Intellectual Ventures I LLC v. Mfrs. & Traders Trust Co.

United States District Court for the District of Delaware

December 18, 2014, Decided; December 18, 2014, Filed

Civ. No. 13-1274-SLR

INTELLECTUAL VENTURES I LLC and INTELLECTUAL VENTURES II LLC, Plaintiffs, v. MANUFACTURERS AND TRADERS TRUST COMPANY, Defendants.

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Judges: SUE L. ROBINSON, District Judge.

Opinion by: SUE L. ROBINSON

Opinion

MEMORANDUM OPINION

I. INTRODUCTION

On July 24, 2013, plaintiffs Intellectual Ventures I LLC and Intellectual Ventures II LLC (collectively, "plaintiffs") filed a complaint against defendant Manufacturers and Traders Trust Company ("defendant") alleging direct and indirect infringement of U.S. Patent Nos. 7,664,701 ("the '701 patent"), 8,083,137 ("the '137 patent"), 7,603,382 ("the '382 patent"), 7,260,587 ("the '587 patent") (collectively, "the patents-in-suit"), and 6,182,894 ("the '894 patent"). (D.l. 1) After defendant filed a motion to dismiss, plaintiffs filed an amended complaint on November 15, 2013, including additional allegations regarding indirect infringement and withdrawing the claims based on the '894 patent. (D.l. 14) Presently before the court is defendant's **[*2]** motion to dismiss the amended complaint. (D.l. 16) The court has jurisdiction over this matter pursuant to *28 U.S.C. §§ 1331* and *1338(a)*.

II. BACKGROUND

Plaintiffs are Delaware limited liability companies having a principal place of business in Bellevue, Washington. (D.l. 14 at PP2-3) Defendant is a New York corporation with its principal place of business in Buffalo, New York. (*Id*. at 4)

The '137 patent, titled Administration of Financial Accounts, was filed May 26, 2009 and issued December 27, 2011. The '382 patent, titled Advanced Internet Interface Providing User Display Access of Customized Webpages, was filed November 5, 2004 and issued October 13, 2009. The '587 patent, titled Method for Organizing Digital Images, was filed December 22, 2003 and issued August 21, 2007. The '701 patent, titled Masking Private Billing Data by Assigning Other Billing Data to Use in Commerce with Businesses, was filed November 1, 2006 and issued February 16, 2010.[1]

III. STANDARD OF REVIEW

A motion filed under *Federal Rule of Civil Procedure 12(b)(6)* tests the sufficiency of a complaint's factual allegations. *Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)*; *Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993)*. A complaint must contain "a short and plain statement of the claim

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[1] Defendant's briefing cites several cases involving the patents-in-suit. In *Intellectual Ventures I LLC v. Capital One Financial Corp., Civ. No. 13-740, 2014 U.S. Dist. LEXIS 53001, 2014 WL 1513273 (E.D. Va. April 16, 2014)*, the court concluded that the '137 and '382 patents were invalid for lack of patentable subject matter. The remaining cases involving the patents-in-suit are stayed pending review of the patents-in-suit by the U.S. Patent and Trademark Office: Civ. No. 13-378, **[*3]** S.D. Ohio; Civ. No. 13-358, W.D.N.C.; Civ. No. 13-740, W.D. Pa.; and, Civ. No. 13-5386, S.D.N.Y. (also stayed pending the appeal in *Intellectual Ventures I LLC v. Capital One Financial Corp.*).

showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.″ _Twombly, 550 U.S. at 545_ (internal quotation marks omitted) (interpreting _Fed. R. Civ. P. 8(a)_). Consistent with the Supreme Court's rulings in _Twombly and Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)_, the Third Circuit requires a two-part analysis when reviewing a _Rule 12(b)(6)_ motion. _Edwards v. A.H. Cornell & Son, Inc., 610 F.3d 217, 219 (3d Cir. 2010)_; _Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009)_. First, a court should separate the factual and legal elements of a claim, accepting the facts and disregarding the legal conclusions. _Fowler, 578 F.3d. at 210-11_. Second, a court should determine whether the remaining well-pled facts sufficiently show that the plaintiff ″has a 'plausible claim for relief.'″ _Id. at 211_ (quoting _Iqbal, 556 U.S. at 679_). As part of the analysis, a court must accept all well-pleaded factual allegations in the complaint as true, and view them in the light most favorable to the plaintiff. _See Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007)_; _Christopher v. Harbury, 536 U.S. 403, 406, 122 S. Ct. 2179, 153 L. Ed. 2d 413 (2002)_; _Phillips v. Cnty. of Allegheny, 515 F.3d 224, 231 (3d Cir. 2008)_. In this regard, a court **[*4]** may consider the pleadings, public record, orders, exhibits attached to the complaint, and documents incorporated into the complaint by reference. _Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322, 127 S. Ct. 2499, 168 L. Ed. 2d 179 (2007)_; _Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384-85 n.2 (3d Cir. 1994)_.

