
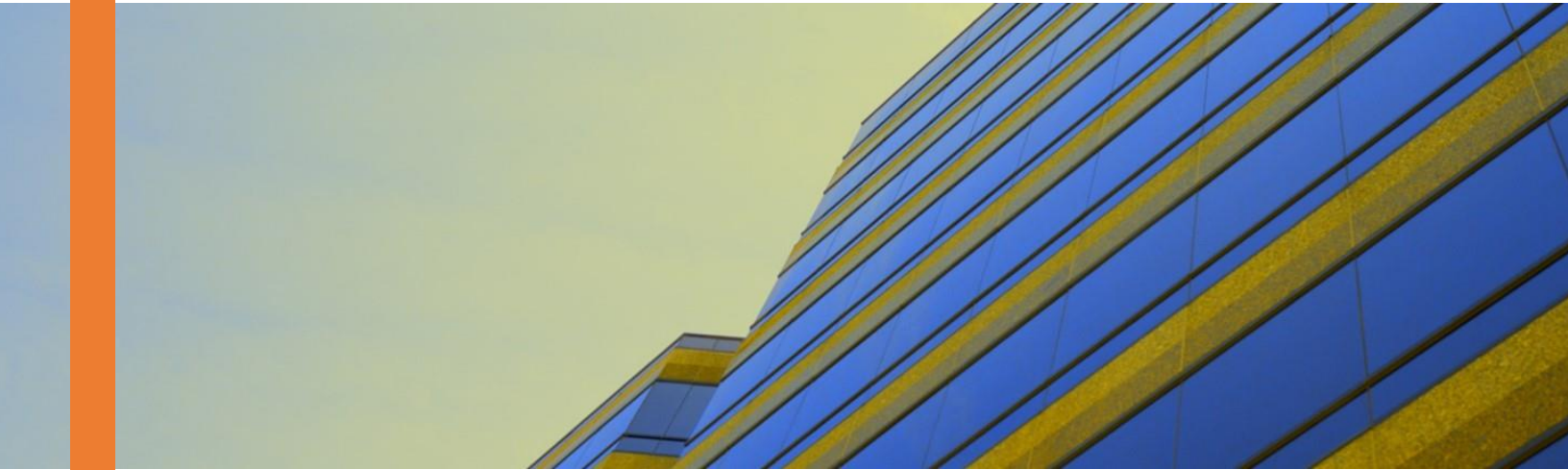




TWO-WAY MEDIA LTD. V. COMCAST CABLE COMMUNICATIONS, LLC, ET AL.



WILL GVOTH
HARRITY & HARRITY LLP
11350 Random Hills Road
Suite 600
Fairfax, VA 22030

Two-Way Media LTD v. Comcast Cable Communications, LLC, et al.

January 23, 2018 – In *Two-Way Media LTD v. Comcast Cable Communications, LLC, et al.*, 2017 U.S. App. LEXIS 21706 (Fed. Cir. Nov. 1, 2017), the Court of Appeals for the Federal Circuit found that claims of various patents owned by Two-Way Media LTD were directed to ineligible subject matter under 35 U.S.C. § 101 (“101”).

This opinion provides insight into how claims may be construed and how this might impact an analysis of the claims under 101.

Four continuation patents were at issue: 5,778,187 ('187 patent), 5,983,005 ('005 patent), 6,434,622 ('622 patent), and 7,266,686 ('686 patent). The patents relate generally to a system for streaming audio/visual data over a communications system like the Internet. Claim 1 of the '187 patent is representative of all the claims of the '187 patent and the '005 patent; claims 1 and 29 are representative of the '622 patent; and claims 1, 22, 26, and 30 are representative of the '686 patent.

As an example, and at a high level, claim 1 of the '187 patent is generally directed to a method for:

- Converting a plurality of streams of data into a plurality of streams of addressed digital packets;
- Controlling the routing of the stream of packets in response to selection signals; and
- Monitoring receptions of packets by the users and accumulating records.

