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"Loan-Application Clearinghouse" is Not Patentable

In *LendingTree v. Zillow*, the Federal Circuit noted, in a non-precedential opinion, that the patent itself described the invention as a "process for coordinating loans . . . over the Internet." The patent also described the invention as enabling borrowers to avoid "physically going to or calling each lender and filling out an application."

The Federal Circuit characterized the invention as being a "loan-application clearinghouse or, more simply, coordinating loans."

With such characterization, the Federal Circuit said the patent was a "fundamental economic practice" that the US Supreme Court said is abstract. Further, the "concept of applying for loans and receiving offers is also long prevalent in our financial system." And the use of a "broker (i.e., a computer program . . .) is also a building block of the modern economy."

The Federal Circuit also determined that the patent did not "transform the abstract idea of coordinating loans in a patent-eligible application of that idea."

"At best, the [patent] describes the automation of a fundamental economic concept . . . through the use of generic-computer functions."

COMMENT:

This case demonstrates the potential disadvantages of broadly describing, in a patent, what the invention does or achieves. The broad descriptions can be used against the patent owner.

Diagnostic Test for for Prenatal DNA Remains Unpatentable

Last year, the Federal Circuit addressed in *Ariosa v. Sequenom* a patent for a diagnostic test for prenatal DNA. The patent covered measuring, noninvasively, cell-free fetal DNA which originated from a fetus. This cffDNA circulated in the mother's bloodstream and could be isolated, amplified, and measured.

The invention abrogated the need for an invasive technique. The Federal Circuit still found the patent invalid.

The US Supreme Court recently denied reviewing the Federal Circuit decision. Therefore, the Federal Circuit finding of the invention being unpatentable stands.

COMMENT

The benefit of the noninvasive technique was seemingly undisputable. But, unfortunately, the benefit did not seem to factor into the analysis of patentability.

Law Firm aka "Copyright Troll" Sanctioned

The Prenda Law firm set up shell companies to purchase copyrights to pornographic movies. When a movie was illegally downloaded, the shell company would file a lawsuit against "John Doe" and use early discovery mechanisms to determine the identity of the illegal downloader.

The shell company would then send a letter to the "John Doe" threatening suit if the individual did not pay a few thousand dollars to settle. None of the shell companies litigated a single case to judgment on the merits.

The Prenda Law firm made millions.

The district court sanctioned the principals of the Prenda Law firm in the amount of $40K, which was then doubled. The district court also required the posting of a bond pending appeal in the amount of $133K.

The Ninth Circuit found no abuse of discretion.

COMMENT

The court pointed to the potential embarrassment of the John Doe defendants that could have resulted from the connection to pornography and that may have forced the John Doe defendants to pay up. That may have been more than the court could tolerate.

Inter Partes Review Mechanism to Invalidate a Patent - Good Odds For the Alleged Infringer

An accused patent infringer may challenge, in the US patent office, the validity of a patent. The challenge can be based on "prior art" that is identical to the patent or makes the patent obvious. The mechanism of challenge is an inter partes review (IPR) proceeding.

Recent statistics from the US patent office reveal that a vast majority of IPR's are in the technology areas of electrical and computers, as well as business methods.

The statistics also reveal that upon completion of the proceeding, a majority of the patent claims in the proceedings have been found unpatentable.

COMMENT

For patent challengers, it seems that an IPR remains, statistically, a good bet.

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