

ANCORA TECHS, INC. V. HTC, Appeal No. 2018-1404 (Fed. Cir. November 16, 2018) (Dyk, Wallach, and Taranto) Appealed from W.D. Wash. (Judge Jones).

Background:

Ancora's '941 patent is directed to a method of using a modifiable part of a BIOS memory to store software license-verification information, by using an E²PROM manipulation command ("an agent"), to verify whether the software is licensed to run on that computer. The specification discloses that the modifiable part of the BIOS memory was not used before to store the software license-verification information. The specification also discloses that the claimed method improves computer software security and provides a solution to a software hacking problem because hacking the BIOS memory is more difficult than hacking other computer memories.

Ancora sued HTC for infringement of the '941 patent and HTC filed a motion to dismiss arguing that the subject matter of the '941 patent is not patent-eligible under 35 U.S.C. § 101. The district court granted HTC's motion concluding that the claims are directed to an abstract idea. Ancora appealed.

Issues/Holdings:

Did the district court err in granting the motion finding the '941 patent not patent-eligible under 35 U.S.C. § 101? Yes, reversed.

Discussion:

The Federal Circuit cited its precedents finding in favor of subject matter eligibility: *Finjan*, *Enfish*, *Visual Memory*, *Core Wireless*, and *Data Engine*. In particular, the Federal Circuit stated that the claims in *Visual Memory* were directed to an improved computer memory, which was an improvement in computer functionality.

In accordance with the precedents, the Federal Circuit concluded that claim 1 is not directed to an abstract idea because claim 1 recites a method of improving computer software security and thus, the claimed method is "a non-abstract computer-functionality improvement." Specifically, the claimed method identifies the improvements effectuated in an unexpected way: a structure containing a license record is stored in a non-volatile portion of the BIOS, and the structure in that memory location is used for verification. In this way, the claim addresses a technical problem with computers: vulnerability of license-authorization software to hacking.

As such, the claim has "the specificity required to transform a claim from one claiming only a result to one claiming a way of achieving it." Accordingly, the Federal Circuit held that claim 1 passes muster under step one of the *Alice* analysis, and did not reach step two.

Case Cite	Patent Eligible?	Subject matter of claims	Summary of Holding
Step One cases			
<i>Finjan v. Blue Coat System, Inc.</i> (Fed. Cir. 2018)	Yes	A behavior based virus scan	Whether the claims are directed to an abstract idea often turns on whether the claims focus on “the specific asserted improvement in computer capabilities ... or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” (citing <i>Enfish</i>) Claims to a “behavior-based virus scan” were a specific improvement in computer functionality and hence not directed to an abstract idea.
<i>Enfish v. Microsoft</i> (Fed. Cir. 2016)	Yes	Self-referential tables	The claimed self-referential tables improved the way that computers operated and handled data. The claimed self-referential tables allowed the more efficient launching and adaptation of databases.
<i>Visual Memory LLC v. NVIDIA Corp.</i> (Fed. Cir. 2017)	Yes	A specific way to store a certain type of data in cache memory	The patent was specifically “directed to an improved computer memory system, not to the abstract idea of categorical data storage,” and therefore was not directed to an abstract idea.
<i>Core Wireless Licensing v. LG Elecs., Inc.</i> (Fed. Cir. 2018)	Yes	A method of making web sites easier to navigate on a small screen	The claims were directed to a specific type of index for a specific type of user and so not directed to an abstract idea.
<i>Data Engine Technologies LLC v. Google LLC</i> (Fed. Cir. 2018)	Yes	A method of navigating through 3D spreadsheets using a specific structure of tabs	Claims are distinguished over other claims to be “simply directed to displaying a graphical user interface or collecting, manipulating, or organizing information.”
<i>Ancora Techs, Inc. v. HTC</i> (Fed. Cir. 2018)	Yes	A method of using a BIOS memory to store software license info and to verify the software license	Claims having “the specificity required to transform a claim from one claiming only a result to one claiming a way of achieving it” are not directed to an abstract idea.
Step Two cases			
<i>BASCOM Global Internet Services v. AT&T Mobility</i> (Fed. Cir. 2016)	Yes	A method and system of filtering Internet content using an ISP	Claims were a “technical improvement over the prior art ways of filtering such content.” Although “[f]iltering content on the Internet was already a known concept, . . . the patent describes how its particular arrangement of elements is a technical improvement over the prior art ways of filtering such content.”
<i>IV I LLC v. Symantec Corp.</i> (Fed. Cir. 2016)	No	Installation of a virus-screening software on a telephone network	The claim at issue did not “recite[] any improvement to conventional virus screening software, nor . . . solve any problem associated with situating such virus screening on the telephone network,” thus the patent did not identify a sufficient inventive concept under <i>Alice</i> to transform the claimed abstract idea into something patentable.