

Heads Up! That's Patentable Subject Matter: Thales Visionix Inc. v. U.S

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In addressing the first step of the Supreme Court of the United States' § 101 framework in *Alice* ([IP Update, Vol. 17, No. 7](#)) evaluating whether the claimed subject matter is an abstract idea, the US Court of Appeals for the Federal Circuit reversed a decision invalidating claims directed to a heads-up display patent as being patent ineligible under 35 USC § 101. *Thales Visionix Inc. v. U.S.*, Case No. 15-5150 (Fed. Cir., Mar. 8, 2017) (Moore, J).

Thales Visionix, a developer of helmet-mounted display systems (HMDS), sued the United States for patent infringement in the US Court of Federal Claims (Claims Court). The asserted claims are directed to HMDS used by fighter jet pilots. The claims utilize mathematical equations to determine the orientation of the helmet relative to the frame of a moving vehicle through inertial sensors such as accelerometers and gyroscopes. Elbit Systems, the government contractor that produced the HMDS for the government, joined the case as a third-party defendant. The Claims Court granted a motion brought by Elbit Systems and the government for judgment on the pleadings that the asserted claims are invalid for being directed to an abstract idea. The Claims Court found that all asserted claims (1) are directed to the abstract idea of using laws of nature governing motion to track two objects, and (2) provide no inventive concept beyond the abstract idea. Thales Visionix appealed.

The Federal Circuit reversed, concluding that the asserted claims are not directed to an abstract idea since they specify a particular configuration of inertial sensors and

a particular method of using the raw data from the sensors. The Court emphasized that “it is not enough merely to identify a patent-ineligible concept underlying the claim; we must determine whether that patent-ineligible concept is what the claims is ‘directed to.’”

To reach the conclusion that the asserted claims are not abstract, the Federal Circuit traced recent precedent, such as *Enfish LLC* ([IP Update, Vol. 19, No. 6](#)), as well as the Supreme Court’s pre-*Alice* rationale in *Diamond v. Diehr*, finding the claims at issue “nearly indistinguishable from the claims at issue in *Diehr*.” Although the claims utilize mathematical equations to determine the orientation of the helmet, the equations serve only to tabulate position while being dictated by the placement of the inertial sensors and application of laws of physics. Requiring a mathematical equation to complete the claimed methods and system “does not doom the claims to abstraction.” Because the patentee did not claim the equations themselves and the claims were not directed to an abstract idea, the inquiry should therefore end with *Alice* step one.

Practice Note: Although this decision did not reach the question of whether the claims disclosed an “inventive concept,” the Federal Circuit commented on the multiple advantages of the claimed methods and systems over the prior art. In other words, the Court’s “abstract idea” analysis went to an evaluation of whether the subject matter is non-conventional or an improvement upon previously disclosed technologies. This decision suggests that drafting a specification and claims indicating a non-conventional use may provide some level of protection against a contention that the claimed subject matter is abstract.

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