

Piranha Media Distribution v. Hulu: Is There Any Limit to How Much the Federal Circuit Will Summarize a Claim to Strike It Down as Patent Ineligible?

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October 18, 2026



In Wednesday's *Piranha Media Distribution LLC v. Hulu, LLC* (nonprecedential), the Federal Circuit affirmed a district court's grant of a motion to dismiss based on patent ineligibility under **35 U.S.C. § 101**.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 two related patents (sharing a specification) directed to inserting advertisements into digital media content so that the user can watch the content for free while the copyright holders receive compensation. U.S. Pat. No. 10,986,403, Abstract.

The district court had found the representative claim was directed to the abstract idea of "displaying an advertisement in exchange for access to copyrighted material" and "the abstract idea of receiving, organizing, and displaying data"—the latter of which is obviously a reference to the *Electric Power Group (EPG)* line of cases. Although the claim involves inserting advertisements into a video stream, it is highly technical and detailed. The Federal Circuit nevertheless treated the subject matter as business-related rather than technological. The representative claim (539 words) follows:

1. A digital media player device for controlling digital media presentations, the digital media player device comprising:

- one or more processors for receiving data comprising digital media content and digital advertising content;

- a user interface input for allowing a user to control a course of presentation of the digital media content received;

- an intersplicer for controlling one or more insertion points of the digital advertising content into the digital media content thereby sequencing the digital media content and the digital advertising content,

- the sequencing comprising ordering one or more data blocks of the digital media content and one or more data blocks of the digital advertising content into a content stream playable as audio or visual content perceivable by the user,

the content stream comprising one or more initially sequenced insertion points at which the digital advertising content is scheduled to be presented relative to the digital media content during play;

in response to user input updating a current play position in the content stream to a new play position in the content stream, the one or more processors using one or more adaptive preference rules to adaptively modify a presentation position of the digital advertising content from at least one of the one or more initially sequenced insertion points to one or more alternatively sequenced insertion points in the digital media content,

at least one of the one or more alternatively sequenced insertion points being different than the one or more initially sequenced insertion points relative to the digital media content within the content stream;

the one or more alternatively sequenced insertion points being adaptively selectable by the intersplicer according to selection criteria defined by the one or more adaptive preference rules taking into account the new play position and at least one of a length of time associated with playing the digital media content and a number of digital media data blocks of the digital media content to be played,

such that at least one of the alternatively sequenced insertion points is positioned at a play position in the digital media content that satisfies a condition selected from:

the play position being a predetermined length of time after the new play position,

the play position being a predetermined number of digital media data blocks after the new play position; and

a user interface output for causing presentation of the content stream during a play period associated with one or more states of play such that a part of the digital advertising content is adaptively played at the one or more alternatively sequenced insertion points, instead of at the one or more initially sequenced insertion points; and

at least a first memory for storing a setting to indicate a first state of play, the setting including a first value to indicate presentation of a required part of the digital advertising content is in progress during presentation of the content stream such that responsive to detecting the first value in the first memory, the user interface input is disabled to prevent commands comprising at least one of a user volume control or a user navigation control from altering a course of presentation of the content stream while presentation of the required part of the digital advertising content is in progress.

Step One: Highly Summarize the Claim

At step one, the Federal Circuit rejected Piranha's argument that the district court erred in finding the claim directed to an abstract idea by simply stating: "We disagree and conclude that [the claim] is directed to the abstract idea of preventing skipping advertisements by receiving, organizing, displaying, and controlling access to data."

As I've discussed, the Federal Circuit's usual § 101 analysis is to **Summarize** a claim, **Analogize** it to one of its prior cases, and then **Euthanize** it ("**SAE**"). Here, the level of summarization appears unbounded—the court reduced a 539-word claim to roughly a dozen words.

The court made clear that it is relying on the *EPG* line of cases:

As we have by now frequently held, claims reciting generalized steps of collecting, analyzing, and presenting information, using nothing other than the conventional operations of generic computer components, are directed to abstract ideas.

After analyzing the claim elements, the court concluded that the claim "achieves the goal of preventing skipping advertisements via steps that do nothing more than receive, organize, display, and control access to data, which places the claim squarely in line with those claims we have previously determined to be directed to computer-implemented abstract ideas."

Piranha argued that the claim was directed to a specific technical solution to the technical problem of "users' easily manipulating media to avoid ads." The court disagreed. Because the patents (and Piranha's own district-court filings) acknowledged the decades-old practice of recording and then fast-forwarding over advertisements, the court concluded that the claim does not solve a technical problem. The court also pointed to specification language describing the invention as providing "a revenue generating market for the free consumer redistribution of media content, sponsored through paid advertising" and allowing "free use of media...while at the same time enabling compensation to copyright holders." In the court's view, this confirmed that the claim is more related to a business method than anything technological.

The court further found that the claim is not directed to an improvement in computer capabilities because "Piranha's own description of the intersplicer's purportedly patent-eligible activity is nothing more than the organization of data." To the extent that Piranha relied on the complexities of claimed calculations, the court noted that "we have specifically held that 'the inability for the human mind to perform each claim step does not alone confer patentability.'" As I've mentioned before, this appears to be a point of tension with the PTO's subject matter guidelines.



Step Two: Everything is Conventional

At step two, the court found that both the claim language and specification “confirm that the invention uses only generic conventional computer components ‘operating according to their ordinary functions.’” (citing *Two-Way Media*) The court rejected Piranha’s argument that the intersplicer provides an improvement over the prior art because that component “performs only insignificant data gathering steps.” The court then cited to multiple passages from the specification for support.



Key Takeaways for Litigators and Drafters

This case illustrates how difficult it is for a claim directed to anything business-related or *EPG*-related to be found patent eligible. The court highly summarized a technically drafted, detailed claim to find it directed to an abstract idea. As I’ve noted in prior posts, adding specific technical details and many limitations to a claim is probably not enough when the claimed subject matter has anything to do with business methods or falls within the *EPG* line of cases.

- **For Litigators:** This case should embolden you to highly summarize a claim as an abstract idea. Every claimed invention has some basic concept. This case shows that the court is very willing to go there with you.
 - **For Patent Drafters:** Simply adding lots of technical details is unlikely to save a claim that the court can still summarize as an *EPG*-style data collection, analysis, and display process or as a business method. The specification must identify and elaborate concrete technological problems and solutions, and the claims must expressly recite those technological features.
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