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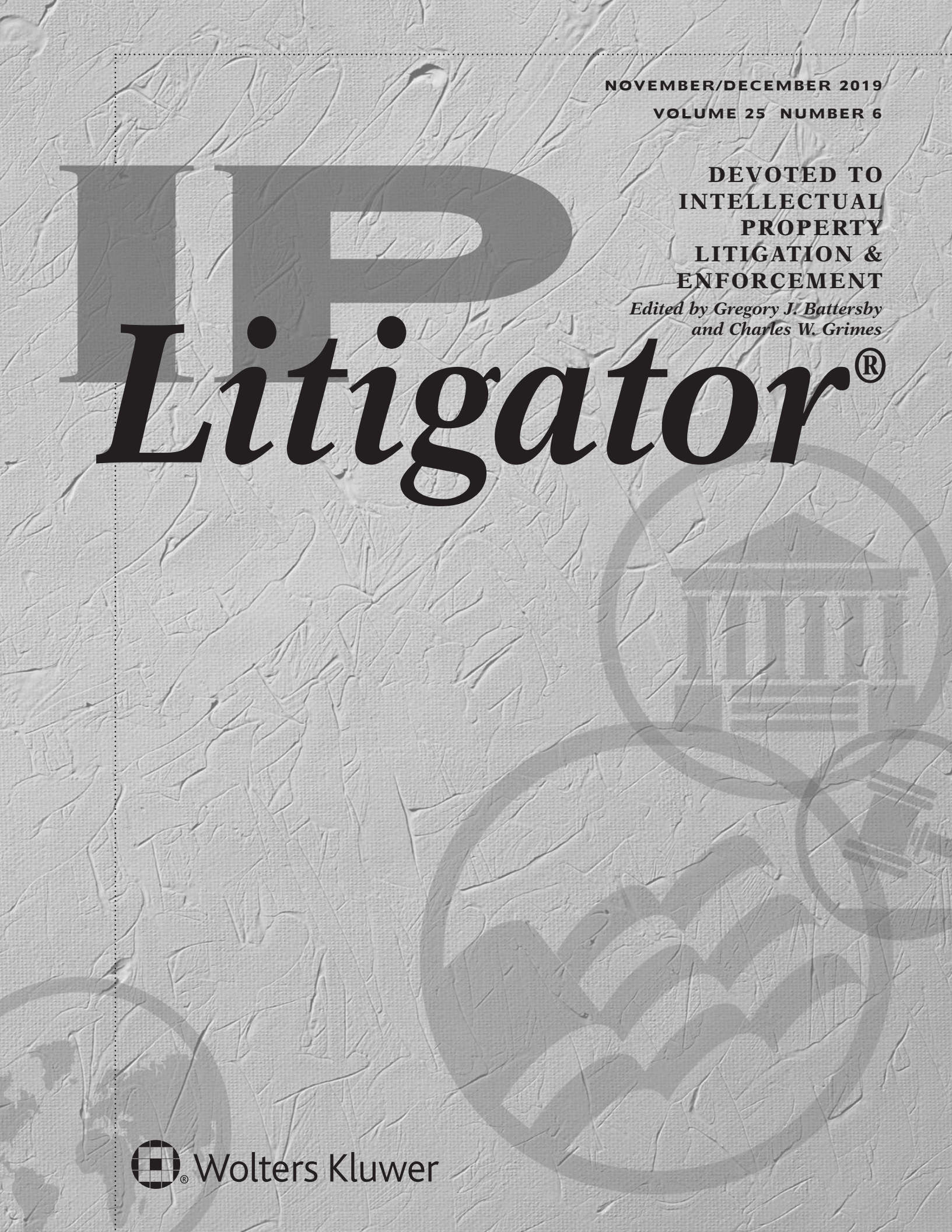

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Patent Litigation

Anthony J. Fuga

Federal Circuit Elucidates *Berkheimer* and *Aatrix*; Patents Presumed Eligible Under Section 101

The US Court of Appeals for the Federal Circuit, in a precedential opinion in *Cellspin Soft, Inc. v. Fitbit, Inc., et al.*, CAFC, June 25, 2019, vacated both the district court's Section 101 dismissal and the order granting attorney fees under Section 285. Most interesting, however, is the Federal Circuit's discussion of both *Berkheimer* and *Aatrix*, as well as the court's clear statement that patents are presumed patent eligible under Section 101.

Although patents are presumed to be valid, the Federal Circuit had never conclusively stated that the same presumption applies to a patent when it is challenged on Section 101 grounds—that is, whether the patent is directed to patent-ineligible subject matter, such as a law of nature or abstract idea. District courts have been divided on this issue, often citing a *concurring opinion* by Judge Haldane Robert Mayer *in Ultramercial, Inc., and Ultramercial, LLC v. Hulu, LLC and WildTangent, Inc., 2010-1544, CAFC, November 14, 2014,* where he opined that "no presumption of eligibility attends the section 101 inquiry."