The court's determination is not whether the non-moving party ″will ultimately prevail″ but whether that party is ″entitled to offer evidence to support the claims.″ _United States ex rel. Wilkins v. United Health Grp., Inc., 659 F.3d 295, 302 (3d Cir. 2011)_. This ″does not impose a probability requirement at the pleading stage,″ but instead ″simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of [the necessary element].″ _Phillips, 515 F.3d at 234_ (quoting _Twombly, 550 U.S. at 556_). The court's analysis is a context-specific task requiring the court ″to draw on its judicial experience and common sense.″ _Iqbal, 556 U.S. at 663-64_.

IV. DISCUSSION

A. Standard

The standard of proof to establish the invalidity of a patent is ″clear and convincing evidence.″ _Golden Blount, Inc. v. Robert H. Peterson Co., 365 F.3d 1054, 1058 (Fed. Cir. 2004)_; _see also, Ultramercial, Inc. v. Hulu, LLC, 722 F.3d_

1335, 1338-39 (Fed. Cir. 2013), vacated sub nom. _WildTangent, Inc. v. Ultramercial, LLC, _U.S. _, 134 S.Ct. 2870, 189 L. Ed. 2d 828 (2014)_. Whether a claim is drawn to patent-eligible subject matter under _35 U.S.C. § 101_ is a threshold inquiry to be determined as a matter of law in establishing the validity of the patent. _CLS Bank Int'l v. Alice Corp. Pty. Ltd., 717 F.3d 1269, 1277 (Fed. Cir. 2013)_, aff'd, _Alice Corp. Pty. Ltd. v. CLS Bank Int'l, U.S. , 134 S.Ct. 2347, 82 L. Ed. 2d 296, 189 L. Ed. 2d 296 (2014)_; _In re Bilski, 545 F.3d 943, 950 (Fed. Cir. 2008)_ (citing _In re Comiskey, 499 F.3d 1365, 1371 (Fed. Cir. 2007))_ (″Bilski I″). _Section 101_ provides that patentable subject matter extends to four broad categories, including: ″new and useful processes], machine[s], manufacture, or composition[s] of matter.″ _35 U.S.C. § 101_; see also _Bilski v. Kappos, 561 U.S. 593, 601, 130 S. Ct. 3218, 177 L. Ed. 2d 792 (2010)_ (″Bilski II″); **[*5]** _Diamond v. Chakrabarty, 447 U.S. 303, 308, 100 S. Ct. 2204, 65 L. Ed. 2d 144 (1980)_. A ″process″ is statutorily defined as a ″process, art or method, and includes a new use of a known process, machine manufacture, composition of matter, or material.″ _35 U.S.C. § 100(b)_. The Supreme Court has explained:

> A process is a mode of treatment of certain materials to produce a given result. It is an act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing. If new and useful, it is just as patentable as is a piece of machinery. In the language of the patent law, it is an art. The machinery pointed out as suitable to perform the process may or may not be new or patentable; whilst the process itself may be altogether new, and produce an entirely new result. The process requires that certain things should be done with certain substances, and in a certain order; but the tools to be used in doing this may be of secondary consequence.

Diamond v. Diehr, 450 U.S. 175, 182-83, 101 S. Ct. 1048, 67 L. Ed. 2d 155 (1981) (internal quotations omitted).

The Supreme Court recognizes three ″fundamental principle″ exceptions to the Patent Act's subject matter eligibility requirements: ″laws of nature, physical phenomena, and abstract ideas.″ _Bilski II, 561 U.S. at 601_. The Supreme Court has held that ″[t]he concepts covered by these exceptions are 'part of the **[*6]** storehouse of knowledge of all men ... free to all men and reserved exclusively to none.'″ _Bilski II, 561 U.S. at 602_ (quoting _Funk Bros. Seed Co. v. Kalo Inoculant Co., 333 U.S. 127, 130, 68 S. Ct. 440, 92 L. Ed. 588, 1948 Dec. Comm'r Pat. 671 (1948))_. ″[T]he concern that drives this exclusionary principle is one of pre-emption,″ that is, ″'that patent law not inhibit further

discovery by improperly tying up the future use of' these building blocks of human ingenuity." *Alice, 134 S.Ct. at 2354* (citing *Bilski II, 561 U.S. at 611-12* and *Mayo Collaborative Services v. Prometheus Labs., Inc., 566 U.S. __, 132 S.Ct. 1289, 1301, 182 L. Ed. 2d 321 (2012))*.

