

## Amazon Beats Inventor's Internet Of Things Patent Suit

By **Andrew Karpan**

*Law360 (September 21, 2021, 7:47 PM EDT)* -- An Arizona federal judge has ruled against an inventor claiming that Amazon's "internet of things" interface infringed his patents on how to apply swarm intelligence to microchip processing, finding that the patents cover nothing more than abstract ideas.

Monday's ruling came a little over two months after Judge Diane J. Humetewa of the U.S. District Court for the District of Arizona heard Amazon's case that two patents owned by Swarm Technology did not cover technology that could be protected by patent law. Swarm received the two patents in 2017 and 2020; they covered a way to improve the speed at which computers process data. The company claimed that an Amazon Web Services brand called IoT Greengrass infringed that method.

"Every idea is not eligible for a patent, even if it is a good one," Judge Humetewa wrote.

The two patents, Amazon argued, merely covered "a series of basic steps that humans can, and do, perform," according to the company's dismissal bid. The judge agreed.

Both Amazon and the judge leaned on the U.S. Supreme Court's Alice ruling, which sets up a two-step test to see if a claim in a patent is too abstract. The patents failed the first step because what they covered was not inventive, according to the ruling. They failed the second step because they failed to transform the abstract idea into something patent-eligible.

It is not enough that Swarm claims that its patents are novel, the judge wrote in response to a line of argument from Swarm Technology that its patents had "ushered in a 'new parallel processing paradigm' that dramatically increases computer performance."

"The court doubts that Swarm could point to a specific inventive concept," Judge Humetewa added.

The lawsuit against Amazon by Swarm, a husband and wife team, was at least the second time Swarm had accused a tech company of infringing its patents. The patents are also at issue in a declaratory lawsuit Juniper Networks Inc. filed against the company in California federal court last year. Juniper had accused Swarm of leveling "a campaign aimed at securing Juniper as the first licensee" of its patents.

That case is ongoing and, last month, Juniper lodged a petition for inter partes review at the Patent Trial and Appeal Board aimed at invalidating claims in the earlier of the two patents at issue in the Amazon case.

Back in front of Judge Humetewa, Swarm Technology labeled Amazon's arguments "entomologically naïve" and pointed out that the patents were "rigorously prosecuted" at the U.S. Patent and Trademark Office. The same claims Amazon had challenged were the result of multiple rejections, Swarm added, arguing that "amending a claim to overcome cited art is the very definition of adding an inventive concept."

Judge Humetewa actually agreed with this point, but wrote that the reasoning didn't do very much for Swarm because nonobviousness was different from eligibility. The patents might very well not be anticipated by earlier inventions, but the history of case law on the Alice decision didn't deign to give this very much weight in finding out how patent-eligible the invention was, she wrote.

In the colorful complaint that Swarm Technology lodged against Amazon back in March, Swarm co-founder Alfonso Íñiguez says he "recently discovered" that numerous tech companies had stolen his technology, which he developed after getting laid off from his job at a former Motorola Inc. unit during the 2009 recession. According to the filings, Íñiguez had published numerous homemade videos on the subject of CPU architecture and robotic automation, all animated by footage of teams of ants working together and "giving a visual metaphor of his revolutionary new computer architecture."

"We intend to proceed for a motion for leave to amend and then an amended complaint," a representative of Beus Gilbert McGroder, the firm representing Swarm Technology in the case, told Law360 on Tuesday.

Representatives for Amazon's counsel in the case did not respond to a request for comment on the ruling.

The patents-in-suit are U.S. Patent Nos. 9,852,004 and 10,592,275.

Amazon is represented by Max Grant, Adam Greenfield, Gabriel Bell, David Zucker, and Kimberly Li of Latham & Watkins LLP.

Swarm Technology is represented by Leo R. Beus, Michael K. Kelly and Timothy J. Casey of Beus Gilbert McGroder.

The case is Swarm Technology LLC v. Amazon.com Inc. et al., case number 2:21-cv-00438, in the U.S. District Court for the District of Arizona.

--Editing by Karin Roberts.