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United States District Court,
N.D. California.

Bascom Research, LLC, Plaintiff,
v.
LinkedIn, Inc., Defendants.
Bascom Research, LLC, Plaintiff,
v.
Facebook, Inc., Defendants.

Case No. 12–cv–06293–SI; Case No. 12–cv–06924 SI | Signed January 2, 2015 | Filed January 5, 2015

Synopsis

Background: Patentee brought action alleging infringement of patents related to the creation of link relationships between documents located on computer networks or the Internet. Alleged infringers moved for summary judgment of invalidity.

Holdings: The District Court, Susan Illston, J., held that:

[1] patents were directed to a patent-ineligible abstract idea, and

[2] patents did not contain an inventive concept.

Motion granted.

West Headnotes (11)

[1] Patents
Degree of proof

An alleged infringer asserting an invalidity defense bears the burden of proving invalidity by clear and convincing evidence. 35 U.S.C.A. §§ 101, 282.

2 Cases that cite this headnote

[2] Patents
Laws of nature, natural phenomena, and abstract ideas; fundamental principles

The purpose of excepting laws of nature, natural phenomena, and abstract ideas from patent eligibility is to protect the basic tools of scientific and technological work that lie beyond the domain of patent protection. 35 U.S.C.A. § 101.

Cases that cite this headnote

[3] Patents
Laws of nature, natural phenomena, and abstract ideas; fundamental principles

Courts apply a two-step test for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts: the court must first determine whether the claims at issue are directed to one of those patent-ineligible concepts, and if they are not, the claims past muster; however, if the claims are directed to a patent-ineligible concept, the court must then search for an inventive concept, that is, 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. 35 U.S.C.A. § 101.

Cases that cite this headnote

[4] Patents
Laws of nature, natural phenomena, and abstract ideas; fundamental principles

In searching for an inventive concept for purposes of determining the eligibility of a patent directed to laws of nature, natural phenomena, or abstract ideas, the court considers the elements of each claim both individually and as an ordered combination. 35 U.S.C.A. § 101.

Cases that cite this headnote

[5] Patents
Laws of nature, natural phenomena, and abstract ideas; fundamental principles

Patent-ineligible abstract ideas are not limited to fundamental truths, fundamental economic practices, or basic tools of scientific and technological work. 35 U.S.C.A. § 101.

Cases that cite this headnote

[6] Patents

Use or operation of machine or apparatus as affecting process; 'machine or transformation' test

Merely requiring generic computer implementation fails to transform an abstract idea into a patent-eligible invention. 35 U.S.C.A. § 101.

2 Cases that cite this headnote

[7] Patents

Business methods; Internet applications

Patents related to the creation of link relationships between documents located on computer networks or the Internet were directed to the patent-ineligible abstract idea of creating, storing, and using relationships between objects, since establishing relationships between document objects and making those relationships accessible was not meaningfully different from classifying and organizing data, which was a common, age-old practice that could be performed mentally. 35 U.S.C.A. § 101.

Cases that cite this headnote

[8] Patents

Computers and Software

For an abstract idea involving a computer to be patent-eligible, the claim has to supply a new and useful application of the idea. 35 U.S.C.A. § 101.

2 Cases that cite this headnote

[9] Patents

Laws of nature, natural phenomena, and abstract ideas; fundamental principles

Stating an abstract idea while adding the words "apply it" is not enough for patent eligibility. 35 U.S.C.A. § 101.

Cases that cite this headnote

[10] Patents

Business methods; Internet applications

Patents related to the creation of link relationships between documents located on computer networks or the Internet did not contain inventive elements that could transform the abstract idea of creating, storing, and using relationships between objects into a patent-eligible application, where the claims did not require anything beyond generic and conventional computer structures and unspecified software programming, and they did not improve the functioning of any computer. 35 U.S.C.A. § 101.

Cases that cite this headnote

[11] Patents

In general; utility

US Patent 7111232, US Patent 7139974, US Patent 7158971, US Patent 7389241. Invalid.

1 Cases that cite this headnote

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ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

Re: Dkt. No. 117 in C 12–cv–6293 SI
and Dkt. No. 141 in C 12–cv–6294

SUSAN ILLSTON, United States District Judge

***1** On December 2, 2014, the Court held a hearing on defendants' motions for summary judgment of invalidity of plaintiff's patents-in-suit under 35 U.S.C. § 101. For the reasons set forth below, the Court GRANTS defendants' motions for summary judgment.

BACKGROUND

On October 3, 2012, plaintiff Bascom Research, LLC ("Bascom") filed related actions for patent infringement against defendants Facebook, Inc. and LinkedIn Corporation under the Patent Act, 35 U.S.C. § 101 *et seq.*[1] *Bascom Research LLC v. Facebook, Inc.*, No. 12–cv–06293 SI, Dkt. No. 73, First Am. Compl. ("FAC") ¶ 3; *Bascom Research LLC v. LinkedIn Corporation*, No. 12–cv–06294 SI, Dkt. No. 92, First Am. Compl. ("*LinkedIn* FAC") ¶ 3.[2] Bascom accuses defendants of directly and indirectly infringing four of its patents. FAC ¶¶ 35–106.