Although a fundamental principle cannot be patented, the Supreme Court has held that "an **application** of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection," so long as that application would not preempt substantially all uses of the fundamental principle. *Bilski II, 561 U.S. at 612* (quoting *Diehr, 450 U.S. at 187*) (internal quotations omitted); *Bilski I, 545 F.3d at 954*. The Supreme Court recently reiterated the

> framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, "[w]hat else is there in the claims before us?" To answer that question, we consider the elements of each claim both individually and "as an ordered combination" to determine [*7] whether the additional elements "transform the nature of the claim" into a patent-eligible application. We have described step two of this analysis as a search for an "'inventive concept'"__i.e., an element or combination of elements that is "sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself."

Alice Corp., 134 S.Ct. at 2355 (citing *Mayo, 132 S.Ct. at 1294, 1296-98)*.[2] "[T]o transform an unpatentable law of nature into a patent-eligible application of such a law, one must do more than simply state the law of nature while adding the words 'apply it.'" *Mayo, 132 S.Ct. at 1294* (citing *Gottschalk v. Benson, 409 U.S. 63, 71-72, 93 S. Ct. 253, 34 L. Ed. 2d 273 (1972))*. It is insufficient to add steps which "consist of well-understood, routine, conventional activity," if such steps, "when viewed as a whole, add nothing significant beyond the sum of their parts taken separately." *Id. at 1298*. "Purely 'conventional or obvious' '[pre]-solution activity' is normally not sufficient to transform an unpatentable law of nature into a patent-eligible

application of such a law." *Id*. (citations omitted). Also, the "prohibition against patenting abstract ideas 'cannot be circumvented by attempting to limit the use of the formula to a particular technological environment' or adding 'insignificant postsolution [*8] activity.'" *Bilski II, 561 U.S. at 610-11* (citation omitted). For instance, the "mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention." *Alice, 134 S.Ct. at 2358*. "Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of 'additional featur[e]' that provides any 'practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.'" *Id*. (citations omitted).

The court finds the comparison of *Bancorp Servs., LLC v. Sun Life Assurance Co. of Canada, 687 F.3d 1266 (Fed. Cir. 2012)*, to *SiRF Tech., Inc. v. Int'l Trade Comm'n, 601 F.3d 1319 (Fed. Cir. 2010)*, instructive. In *Bancorp*, where the asserted patents disclosed "specific formulae for determining the values required to manage a stable value protected life insurance policy," the district court granted summary judgment of invalidity under *§ 101*. *Bancorp, 687 F.3d at 1270*. Under the machine prong of the machine or transformation test, the district court found that "the specified computer [*9] components are no more than objects on which the claimed methods operate, and that the central processor is nothing more than a general purpose computer programmed in an unspecified manner." *Id. at 1273*. In affirming the district court's findings, the Federal Circuit explained that

> the use of a computer in an otherwise patent-ineligible process for no more than its most basic function - making calculations or computations - fails to circumvent the prohibition against patenting abstract ideas and mental processes. As we have explained, "[s]imply adding a 'computer aided' limitation to a claim covering an abstract concept, without more, is insufficient to render the claim patent eligible." *Dealertrack, Inc. v. Huber, 674 F.3d 1315, 1333 (Fed. Cir. 2012)*.

To salvage an otherwise patent-ineligible process, a computer must be integral to the claimed invention, facilitating the process in a way that a person making calculations or computations could not.

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[2]   The machine-or-transformation test still may provide a "useful clue" in the second step of the *Alice* framework. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 2014 WL 5904902, at *6 (Fed. Cir. 2014) (citing *Bilski II*, 561 U.S. at 604 and *Bancorp Servs., L.L.C., v. Sun Life Assurance Co. of Can*., 687 F.3d 1266, 1278 (Fed. Cir. 2012). A claimed process can be patent-eligible under *§ 101* if: "(1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing." *In re Bilski*, 545 F.3d 943, 954 (Fed. Cir. 2008) (en banc), *aff'd on other grounds, Bilski II*, 561 U.S. 593, 130 S. Ct. 3218, 177 L. Ed. 2d 792.

Id. at 1278. Ultimately, the Federal Circuit concluded that "[t]he computer required by some of Bancorp's claims is employed only for its most basic function, the performance of repetitive calculations, and as such does not impose meaningful limits on the scope of those claims." *Id. at 1278*.

