

Fed. Circ. Won't Revive Jericho's Computer Security Patent

By **Kevin Penton**

Law360, New York (March 14, 2016, 4:50 PM ET) -- The Federal Circuit on Monday upheld a lower court's invalidation of a computer security system patent that was tossed under the U.S. Supreme Court's Alice decision for being abstract, according to a filing.

The appellate court panel's one-sentence order did not expand on its reasoning for upholding a Northern District of Texas judge's invalidation of Jericho Systems Corp.'s U.S. Patent Number 8,560,836 under the high court's Alice decision, which held abstract ideas implemented using a computer are not patent-eligible under Section 101 of the Patent Act.

Counsel for the parties could not be reached on Monday for comment.

Jericho, which had asserted the patent in an infringement suit against Axiomatics Inc. had told the Federal Circuit that the lower court had ignored innovations in the computer system design that took the patent beyond an abstract idea.

The judge should have accounted for the steps Jericho's patent took to move the concept beyond putting security protocols on a computer, including distributed rule storage and communications systems meant to improve the efficiency of existing security systems, Jericho's attorney J. Kevin Fee of Morgan Lewis & Bockius LLP said at a Federal Circuit hearing last Tuesday.

He argued that the trial court reduced the patented claims too far in its May 2015 analysis and decision that the claims were unpatentably abstract. Fee urged the panel to overturn the decision to toss the patent, which was asserted against Axiomatics for security systems it designed and sold to several clients such as the U.S. Department of Veterans Affairs.

"That is going far too far for this case, for any precedent in this court or in the Supreme Court," Fee said.

Axiomatics faced allegations that security systems it designed and sold to clients infringed the patent. It won the ruling against Jericho's patent last May, after more than a year of litigation before U.S. District Judge Ed Kinkeade. Parallel litigation over alleged infringement by Axiomatics' government clients was stayed pending Jericho's appeal, according to court documents.

Axiomatics had argued that since the patent was directed toward applying a rules-based security system

to a computer, the district court correctly determined that the patent should not survive Alice.

The patent-in-suit is U.S. Patent Number 8,560,836.

U.S. Circuit Judges Alan D. Lourie, William C. Bryson and Jimmie V. Reyna sat on the panel for the Federal Circuit.

Jericho is represented by J. Kevin Fee, Alex Hanna and Julie S. Goldemberg of Morgan Lewis & Bockius LLP.

Axiomatic is represented by Gabriel Bell and Lawrence J. Gotts of Latham & Watkins LLP.

The case is Jericho Systems Corp. v. Axiomatics Inc. et al., case number 15-1656, in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Michael Macagnone. Editing by Emily Kokoll.

All Content © 2003-2016, Portfolio Media, Inc.