

EXHIBIT A

2020 WL 7703014

Only the Westlaw citation is currently available.
United States Court of Appeals, Federal Circuit.

SIMIO, LLC, Plaintiff-Appellant

v.

FLEXSIM SOFTWARE PRODUCTS, INC., Defendant-Appellee

2020-1171

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Decided: December 29, 2020

Appeal from the United States District Court for the District of Utah in No. 2:18-cv-00853-DB, Senior Judge [Dee V. Benson](#).

Attorneys and Law Firms

[David G. Oberdick](#), Meyer, Unkovic & Scott, Pittsburgh, PA, argued for plaintiff-appellant. Also represented by [Joseph Aaron Carroll](#); [James C. Watson](#), [H. Dickson Burton](#), TraskBritt, P.C., Salt Lake City, UT.

[Mark A. Miller](#), Dorsey & Whitney LLP, Salt Lake City, UT, argued for defendant-appellee. Also represented by [Brett L. Foster](#), [Elliot Hales](#).

Before [Prost](#), Chief Judge, [Clevenger](#) and [Stoll](#), Circuit Judges.

Opinion

[Prost](#), Chief Judge.

*1 Simio, LLC (“Simio”) sued FlexSim Software Products, Inc. (“FlexSim”) in the United States District Court for the District of Utah for infringing [U.S. Patent No. 8,156,468](#) (“the ’468 patent”). The district court held the asserted claims of the ’468 patent ineligible for patenting under [35 U.S.C. § 101](#) and, as a result, dismissed the action because Simio’s complaint failed to state a claim upon which relief could be granted. Simio then moved for leave to file an amended complaint, which the district court denied.

Simio appeals the dismissal and the denial of its motion for leave to amend. We affirm.

Background

I

The ’468 patent is titled “System and Method for Creating Intelligent Simulation Objects Using Graphical Process Descriptions.” Its background section describes different types of simulations, including those that are event-oriented, process-oriented, and object-oriented, the last of which is relevant here. ’468 patent col. 2 l. 10–col. 3 l. 26.

Object-oriented simulations are, as the name suggests, based on “objects.” Objects can be things in the simulation, such as people, vehicles, or machines. Although the patent acknowledges that object-oriented simulations have existed since the 1960s, *id.* at col. 2 ll. 10–19, it states that earlier object-oriented simulation products were “programming-based tools” that were “largely shunned by practitioners as too complex,” *id.* at col. 3 ll. 13–14. The patent also describes a trend that emerged in the 1980s

and 1990s: using graphics to simplify building simulations. *See id.* at col. 2 ll. 46–54 (“The introduction of Microsoft Windows made it possible to build improved graphical user interfaces and a number of new graphically based tools emerged”).

The ‘468 patent’s purported invention concerns making object-oriented simulation easier and more accessible by letting users build simulations with graphics instead of programming:

Objects are built using the concepts of object-orientation. Unlike other object-oriented simulation systems, however, the process of building an object in the present invention is simple and completely graphical. There is no need to write programming code to create new objects.

Id. at col. 8 ll. 22–26; *see also id.* at col. 4 ll. 39–42 (“Unlike existing object-oriented tools that require programming to implement new objects, Simio™ objects can be created with simple graphical process flows that require no programming.”), col. 6 ll. 50–53 (“The present invention is designed to make it easy for beginning modelers to build their own intelligent objects Unlike existing object-based tools, no programming is required to add new objects.”).

Claim 1 is the only independent claim.¹ It recites:

A computer-based system for developing simulation models on a physical computing device, the system comprising:

one or more graphical processes;

one or more base objects created from the one or more graphical processes,

wherein a new object is created from a base object of the one or more base objects by a user by assigning the one or more graphical processes to the base object of the one or more base objects;

*2 wherein the new object is implemented in a 3-tier structure comprising:

an object definition, wherein the object definition includes a behavior,

one or more object instances related to the object definition, and

one or more object realizations related to the one or more object instances;

wherein the behavior of the object definition is shared by the one or more object instances and the one or more object realizations; and

an executable process to add a new behavior directly to an object instance of the one or more object instances without changing the object definition and the added new behavior is executed only for that one instance of the object.

