting with various pieces of hardware is not inventive. Second, the court found that prior art incorporated wireless communication between a computer and various

cochlear implant and hearing aid components. According to the court, nothing in claim 3 suggests anything more inventive than the concepts discussed in the prior art of record.

Practice Tip: This case presents the situation where the claim-at-issue depends from an already invalidated independent claim. Because of this, the court focused its patent ineligibility analysis on the limitations of the dependent claim and whether those limitations were inventive. To anticipate this scenario, patent owners should consider describing and claiming technical details for tangible components not only in the independent claims, but also in each dependent claim. For defendants, this case showcases the advantage of maintaining a § 101 defense as a back-up where a dependent claim may survive an IPR proceeding.

Categories



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