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Multitasking Patent Ineligible, Even in View of *Enfish*

By Patrick T. Muffo

The Federal Circuit recently held a software patent to be eligible for patent protection for just the second time since *Alice* was decided almost two years ago, in a case now commonly referred to as *Enfish*. The district court cases that follow will be closely monitored, especially those dealing with patents for more technical software-based inventions. The case of *Kinglite v. Micro-Star* is therefore influential in its interpretation of *Enfish* and its treatment of software patent claims in general.

In *Kinglite*, Case No. CV 14-03009 JVS(PJWx) (May 26, 2016 Order Granting Motion for Judgment on the Pleadings), the patent-in-suit related to a BIOS multitasking operation. For example, the patent discloses methods where the BIOS can perform processes in parallel, rather than in sequence, to speed up the use of the computer's resources.

The court found the invention to be directed to an abstract idea, likening the concept of multitasking to cooking a risotto dish with a poached egg:

> Claim 1 discusses the basic process of doing two things nearly simultaneously. This is something all people do, but chefs would be particularly aware of the basic concept. Imagine cooking a delicious, creamy risotto with a poached egg on top. Cooking a poached egg takes a few steps, but the egg need not be disturbed except at particular intervals (i.e., when the egg is cracked and put into simmering water, and then when it is taken out). On the other hand, to make a risotto, consistent stirring and slow addition of broth to the rice is the preferred method of achieving a perfect risotto.

The court then held the invention lacked any inventive concept, distinguishing the present case from *Enfish*. Specifically, the court distinguished between (1) software that caused corresponding hardware to function better

than the hardware normally would, and (2) a process that simply improves the experience of the user by allowing the computer to access the computer hardware in a more convenient or fast manner. Specifically, (1) is patent-eligible, and (2) is not.

> [T]he Federal Circuit found [in *Enfish*] that the claimed invention was a self-referential table for a computer database—a table that functioned differently than conventional database structures. Here, in contrast, the invention of the '202 Patent is not directed towards an improvement of the BIOS itself. Rather, the invention simply purports to improve the experience of the user of the computer because the user is able to access aspects of the system faster than it would without the multitasking improvement and make "efficient use of the BIOS boot-up time." The BIOS itself functions in the same way with or without the improvement.

The district court therefore held the patent to be ineligible for patent protection under *Alice*. In a separate section, the court held the claims directed to a "computer-readable medium" to be invalid due to the *In re Nuijten*.

Takeaway

Enfish expanded on the *DDR Holdings* case, but the general concept appears to be the same – that improvements "to the computer itself" require an improvement to hardware or some other tangible component, rather than simply improving the user experience with the existing hardware, but where the hardware would function the same regardless of whether the invention was implemented.

Patrick T. Muffo is an author of the Seyfarth PTAB Blog and Associate in the firm's Chicago office. For more information, please contact a member of the Patent Practice Group, your Seyfarth Shaw LLP attorney, or Patrick T. Muffo at pmuffo@seyfarth.com.