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Map Navigation Patent Invalid Under §101

By Patrick T. Muffo

The patentability of navigation patents continues to develop as district courts and the PTAB hear §101 issues post-*Alice*. Before *Bilski* and *Alice*, numerous courts brushed aside 101 attacks against GPS and store locator patents as mere litigation noise. The Eastern District of Virginia recently found a more general map navigation patent invalid under §101.

The evolution of GPS patents has been interesting to watch. In 2012, then-director David Kappos delivered a keynote address at the Center for American Progress in which he praised GPS systems for being a great innovation.

> Look at just a few of the incredible innovations this nation's inventors have produced in recent years in which patented software played a role, equally as important as the hardware with which it interacts. We all take GPS for granted now; in fact, most of us rely on our smartphones for that service. Like the smartphone in which the technology is now housed, GPS technology involved many innovations integrated in hardware and software.

However, more recently, the Eastern District of Texas declared a GPS-based patent invalid as lacking patent-eligibility in *Rothschild Location Technologies LLC v. Geotab USA Inc. et al.,* although the patent at issue in *Rothschild* was general and did not involve a greater technological focus outside of the basic concept of GPS.

The Eastern District of Virginia followed suit and recently held a map navigation and display system unpatentable under §101 in *Peschke Map Technologies LLC v. Rouse Properties Inc.,* Case No. 1:15-cv-1365 (March 8, 2016 E.D. Virginia). In *Peschke*, the invention was directed to a map navigation system for shopping malls. It consisted of three layers: a first layer showing the layout of a store; a second layer linked to the first layer for a larger area, e.g., the mall itself; and a third layer showing an even larger area, e.g., the neighborhood of the mall.

The court first decided the issue of patentability was ripe for decision at the pleadings stage, i.e., whether the issue of patent-eligibility could be addressed in a motion to dismiss. Peschke argued it could not because there

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was at least one term that needed to be construed. The court disagreed and found that construing the term at issue – "description page" – was unlikely to change whether the patent was drawn to unpatentable subject matter.

The court found the claims to be directed to the abstract idea of "an electronic map navigation system that enables a user to 'locate a particular store through the use of location and layout information.'" In what appears to be more of a determination regarding non-obviousness, the court analogized the invention to a 1798 map of old town Alexandria, the city where the Eastern District of Virginia is located. The court held "[t]he only difference [between the Alexandria map and the claimed invention] is that the process described in the '143 Patent occurs on a computer and uses hyperlinks that cause a description page to appear instead of using markers that direct a user to an index or legend."

The court held there to be no inventive concept, holding the patent to do nothing more than computerize the age-old concept of a map.

Takeaway

In no way should this case be seen as the end of GPS patents. GPS is still a valuable and technological innovation deserving of patent protection in many instances. The more general navigation patents, such as the one at issue in *Peschke*, may not survive *Alice* challenges if it is determined that they simply computerize the concept of navigation. For other patents, such as those improving the function of GPS or those employing GPS with an otherwise patent-eligible structure or concept, *Alice* presents less of an issue.

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