In contrast to *Bancorp*, the Federal Circuit in *SiRF* **[*10]** found that a GPS receiver was "integral" to the claims at issue and, therefore, the machine or transformation test was satisfied. *SiRF, 601 F.3d at 1332*. As in *Bancorp*, the *SiRF* Court emphasized that a machine will only "impose a meaningful limit on the scope of a claim [when it plays] a significant part in permitting the claimed method to be performed, rather than function solely as an obvious mechanism for permitting a solution to be achieved more quickly, i.e., through the utilization of a computer for performing calculations." *Id. at 1333*. After noting how the GPS receiver was specifically involved in each step of the method, the Court concluded that "the use of [the] GPS receiver is essential to the operation of the claimed methods." *Id.*

In sum, although it is "clear that computer-based programming constitutes patentable subject matter so long as the basic requirements of [*35 U.S.C.] § 101* are met," *AT&T, 172 F.3d at 1360*, the requirements of *§ 101* as applied to this area of technology have been a moving target, from the complete rejection of patentability for computer programs[3] to the much broader enunciation of the test in *State Street Bank & Trust Co. v. Signature Fin. Group, Inc., 149 F.3d 1368 (Fed. Cir. 1998)*, *abrogated by In re Bilski, 545 F.3d 943*., that is, "a computer-implemented invention was considered patent-eligible so long as it produced a 'useful, concrete and tangible result.'" *DDR Holdings, LLC v. Hotels.com, L.P., Civ. No. 2013-1505, 773 F.3d 1245, 2014 U.S. App. LEXIS 22902, 2014 WL 6845152, at *10 (Fed. Cir. Dec. 5, 2014)*. As instructed by the Federal Circuit in *DDR Holdings*, the Court's most recent attempt to bring clarity to this area of the law: (1) "recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible," *2014 U.S. App. LEXIS 22902, [WL] at *9*; (2) "mathematical algorithms, including those executed on a generic computer, are abstract ideas," *id.*; (3) "some fundamental economic and conventional business practices are also abstract ideas," *id.*; and (4) general use of the Internet "to perform an abstract business practice (with insignificant added activity)" **[*11]** does not pass muster under *§ 101*, *2014 U.S. App. LEXIS 22902, [WL] at *12*. In order for claims addressing "Internet-centric challenges" to be patent eligible,[4] the claims must do more than

> recite a commonplace business method aimed at processing business information, applying a known business process to the particular technological environment of the Internet, or creating or altering contractual relations using generic computer functions and conventional network operations, such as the claims in *Alice, Ultramercial, buySAFE, Accenture*, and *Bancorp*.

Id. (citing *Alice, 134 S.Ct. at 2359*; *Ultramercial, 772 F.3d 709, 2014 WL 5904902, at *5*, *buySAFE, Inc. v. Google, Inc., 765 F.3d 1350, 1355 (Fed. Cir. 2014)*; *Accenture Global Servs., GmbH v. Guidewire Software, Inc., 728 F.3d 1336, 1344-45 (Fed. Cir. 2013)*; *Bancorp, 687 F.3d at 1278*).

B. Analysis

1. Claim Construction

The Federal Circuit has "never set forth a bright line rule requiring district courts to construe claims before determining subject matter eligibility." **[*12]** *Ultramercial, LLC v. Hulu, LLC, 657 F.3d 1323, 1325 (Fed. Cir. 2011)*, *vacated sub nom. WildTangent*, 132 S. Ct. 2431, 182 L. Ed. 2d 1059. "[B]ecause eligibility is a 'coarse' gauge of the suitability of broad subject matter categories for patent protection, *Research Corp. Techs., Inc. v. Microsoft Corp., 627 F.3d 859, 869 (Fed. Cir. 2010)*, claim construction may not always be necessary for a *§ 101* analysis." *Ultramercial, 657 F.3d at 1325* (citing *Bilski II, 130 S.Ct. at 3231* (finding subject matter ineligible for patent protection without claim construction)). In *Bancorp*, the Federal Circuit reiterated that "claim construction is not an inviolable prerequisite to a validity determination under *§ 101*, but is "ordinarily . . . desirable—and often necessary—to resolve claim construction disputes prior to a *§ 101* analysis, for the determination of patent eligibility requires a full understanding of the basic character of the claimed subject matter." *Bancorp, 687 F.3d at 1273-74*. In advocating for judicial efficiency, the Federal Circuit recently stated:

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[3] *See, e.g.*, 33 Fed. Reg. 15581, 15609-10 (1968). Indeed, in his dissent in *Diamond v. Diehr*, 450 U.S. 175, 101 S. Ct. 1048, 67 L. Ed. 2d 155 (1981), Justice Stevens's solution was to declare all computer-based programming unpatentable. *Id.* at 219.

