Keywords: **patent subject matter eligibility, Section 101, Article III courts**

General: **When drafting the specification for a patent application directed towards improving computer technology, one should include details of how a computer-implemented technological improvement is incorporated onto the computer. Otherwise a court may find that the invention is conventional and therefore ineligible.**

Beteiro, LLC. v. DraftKings Inc.,
United States Court of Appeals for the Federal Circuit
Nos. 2022-2275
Decided: June 21, 2024

I. Background & Facts

Beteiro, LLC ("Beteiro") owns four patents, U.S. Patent Nos. 9,965,920 ("the '920 patent"), 10,043,341 ("the '341 patent"), 10,147,266 ("the '266 patent"), and 10,255,755 ("the '755 patent").[1] The asserted patents are directed towards facilitating a user's participation in gaming and gambling activity while they are not physically located at the gaming venue. The asserted patents share a common specification, and the common specification describes an embodiment where a user may access a gaming facility computer via their communication device (e.g., mobile phone) and engage in gambling activity. The gaming facility computer can ascertain the location of the user via GPS on the user's mobile phone, and determine whether gambling activity is allowed by the state where the user is presently located.

Particularly, independent claim 2 from the '755 patent recites the relevant portion below:

> receiving, with the computer, a bet message transmitted from the first communication device or from a second communication device, wherein the second communication device is associated with the individual, and further *wherein the first communication device or the second communication device comprises a global positioning device*, wherein the global positioning device determines a position or location of the first communication device or the second communication device, …

Additionally, the shared specification briefly mentions that the user's mobile phone may include GPS capability to determine where the user is physically located while they initiate the gambling activity, but lacks particular details on how this GPS capability is implemented onto the

[1] The '920 patent was filed in 2016, and the remaining three patents were filed in 2018 (notably 3 months after the decision in *Murphy v. NCAA* legalized sports betting), and all four patents claim priority through a chain of continuations and continuations-in-part back to a provisional application filed in 2002.

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mobile phone. During prosecution, the claims of the asserted patents were found to be directed to eligible subject matter, and the applications were granted after a determination that the claims required a particular machine or processor.

During 2021 and 2022, Beteiro filed at least six cases in the District of New Jersey against DraftKings and other defendants, alleging that DraftKings infringed the claims in the asserted patents. Specifically, Beteiro alleged that DraftKings' infringing activity includes "provid[ing] a plurality of gambling and event wagering services." In response, DraftKings filed a motion to dismiss on the grounds that the asserted patents were directed to nonpatentable subject matter under 35 U.S.C. § 101. The District Court in New Jersey agreed with DraftKings and granted their 12(b)(6) motion. Beteiro subsequently appealed to the Federal Circuit.

II. Issues

1) Did the District Court in New Jersey properly apply the *Alice/Mayo* test framework to evaluate the subject matter eligibility of the claims in the asserted patents?
2) Does a patent examiner's determination that claims are patent-eligible hold any weight?

III. Discussion

Yes, the Federal Circuit agrees with the District Court and affirms their decision to dismiss Beteiro's complaint. In coming to his conclusion, the Federal Circuit reviews the District Court's decision *de novo,* and agrees that the asserted patents are (1) directed to an abstract idea, and (2) do not contain an inventive concept.

The Claims in the Asserted Patents are abstract

In the decision, the Federal Circuit stated that the claims in the asserted patents are "directed to the abstract idea of 'exchanging information concerning a bet and allowing or disallowing the best based on where the user is located.'" In support of this statement, the court detailed four main supporting arguments as to how they arrived at the same conclusion as the District Court. First, the court notes that the claims exhibit features that are well-settled indicators of abstractness. For example, claims that detect information, generate and transmit notifications, receive messages, and process information have frequently been held to be abstract.