On September 26, 2014, defendants filed motions for summary judgment of patent invalidity pursuant to 35 U.S.C. § 101. Defendants contend that Bascom's patent claims are invalid under the recent U.S. Supreme Court decision in *Alice Corp. Pty. v. CLS Bank Int'l*, —— U.S. ——, 134 S.Ct. 2347, 189 L.Ed.2d 296 (2014), because the claims (1) are directed to an "abstract idea," and (2) "do not recite any transformative elements beyond a generic computer implementation." *Id.*

Bascom accuses defendants of infringing four patents: U.S. Patent No. 7,389,241 (the '241 patent) (titled "Method for Users of a Network to Provide Other Users with Access to Link Relationships Between Documents"); U.S. Patent No. 7,111,232 (the '232 patent) ("Method and System for Making Document Objects Available to Users of a Network"); U.S. Patent No. 7,139,974 (the '974 patent) ("Framework for Managing Document Objects Stored on a Network"); and U.S. Patent No. 7,158,971 (the '971 patent) ("Method for Searching Document Objects on the Network"). FAC ¶¶ 6, 9, 12, 15. The '971 is a continuation-in-part of the '974, the '241 is a continuation-in-part of the '232, the '974 and '232 are both continuations-in-part of application No. 10/050/515, and all four patents claim priority to provisional applications filed in March 2001 and April 2001.

All four patents were issued to Thomas Layne Bascom. *Id.* The four patents-in-suit share substantially overlapping specifications. Each of the four patents contains summaries stating:

> The systems, apparatus and methods of the present invention (hereinafter "Linkspace") incorporate and provide many improvements on existing methods for publishing, distributing, relating and searching document objects on computer networks, including the Internet.
>
> ***2** Linkspace operates to provide many beneficial improvements in searching, identifying, and publishing information over computer networks.
>
> Linkspace permits a user of a computer network or the Internet to establish relationships between document objects located on the network or the Internet. Those relationships may comprise link relationships and link references and are maintained by Linkspace in one or more link directories. The contents of link directories may be organized, categorized, sorted and filtered in groupings based on various criteria relating to, among other things, user interests and attributes, the types of document objects and the nature of the content of those document objects. Linkspace allows a network user to be presented with a selection of links to document objects related to the document object the user is currently accessing based upon the URL of the current document object, and link relationships created by the user and other users of the network stored in the link directories.

'974 at 3:30–52; '241 at 3:11–35; '971 at 4:36–58; '232 at 2:63–3:19. The following claim is representative:

> A method for providing a framework for document objects located on a network, the method comprising:
>
> creating one or more link directories for storing link relationships between document objects located on the network, wherein the one or more link relationships are separate from the document objects;
>
> creating a link relationship between a first document object located on the network and a second document object located on the network;

> assigning attributes describing the link relationship, wherein the attributes are stored with the link relationship;
>
> presenting the link relationship with one or more of the attributes describing the link relationship.

'974 Claim 45.[3] The other asserted claims similarly recite "link relationships" between document objects and different types of features involving link relationships. *See* '974 Claims 1, 2, 5, 7–9, 31, 34, 44; '232 Claims 4–6, 12, 14; '971 Claims 14, 19–21; and '241 Claims 1, 2, 4, 17, 24, 55, 61–63, 73, 74, 78. The link relationships are described by attributes that are "descriptive, temporal, spatial, or quantitative in nature, i.e., describe the link reference in terms of who or what, when, where, or how much." '974 at 8:49–52; '971 at 10:12–15; '232 at 8:26–29; '241 at 8:32–34. Attributes "may include descriptions of the content of either of the document objects [ ] related by the link relationship [ ] wherein that content may be described to include a product review, news article, product information page, competitor's product information, or product order forms, among other types of content." '974 at 13:17–22; '971 at 14:46–53; '232 at 12:59–65; '241 at 12:58–64. The link relationships may be stored in a "link directory," which the specifications describe as a "table" or a set of "relational database records." '974 at 11:34–12:35; '971 at 12:6517:49; '232 at 11:11–40, 13:53–14:59; '241 at 11:11–40, 13:52–14:59. The specifications state that these features are implemented over a system that includes a network, "such as the Internet or other network of interconnected computers or a combination of networks and the Internet"; "client devices"; servers; "first document objects"; "second document objects"; "link references ... corresponding to the first document objects 40 and the second document objects"; and "link relationships." '971 at 6:53–8:30, 47:56–48:8; '232 at 4:66–6:44, 30:46–63; '974 at 5:22–6:67, 34:35–52; '241 at 5:9–6:52, 39:8–25.

***3** During prosecution of the '971 patent, the Examiner rejected the claims based on 35 U.S.C. § 101"because they merely recite a number of computing steps without producing any tangible result and/or being limited to a practical application within the technological arts." Dkt. 118–7 at 2–3. Bascom overcame these rejections by adding the words "computer-implemented" into the claims. Dkt. 118–22 at 10. In 2012, the Patent Office rejected all pending claims in a related Bascom patent application under § 101. Dkt. 118–23 at 2–3. The rejected claims were directed to selecting objects, creating link references, associating attributes, and storing them in link directories. Dkt. 118–24. Bascom did not challenge the PTO's rejection.

