2015 WL 394273
Only the Westlaw citation is currently available.
United States District Court,
N.D. Illinois, Eastern Division.

Vehicle Intelligence and Safety LLC, Plaintiff–Counterdefendant,
v.
Mercedes–Benz USA, LLC and Daimler AG, Defendants–Counterplaintiffs.

No. 13 C 4417 | Signed January 29, 2015

Synopsis

Background: Patentee filed suit against automobile manufacturer, claiming infringement of patent directed to expert safety screening of equipment operators for impairments. Manufacturer moved for judgment on pleadings.

[Holding:] The District Court, William T. Hart, J., held that patent was invalid as abstract idea ineligible to be patented.

Motion granted.

West Headnotes (9)

[1] Patents
Evidence

On a motion for judgment on the pleadings challenging patent eligibility, ineligibility must be shown by clear and convincing evidence appearing in the patent. Fed. R. Civ. P. 12(c).

Cases that cite this headnote

[2] Patents
Presumption of correctness in general

Patents
Degree of proof

Every patent is presumed to be issued properly, absent clear and convincing evidence to the contrary.

Cases that cite this headnote

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

There are three narrow exceptions to statutory patent eligibility: laws of nature, physical phenomena, and abstract ideas. 35 U.S.C.A. § 101.

Cases that cite this headnote

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

To overcome a charge of abstract idea preemption from statutory patent eligibility, it must appear that the invention's claim limitations reflect an inventive concept that adds significantly to, and limits, the expanse of any abstract idea. 35 U.S.C.A. § 101.

Cases that cite this headnote

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

A two-part framework applies to all contentions that patents embody abstract ideas ineligible for patent protection: (1) it must be determined whether the patent is directed to an abstract idea, and (2) it must be determined whether any element, or combination of elements, in the claim is sufficient to ensure that the claim contains an inventive concept amounting to significantly more than the abstract idea itself, that is, more than an instruction to apply the abstract idea. 35 U.S.C.A. § 101.

Cases that cite this headnote

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

Patent directed to expert safety screening of equipment operators for impairments was invalid, as ineligible for patent protection, since

claims qualified as abstract idea by broadly relating to concept of testing operators of any kind of moving equipment for any kind of physical or mental impairment and lacked inventive concept sufficient to confer patent eligibility. 35 U.S.C.A. § 101.

1 Cases that cite this headnote

[7] **Patents**

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

An abstract idea does not become patent-eligible by specifying that a computer can be used to implement the idea. 35 U.S.C.A. § 101.

Cases that cite this headnote

[8] **Patents**

In general; utility

US Patent 7,394,392. Invalid.

Cases that cite this headnote

[9] **Patents**

In general; utility

US Patent 4,738,333, US Patent 6,748,301, US Patent 6,886,653. Cited as Prior Art.

Cases that cite this headnote

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OPINION AND ORDER

William T. Hart, UNITED STATES DISTRICT JUDGE

***1** Plaintiff Vehicle Intelligence and Safety LLC ("VIS") brings this action against Mercedes–Benz USA, LLC and Daimler AG (collectively "defendants") charging infringement of United States Patent No. 7,394,392 entitled "Expert Safety Screening of Equipment Operators ("the '392 patent") issued July 1, 2008.

The case is now before the court on defendants' second Rule12(c) motion for judgment on the pleadings. A previous motion for judgment on the pleadings was denied without prejudice to being renewed after conducting term-construction proceedings in accord with *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed.Cir.1995). *See Vehicle Intelligence & Safety LLC v. Mercedes–Benz USA, LLC*, 2014 WL 983123 (N.D.Ill. March 13, 2014). After term-construction proceedings, an order was entered resolving claim construction issues. *See Vehicle Intelligence & Safety LLC v. Mercedes–Benz USA, LLC*, 2014 WL 4652563 (N.D.Ill. Sept. 18, 2014) ("*VIS II*"). Defendants now renew their motion for judgment on the pleadings contending that the '392 patent is based on an abstract idea and that the claims do not contain an "inventive concept" sufficient to confer patent eligibility pursuant to 35 U.S.C. § 101.

