

Enfish Can't Save Visual Memory's IP Suit Against Nvidia

By **Daniel Siegal**

Law360, Los Angeles (May 27, 2016, 10:11 PM ET) -- A Delaware federal judge on Friday tossed Visual Memory LLC's patent infringement suit against graphics chip maker Nvidia Corp., ruling that the Federal Circuit's recent Enfish ruling doesn't save Visual Memory's patents from being invalid under the high court's Alice decision.

In a memorandum opinion, U.S. District Judge Richard Andrews granted Nvidia's motion to dismiss the suit over Visual Memory's patent for a computer memory system and the storage and transfer of digital data from permanent to temporary storage and back. Judge Andrews in his ruling agreed with Nvidia's argument that Visual Memory's patent is directed to the "abstract idea of categorical data storage," simply implemented on a computer system, and thus is exactly the type of patent that is invalid under Alice.

Judge Andrews added that Enfish doesn't save Visual Memory, because it cautioned against taking an overly abstract view of computer system patents — but does not exempt from eligibility scrutiny "all patents which purport to improve the functioning of a computer."

"The claims here are 'recited too broadly and generically to be considered sufficiently specific and meaningful applications of their underlying abstract ideas,'" Judge Andrews wrote. "The claimed computer functionality can only be described as generic or conventional."

Visual Memory had filed suit in September in a three-page complaint that simply asserted its patent, U.S. Patent Number 5,953,740, and alleged that Nvidia's Quadro and Tesla lines of graphics cards and graphics processing units were infringing it.

Judge Andrews' ruling comes just over a week after the U.S. Patent and Trademark Office's deputy commissioner for patent examination policy, Robert Bahr, broke down the effect of the Enfish ruling for patent examiners, telling them to remember that patents for software and computer improvements are not always abstract and invalid under Alice. In Enfish, the appeals court clarified it does not "broadly hold that all improvements in computer-related technology are inherently abstract which are invalid under Alice."

In the Enfish ruling, issued May 12, the appeals court held that U.S. District Judge Mariana R. Pfalzer was wrong to conclude in 2014 that Enfish LLC's patents on a type of database asserted against Microsoft Corp. were invalid under Alice for claiming only the abstract idea of organizing information.

The appeals court said that the judge's description of the claimed invention in such general terms, "untethered from the language of the claims," went too far and could mean that almost any patent could be found invalid under Alice.

Since the high court decided Alice, scores of patents involving software and the Internet have been found invalid by judges who summarized the claimed invention in broad, general terms, and the Enfish ruling will be embraced by patent owners appealing such decisions or responding to motions seeking invalidity judgments, attorneys told Law360 after the decision.

Attorneys for the parties did not immediately respond to requests for comment on Friday.

The patent-in-suit is U.S. Patent Number 5,953,740.

Visual Memory is represented by Stamatios Stamoulis and Richard C. Weinblatt of Stamoulis & Weinblatt LLC.

Nvidia is represented by Jack B. Blumenfeld and Paul Saindon of Morris Nichols Arsht & Tunnell LLP, and Maximilian K. Grant, Gabriel K. Bell and Richard G. Frenkel of Latham & Watkins LLP.

The case is Visual Memory LLC v. Nvidia Corp., case number 1:15-cv-00789, in the U.S. District Court for the District of Delaware.

--Additional reporting by Ryan Davis. Editing by Aaron Pelc.

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