

# ***Linden v. ResMed*: Not Surprising That This Remote Telehealth Patent Is Struck Down as Patent Ineligible**

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In Friday's *Linden v. ResMed* (nonprecedential), the Federal Circuit affirmed a district court's grant of a motion to dismiss based on patent ineligibility under **35 U.S.C. § 101**. The case involves a patent directed to remote telehealth, where a patient is in one location with an electronic device that is connected to a doctor at a different location. The claims are functionally drafted and the subject matter includes human activity—a category that has always had a difficult time with patent eligibility. (See, e.g., [my 1999 article](#)) The result here is simply not surprising. The representative claim follows:

**1. A method for treating a patient comprising steps of:**

providing a first device at a patient location, the first device being an internet and networking capable multi-media mobile electronic device comprising at least one each of a physical output display and an input transducer;

providing a second device at a remote location, wherein the second device is distinct and separate from the first device;

establishing an audio-video and data communication connection between the patient location and the remote location;

conducting an audio-video conference between the patient at the patient location and a treatment provider at the remote location, wherein the audio-video conference comprises the treatment provider eliciting patient information by verbally interacting with the patient;

transmitting the patient information from the first device to the second device by way of the audio-video conference;

using the input transducer to measure a patient parameter at the patient location and produce a first signal indicative of the patient parameter, wherein the patient parameter includes at least one vital sign;

transmitting the first signal to the second device;

forming a diagnosis at least partially based on the patient parameter;

using the first signal at the remote location, the diagnosis and the patient information transmitted before, during or after the audio-video conference to

determine a treatment and generating a second signal associated with said treatment;

sending said second signal from said second device to said first device to administer a treatment; and

using said second signal to cause a physical interaction between the physical output display and the patient.

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### **Step One: Remote Version of Conventional Human Activity**

At step one, the Federal Circuit agreed with the district court that the claim “simply describes ‘a remote version’ of an in-person doctor visit, a type of conventional organized human activity.” The court noted that it “has routinely affirmed the ineligibility of claims directed to similar conventional organized human activities being performed remotely.” (citing *University of Florida Research Foundation, an Electric Power Group (EPG)* case).

Linden argued that the claim was non-abstract because it is directed to a specific technological system with a “concrete technological architecture.” The court rejected this argument because the claim “recites only that the first ‘electronic device’ must be ‘internet and networking capable’ and must include at least one ‘physical output display’ and ‘input transducer.’” Moreover, the specification states that the “invention adds ‘communications or remote control capabilities to *known devices*’ like ‘medical devices, therapy devices, rehabilitation devices,’ etc.”

The court also rejected Linden’s technological-improvement argument because he “does not describe what, if any, advancements to computer devices are encompassed by [the claim].”

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### **Step Two: Everything Is Conventional**

At step two, Linden made a *Bascom* argument, the claim reflects a nonconventional arrangement of conventional pieces (“capturing patient data, transmitting that data, receiving remote control signals, and implementing those signals through a powered device”). The court rejected this argument because it merely restates the abstract idea, stating that “[o]ur jurisprudence is well-settled that ‘the abstract idea cannot supply the inventive concept.’” (citing *Mobile Acuity*) Linden’s other arguments were rejected as being conclusory.

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## Key Takeaways

It is nice to see a case that probably would have been found unpatentable even before *Alice*. Patents involving human activity have always had patent-eligibility difficulty. Here, the claim's preamble recites, "[a] method for treating a patient." For this patent to have had a chance, it would have had to explain in the specification the technical difficulties that had to be overcome and then make sure those difficulties were recited in the claims. Simply drafting a specification using generic components in their intended manner with functional claims doesn't work with purely technical subject matter (see, e.g., *ChargePoint*), never mind when the claim includes questionable subject matter like business-related or human-activity-related elements.

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