The '392 Patent Abstract is as follows:

> Methods and systems using one or more expert systems to screen equipment operators for impairments, such as intoxication, physical impairment, medical impairment, or emotional impairment, to selectively test the equipment operators and control the equipment (e.g., automobiles, trucks, industrial vehicles, public transportation vehicles, such as buses, subways, trains, planes, and ships, and dangerous machinery in general) if impairment of the equipment operator is determined. One embodiment is a method to screen an equipment operator for intoxication, using one or more expert systems.

> A second embodiment is a method to screen an equipment operator for impairment, such as intoxication, physical impairment, medical impairment, or emotional impairment, using one or more expert systems. A third embodiment is an equipment operator screening system to determine impairment, such as intoxication, physical impairment, medical impairment, or emotional impairment, using one or more expert systems.

The '392 Patent does not invent impairment detection methods or devices. The patent discloses eleven prior art patents for impairment detection systems which are incorporated by reference. The patent acknowledges that the prior art patents have been issued to detect driver impairment. Cols. 1–3. Many of these patents are linked to locking systems that prevent vehicle operation unless the operator passes a breath analyzer, voice analyzer, and/or skin sensor test. Cols. 1–2 (describing U.S. Patent Nos. 6,886,653; 6,748,301, & 4,738,333).

The Amended Complaint alleges that defendants have directly infringed at least claim 8 of the '392 Patent by selling each Mercedes–Benz vehicle that incorporates a feature of the vehicle referred to as ATTENTION ASSIST.

***2** Claim 8 of the '392 Patent is an exemplary claim. It is as follows:

> A method to screen an equipment operator for impairment, comprising:
>
> screening an equipment operator by one or more expert systems to detect potential impairment of said equipment operator;
>
> selectively testing said equipment operator when said screening of said equipment operator detects potential impairment of said equipment operator; and
>
> controlling operation of said equipment if said selective testing of said equipment operator indicates said impairment of said equipment operator, wherein said screening of said equipment operator includes a time-sharing allocation of at least one processor executing at least one expert system.

Col. 15, ll. 30–43.

The description of the preferred embodiments includes:

> Embodiments of the invention can be implemented by utilizing combinations of one or more modules (e.g., using all of a module, or using a portion of a module) already existing in the equipment as standard features. For example, in a typical vehicle there is an operations module (e.g., an equipment operations module allowing the equipment operator to determine one or more functions of equipment, such as speed of operation and direction of movement), an audio module (e.g., a sound entertainment module, or a communication module), a navigation module (e.g., a map display module), an anti-theft module (e.g., a motion detector module), and a climate control module (e.g., an air-conditioning module). Many of these modules have become very sophisticated in their operator interfaces and in their convenience to the equipment operator. These existing modules also can provide useful information on past and/or current operator actions to assist in the process of determining whether the equipment operator is truly impaired or not impaired.

Col. 6, ll. 33–49.

Additional descriptive data is as follows:

> Embodiments of the invention can be constructed using one or more data processing systems already existing in the equipment modules listed above, in a time-sharing allocation of their available processors and memory. Such existing equipment modules frequently have some unused memory and unused processor time available after performing their existing module

> functions. Alternatively, one or more additional data processing systems (e.g., based on any commercially available microprocessor of any word bit width and clock speed, a control Read–Only–Memory, or a data processing equivalent) can be dedicated to combining the information gathered from one or more modules listed above, or disclosed by one or more of the prior art patents incorporated by reference.

Col. 7, ll. 9–22.

[1] **[2]** A Rule 12(c) motion for judgment on the pleadings challenging patent eligibility must be shown by clear and convincing evidence appearing in the patent. Every patent is presumed to be issued properly, absent clear and convincing evidence to the contrary. *See*Microsoft Corp. v. i4i Ltd. P'ship, —— U.S. ——, 131 S.Ct. 2238, 2242, 180 L.Ed.2d 131 (2011); *CLS Bank Int'l v. Alice Corp.*, 717 F.3d 1269, 1304–05 (Fed.Cir.2013) (*en banc*), *aff'd*,—— U.S. ——, 134 S.Ct. 2347, 189 L.Ed.2d 296 (2014).

