

“[A] rich and elaborate corpus of Section 101 precedent” is how the Federal Circuit describes its patentable subject matter caselaw in *Etison, LLC v. HighLevel, Inc.*

by

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In today’s *Etison v. HighLevel* case (nonprecedential), the Federal Circuit struck down two patents for patent ineligibility under 35 U.S.C. § 101 that are directed to website templates which create digital sales funnels to entice and direct potential customers to purchase products. The representative claim follows:

A method, comprising:

providing, to a user for display on a client device, via a website creation system, a user dashboard comprising a selectable option to create a website;

receiving a selection of the selectable option to create a website;

in response to receiving the selection of the selectable option to create a website, providing, to the user for display on the client device, a plurality of website types for selection;

receiving a selection of a website type of the plurality of website types,

wherein each website type of the plurality of website types comprises a series of directional webpages configured to cause an end user interaction with a website,

wherein the series of directional webpages of each website type of the plurality of websites types comprises a unique plurality of sequential webpages configured to be provided sequentially one after another;

in response to receiving the selection of a website type of the plurality of website types, providing, to the user for display on the client device, a plurality of website templates for selection, the plurality of website templates being particular to the selected website type;

receiving a selection of a website template of the plurality of website templates and the series of directional webpages of the selected website type;

in response to receiving the selection of a website template, generating and launching a generic website based on the selected website type and selected website template and providing, to the user for display on the client device, a website editor graphical user interface, the website editor graphical user interface comprising a plurality of webpage tabs, each webpage tab of the plurality of webpage tabs representing a webpage of the series of directional webpages;

receiving at least one indication of a user interaction editing at least one webpage of the series of directional webpages; and

in response to receiving the at least one indication of a user interaction editing at least one webpage of the series of directional webpages, editing the launched generic website to create a customized website.

In striking down the patents on a motion to dismiss, the district court had found the claims were directed to the abstract idea of “filtering information based on user preferences to arrive at a final result.” Interestingly, the appellant chose not to appeal this issue. The case, therefore, dealt solely with the *Alice* step-two analysis.

The appellant argued that its amended complaint plausibly alleged that the claims recited technological advantages over prior systems. The Federal Circuit, however, disagreed, stating that “conclusory allegations that the prior art lacked elements of the asserted claims are insufficient to demonstrate an inventive concept.” (citing *Trinity Info Media*) The court continued, “nothing in the claims,

specifications, or the Amended Complaint provides necessary detail as to how to achieve the alleged improvement in computer functionality.”

The court then analogized the claims to others it found invalid for “consisting of nothing more than ‘functional, result-focused language.’” (citing *GoTV*, “In conducting the step-two inquiry, we have repeatedly emphasized that it is not sufficient, in order to pass muster, for a claim to use functional, result-focused language or to encompass ordinary computers and networks to perform their ordinary functions in carrying out an abstract idea, ... without going further to require a specific implementation to improve how those functions are carried out.”)

The court also approved of the district court having analogized the patents-in-suit to similar claims the Fed. Cir. had already evaluated “in what now amounts to a rich and elaborate corpus of Section 101 precedent....” Yes, that’s what the Federal Circuit said about its § 101 caselaw. The court continued:

More than a decade ago, we announced that “the decisional mechanism courts now apply [to Section 101 cases] is to examine earlier cases in which a similar or parallel descriptive nature can be seen,” *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016), and we have consistently adhered to this “classic common law methodology” in our Section 101 jurisprudence in the years since, *In re Killian*, 45 F.4th 1373, 1383 (Fed. Cir. 2022).

Certainly, there are many Federal Circuit cases since *Alice*, but I’m not sure that leaving courts and practitioners to “analogize” to those numerous decisions when seeking direction can lead to anything but confusion.

In any event, the court stated that the district court had “appropriately and persuasively analogized the present case to our decision in *Intellectual Ventures*....” The court continued:

In that case, we found that “a series of generic computer components that merely restate their individual functions” – such as “organizing, mapping, identifying, defining, detecting, and modifying” – only “describe[d] the functions of the abstract idea itself, without particularity” and, thus, was “simply not enough under step two” to plausibly allege an inventive concept.

The court also separately analyzed two dependent claims that included a limitation directed to “one or more triggers.” But, the court held that this limitation was a conventional computer activity.

Key takeaways: We again see a detailed claim (338 words) struck down because the court finds that it is functionally drafted. I think it’s also interesting that the court looks upon its § 101 caselaw with what seems like a sense of pride. Perhaps this means that the court does not intend to provide any more clarity than what it has done since June 2014, the date of the Supreme Court’s *Alice* decision.