



THINK FORWARD

Subject Matter Eligibility and Questions of Fact

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In *Aatrix Software, Inc v. Greenshades Software, Inc.* (Feb. 14, 2018), the Federal Circuit reversed a district court's denial of a motion for leave to file a second amended complaint. According to the majority opinion written by Judge Moore, the lower court improperly granted dismissal because the amended complaint raised factual allegations concerning subject matter eligibility under 35 U.S.C. §101 which, if accepted as true, would preclude dismissal.

Aatrix sued Green Shades alleging infringement of two patents. Green Shades moved to dismiss under Rule 12(b)(6), asserting that the claimed inventions are ineligible under §101. The district court granted the motion. The district court reasoned that the claims were directed to an abstract idea of "fundamental human activity that can be performed using a pen and paper." Aatrix moved for leave to amend the complaint with additional factual allegations to show that the claimed inventions include inventive components that improve the workings of a computer. The district court denied Aatrix's motions and held that "[u]pon consideration of the filings and the relevant case law, the [district court] sees no reason to reconsider its prior determination."

In the Federal Circuit's opinion reversing the dismissal, the court noted that "[t]his is not a case where patent ineligibility was properly adjudicated with finality at the Rule 12(b)(6) stage." The opinion further reasoned, "the proposed second amended complaint, ... if accepted as true, establish that the claimed combination contains inventive components and improves the workings of the computer." In addition, the court provided specific examples of factual allegations from the proposed amended complaint that, if taken as true, raise factual disputes underlying the §101 analysis.

The *Aatrix* holding marks the second decision this month in which the Federal Circuit has disagreed with the early dismissal of patent litigation where claims were found ineligible under the Alice framework. In *Berkheimer v. HP Inc.* (Feb. 8, 2018), the Federal Circuit partially vacated a district court's summary judgement of ineligibility because there was a genuine issue of material fact as to whether some of the pertinent claims included well-understood, routine, and conventional features. A consistent theme in both cases is that the Federal Circuit appears to be increasing the weight given to factual allegations in adjudicating motions to dismiss and motions for summary judgement that involve patent eligibility under §101.

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