IP Alert: Abstract Ideas: A Common-Sense Distinction in Electric Power Group v. Alstom

ABSTRACT IDEAS: A COMMON-SENSE DISTINCTION IN *ELECTRIC POWER GROUP V. ALSTOM*

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While the number of decisions holding claims to be patent eligible under the two-part *Alice* test have been few and far between, sometimes even seemingly unfavorable decisions provide valuable insight into courts' application of the test.[1] In *Electric Power Group, LLC v. Alstom S.A.*, the Court of Appeals for the Federal Circuit affirmed the district court's grant of summary judgment, reasoning that although representative claim 12 of U.S. Patent No. 8,401,710 was "lengthy and numerous," it was "so result-focused, so functional, as to effectively cover any solution to an identified problem," and thus patent ineligible.[2]

Electric Power Group (EPG) received U.S. Patent Nos. 7,233,843; 8,060,259; and 8,401,710, in late 2000 concerning "systems and methods for performing real-time performance monitoring of an electric power grid by collecting data from multiple data sources, analyzing the data, and displaying

the results."[3] EPG argued that a benefit of its invention is to provide a "humanly comprehensible" amount of information useful for users to assess the vulnerability/reliability of a power grid, but the Court did not find that argument persuasive.[4] Claim 12 of U.S. Patent No. 8,401,710 appears below.

> 12. A method of detecting events on an interconnected electric power grid in real time over a wide area and automatically analyzing the events on the interconnected electric power grid, the method comprising:
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> receiving a plurality of data streams, each of the data streams comprising sub-second, time stamped synchronized phasor measurements wherein the measurements in each stream are collected in real time at geographically distinct points over the wide area of the interconnected electric power grid, the wide area comprising at least two elements from among control areas, transmission companies, utilities, regional reliability coordinators, and reliability jurisdictions;
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> receiving data from other power system data sources, the other power system data sources comprising at least one of transmission maps, power plant locations, EMS/SCADA systems;
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> receiving data from a plurality of non-grid data sources;
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> detecting and analyzing events in real-time from the plurality of data streams from the wide area based on at least one of limits, sensitivities and rates of change for one or more measurements from the data streams and dynamic stability metrics derived from analysis of the measurements from the data streams including at least one of frequency instability, voltages, power flows, phase angles, damping, and oscillation modes, derived from the phasor measurements and the other power system data sources in which the metrics are indicative of events, grid stress, and/or grid instability, over the wide area;
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> displaying the event analysis results and diagnoses of events and associated ones of the metrics from different categories of data and the derived metrics in visuals, tables, charts, or combinations thereof, the data comprising at least one of monitoring data, tracking data, historical data, prediction data, and summary data;
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> displaying concurrent visualization of measurements from the data streams and the dynamic stability metrics directed to the wide area of the interconnected electric power grid;
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> accumulating and updating the measurements from the data streams and the dynamic stability metrics, grid data, and non-grid data in real time as to wide area and local area portions of the interconnected electric power grid; and
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> deriving a composite indicator of reliability that is an indicator of power grid vulnerability and is derived from a combination of one or more real time measurements or computations of measurements from the data streams and the dynamic stability metrics covering the wide area as well as non-power grid data received from the non-grid data source.

APPLICATION OF THE TWO-STAGE ALICE TEST

The Court concluded, in stage one of the *Alice* test, that the claim was directed to "collecting information, analyzing it, and displaying certain results of the collection and analysis," which it held is an abstract idea.[5] "Information as such is an intangible," and analyzing it is essentially a mental process within the information-based category of abstract ideas.[6]

Meanwhile, in stage two of the *Alice* test, the Court held the claim also failed to satisfy the *Alice* test. The Court explained that "a large portion of the lengthy claims is devoted to enumerating types of information and information sources available within the power-grid environment…, [but this] does nothing significant to differentiate a process from ordinary mental processes [that are excluded] from the information-based category of abstract ideas."[7] The Court turned its inquiry towards "any requirements for *how* the desired result is achieved."[8] "Nothing in the claims, understood in light of the specification, requires anything other than off-the-shelf, conventional computer, network, and display technology," the Court noted.[9] "The claims in this case do not require a new source or type of information, or new techniques for analyzing it,… [or] an arguably inventive set of components or methods, such as measurement devices or techniques, that would generate new data."[10] Therefore, the claim fails under 35 U.S.C. § 101.

A COMMON-SENSE DISTINCTION

After some prefacing, the Court agreed with the district court that "one helpful way of double-checking the application of the Supreme Court's [two-stage *Alice*] framework to particular claims — specifically, when determining whether the claims meet the requirement of an inventive concept *in application*,"[11] is by "invoking an important common-sense distinction between ends sought and particular means of achieving them, between desired results (functions) and particular ways of achieving (performing) them."[12] "[T]here is a critical difference between patenting a particular concrete solution to a problem and attempting to patent the abstract idea of a solution to the problem in general,"[13] the district court explained, presumably relying upon the same principle of pre-emption extolled in *Alice*.[14] When the "claims [are] so result-focused, so functional, as to effectively cover any solution to an identified problem," then they inhibit innovation by prohibiting others from developing their own solutions to the problem.

Click here to download the decision in *Electric Power Group, LLC v. Alstom S.A*.

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[1] *See Alice Corp. Prop. Ltd. v. CLS Bank Int'l*, 134 C. St. 2347, 2355 (2014).
See also Enfish, LLC v. Microsoft Corporation, No. 2015-1244 (Fed. Cir. 2016).
[2] *See Electric Power Group, LLC v. Alstom S.A*., Appeal No. 2015-1778, slip op. at 12 (Fed. Cir., Aug. 1, 2016).
[3] *See id.* at 2.
[4] *See id.* at 9.
[5] *See id.* at 6.
[6] *See id*. at 7.
[7] *See id.* at 9.

[8] *See id.* (emphasis in original).
[9] *See id.* at 10.
[10] *See id.* at 9.
[11] *See id.at 12.* (emphasis in original).
[12] *See id.* at 2.
[13] *See id.* at 11.
[14] *See Alice Corp. Prop. Ltd. v. CLS Bank Int'l*, 110 USPQ2d 1976, 1980 (2014).

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