

Automated Tracking Solutions, LLC v. The Coca-Cola Company

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Automated Tracking Solutions, LLC, (“ATS”) appealed findings of invalidity for failing to claim patent-eligible subject matter by the United States District Court for the Northern District of Georgia. In a decision rendered by the United States Court of Appeals for the Federal Circuit on February 16, 2018, the Court affirmed the district court’s finding that the subject matter was not patent-eligible.

ATS asserted four patents, U.S. Patents Nos. 7,551,089; 7,834,766; 8,842,013; and 8,896,449, against The Coca-Cola Company (“Coca-Cola”). As ATS explained in its complaint, the asserted patents relate to “processes and systems to perform the functions of ‘identification, tracking, location, and/or surveillance of tagged objects anywhere in a facility or area’ utilizing radio frequency identification (“RFID”) technology.

In its district court briefing, ATS identified four representative claims—one independent claim from each asserted patent. However, the district court adopted Coca-Cola’s opposing proposal selecting two of the four aforementioned claims as representative. Analyzing these two claims, the district court granted Coca-Cola’s motion for judgment on the pleadings finding that the claims of the asserted patents were patent ineligible under § 101. ATS appealed.

During oral argument, ATS conceded that the district court’s selection of representative claims was proper and the decision not to analyze the two other claims identified by ATS did not affect the § 101 analysis.

Representative claim 1 of U.S. Patent No. 7,834,766 recites:

1. A system for locating, identifying and/or tracking of an object, the system comprising:

a first transponder associated with the object;

a reader that is configured to receive first transponder data via a radio frequency (RF) signal from the first transponder;

an antenna in communication with the reader and having a first coverage area;

a processor coupled to the reader, wherein the processor is configured to receive the first transponder data from the reader and to generate detection information based on the received first transponder data, the detection information comprising first sighting and last sighting of the first transponder in the first coverage area; and

a storage device that is configured to store the detection information.

Regarding *Alice* step-one, the Federal Circuit held the representative claims of the asserted patents were directed toward the abstract idea of locating, identifying, and/or tracking of an object using RFID components. Noting that ATS conceded the district court's choice of representative claims was proper, the Federal Circuit explained that its review was limited to the representative claims. ATS's remaining arguments as to claim scope were unpersuasive because, while the dependent claims of the asserted patents may have included additional limitations, those limitations were not present in the representative claims.

Regarding *Alice* step-two, the Federal Circuit also affirmed the district court's finding that the asserted patents did not contain an inventive concept. ATS argued that RFID was a developing technology at the time of invention, and thus, the representative claims of the asserted patents did not recite routine and conventional uses of an RFID system. While the Federal Circuit was obligated to accept as true all plausible factual allegations in ATS's complaint, the complaint contained no allegations supporting ATS's argument. The Federal Circuit also found that the specification described an RFID system comprised of conventional components, the same components recited in the representative claims of the asserted patents. While the Federal Circuit referenced its recent decision in *Berkheimer* which held that whether a claim element or a combination of claim elements was well-understood, routine and conventional is a question of fact, there was no such factual issue here.

The Federal Circuit held that the same analysis applied to the second representative claim because that claim did not "recite any additional elements beyond those found to be directed to an abstract idea under our analysis of claim 1 of the '766 Patent." Further, the second representative claim did not include "an inventive concept under *Alice* step two" because it was broader than representative claim 1.

As a practice tip, a patentee should consider including in a complaint for patent infringement allegations that the claim elements, individually or as a whole, were not well-understood, routine or conventional at the time of the invention. Given the Federal Circuit's recent decisions, including such allegations can create an issue of fact and provide some degree of protection against early § 101 challenges.

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