INTELLECTUAL VENTURES I LLC v. SYMANTEC CORP., Appeal Nos. 2015-1769, -1770, -1771 (Fed. Cir. September 30, 2016). Before Dyk, Mayer, and Stoll. Appealed from D. Del. (Judge Stark).

Background:

Intellectual Ventures (IV) sued Symantec for infringement of three patents. A first patent (the '050 patent) is directed to filtering emails that have unwanted content; a second patent (the '142 patent) is directed to systems and methods for receiving, screening, and distributing email; and a third patent (the '610 patent) is directed to computer virus screening. The district court determined that the '050 and '142 patents are directed to ineligible subject matter and that the '610 patent is directed to eligible subject matter. The district court also determined that Symantec infringed the '610 patent. IV appealed the determination of ineligibility relative to the '050 and '142 patents, and Symantec appealed the determination of eligibility of the '610 patent.

Issues/Holdings:

Did the district court err in finding that the '050 and '142 patents are ineligible? No, affirmed. Did the district court err in finding that the '610 patent is eligible? Yes, reversed.

Discussion:

The Federal Circuit agreed with the district court's determination that filtering email based on identifiers, as claimed in the '050 patent, and deferring and reviewing email in a networked computer system by applying business rules to the messages, as claimed in the '142 patent, are abstract ideas. The Federal Circuit found that the '050 and '142 patents are directed to human-practicable concepts relative to the processing of paper mail. Under step two of the *Mayo/Alice* test, the Federal Circuit determined that the '050 and '142 patents do not improve the functioning of the computer itself and do not solve a challenge particular to the Internet.

The '610 patent is directed to the use of known virus screening software within the Internet, as opposed to conventional virus screening that occurs on an end user's computer. The Federal Circuit noted that virus screening is a long prevalent practice in the field of computers and thus constitutes an abstract idea. The Federal Circuit determined that the '610 patent does not improve the functioning of the computer itself and does not solve a challenge particular to the Internet and thus held that performing otherwise abstract activity on the Internet is ineligible.

Judge Stoll dissented with respect to the '610 patent and asserted that the '610 patent is eligible as an ordered combination because the invention is a fundamental architectural shift from prior art virus screening and improves the overall security of telecommunication networks by preventing viruses from reaching and exploiting end users. Judge Stoll further noted that the '610 patent solves the problem of individual computer users having to periodically to update their virus software locally on their computers in order to ensure adequate protection from viruses.

In a concurring opinion, Judge Mayer opined that all software implemented on a standard computer should be deemed categorically outside the bounds of section 101 because software is merely an idea without physical embodiment and is thus inherently abstract. Judge Mayer further stated that software development has flourished despite, and not because of, the availability of patent protection.