In the present cases, Bascom asserts claims for direct infringement under 35 U.S.C. § 271(a). FAC ¶ 33. Bascom alleges that defendants own and operate online social networking platforms that allow users "to create their own personal profiles, link with their friends, acquaintances, co-workers, etc., join common-interest user groups, and share a variety of content." FAC ¶ 21; *see also LinkedIn* FAC ¶ 20. Bascom alleges that both websites are built on social graphs accessible via Application Program Interfaces (APIs), which present objects in the graphs (e.g., people, groups, photos, etc.) and the connections between them (e.g., friend relationships, colleagues, shared content). FAC ¶ 21; *LinkedIn* FAC ¶ 20. Bascom claims that the objects and connections in the graphs can be manipulated and generated by user interaction. FAC ¶ 25; *LinkedIn* FAC ¶ 24. Bascom asserts that the Facebook and LinkedIn platforms infringe its four patents by:

> making, using, and operating the claimed system and methods on the [Facebook or LinkedIn] Platform.... By way of non-limiting example, as discussed above, the [Facebook and LinkedIn Platforms] include[ ] a number of document objects that represent various entities and things. The [Facebook and LinkedIn Platforms] also contain[ ] a number of linking relationships that logically connect the document objects to each other. These linking relationships contain a variety of attributes that describe the linking relationship. By way of non-limiting example, these attributes may be found in the social graph[s] of the [Facebook and LinkedIn Platforms] which may be represented using the [Facebook and LinkedIn] API[s] and may be manipulated [by user interaction] ... Each of the elements of the social graph, including the link relationships, may be retrieved using a unique identifier and presented based on the particular implementation of the application. Furthermore, users of the [Facebook and LinkedIn Platforms]

> are given the ability to access objects based on their relationship to other objects.

FAC ¶¶ 31–32; *LinkedIn* FAC ¶¶ 32–33.

Bascom also alleges that defendants indirectly infringe the patents-in-suit pursuant to 35 U.S.C. § 271(b)"by instructing, directing and/or requiring others, including its users and developers, to perform all or some of the steps of the method claims, either literally or under the doctrine of equivalents, of the Patents–In–Suit." FAC ¶ 33.

LEGAL STANDARD

Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The moving party, however, has no burden to disprove matters on which the non-moving party will have the burden of proof at trial. The moving party need only demonstrate to the Court that there is an absence of evidence to support the non-moving party's case. *Id.* at 325, 106 S.Ct. 2548.

***4** Once the moving party has met its burden, the burden shifts to the nonmoving party to "set forth, by affidavit or as otherwise provided in Rule 56, 'specific facts showing that there is a genuine issue for trial.' "*T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir.1987) (citing *Celotex*, 477 U.S. at 324, 106 S.Ct. 2548). To carry this burden, the non-moving party must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). "The mere existence of a scintilla of evidence ... will be insufficient; there must be evidence on which the jury could reasonably find for the [non-moving party]." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

In deciding a summary judgment motion, the Court must view the evidence in the light most favorable to the non-moving party and draw all justifiable inferences in its favor. *Id.* at 255, 106 S.Ct. 2505. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge ... ruling on a motion for summary judgment." *Id.* However, conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *Thornhill Publ'g Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir.1979).

[1] Under § 282 of the Patent Act, issued patents are presumed to be valid. 35 U.S.C. § 282. As such, an alleged infringer asserting an invalidity defense pursuant to § 101 bears the burden of proving invalidity by clear and convincing evidence. *Microsoft Corp. v. i4i L.P.*, ––U.S. ––––, 131 S.Ct. 2238, 2242, 180 L.Ed.2d 131 (2011).

DISCUSSION

As an initial matter, Bascom contends that the Court must conduct claim construction to determine the validity of the patents-in-suit. In response, defendants cite *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada (U.S.)*, 687 F.3d 1266, 1273 (Fed.Cir.2012), for the proposition that "claim construction is not an inviolable prerequisite to a validity determination under § 101." *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada (U.S.)*, 687 F.3d 1266, 1273 (Fed.Cir.2012). However, in *Bancorp* the Federal Circuit also stated "that it will ordinarily be 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." *Id.* at 1273–74.

The Court finds that Bascom has not shown why claim construction is necessary to determine whether the patents claim patent-eligible subject matter. In any event, defendants state that they do not object to the Court assuming (for purposes of this motion only) the proposed constructions offered by Bascom. Bascom proposes the constructions of the following terms: "link relationship" means "a structure having one or more pointers connecting two or more document objects and identifying one or more link relationship attributes"; "link relationship attribute(s)" means "information describing ways in which two or more document objects are related"; "the link relationships are separate from the document objects" means "link relationships are stored in a different location from the document objects."[4] Bascom proposes to construe all other terms solely by their plain and ordinary meaning. As the Court discusses below, adopting

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