***3** **[3]** **[4]** To be patent eligible, a claimed invention must be a "new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." 35 U.S.C. § 101. The Supreme Court has held that there are three narrow exceptions to statutory patent eligibility: "laws of nature, physical phenomena, and abstract ideas." *Bilski v. Kappos*, 561 U.S. 593, 601, 130 S.Ct. 3218, 177 L.Ed.2d 792 (2010) (quoting *Diamond v. Chakrabarty*, 447 U.S. 303, 308, 100 S.Ct. 2204, 65 L.Ed.2d 144 (1980)). To overcome a charge of abstract idea preemption it must appear that the claim limitations reflect an "inventive concept" that adds significantly to, and limits, the expanse of any abstract idea. *Mayo Collaborative Serv. v. Prometheus Labs., Inc.*, —— U.S. ——, 132 S.Ct. 1289, 1293–94, 182 L.Ed.2d 321 (2012).

[5] The Supreme Court held in *Alice Corp.*, 134 S.Ct. at 2355, that the two-part framework set forth in *Mayo* applies to all contentions that patents embody ineligible, abstract ideas contrary to § 101. First, it must be determined whether the patent is directed to an abstract idea, and, second, it must be determined whether any element, or combination of elements, in the claim is sufficient to ensure that the claim amounts to significantly more than the abstract idea itself—more than an instruction to apply the abstract idea. This has been referred to as an inventive concept.

Abstract ideas are excluded from eligibility based on the concern that monopolization of the basic tools of scientific and technological work could impede innovation more than promote it. Abstract ideas referred to in *Alice Corp.*, 134 S.Ct. at 2350, include: fundamental economic practices instructing how to hedge a risk, citing *Bilski*, 561 U.S. at 599, 130 S.Ct. 3218; an algorithm code for converting binary-coded numerals to pure binary form, citing *Gottschalk v. Benson*, 409 U.S. 63, 67, 93 S.Ct. 253, 34 L.Ed.2d 273 (1972); and a mathematical formula for computing alarm limits in a catalytic conversion process, citing *Parker v. Flook*, 437 U.S. 584, 594–595, 98 S.Ct. 2522, 57 L.Ed.2d 451 (1978).

Limitations that may be enough to qualify as significantly more or to embody an inventive concept were said to be improvements to another technology or technical field or improvements to the functioning of a computer. *Alice Corp.*, 134 S.Ct. at 2359–60. However, requiring no more than a generic computer to perform generic computer functions that are well-understood activities previously know to the computer industry would not be sufficient. *Id.* at 2359 (citing *Mayo*, 132 S.Ct. at 1297, 1301).

[6] The claims in this case broadly relate to the concept of testing operators of any kind of moving equipment for any kind of physical or mental impairment. This concept qualifies as an abstract idea within the meaning of the cited Supreme Court precedents as well as Federal Circuit precedents. *See*Dealertrack, Inc. v. Huber, 674 F.3d 1315, 1333 (Fed.Cir.2012) (processing information through a clearinghouse); *Digitech Image Techs., LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344, 1350 (Fed.Cir.2014) (creating an electronic profile); *Planet Bingo, LLC v. VKGS LLC*, 576 Fed.Appx. 1005, 1007–08 (Fed Cir.2014) (computer-aided management of multiple sets of bingo numbers).

The Federal Circuit has also held that methods "which can be performed entirely in the human mind" are abstract ideas. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed Cir.2011) (verifying the validity of credit card transactions). *See also*SmartGene, Inc. v. Advanced Biological Labs., SA, 555 Fed.Appx. 950, 954–55 (Fed.Cir.), *cert. denied*,—— U.S. ——, 135 S.Ct. 58, 190 L.Ed.2d 32 (2014) (ranking and selecting treatments for sick patients). Similarly, considering which to apply

and evaluating the results from multiple methods for testing whether an equipment operator is suffering from a physical, medical, or emotional impairment is a process that can be carried out by doctors, EMT's, police officers, and others.