Second, the claims utilize "result-focused functional language" and do not contain specific details as to how the purported invention achieves those results. The court remarks that these types of claims that lack a baseline of specificity detailing how the results are accomplished are almost always found to be ineligible under Section 101. Citing *Electrical Power Group*, the Federal Circuit decision from 2016, the court here also remarks that using generic computer and network technology to carry out economic transactions has been a frequent feature of claims found to be ineligible. Third, the court also points to other precedential cases[2] that they have decided since the *Alice* decision that similarly involve methods for providing information to individuals based on their locations. These cases similarly found that these claims were also abstract.

Fourth, and perhaps most interestingly, the Federal Circuit then details how they agree that the District Court persuasively analogizes the claims in the asserted patent to "longstanding 'real-world' activities." The district court compared the claimed method to the actions of a teller at a

[2] *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F. 3d 1253 (Fed Cir. 2016) and *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed Cir. 2016).

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casino that straddles a state border, where the teller has to ensure that patrons are on the Nevada side of the state line before accepting a bet. The Federal Circuit was convinced, as was the District Court, that those accepting bets have *always* had to confirm that the bettor was located in a place where gambling was allowed.

Beteiro contends that the claims are not abstract and are instead tied to technological improvements. However, the Federal Circuit dismisses this argument and instead characterizes the claims simply a mere use of computers that do not claim any improvement in the computer technology itself. Here, DraftKings argues successfully that the issue of remote gambling not being prevalent in 2002 was not a technological problem - but rather a legal one – and the claims in the asserted patents do not provide a specific improvement as to how the computers operate.

The Claims in the Asserted Patent do not contain an Inventive Concept

The Federal Circuit also dismissed Beteiro's argument that the filed complaint raised a genuine issue as to whether the inclusion of GPS on a mobile phone was conventional technology in 2002. In an attempt to support their position, Beteiro alleges that the use of geolocation and global positioning while processing wagers placed by mobile phones was many years away, and could hardly be considered conventional at the priority date of the asserted patents.

However, in their decision, the Federal Circuit repeatedly emphasizes that this argument is undercut by a lack of support in the specification. For example, the court points out the length of the shared specification, and how the mentioned implementation of GPS onto the mobile device was limited to a mere 15 lines in the specification that spanned over 95 columns. Further, the specification does not differentiate between how GPS would be implemented on a mobile device as opposed to a conventional computer. Unfortunately for Beteiro, the specification provides no description of any hardware or software that would be required to implement GPS on the mobile phone. Taking this absence in context of the claimed subject matter, the court reasons that the only plausible explanation for this lack of description is that a person of ordinary skill in the art would have recognized that the claims involve nothing more than a conventional use of GPS technology.

Determinations of Subject Matter Eligibility by Patent Examiners hold no weight in an Article III Court

The Federal Circuit also dismissed Beteiro's reliance on the determination by the Patent Examiner during prosecution that the claims were eligible. The court states that the Examiner's consideration of Section 101 issues does not "in any way shield the patent claims from Article III review for patent eligibility." To further support this, the court states that the Examiner applied case law from before the *Alice* decision, and that "physicality" of what is claimed no longer exempts claims from being directed to an abstract idea. While, admittedly, the claims at issue here require concrete components, the Court posits that the specification makes clear that the physical components merely provide a generic environment to carry out the abstract idea.

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IV. Conclusion and Takeaways

1) In order to be eligible in light of § 101, the claims should provide a technical solution to a technical problem. Further, courts will read the claims in the light of the specification, and if details as to how the technical problem is solved is lacking, the court will take that to mean that a person of ordinary skill in the art would know how to implement the solution.

2) Patent practitioners cannot rely on a determination that the claims are directed to patent eligible subject matter simply because the Examiner grants the application. Article III courts will apply their own analysis under *Alice/Mayo de novo*.

3) In scenarios where the claimed subject matter is directed towards a technological improvement related to computers, take care to carefully describe any particular hardware or software components that might be useful in implementing this improvement.

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