

```

208 limit_val = a;
209 $("#limit_val").a(a);
210 update_slider();
211 function(limit_val);
212 $("#word-list-out").a(" ");
213 var b = k();
214 h();
215 var c = 1(), a = "", d = parseInt(
  parseInt($("#slider_shuffle_num
216 function("LIMIT_total": d);
217 function("rand": + 9);
  function("check re
  if (c = d, function("check re

```

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Bascom v. AT&T Mobility: Fodder for arguments on patent eligibility

Last week, in the case of *Bascom Global Internet Services v. AT&T Mobility LLC*, the Federal Circuit handed down an opinion reversing a decision by the district court that the patent asserted by Bascom claimed ineligible subject matter. This is significant, not only because *Bascom* is only the third case since the Supreme Court's decision in *Alice v. CLS Bank* where the Federal Circuit found a patent challenged under *Alice* to be eligible, but also because *Bascom* is the first case where the Federal Circuit has agreed with a district court that a patent is directed to an abstract idea, but nonetheless found it eligible based on the presence of an additional "inventive concept." Accordingly, given that every patent incorporates an abstract idea or other ineligible subject matter on some level, the *Bascom* opinion has the potential to be applied in almost all cases where a claim is challenged based on subject matter eligibility.

Background

The claims at issue in *Bascom* were directed to filtering content on the internet. According to Bascom, at the time the invention was made, content filtering systems were implemented in one of two ways. They could be implemented on a user's local computer, in which case they could be customized to the individual user's needs, but also were susceptible to hacking by technically skilled users. Alternatively, a filtering system could be implemented on an internet service provider (ISP) server, in which case it would not be vulnerable to circumvention, but also would not allow for different filters to be applied to different users. Bascom's patent sought to combine the benefits of both approaches by implementing filtering software on an ISP server, but still providing customization by taking advantage of the ability of some ISPs to identify accounts and associate them with content requests. At the district court level, AT&T likened this to the practice of a parent or librarian forbidding children from reading certain books, and the district court agreed. It

then found that the fact that Bascom's claims would filter content on the internet did not prevent them from being directed to an abstract idea: "content on the internet is not fundamentally different" from content obtained through other media like books or magazines, and that they did not include an "inventive concept" which could establish their eligibility, because all the limitations they recited were nothing more than generic computer equipment or standard filtering software.

"Technical Solution" Key

In reversing the district court, the Federal Circuit's opinion made clear that a claim which provided technical solution to a problem should be treated as patent eligible regardless of the nature of the problem in question. After agreeing with the district court that Bascom's claims were directed to an abstract idea, and that all of their limitations were generic computer, network and Internet components, the Federal Circuit noted that the *Bascom* claims improved on the prior art that existed at the time the invention was made. Specifically, those claims combined the customization benefits of filters on a local computer with the security benefits of filters on an ISP server, and they did so by taking advantage of the ability of some ISPs to identify and associate accounts with content requests. The court then looked at how previous cases had handled subject matter eligibility challenges, and concluded that inventions which provided a technical solution to a problem were treated as patent eligible, while inventions which solved a problem with an abstract idea and then implemented that solution with generic technical components in a conventional way, were not. Accordingly, because the ability of some ISPs to identify and associate accounts with content requests was a technical feature which Bascom harnessed to implement the claimed invention, the Federal Circuit found that Bascom's claims included an inventive concept which was sufficient to establish subject matter eligibility.

Bascom's focus on providing a technical solution represents a more liberal approach to determining subject matter eligibility than has been seen in other post-*Alice* cases. Prior to *Bascom*, *Alice* and the cases which followed it arguably could have been as treated as

requiring a technical solution to a technical problem for a claim to be treated as patent eligible. See *Enfish, LLC v. Microsoft Corporation*, 2016 WL 2756255 at *8 (Fed. Cir. May 12, 2016) (“the claims are directed to a specific implementation of a solution to a problem in the software arts. Accordingly, we find the claims at issue are not directed to an abstract idea”); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 721 (Fed. Cir. 2014) (Mayer, J. concurring) (“In effect, *Alice* articulated a technological arts test for patent eligibility”).

However, in analyzing prior cases, the *Bascom* opinion noted that the problem solved by the claims found to be patent eligible in the case of *DDR Holdings v. Hotels.com*, was a business problem – i.e., the problem of retaining potential customers. Going forward, practitioners should be mindful of this expansion, both as a source of support for arguments in favor of subject matter eligibility, and as a potential indication of a shift in the direction of a more liberal treatment of subject matter eligibility questions.

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