

Symantec Gets Intellectual Ventures Patent Axed Under Alice

By **Kelcee Griffis**

Law360, New York (February 15, 2017, 1:29 PM EST) -- Symantec Corp. has won invalidation of an Intellectual Ventures Management LLC patent covering data storage and backup systems, dodging claims it infringed the Intellectual Ventures patent ahead of an April trial date.

A Delaware federal judge on Monday handed summary judgment to Symantec and unit Veritas Technologies LLC, which has since been sold, ruling the patent was ineligible under the Supreme Court's Alice precedent, which held that abstract ideas implemented using a computer are not patent-eligible under Section 101 of the Patent Act.

Although the memorandum opinion explaining the decision is filed under seal, Symantec said in December that the patent fails under the Alice test because it is directed at the supposedly abstract idea of "storing up-to-date backup copies of data remotely for safekeeping."

In Symantec's reply brief in support of a motion for ineligibility, it contended that the Intellectual Ventures patent adds "nothing inventive, just conventional computer and network technology."

"IV concedes (by not contesting) that this is an abstract idea that humans have long practiced, even in the 'computer environment,'" Symantec argued in the brief.

The patent-in-suit, U.S. Patent No. 5,537,533, is the last of three to drop from the suit, originally filed in 2013. Intellectual Ventures previously withdrew one patent from the proceedings and the Delaware court granted Symantec summary judgment of noninfringement on the second, said Dean G. Dunlavey of Latham & Watkins LLP, counsel for Symantec.

He said Intellectual Ventures filed the 2013 suit amid another suit involving the same parties. While the 2013 suit targeted three patents mostly covering data storage and backup, the earlier suit, filed in 2010, targeted four patents covering popular software including Norton AntiVirus.

The 2010 suit ballooned into a \$300 million jury trial that ultimately invalidated at least two Intellectual Ventures patents. Court records show that Intellectual Ventures secured \$8 million in damages based on one claim of another patent, but the Federal Circuit ultimately overturned the award.

"Obviously, we're pleased with the outcome. This is the seventh patent that Intellectual Ventures has asserted against Symantec," Dunlavey said. "They're batting 0 for 7."

Counsel for Intellectual Ventures could not be immediately reached for comment.

The patent-in-suit is U.S. Patent No. 5,537,533.

Intellectual Ventures is represented by Joseph Farnan III, Brian Farnan and Michael Farnan of Farnan LLP.

Symantec is represented by Jack B. Blumenfeld, Karen Jacobs and Michael J. Flynn of Morris, Nichols, Arshat & Tunnell LLP and Dean G. Dunlavey, Lisa K. Nguyen, Michelle P. Woodhouse, Gabriel K. Bell, Inge A. Osman, David A. Zucker, Priyen N. Patel, David F. Kowalski and Douglas E. Lumish of Latham & Watkins LLP.

The case is Intellectual Ventures I LLC v. Symantec Corp., case number 13-cv-00440-LPS, in U.S. District Court for the District of Delaware.

This story has been updated to reflect an additional defendant.

--Editing by Kelly Duncan.