The other representative claims are directed to similar methods or to systems with means plus function claiming similar to the previously described claim.

The common specification describes the invention as a scalable architecture for delivering real-time information (e.g., a distribution architecture integrated with a control architecture). Embedded in the architecture is a control mechanism that provides for the management and administration of users who are to receive real-time information. The specification also describes monitoring network conditions and generating records about real-time streams.

The Federal Circuit first analyzed the '187 and '005 patents. Under Step 1 of the *Alice* test – the district court found that the claims of these patents are directed to the abstract idea of 1) sending information, 2) directing the sent information, 3) monitoring the receipt of the sent information, and 4) accumulating records about receipt of the sent information. In analyzing this determination, the Federal Circuit stated that “claim 1 recites a method for routing information using result-based functional language...but does not describe how to achieve these results in a non-abstract way.” Further, the Federal Circuit rejected proposed claim constructions, offered by Two-Way Media, that the claims are tied to the network architecture described in the specification. In rejecting the proposed claim constructions, the Federal Circuit stated that the “constructions recite only conventional computer components.”

After affirming the analysis of the district court under step 1 of the *Alice* test, the Federal Circuit analyzed these claims under step 2 of the *Alice* test. Under step 2, the district court “found no saving inventive concept” in the claims. Although the district court acknowledged that the specification describes “a system architecture as a technical innovation,” the claim is not tied to the described architecture. The Federal Circuit rejected Two-Way Media’s assertions that the “claim solves various technical problems” because the claim recites generic functional language to solve these problems. In addition, the Federal Circuit stated that the claim does not require anything other than conventional technology and that the claim merely recites a conventional ordering of steps.

After analyzing the '187 and '005 patents, the Federal Circuit analyzed the '622 patent and '686 patent under the *Alice* test. For these patents, the district court concluded that the '622 patent was directed to “the abstract idea of monitoring the delivery of real-time information to a user...and that the '686 patent was directed to the abstract idea of measuring the delivery of the real-time information for commercial purposes.” It is worth noting that the district court, in part, based its conclusion on the preamble of the claims at issue. The Federal Circuit found no error in the district court citing the preamble in its review. The Federal Circuit then concluded that the claims are “directed to monitoring the delivery of real-time information to user(s) or measuring such delivery for commercial purposes.”

Under step 2 of the *Alice* test, the Federal Circuit reviewed the district court’s finding that the claims of the '622 and '686 patents did not contain an inventive concept. Similar to the claims discussed above, the Federal Circuit disagreed with the argument that the district court failed to account for the system architecture and failed to give weight the “nonconventional arrangement of components” of the system architecture. The Federal Circuit agreed with the district court, stating that the claims do not include an inventive concept. For example, the claims recite use of an “intermediate computer” and an “intermediate server.” The Federal Circuit stated that these components are “conventional computer and network components operating according to their ordinary functions.” Further, the Federal Circuit stated that the steps of the claims “are organized in a completely conventional way – data are first processed, sent, and once sent, information is recorded” and “fail to describe a ‘specific, discrete implementation of the abstract idea’ sufficient to qualify for eligibility under 101.”

One of the main takeaways from this opinion is that even though the specification of the patents at issue arguably recited a novel concept (e.g., a novel system architecture), the claims were not tied sufficiently to that novel concept. This opinion highlights the importance of the relationship between the claims and the specification with regard to a 101 analysis. It shows that it may be difficult to argue that broad terms used in the claims are tied to novel concepts described in the specification, unless those broad terms are explicitly, or very clearly, tied to the novel concepts. For example, for purposes of a 101 analysis and with regard to this opinion, reciting generic devices in the claims, such as an “intermediate server” or an “intermediate computer,” may not sufficiently tie the claims to a novel system architecture described in the specification unless the specification or the claims describe the relationship between the terms and the novel concepts.