

Invalidating a Patent on a Motion to Dismiss Is Proper: Content Extraction and Transmission LLC v. Wells Fargo Bank

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The U.S. Court of Appeals for the Federal Circuit did not find the patentee's infringement suit to be objectively baseless, notwithstanding that the underlying patent was found invalid at the pleadings stage under §101. *Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat'l Assoc. et al.*, Case Nos. 13-1588, 13-1589, 14-1112, 14-1687 (Fed. Cir., Dec. 23, 2014) (Chen, J.).

Content Extraction and Transmission (CET) owns four related patents directed to optical character recognition of hard copy documents. CET sued Wells Fargo and PNC Bank for patent infringement, targeting the banks' ATM check deposit software. In response, the manufacturer of these ATMs, Diebold, filed a declaratory judgment action against CET, asserting non-infringement and invalidity.

The district court consolidated all the related cases for pretrial purposes. The banks moved to dismiss CET's complaint under Fed R. Civ. P. 12(b)(6) on the ground that the claimed subject matter was not patent-eligible under 35 U.S.C. §101. The district court agreed, invalidated the claims and dismissed as moot Diebold's declaratory judgment claims. CET appealed the invalidity finding.

The Federal Circuit affirmed the district court's invalidity findings and dismissals. First, in line with the recent trend of post-*Alice Corp* and post-*Ulramercial* cases, the Court agreed that CET's claims are directed to an abstract idea lacking inventive concept. As the Court explained, the claimed invention amounted to collecting data, recognizing data and storing the recognized data. Noting that humans have always performed these functions, the Court found the claims' recitation of a computer to perform these functions and the use of well-known scanners with optical character recognition were not inventive concepts and did not transform this abstract idea into patent-eligible subject matter. Accordingly, the Court agreed that the subject matter of CET's patents is ineligible.

Second, the Court affirmed the procedural timing of the district court's decision, despite the lack of discovery or *Markman* proceedings. The Court acknowledged that claim construction is not a prerequisite to determining subject matter eligibility under §101. Instead, the Court approved of the district court's interpretation of the claims in the manner most favorable to the patentee and agreed that, even construing the claims in this way, they are directed to ineligible subject matter.

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