<u>KONINKLIJKE KPN N.V. v. GEMALTO M2M GMBH</u>, Appeal Nos. 2018-1863, 1864, 1865 (Fed. Cir. November 15, 2019). Before Dyk, <u>Chen</u> and Stoll. Appealed from D. Del. (Judge Stark).

Background:

KPN owns a patent directed to a device for checking whether data is accurately transmitted. KPN's patent seeks to solve a systematic error problem in prior art check data generators resulting from the same check data being produced for a corrupted data block and an uncorrupted data block. To solve this problem, the patent discloses varying the way the check data is generated by varying the permutation applied to different data blocks.

KPN sued Gemalto M2M, a digital security company, for infringing claims 1 to 4 of its patent. Gemalto responded by moving for judgment on the pleadings, alleging the patent claims were ineligible under 35 U.S.C. §101. The district court determined that the claims recite nothing more than mere abstract data manipulation operations, and thus granted Gemalto's motion. KPN appealed the district court's decision with respect to dependent claims 2 to 4 only.

Issue/Holding:

Did the district court err in finding claims 2 to 4 invalid under 35 U.S.C. §101? Yes, reversed.

Discussion:

On appeal, KPN argued that claims 2 to 4 recite a technological improvement to prior art check data generators because the claims recite that the varying device is configured to "*modify* the [bit position] permutation *in time*." KPN further argued that, by varying the way the check data is generated from time to time, the claimed device avoids the prior art's failure to detect errors that persisted due to the check data being generated always in the same manner.

The Federal Circuit agreed with KPN. For *Alice* step one, the Federal Circuit looked to whether the appealed claims recite a specific means or method that solves a problem in an existing technological process. The Federal Circuit determined that claims 2 to 4 improve upon the prior art devices by providing a dynamic check data generator that enables increased detection of systematic errors by modifying the data permutation "in time." Thus, the claims recite a non-abstract improvement to an existing technological device, rather than simply the abstract idea of manipulating data.

Gemalto argued that the claims are ineligible because they fail to recite an "application step" to actually use the generated check data to perform error detection. However, the Federal Circuit confirmed that §101 does not require a claim to recite how one device is applied to the overall system. Rather, the claim merely needs to recite a sufficiently specific implementation, such as the claimed modifying of the permutation in time, which results in the improvement.

Because the claims were found to be patent-eligible under *Alice* step one, the Federal Circuit did not proceed to a step two analysis. The district court's judgment was reversed.