Ollnova Technologies Ltd. v. ecobee Technologies ULC:

Claims Found Patent Eligible Over *Electric Power Group*

by

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In addition to the claims surviving *Electric Power Group* (*EPG*), today's *Ollnova* Federal Circuit decision had an interesting twist. The court addressed whether the jury instructions were proper for a patentable-subject-matter determination under 35 U.S.C. § 101. The court found error in a jury instruction that asked the jury to decide whether a claim recited an inventive concept without being instructed on whether the claim was even directed to an abstract idea. The court stated that "this Court's precedent evaluates the alleged inventive concept at step two in light of the abstract idea identified at step one." By failing to identify the abstract idea, the jury was permitted "to treat the abstract idea itself as supplying the inventive concept." The court held, "the jury should be instructed as to the abstract idea and informed that the abstract idea cannot supply the inventive concept."

There certainly are Federal Circuit cases where the court seemingly skipped step one, finding patent eligibility via an inventive concept at step two. *DDR* is one. Interestingly, the court distinguished *DDR*, stating the court there had "identified various characterizations of the abstract idea" and then proceeded to step two because "under any of those characterizations of the abstract idea, the … claims satisfy … step two." I re-read *DDR*, and it seems to me that the court there was more persuaded by the claims reciting a technical solution to a technical

problem rather than considering whether the inventive concept was subsumed within any abstract idea. But, I digress.

Two of the court's § 101 analyses are worth mentioning, one involving the '887 patent and the other involving the '371 patent. Both patents are directed to building automation systems (BAS), and in both, the court found the claims did not recite an abstract idea. I reproduce the representative claims below for each patent, because each is fairly functionally drafted, which is surprising, given that the Federal Circuit is striking down many such claims.

The '887 patent addresses problems of limited bandwidth, signal interference, and power usage in a BAS. Claim 1 is representative:

> 1. A wireless automation device, comprising:
>
> a transceiver operable to wirelessly communicate packets of information over a wireless network;
>
> a sensor operable to generate a [*sic*] indicator for a sensed condition;
>
> a controller configured to poll the sensor at a polling interval to read the indicator during a current period of the polling interval and to selectively operate the transceiver to communicate information associated reading of the indicator; and
>
> a memory, the controller storing a reading of the indicator during the current period in the memory, where the memory stores at least one prior reading of the indicator, the prior reading of the indicator made during a prior period of the polling interval,
>
> wherein the transceiver is configured to transmit a most recent reading of the indicator stored in the memory during a period of a transmission interval in response to detecting a change in the sensed condition outside a predetermined range and wherein transmission of the most recent reading of the indicator stored in the memory during the period of the transmission interval is suspended in response to detecting a change in the sensed condition within the predetermined range.

The court found this claim is directed to "a specific technology-based improvement in the operation of a network ... using a 'wireless automation device.'" The court also stated that the claim's limitations "do not merely describe collecting and communicating data in the abstract" but "they recite a particular technique governing *when* and *how* information is transmitted." (emphasis in original). Moreover, the claim imposes "timing constraints" and a "conditional trigger."

Most importantly, the court distinguished *EPG* by stating:

> In *Electric Power Group*, … the claimed invention merely collected data from sensors located across an electric grid, analyzed it, and displayed the results without changing how existing sensors worked, how information was analyzed or transmitted, or how it was displayed.
>
> ….
>
> Here, in contrast, the claims recite a particularized set of constraints that alters when and how data is collected and transmitted. The claims are not merely directed to a result, such as "filtering data" or "transmitting relevant information," but to a defined technique for achieving such results. The combination of periodic polling, transmission intervals, and selective transmission upon a threshold being met reflects a particular means for communications within BAS networks rather than a generalized data-handling concept.

The court concluded that the claim was not directed to an abstract idea.

The '371 patent is directed to data transmission within a BAS system. The representative claim follows:

> 13. An automation component configured for wireless communication within a building automation system, the automation component comprising:
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> a wireless communications component;
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> a processor in communication with the wireless communications component;

> a memory in communication with the processor, the memory configured to store computer readable instructions which are executable by the processor;
>
> wherein the computer readable instructions are programmed to:
>
> receive at least one change-of-value update via the wireless communications component, wherein the change-of-value update includes a plurality of change-of-value messages received from a plurality of devices;
>
> storing the at least one change-of-value update corresponding to at least one wireless device; and
>
> communicate the at least one change-of-value update in response to a polling request and repeat the at least one change-of-value update at regular intervals according to a schedule or until a change-of value acknowledgment is received.

The court stated that this claim "provides a specific manner in which data is transmitted within a BAS system." The court also referred to the specification which "confirms that the claimed communication means addresses technical challenges arising in BAS networks." Importantly, the court once again distinguished *EPG* stating:

> ecobee's reliance on the same cases involving generalized data analysis and transmission claims it cited against the '887 patent is misplaced. *See* Cross-Appellant Br. 40. Unlike the automation component for a wireless communication system claimed here, those cases did not involve a comparably specific asserted improvement in the operation of an existing technological system. *See, e.g., Elec. Power Grp.*, 830 F.3d at 1354–55; *Chamberlain Grp.*, 935 F.3d at 1346–48; *Affinity Labs*, 838 F.3d at 1258–62.

The court was persuaded by "the wireless network communications challenges addressed by the inventors and the claimed improvements to device operations." The court therefore concluded that the claim was not directed to an abstract idea.

Key takeaways: First, this case is a rarity; the claims survived *EPG*. I can't think of another case where *EPG* was applied and the claims survived. Second, the claims were somewhat functionally drafted. I've written about many other claims of similar breadth that were easily struck down by the court. In fact, the court is beginning to use "functionally drafted" as a new abstract-idea category. *See e.g., GoTV Streaming v. Netflix* ("result-focused functional language, containing no specificity about how the purported invention achieves those results" is an abstract idea). And, lastly, the claims here were not very detailed. Yet, they survived. For example, the representative claims above contained 189 and 136 words each, respectively, whereas the *EPG* representative claim had 394 words. The court here was obviously persuaded by the technological challenges that the invention had to overcome, because the opinion described those challenges in detail. I therefore attribute this result to a well-crafted specification.