NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

WHITSERVE LLC,
Plaintiff-Appellant

v.

DROPBOX, INC.,
Defendant-Appellee

2019-2334

Appeal from the United States District Court for the District of Delaware in No. 1:18-cv-00665-CFC, Judge Colm F. Connolly.

Decided: April 26, 2021

MICHAEL JOSEPH KOSMA, Whitmyer IP Group LLC, Stamford, CT, for plaintiff-appellant. Also represented by STEPHEN BALL.

GREGORY H. LANTIER, Wilmer Cutler Pickering Hale and Dorr LLP, Washington, DC, for defendant-appellee. Also represented by CLAIRE HYUNGYO CHUNG; ELIZABETH BEWLEY, Boston, MA.

Before REYNA, SCHALL, and WALLACH, *Circuit Judges*.

REYNA, *Circuit Judge*.

Appellant WhitServe LLC appeals from the United States District Court for the District of Delaware. WhitServe brought an infringement action against Dropbox. Dropbox moved to dismiss WhitServe's complaint with prejudice on grounds that the patent claims asserted by WhitServe are directed to patent ineligible subject matter. The district court granted Dropbox's motion to dismiss, and WhitServe appeals. We affirm the judgment of the district court.

BACKGROUND

WhitServe LLC ("WhitServe") filed suit on May 1, 2018 alleging that Dropbox, Inc. ("Dropbox") infringes at least claims 10 and 19 of U.S. Patent No. 8,812,437 ("the '437 patent"). The '437 patent, entitled "Onsite Backup for Third Party Internet-Based Systems," generally relates to "safeguarding customer/client data when a business outsources data processing to third party Internet-based systems," by backing up the internet-based data to a client's local computer. '437 patent col. 1 ll. 6–9. The specification discloses a "central computer," a "client computer," a "communications link" between each computer and the Internet, and a "database" containing a plurality of data records. *Id.* at col. 2 ll. 34–52; col. 4 ll. 4–13. The specification further discloses software that is capable of "modifying" the data records by "updating and deleting" data in the data records. *Id.* at col. 4 ll. 26–30. In sum, the disclosed computers can send a request for a copy of data records over the Internet, receive the request, and transmit a copy of the requested data. *See, e.g.*, *id.* at col. 4 ll. 31–41.

Claim 10 is representative of the '437 patent's claims for purposes of this appeal.[1] Claim 10 recites:

> A system for onsite backup for internet-based data processing systems, comprising:
>
> a central computer accessible by at least one client computer at a client site via the Internet for outsourced data processing;
>
> at least one database containing a plurality of data records accessible by said central computer, the plurality of data records including internet-based data that is modifiable over the Internet from the client computer;
>
> data processing software executing on said central computer for outsourcing data processing to the Internet from the at least one client computer, said data processing software modifying the internet-based data in the plurality of data records according to instructions received from the at least one client computer, the modifying including updating

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[1] On appeal, WhitServe contests the district court's treatment of claim 10 as representative. *See* Appellant's Br. 17. However, the district court determined that "WhitServe did not challenge Dropbox's treatment of claim 10 as representative or present any meaningful argument for the distinctive significance of any claim limitation not found in claim 10." J.A. 9. In addition, Whitserve's opening brief on appeal does not address any claim of the '437 patent other than claim 10 and thus WhitServe has waived the argument that claim 10 is not representative, and waived argument as to the patent eligibility of other claims in the '437 patent. *SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1319 (Fed. Cir. 2006).

> and deleting the internet-based data in the plurality of data records;
>
> a client data request, sent from at least one client computer via the Internet to said central computer, the client data request comprising a request for a backup copy of at least one of the plurality of data records;
>
> software executing on said central computer to receive, via the Internet from the at least one client computer, the request for a backup copy of at least one of the plurality of data records including the internet-based data in the at least one of the plurality of data records that has been modified by said data processing software; and
>
> software executing on said central computer to transmit the backup copy of the at least one of the plurality of data record [sic] including the internet-based data in the at least one of the plurality of data records that has been modified by said data processing software to the client site for storage of the internet-based data from the at least one of the plurality of data record [sic] in a location accessible via the at least one client computer;
>
> wherein the location is accessible by the at least one client computer without using the Internet.

Id. at col. 4 ll. 14–50.

Dropbox moved to dismiss WhitServe's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) on grounds that the '437 patent's claims recite patent ineligible subject matter pursuant to 35 U.S.C. § 101. On July 25, 2019, the district court granted Dropbox's motion to dismiss, concluding that the claims are directed to an abstract idea and fail to supply an inventive concept that transforms the abstract idea into a patent-eligible application.

WhitServe LLC v. Dropbox, Inc., No. CV 18-665-CFC, 2019 WL 3342949, at *1, *5–6 (D. Del. July 25, 2019).

Specifically, the district court agreed with Dropbox that the '437 patent is directed to the abstract idea of "backing up data records," and concluded that the claims are not directed to an improvement in computer functionality. *Id.* at *4–5. In addition, the district court found that representative claim 10 "recites only generic computer components performing routine computer functions." *Id.* at *4. The district court found "nothing inventive in how the ['] 437 patent arranges the storage of backup data," reasoning that "[i]t is a well-understood practice of human organization that backup copies are stored in a location separate and distinct from the original location." *Id.* at *5. The district court reasoned that if the original location was onsite, the conventional backup location would be offsite, or vice versa. *Id.* at *5–6. The district court reasoned that the claims were similar to when "humans secure critical documents, such as wills . . . in a bank safe deposit box, but keep a copy at home for quick reference when needed." *Id.* at *6.

Further, the district court observed that, contrary to WhitServe's argument, Dropbox was not required to separately address the patent's preemptive scope in order to prevail on its motion to dismiss, because preemption "is not a separate and independent test under *Alice,*" but rather is a "concern that undergirds [] § 101 jurisprudence." *Id.*

The district court rejected WhitServe's contention that factual issues precluded dismissal, noting that this court has "repeatedly affirmed § 101 rejections at the motion to dismiss stage, before claim construction or significant discovery has commenced," *id.* (quoting *Cleveland Clinic Found. v. True Health Diagnostics LLC*, 859 F.3d 1352, 1360 (Fed. Cir. 2017)). The court stated that nothing in the allegations set forth in WhitServe's complaint or in the specification of the '437 patent would create a factual issue regarding patent eligibility. *Id.* at *7.

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