

**Claims broad enough to cover an inventive concept—but which do
not require it—struck down as patent ineligible
(another *Electric Power Group* case)**

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In today's *Berkeley*IEOR v. W.W. Grainger Inc.* decision (nonprecedential), the Federal Circuit reversed a district court's finding of patent eligibility. The case involves three patents directed to methods for calculating object-level profitability. The district court had found the claims patent eligible at *Alice* step two for reciting an inventive concept: performing parallel computations in a faster amount of time. The representative claim follows:

1. A process for determining object level profitability in a computer, comprising the steps of:

[1a] providing a relational database management system operable in association with a computer;

[1b] preparing information to be accessed electronically through the relational database management system;

[1c] establishing, in the relational database, rules for processing the prepared information;

[1d] using the relational database management system to independently calculate at least one marginal value of profit for each object being measured using the established rules as applied to a selected set of prepared information;

[1e] using the relational database management system to calculate a fully absorbed profit adjustment value for each object being measured; and

[1f] combining the at least one marginal value of profit and the fully absorbed profit adjustment value to create a measure for object level profitability.

At step one, the Federal Circuit agreed with the district court that the claims are directed to the abstract idea of calculating profitability. The court explained that the claim “is directed to the idea of performing mathematical calculations to determine profitability using a computer to do so.” Citing *Electric Power Group (EPG)*, the court held that “[t]he idea of performing calculations based on ‘abstract processes of collecting and analyzing information, without more,’ is an abstract idea.”

At step two, the Federal Circuit reversed the district court’s holding that the claims recited the inventive concept of an “unconventional combination [that] improves the functioning and operation of the computer itself by performing parallel computations in a faster amount of time.” Citing *Alice*, the Federal Circuit stated that “if a claim is so broad that it can be practiced without the alleged inventive concept, i.e., the alleged inventive concept is not required by the claim, then the claim cannot be ‘significantly more’ than the abstract idea itself and fails at step two.” Because the parties and the district court agreed that the alleged inventive concept is not actually required by the claim, the Federal Circuit held that “it was legal error for the district court to nonetheless conclude that parallel processing supplied the inventive concept for [the claim]....” Consequently, the court found the claims patent ineligible and struck them down.

Key takeaways: *EPG* continues to reign supreme as the Federal Circuit’s weapon of choice for striking down claims under 35 U.S.C. § 101. While the

claims were functionally drafted and even directed to kind of a business method, that wasn't what the court was focused on. Instead, the court performed an *EPG* analysis and found the claims ineligible because their scope did not actually require the inventive concept. This serves as a stark reminder that the inventive concept must be explicitly recited in the claim to survive step two scrutiny.