This last limitation—the “executable-process limitation” (also referred to as the “add-on limitation”)—concerns changing a particular object’s behavior without changing the object’s overall definition in the simulation. By way of an example given during prosecution, in a simulation containing an object definition for “Poodle” and poodles Sam and Fred, a user might independently change Sam’s behavior (e.g., make him tend to chase cars) without similarly changing the behavior of Fred or any other poodle.

¹ The district court discussed only claim 1. Because Simio also discusses only claim 1 and does not separately argue any other claim’s eligibility, we treat claim 1 as representative for purposes of our eligibility analysis. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1352 (Fed. Cir. 2016).

Simio's complaint accused FlexSim of infringing claims 1–3, 6, 8, and 9 of the '468 patent (the “asserted claims”). On December 21, 2018, FlexSim moved to dismiss the complaint under [Federal Rule of Civil Procedure 12\(b\)\(6\)](#), arguing that it failed to state a claim upon which relief could be granted because the asserted claims are ineligible for patenting under [35 U.S.C. § 101](#).

On January 18, 2019, before Simio filed its opposition to the motion to dismiss, the parties jointly submitted a report to the district court agreeing to a March 15, 2019 deadline to move to amend pleadings. The court adopted the parties’ proposed deadline and set March 15, 2019, as the “Last Day to File Motion to Amend Pleadings (absent good cause)” in its January 23, 2019 scheduling order. J.A. 145.

Simio filed its opposition to the motion to dismiss on February 8, 2019. The opposition included a footnote stating: “Simio also reserves the right to amend its [c]omplaint in order to more fully develop these issues.” J.A. 175 n.8 (citing [Aatrix Software, Inc. v. Green Shades Software, Inc.](#), 882 F.3d 1121 (Fed. Cir. 2018)). FlexSim replied, and the district court held a hearing on the motion on May 29, 2019.

The district court applied the two-step framework set forth in [Alice Corp. Pty. Ltd. v. CLS Bank International](#), 573 U.S. 208, 134 S.Ct. 2347, 189 L.Ed.2d 296 (2014), and held the asserted claims ineligible. [Simio, LLC v. FlexSim Software Prods., Inc.](#), No. 2:18-cv-00853, 2019 WL 2552243, at *3–4 (D. Utah June 20, 2019) (“*Dismissal Op.*”). In a thoughtful opinion, the court concluded that (1) the claims are directed to “the decades-old computer programming practice of substituting text[-]based coding with graphical processing,” which the court determined was an ineligible abstract idea and (2) considering the claim elements both individually and as an ordered combination, FlexSim “met its burden of showing no inventive concept or alteration of computer functionality sufficient to transform the system into a patent-eligible application.” *Id.* The district court accordingly granted the motion to dismiss.²

² The district court also held the asserted claims ineligible for not falling into any of § 101’s four categories of eligible subject matter: “process,” “machine,” “manufacture,” or “composition of matter.” In particular, the court determined that the claims did not fall into the “machine” category (which was the only category Simio relied on). *Dismissal Op.*, 2019 WL 2552243, at *2–3 (citing [Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.](#), 758 F.3d 1344 (Fed. Cir. 2014)). We need not reach this issue, however, because even assuming the claims fall into the “machine” category, we conclude that they nonetheless claim nothing more than an ineligible abstract idea under *Alice*’s two-step framework. See *Alice*, 573 U.S. at 224, 134 S.Ct. 2347 (explaining that claims to, “in § 101 terms, a ‘machine,’ ” may nonetheless be ineligible for claiming one of these exceptions).

*3 After the court's dismissal and entry of judgment, Simio moved for reconsideration under Rule 59(e) and leave to file a proposed amended complaint (“PAC”). The district court denied both. It concluded that Simio had failed to justify reconsideration, having presented no intervening change in law, previously unavailable evidence, or need to correct clear error or manifest injustice. [Simio, LLC v. FlexSim Software Prods., Inc.](#), No. 2:18-cv-00853, 2019 WL 5423609, at *3 (D. Utah Oct. 23, 2019). The court also concluded that “amendment would be futile because the new factual allegations [in the PAC] are inadequate to remedy the '468 patent on the merits.” *Id.* It did not reach FlexSim's argument that because Simio moved for leave to amend after the scheduling order's deadline and did not show good cause for missing that deadline, leave to amend should be denied.

