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"Delivery of Streaming Content" is Not Patentable

Affinity sued Amazon on a patent which the Federal Circuit described as covering "streaming content generally".

A representative claim referred to a system that maintains a content library, executes instructions by a handheld device, and streams content from a network resource to the handheld device.

In *Affinity v. Amazon*, the Federal Circuit viewed the patent as not disclosing "any particular mechanism for wirelessly streaming content to a handheld device" nor a "specific means for performing that function."

"At that level of generality", according to the Federal Circuit, "the claims do no more than describe a desired function or outcome, without providing any limiting detail that confines the claim to a particular solution to an identified problem."

The Federal Circuit concluded that the "purely functional nature of the claim confirms that it is directed to an abstract idea, not to a concrete embodiment of that idea."

Further, the "addition of basic user customization features to the interface does not alter the abstract nature of the claims and does not add an inventive component that renders the claims patentable."

COMMENT:

Affinity tried to convince the Federal Circuit of patentability based on a customizable user interface. That may have been the only feature to argue patentability, but it may have been doomed from the start.

"Automated Animation" is Patentable

The patent described the invention as a "method for automatically . . . producing accurate and realistic lip synchronization and facial expressions in animated characters."

The Federal Circuit said the patent sought to "automate a 3-D animator's tasks." "Rule sets aim to produce more realistic speech by 'taking into consideration the differences in mouth positions for similar phonemes [i.e., sounds] based on context.'" "The invention . . . uses rules to automatically set a keyframe [i.e., an important time] at the correct point to depict more realistic speech, achieving results similar to those previously achieved manually by animators."

In *McRo v. Bandai*, the defendants conceded that "processes that automate tasks that humans are capable of performing are patent eligible if properly claimed." They further conceded that "an animator's process was driven by subjective determinations rather than specific, limited mathematical rules."

However, the defendants argued that the claims were abstract "because they do not claim specific rules."

The Federal Circuit explained that the "automation goes beyond merely 'organizing [existing] information into a new form'". Rather, the invention "uses a combined order of specific rules that renders information into a specific format that is then used and applied to create desired results."

COMMENT

The defendants may have lost the patentability issue based on an absence of evidence. The Federal Circuit pointed out that defendants' "argument that any rules-based lip-synchronization process must use the claimed type of rules has appeal, but no record evidence supports this conclusion."

Unauthorized Use of Photos of Hip Hop Group Run-DMC

Well-known photographer Glen Friedman took photos of Run-DMC and licensed some of them to Sony.

Live Nation, according to the Ninth Circuit, is a "music merchandising company" that makes products with images and logos of music artists. Live Nation made t-shirts and calendars using some of Friedman's Run-DMC photos which Run-DMC approved for use by Live Nation.

In Friedman's copyright infringement lawsuit, Live Nation conceded infringement. It disputed willful infringement.

The Ninth Circuit pointed out that willful infringement can be found on either "intentional" behavior or "reckless" behavior.

According to the Ninth Circuit, Run-DMC's artistic approval of the photos was not a clearance of legal rights to use the photos. Live Nation's reliance on artistic approval could amount to recklessness or willful disregard of Friedman's rights.

COMMENT:

Additional facts that did not help Live Nation included the fact that a Live Nation employee sent an email indicating that Live Nation should not use ANY Friedman photos for Run-DMC, and that Friedman owned all rights to them.

"PlumbBob" From "The Sims" Computer Game Can Be Copyrightable

Electronic Arts (EA), the maker of the computer game, "The Sims", contracted with Lithomania to produce a USB flash drive shaped like a "PlumbBob", a gem-shaped icon from the game. Lithomania contracted with DT to produce a prototype of the flash drive.

EA approved DT's prototype but then Lithomania found Trek who could make the drives at a cheaper price. Lithomania still told EA that the former had an agreement with DT.

DT sued EA seeking a declaration that DT was a joint author of the flash drive.

The Ninth Circuit said the issue was "whether DT's 3-D rendition of the PlumbBob as a USB flash drive is entitled to copyright protection as a derivative work. If DT contributed material 'distinguished from the preexisting material employed in the work,' DT can claim a copyright in its contributions."

An initial question, according to the Ninth Circuit, was whether any aspects of the work "are purely functional, utilitarian or mechanical."

DT argued that it made a "non-functional contribution to the USB drive by designing the flash drive to fit into the PlumbBob with a 'futuristic cut away look . . . at a unique angle."

The court responded by stating that the "mere feature of having a USB flash drive that can be removed from the PlumbBob object is not copyrightable; that is a functional attribute 'necessitated by the fact' that the 3-D PlumbBob was designed for use as a USB flash drive. . . . But the 'cut away' manner in which the flash drive is to be removed is potentially non-functional."

As to originality, DT argued that its design included 12 sides rather than the original 20 sides. The Ninth Circuit found that the "number of sides on DT's USB flash drive is not a copyrightable contribution. However, the manner in which "DT designed the USB drive to fit into the PlumbBob could be sufficiently original for copyright protection."

COMMENT

The case was decided at the summary judgment stage. Thus, the court was merely finding that a jury could possibly find copyright protection, not that the jury must do so.

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