This is no longer a debate: Patents are presumed to be eligible under Section 101.

Cellspin's Asserted Patents

Cellspin asserted four patents, all of which shared the same specification. The patents relate to connecting a data capture device (e.g., a digital camera) to a mobile device so that a user can automatically publish content from the data capture device to a website. The patents state that prior art devices could digitally capture content. But to upload the content to the internet, users had to utilize a memory stick or cable to transfer the content to a computer.

The patents teach a way to transfer and upload data "automatically or with minimal user intervention" using a "data capture device" and a "mobile device." The two devices communicate via short-range wireless communication protocols (e.g., Bluetooth). The patents teach that a "client application" on the mobile device detects and receives content from the data capture device over the wireless connection and then "publishes the data and multimedia content on one or more websites automatically or with minimal user intervention."

Notably, the claims require establishing a paired connection between the data capture device and the mobile device *before* data is transmitted between the two.

The District Court's Opinion

Shortly after the Federal Circuit decided *Aatrix Software v. Green Shades Software, 2017-1452, CAFC, February 14, 2018 in 2018*, Cellspin filed notices of supplemental authority and then amended its complaints, just a few days before the scheduled hearing on the Section 101 motions to dismiss. Cellspin's amendment was within the timeframe contemplated by the scheduling order.

The US District Court for the Northern District of California granted the defendants' motions to dismiss, finding that "acquiring, transferring, and publishing data and multimedia content on one or more websites" was an abstract idea. At step two of the *Alice* inquiry, the district court found that the claim elements (e.g., a data capture device, Bluetooth) represented conventional computer components and performed as expected according to their ordinary uses.

After dismissing Cellspin's claims, the district court found that the case was exceptional because Cellspin's claims were "manifestly directed to an abstract idea" and were "exceptionally meritless." The district court noted that Cellspin litigated "aggressively" and refused "to analyze its patents critically" before filing suit.

The Federal Circuit Reverses the Dismissal and Fee Award

The Federal Circuit agreed with the district court that Cellspin's

claims were directed to the abstract idea of capturing and transmitting data from one device to another, noting that "the need to perform tasks automatically is not a unique technical problem."

At step two, however, the Federal Circuit found Cellspin's allegations were enough to exclude a finding that the asserted claims were ineligible under Section 101 as a matter of law.

Cellspin alleged that it was "unconventional to separate the steps of capturing and publishing data so that each step would be performed by a different device linked via a wireless, paired connection." The Federal Circuit noted that this two-step, two-device structure "is discussed throughout the shared specification."

The Federal Circuit looked to *Aatrix*, stating that "we repeatedly cited allegations in the *complaint* to conclude that the disputed claims were potentially inventive." The Federal Circuit, however, noted, "we do not read *Aatrix* to say that any allegation about inventiveness, *wholly divorced*, from the claims or the specification, defeats a motion to dismiss ... As long as what makes the claims inventive is recited by the claims, the specification need not expressly list all the reasons why this claimed structure is unconventional."

Cellspin's allegations were not wholly divorced from the patent specification. The Federal Circuit found that Cellspin made specific, plausible factual allegations about why its claims were not conventional, and there was "no basis, at the pleadings stage, to say that these claimed techniques, among others, were well-known or conventional as a matter of law."

Looking specifically at Bluetooth, the Federal Circuit found that "even assuming Bluetooth was conventional at the time of these inventions, implementing a well-known technique with particular devices in a specific combination ... can be inventive." The district court, however, ignored "the principle, implicit in *Berkheimer* and explicit in *Aatrix*, that factual disputes about whether an aspect of the claims is inventive may preclude dismissal at the pleadings stage under Section 101."

Moving to the attorney fees award, the Federal Circuit emphasized that "patents granted by the Patent and Trademark Office are presumptively valid ... To the extent the district court departed from this principle by concluding that issued patents are presumed *valid* but not presumed *patent eligible*, it was wrong to do so."

Accordingly, the Federal Circuit accepted Cellspin's allegations as true and held that "we cannot say that the asserted claims are ineligible under Section 101 as a matter of law."

Takeaways

It is clear upon reading this decision that the Federal Circuit, or at least this panel (Judges Kathleen O'Malley, Alan Lourie and Richard Taranto), wanted to emphasize a few points.

1. Patents are presumed to be valid and eligible even in the Section 101 context.
2. The focus of the Section 101 inquiry remains the asserted claims.
3. The patent specification does not need to expressly state all the reasons there is an inventive concept, *but* the purported inventive concept cannot be "wholly divorced" from the claims or the specification. In other words, the factual allegations must still be plausible.

Anthony Fuga is a partner in Holland & Knight's Chicago office. He represents clients—as either plaintiffs or defendants—in all forms of intellectual property disputes.