Improved User Experience Does Not Improve Computer Functionality Under *Alice*, Court Rules

Anthony J. Fuga

In 2019, the U.S. District Court for the District of Utah dismissed Simio, LLC's lawsuit against FlexSim Software Products, Inc., finding that the asserted patent was ineligible under Section 101. Simio responded by asking the court to vacate its judgment or, alternatively, grant leave to amend its complaint based on the then-recent *Cellspin v. Fitbit* decision. The district court found no basis to vacate its previous judgment or grant leave to amend.

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Anthony J. Fuga, a partner in the Chicago office of Holland & Knight LLP, represents clients in all forms of intellectual property litigation, including patent, trade secret, trademark, copyright, and Computer Fraud and Abuse Act disputes. Mr. Fuga may be contacted at *anthony.fuga@hklaw.com*.

ALICE STEP 1

Simio asserted a patent titled "System and Method for Creating Intelligent Simulation Objects Using Graphical Process Descriptions," which described different types of simulations, including those that are "event-oriented, process-oriented, and object-oriented." The asserted patent claim[2] related to the third type: object-oriented simulations and taught "making object-oriented simulation easier and more accessible by letting users build simulations with graphics instead of programming."

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Looking at both the asserted claim and patent specification, the Federal Circuit found that patent "showcased its key advance: using graphics instead of programming to create object-oriented simulations . . . the process of building an object in the present invention is simple and completely graphical. There is no need to write programming code

to create new objects." The Federal Circuit determined, however, that applying the practice of using graphics instead of programming to the environment of object-oriented simulations is no more than an abstract idea.

Simio argued that the claim was not directed to an abstract idea because it "presents improvements to computer-implemented simulation, resulting in improvements in the computers' capabilities." The Federal Circuit disagreed: "[T]his argument does not explain how the computer's functionality is improved beyond the inherent improvement of the experience of a user who cannot (or maybe, would rather not) use programming." "In this case, 'improving a user's experience while using a computer application is not, without more, sufficient to render the claims directed to an improved computer functionality.'"

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Simio argued that the improvement to the computer's functionality was by employing a "new way of customized simulation modeling with improved processing speed." However, the court rejected this argument as well: "[C]laiming the improved speed or efficiency inherent with applying the abstract idea on a computer is insufficient to render the claims patent eligible as an improvement to computer functionality."

The Federal Circuit finally found that Simio's own characterization – adding to an instance of a simulated object without the need for programming – supported the conclusion that the patent was directed to an abstract idea, and this argument was better considered "as a potentially inventive application of the abstract idea at step two" of the *Alice* inquiry.

ALICE STEP 2

Simio argued at step two that the "executable-process limitation" in the claims provided the necessary inventive concept. The Federal Circuit again disagreed with Simio. "While Simio acknowledges that implementing the executable process's functionality through programming was conventional or known, it contends that doing so with graphics in a simulation provides the inventive concept. . . . But what Simio relies on is just the abstract idea itself, which cannot supply the inventive concept."

Simio also stressed that the executable-process limitation is novel. But even if this were true, it did not avoid the problem of abstractness because a claim for a new abstract idea is still an abstract idea. "And that's really what we have: a claim directed to the idea of using graphics instead of programming to create object-oriented simulations – maybe a new idea, but still an abstract one – and lacking any inventive concept, any meaningful application of this idea, sufficient to save the claim's eligibility."

LEAVE TO AMEND THE COMPLAINT

Simio made two arguments on appeal related to the denial of leave to amend. First, Simio argues that the amended complaint's new allegations were sufficient to preclude dismissal for ineligibility. Second, Simio argued that the district court erred by finding ineligibility without first conducting claim construction. Both of these arguments failed.

As to the first argument, the new allegations were not sufficient to preclude dismissal because Simio's added allegations were either conclusory or not helpful to its case. "A statement that a feature improves the functioning and operations of the computer is, by itself, conclusory."

As to the second argument, Simio failed to explain how claim construction might benefit it in the court's *Alice* analysis and, instead, limited its specific claim-construction arguments to show that the asserted claim was to a statutorily eligible "machine." The court saw no error in the district court deciding patent eligibility without first conducting claim construction.

The Federal Circuit finally affirmed the district court's decision to deny leave for a third reason: Simio failed to show good cause for seeking leave to amend after the scheduling order's deadline. While Simio included a generic footnote in its motion-to-dismiss opposition, Simio "supplied no authority suggesting that this kind of drive-by request insulates a party from the consequence of missing the amendment deadline."

Accordingly, the Federal Circuit affirmed the district court's finding that the asserted patent was invalid under Section 101 and the denial of leave to amend the complaint.

Notes

1. *Simio, LLC v. FlexSim Software Prod., Inc.*, No. 2020-1171, 2020 WL 7703014 (Fed. Cir. Dec. 29, 2020).
2. The asserted claim:

A computer-based system for developing simulation models on a physical computing device, the system comprising:

one or more graphical processes;

one or more base objects created from the one or more graphical processes,

wherein a new object is created from a base object of the one or more base objects by a user by assigning the one or more graphical processes to the base object of the one or more base objects;

wherein the new object is implemented in a 3-tier structure comprising:

an object definition, wherein the object definition includes a behavior,

one or more object instances related to the object definition, and

one or more object realizations related to the one or more object instances;

wherein the behavior of the object definition is shared by the one or more object instances and the one or more object realizations; and

an executable process to add a new behavior directly to an object instance of the one or more object instances without changing the object definition and the added new behavior is executed only for that one instance of the object.

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