***4** Having concluded that the '392 patent embodies an abstract idea, it is necessary to consider whether the elements of infringing claims 8, 9, and 11 through 18 set forth an inventive concept sufficient to transform the claims into a patent-eligible application of equipment operator impairment testing. Claim 8 is representative. The key term is "expert system(s)," which appears in all of the claims which are charged to be infringed. VIS concedes that to overcome prior art in the field of impairment-detection systems, the '392 patent provides that an "expert system" is used to screen and selectively test for operator impairment and control of equipment. The patent does not define the term "expert system" as such; however, the figures, particularly Figure 8, and the related specifications provide intrinsic evidence of what is intended.

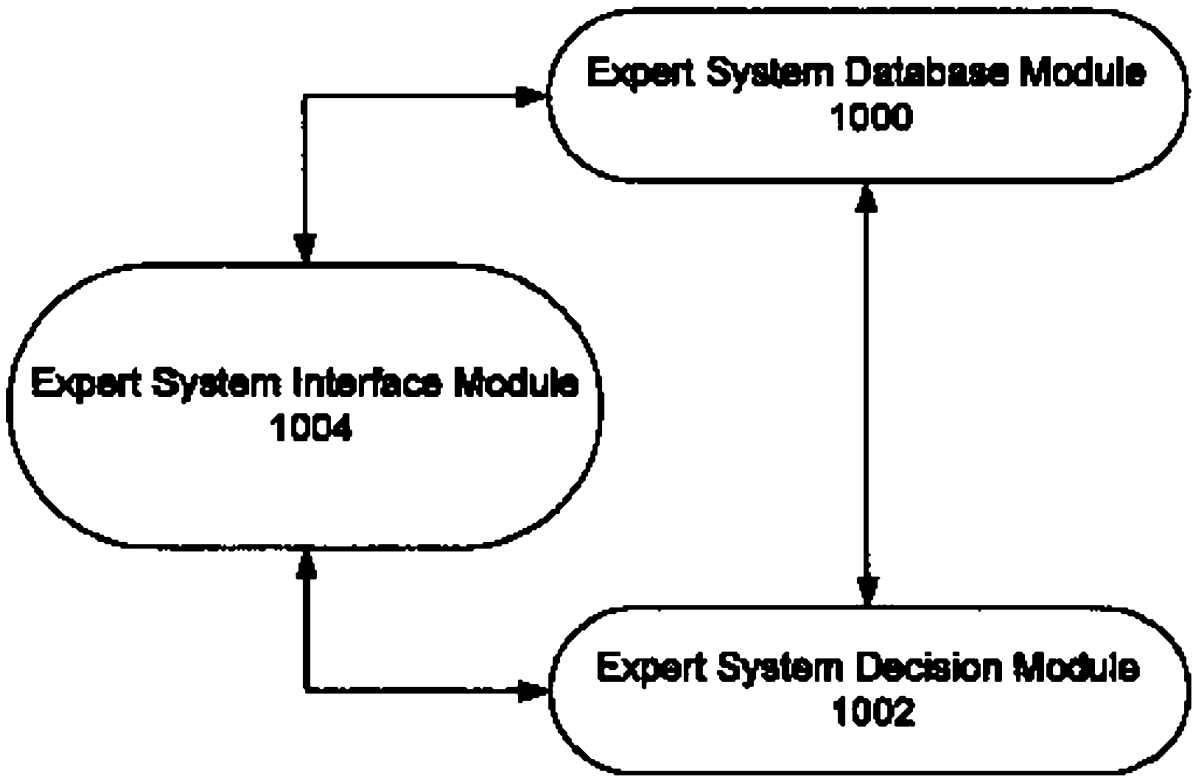

FIG. 8

Expert systems are a class of computer programs first developed in the 1960's that seek to emulate the decision-making of human experts in a field of expertise (*e.g.*, chemistry, medicine, geology). An expert system stores knowledge obtained from human experts in a "knowledge base." In the field of medical diagnosis, an expert system will include rules concerning the symptoms and characteristics associated with various ailments. The system will have a "decision module" inference engine that is programmed to selectively apply expert rules stored in the knowledge base in order to resolve problems. An example of the application of an Artificial Intelligence system is a backward-chaining

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