[4] Although the court understands that the advent of the Internet inspired countless inventive ways of accomplishing routine tasks better, faster, cheaper — indeed, both the PTO and the Federal Circuit considered such ingenuity sufficiently inventive under *§ 101* to be patent eligible — apparently such is not the case under the current legal reasoning.

From a practical perspective, addressing *section 101* at the outset of litigation will have a number of salutary effects. First, it will conserve scarce judicial resources. Failure to recite statutory subject matter is the sort of "basic deficiency," that can, and should, "be exposed at the point of minimum expenditure of time and money by the parties and the court," *Bell Atl. Corp. y. Twombly, 550 U.S. 544, 558, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)* (citations and internal quotation marks omitted). Here, for example, the district court **[*13]** properly invoked *section 101* to dismiss Ultramercial's infringement suit on the pleadings. No formal claim construction was required because the asserted claims disclosed no more than "an abstract idea garnished with accessories" and there was no "reasonable construction that would bring [them] within patentable subject matter." *Ultramercial, LLC v. Hulu, LLC, No. 09-CV-6918, 2010 U.S. Dist. LEXIS 93453, 2010 WL 3360098, at *6 (C.D. Cal. Aug. 13, 2010)*.

Ultramercial, 772 F.3d 709, 2014 WL 5904902, at *8.

Plaintiffs advocate that "the claims, consistent with [plaintiffs'] arguments . . . , require specific technology to practice the patents and therefore are patent eligible." (D.l. 18 at n.3) Plaintiffs' arguments throughout the briefing make no mention of how the construction of certain limitations would inform the *§ 101* analysis. The court concludes that it may proceed on a *§ 101* analysis, as the parties' arguments are not focused on specific claim limitations, but instead on the broader concepts of the claims and the computer components used.

2. The '137 Patent

The '137 patent describes "a system and method which allows consumer users to establish self-imposed limits on the user's spending (borrowing) such that when the limit is reached the consuming user is notified." ('137 patent, 1:65-2:1) There are four independent claims, two system claims and two method claims. Representative independent claim 12 recites: **[*14]**

12. A method comprising:

storing, in a database, a profile keyed to a user identity and containing one or more user-selected categories to track transactions associated with said user identity, wherein individual user-selected categories include a user pre-set limit; and

causing communication, over a communication medium and to a receiving device, of transaction summary data

in the database for at least one of the one or more user selected categories, said transaction summary data containing said at least one user-selected category's user pre-set limit, and wherein said transaction summary data is configured to be presented by the receiving device in a table.

('137 patent, 9:50-59; 10:4-15, 36-49)

Using the framework set forth in *Alice*, the court first determines the central idea of the patent. Plaintiffs argue that the '137 patent "discloses and claims a specific application of administering financial accounts[, or] a practical application of the broader idea of electronically administering financial accounts using computer and database technology." (D.l. 18 at 8) However, the core idea of the patent is allowing users to set self-imposed limits on their spending and receive notifications regarding such limits, **[*15]** i.e., setting up a budget and tracking their spending. Budgeting is a longstanding and fundamental practice, utilized in personal and business finances.

In the second step of the *Alice* framework, the court examines whether the claims are limited by an "inventive concept" such that "the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself." *Alice Corp., 134 S.Ct. at 2355*. The steps of independent claims 1, 5, and 12 are: (1) storing a user profile, which contains at least one user-selected category with a user pre-set limit; and (2) presenting or communicating "transaction summary data" for such category and limit. Claim 12 also requires that the "transaction summary data" be configured in a table. Claim 19 requires: (1) listing the financial transactions in categories from a certain time period; and (2) presenting the amount of such transactions in categories together with the user-identified limit. Plaintiffs conclude that these limitations "create a practical way of self-monitoring financial accounts using computer generated automatic updates." (D.l. 18 at 9-10) The steps of storing data from a user, listing data, and presenting summary data (configured in a table), **[*16]** however, are ways "to implement the abstract idea with routine and conventional [computer] activity." *Ultramercial, 772 F.3d 709, 2014 WL 5904902, at *5*; *Fuzzysharp Techs. Inc. v. 3DLabs Inc., Ltd., 447 Fed. Appx. 182, 185 (Fed. Cir. 2011)* (computing and storing data are "functions . . . essentially synonymous with the term "computer" and thus add little or nothing to simply claiming the use of a general purpose computer").

Plaintiffs also argue that "[t]he concept of having your bank automatically notify you concerning your pre-set limits was

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