

Fed. Circ. Backs DirecTV, Amazon Alice Wins On Streaming IP

By Ryan Davis

Law360, New York (September 23, 2016, 7:12 PM EDT) -- The Federal Circuit on Friday affirmed a lower court's decisions that two streaming media patents asserted against Amazon.com Inc., DirecTV LLC and the major sports leagues are invalid for claiming only abstract ideas under the U.S. Supreme Court's Alice decision.

In a pair of rulings in separate suits both brought by Affinity Labs of Texas LLC, the appeals court held that Judge Walter S. Smith Jr. of the Western District of Texas correctly found in favor of the defendants and held that the patents covers only the basic function of streaming media content to mobile devices, not any particular way of doing that.

As a result, the patents do not cover patent-eligible subject matter and are invalid under Alice, which held that abstract ideas implemented using a computer cannot be patented, the appeals court ruled.

"The patent in this case is not directed to the solution of a technological problem, nor is it directed to an improvement in computer or network functionality," the court wrote of the patent in the DirecTV case. "Instead, it claims the general concept of out-of-region delivery of broadcast content through the use of conventional devices, without offering any technological means of effecting that concept."

Affinity Labs, which describes itself as an innovation consulting firm, filed two separate lawsuits against different defendants over different patents, although the Federal Circuit noted that they share a similar specification.

The company accused DirecTV and the media arms of Major League Baseball, the National Basketball Association, the National Hockey League and Turner Broadcasting of infringing a patent on streaming a regional broadcaster's signal to cellular telephones outside the coverage region. The judge rejected Affinity's argument that the sports leagues infringed by making radio broadcasts available nationwide.

The Federal Circuit ruled that "providing out-of-region access to regional broadcast content is an abstract idea" that "has been employed by nearly every form of media that has a local distribution." It compared the claimed invention to mailing copies of a local newspaper to an out-of-state subscriber or using satellites to broadcast sports.

The patent just describes only the idea of wirelessly transmitting broadcasts, but does not describe "how to implement out-of-region broadcasting on a cellular telephone," the court said, and the patent just recites "generic features" of smartphones, like transmitting signal and using a storage medium.

"The claims are drafted in a way that would effectively cover any wireless delivery of out-of-region broadcasting content to a cellular telephone via a network," so they are invalid, the court concluded.

Affinity Labs asserted a different patent against the Amazon's streaming music service. While the title of the patent describes targeted advertising, the claims actually cover similar streaming media technology, the court ruled, affirming the judge's ruling that the patent is invalid.

Like the patent in the DirecTV case, that patent covers only the idea of streaming content, not any way to do it, the court ruled, rejecting Affinity's argument that the patent should be found valid because at the time it was filed in 2000, streaming media was not well-known.

"The claims do no more than describe a desired function or outcome, without providing any limiting detail that confines the claim to a particular solution to an identified problem," the court concluded. "The purely functional nature of the claim confirms that it is directed to an abstract idea, not to a concrete embodiment of that idea."

Attorneys for Amazon, DirecTV and the sports leagues declined to comment on the ruling. An attorney for Affinity Labs could not immediately be reached for comment Friday.

The patents-in-suit are U.S. Patent Numbers 7,970,379 and 8,688,085.

Judges Sharon Prost, William Bryson and Evan Wallach sat on the panel for the Federal Circuit.

Affinity Labs is represented by Cyrus Morton, Ronald Schutz, Patrick Arenz, Brenda Joly and Benjamin Linden of Robins Kaplan LLP.

The NBA, NHL and Turner are represented by David Weaver of Baker Botts LLP and Hilary Preston and Jeffrey Han of Vinson & Elkins LLP. DirecTV is represented by Darin Snyder of O'Melveny & Myers LLP. Major League Baseball is represented by Nathan Cummings of Cooley LLP. Amazon is represented by J. David Hadden, Todd Gregorian, Saina Shamilov, Ravi Ranganath and Adam Lewin of Fenwick & West LLP and Gabriel Bell and Gregory Garre of Latham & Watkins LLP and in-house counsel Jeffrey Dean.

The case Affinity Labs of Texas LLC v. DirecTV LLC et al., case number 2015-1845, and Affinity Labs of Texas LLC v. Amazon.com Inc., case number 2015-2080, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by Patricia K. Cole.