

**Federal Circuit Provides Clarity on the Abstract-Idea analysis in
*GoTV Streaming v. Netflix***

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Ever since the Supreme Court punted on what exactly constitutes an abstract idea in *Alice*, it has been a struggle to understand what is and what is not one. The Federal Circuit provided some nice clarity in *Chargepoint*, particularly on what role the specification plays, and we have received bits and pieces along the way. Now, in today's *GoTV* opinion, the Federal Circuit provided some much-needed clarity on the abstract-idea analysis, functional claiming, and the relationship between steps one and two of the *Alice* analysis.

The case involves three patents, each sharing a common specification, directed to tailoring content to a particular wireless device's capabilities, including resolution, screen size, color palette, *etc.* Tailoring content to a particular device is very old, and since the representative claim is functionally drafted, I thought the Federal Circuit would make quick work of this case. Instead, thankfully, the court provided some nice guidance.

Following is the representative claim:

1. A server implemented method for processing data for a wireless device, comprising:

receiving from the wireless device a request for an application program, said request including an indication of a type of the wireless device;

executing, in response to receiving said request, said application program to generate a wireless device generic template including a plurality of content items;

sending a custom configuration to the wireless device, said custom configuration being specific to said application program;

generating a page description based on said wireless device generic template and a capability of the wireless device, said page description having at least one discrete low level rendering command that is within said rendering capability of said wireless device but that is of a syntax that is wireless device generic; and

sending said page description to the wireless device such that the wireless device is capable of presenting at least one content item from said plurality of content items using both said page description and said custom configuration.

The court started its step-one analysis by stating its frequently used phrase that this analysis “often turns to the question of what the patent asserts as the claimed advance over the prior art.” Then, the court provided analysis on the meaning of “abstractness” as used by the Supreme Court: abstractness has several related meanings “for example, as contrasting with tangibility of implementations of general principles or with concreteness of mechanisms for how to achieve desired results.” The court then referred to three relevant lines of its cases: (1) “a longstanding or fundamental human practice” is directed to an abstract idea; (2) “the steps of obtaining, manipulating, and displaying data, particularly when claimed at a high level of generality” is an abstract idea; and (3) “result-focused functional language, containing no specificity about how the purported invention achieves those results” is an abstract idea. The court also recognized that narrowing an abstract idea to a particular use or environment “remains an abstract idea.” For this point, one of the cases cited for support is *Electric Power Group (EPG)*, which had a very detailed claim.

Perhaps the most helpful abstract-idea discussion involved the court explaining the line between what is and what is not an abstract idea:

On one side of the line (requiring a determination favoring the patent challenger at step one) are claims that simply call for the use of computers and networks as tools to carry out an abstract idea, using their ordinary functions without specific hardware or process advances in those functions—*e.g.*, receiving inputs, storing and retrieving, processing, outputting (including displaying), and transmitting. On the other side of the line (ending the *Alice* inquiry, without proceeding to step two) are claims that call for a concrete asserted improvement in how those functions are carried out, which requires more than result-

focused functional language and more than just using those functions in the context of specifically identified content.

Here, the court held that the claim is directed to the abstract idea of “a template set of specifications...that can be tailored...for final production of the specified product...to fit the user’s constraints.” The court dismissed the claim’s recitation of collecting and combining information as rendering it non-abstract, stating “collecting, storing, organizing, and displaying information are, without more, themselves abstract,” which certainly is *EPG*, although the court did not give such attribution. Interestingly, the patent owner argued that the claims required specific data structures (obviously trying to leverage off of *Enfish*), but the court disagreed, simply referring to those terms as “packages of information of a particular content.”

At step two, the court did us a favor by providing some explanation between the two *Alice* steps:

Step one focuses on the legal issue of the meaning of the claims and specification (and prosecution history if pertinent), which at least typically “can be answered based on the intrinsic evidence,” *CardioNet*, 955 F.3d at 1372; *id.* at 1373–74, whereas step two focuses on often-factual issues of real-world knowledge and practices (within the important legal constraints on what constitutes a qualifying inventive concept, such as not itself being an abstract idea), *see BSG*, 899 F.3d at 1290; *Berkheimer*, 881 F.3d at 1367–68.

The court further stated, at step two, that it is insufficient to recite functional, result-oriented language or ordinary use of computers or networks to perform the abstract idea, “without going further to require a specific implementation to improve *how* those functions are carried out.” In striking down the claims, the court stated that there was no specificity as to how tailoring is done other than result-focused functional language.

All-in-all, I think this is a very important step-one case, which I plan to emphasize in my articles, webinars, and speeches.