Simio timely appealed. We have jurisdiction under [28 U.S.C. § 1295\(a\)\(1\)](#).

Discussion

We review a district court's dismissal for failure to state a claim under the regional circuit's law. [BASCOS Glob. Internet Servs., Inc. v. AT&T Mobility LLC](#), 827 F.3d 1341, 1347 (Fed. Cir. 2016). The Tenth Circuit reviews such dismissals de novo, “accept[ing] all well-pled factual allegations as true and view[ing] these allegations in the light most favorable to the nonmoving party.” [Evans v. Diamond](#), 957 F.3d 1098, 1100 (10th Cir. 2020) (quoting [Peterson v. Grisham](#), 594 F.3d 723, 727 (10th Cir. 2010)).

We also review a district court's denial of motions for reconsideration and leave to amend a complaint under the regional circuit's law. *Del. Valley Floral Grp., Inc. v. Shaw Rose Nets, LLC*, 597 F.3d 1374, 1379 (Fed. Cir. 2010) (reconsideration); *Chi. Bd. Options Exch., Inc. v. Int'l Sec. Exch., LLC*, 677 F.3d 1361, 1374 (Fed. Cir. 2012) (leave to amend a complaint). The Tenth Circuit reviews such denials for abuse of discretion, but when leave to amend is denied for futility, review of the legal basis for an amendment's futility is de novo. *Johnson v. Spencer*, 950 F.3d 680, 707 n.10, 720–21 (10th Cir. 2020).

Patent eligibility under § 101 is a question of law that may involve underlying questions of fact. *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1342 (Fed. Cir. 2018). We review the district court's ultimate conclusion on patent eligibility de novo. *Id.* A patent may be determined ineligible at the Rule 12(b)(6) stage “when there are no factual allegations that, taken as true, prevent resolving the eligibility question as a matter of law.” *Aatrix*, 882 F.3d at 1125.

We first address the dismissal for patent ineligibility, then the denial of leave to amend the complaint.³

³ Although Simio purports to separately appeal the district court's denial of reconsideration, *see* Appellant's Br. 3–4, 64, its opening brief makes no supporting argument distinct from its arguments concerning the original dismissal or denial of leave to amend the complaint. In the Tenth Circuit, grounds warranting Rule 59(e) reconsideration include (1) an intervening change in controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice. *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). Simio has shown none of these—much less explained how the district court abused its discretion by not finding them. Therefore, to the extent Simio separately appeals the district court's denial of reconsideration, we affirm.

I

Section 101 of the Patent Act defines patent-eligible subject matter as “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” 35 U.S.C. § 101. “This provision, however, contains longstanding judicial exceptions, which provide that laws of nature, natural phenomena, and abstract ideas are not eligible for patenting.” *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 765 (Fed. Cir. 2019) (citing *Alice*, 573 U.S. at 216, 134 S.Ct. 2347).

*4 At step one of *Alice*'s two-step framework, we “determine whether the claim[] at issue [is] directed to” an abstract idea. *Alice*, 573 U.S. at 218, 134 S.Ct. 2347. If so, we move to step two, where we “examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Id.* at 221, 134 S.Ct. 2347 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72, 80, 132 S.Ct. 1289, 182 L.Ed.2d 321 (2012)).

A

Under step one's directed-to inquiry, we ask “what the patent asserts to be the focus of the claimed advance over the prior art,” *Solutran, Inc. v. Elavon, Inc.*, 931 F.3d 1161, 1168 (Fed. Cir. 2019) (cleaned up), to determine whether the claim's “character as a whole” is directed to ineligible subject matter, *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257–58 (Fed. Cir. 2016).

The '468 patent showcases its key advance: using graphics instead of programming to create object-oriented simulations. '468 patent col. 8 ll. 22–26 (“Objects are built using the concepts of object-orientation. Unlike other object-oriented simulation systems, however, the process of building an object in the present invention is simple and completely graphical. There is no need to write programming code to create new objects.”); *see id.* at col. 4 ll. 39–42 (“Unlike existing object-oriented tools that require

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