

*Electric Power Group* Reigns Supreme in  
*Sunoco Partners Marketing v. Powder Springs Logistics*

by

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On Friday, the Federal Circuit issued a patentable subject matter case under 35 U.S.C. § 101, where it seemingly used *Electric Power Group* (collecting information, analyzing information, and presenting results is an abstract idea) as the key consideration, even appearing to ignore physical and temporal limitations that tie the claim to the technological advantages described in the specification.

In *Sunoco Partners Marketing v. Powder Springs Logistics* (nonprecedential), the Federal Circuit reviewed three sets of claims directed to blending butane with gasoline at petroleum tank farms, immediately before distribution to tanker trucks. Two of the three sets of claims were found patent eligible because they recite physical systems/processes (e.g., “a tank of gasoline,” “a tank of butane,” “a blending unit,” “a dispensing unit,” and “a rack, wherein the dispensing unit is located at the rack and is adapted to dispense gasoline to gasoline transport vehicles”). Interestingly, the Federal Circuit dismissed one of the defendants-appellants arguments because the claim at issue “is directed to an eligible mechanical invention—i.e., ‘a concrete thing, consisting of parts, or of certain devices and combination of devices.’” (citing *SiRF Tech.*) This seems to contradict *Yu v. Apple* (2021) where the Federal Circuit struck down a digital camera claim with all hardware limitations. But I digress.

The specification was well crafted, and the Federal Circuit acknowledged the technological improvements described. Namely, the gasoline and butane blending occurs downstream of their respective storage tanks: “after the gasoline and butane are drawn from their storage tanks for dispensing into a tanker truck, but before the gasoline is actually dispensed to the tanker truck at the rack.” The rack is where the tanker truck connects to receive its supply. Also, the blending apparatus can use varying blend ratios to achieve a desired vapor pressure. This provides several benefits, such as forming a blend that does not exceed the maximum allowable vapor pressure.

I focus only on the representative claim found patent ineligible, claim 31 of U.S. Pat. No. 7,032,629:

31. A computer-implemented method for blending a butane stream and a gasoline stream comprising the steps of:

receiving a first measurement indicating a vapor pressure of the gasoline stream;

calculating a blend rate at which the butane stream can be blended with the gasoline stream;

transmitting an instruction to a programmable logic controller for adjusting the butane stream to the calculated blend rate for blending with the gasoline stream and distributing at a rack; and

receiving a second measurement indicating a vapor pressure of the blended gasoline stream and butane stream.

Importantly, the preamble recites that the method blends “a butane stream and a gasoline stream.” Use of the term “stream” means the butane and gasoline have left their holding tank. *See e.g.*, ’629 patent, Abstract. Also, the transmitting step transmits “an instruction to a programmable logic controller for ***adjusting the butane stream to the calculated blend rate for blending with the gasoline stream and distributing at a rack.***” It seems to me that the claim is therefore tied to (or controls) the physical process of blending the butane stream and gasoline stream at varying blend ratios downstream of the storage tanks and before being loaded onto the tanker trucks. Nevertheless, the Federal Circuit stated:

***Claim 31 does not recite the step of blending gasoline and butane; nor does it recite where blending would occur.*** Rather, claim 31 recites an algorithm that receives measurements, calculates, and transmits an instruction for adjusting a butane stream based on “receiving” and “calculating” data. (emphasis added)

The Federal Circuit continued:

***The claim’s preamble does not save it from abstraction here.*** We agree that courts must be vigilant against over generalizing what a claim is directed to in an *Alice* analysis. However, “we have treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract

ideas.” *Elec. Power Grp., v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). Here, the claims recite a method “of gathering and analyzing information of a specified content [in claim 31], then displaying the results [by generating a report in claim 32], and not any particular assertedly inventive technology for performing those functions. The [claims] are therefore directed to an abstract idea.” (emphasis added)

The Federal Circuit then struck down the claim by holding that it did not recite an inventive concept at *Alice* step two.

In this case, the Federal Circuit made *EPG* the paramount consideration in its analysis, placing it above the physical and temporal limitations that seem to tie the claim to the technological improvements described in the specification. Obviously, you could also make the observation that the computer-implemented control process was not patent eligible whereas the underlying physical process was. That’s certainly interesting. In my mind, this decision causes much confusion.