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Latham Partner Pulls Off Patent Law Hat Trick

Scott Graham

Latham & Watkins partner Matthew Moore went three for three this spring at the U.S. Court of Appeals for the Federal Circuit.

In a single week in May, Moore argued three patent appeals to the Washington-based court. The first two have already been affirmed summarily, and on Monday Moore completed the hat trick with a precedential win over Intellectual Ventures LLC that should cheer the entire banking industry.

The Federal Circuit ruled that I.V.'s patent claims on computerized financial budgeting and custom web pages based on user geography or usage patterns were all drawn to abstract ideas and applied with generic computer technology. That rendered them unpatentable subject matter under Section 101 of the Patent Act, Judge Timothy Dyk wrote for a unanimous panel in Intellectual *Ventures v. Capital One Bank*.

I.V. has brought similar—though not identical—suits against many other financial giants around the country.

The idea behind one of the patents invalidated Monday is to alert customers automatically when they've exceeded their personal budgets. Dyk wrote that tracking financial transactions to determine whether they exceed preset spending limits is an abstract idea with a long history in human organizing activity.

The other patent at issue, on customizing web pages based on a user's location, is no different conceptually than inserting different printed content in newspapers based on delivery routes, Dyk reasoned. "Providing this minimal tailoring—e.g., providing different newspaper inserts based upon the location of the individual—is an abstract idea," he wrote. Judges Jimmie Reyna and Raymond Chen concurred.

The Federal Circuit was once famous for resisting the U.S. Supreme Court's string of recent decisions on Section 101 patent eligibility. But since last year's ruling in *Alice v. CLS Bank*—and the retirement of Chief Judge Randall Rader—the court has been much more willing to declare patents ineligible.

As of last month the Federal Circuit had taken up 13 Section 101 cases since Alice and found claims unpatentable in 12, according to research by Fenwick & West. Monday's decision runs the tally to 14 of 15. *DDR Holdings v. Hotels.com* remains the only post-Alice case in which the court has rejected a Section 101 challenge.

Latham, meanwhile, is on a streak of its own: It's had a hand in several wins against I.V. recently. In April the firm teamed up with Paul Hastings Janofsky & Walker to knock out I.V. patents—again on Section 101 grounds—on behalf of Symantec Corp. and Trend Micro Inc. The firm also has helped persuaded judges in Delaware and Maryland to move forward with antitrust claims against I.V. brought by Toshiba Corp. and by Capital One.

Moore said he was not authorized to comment on the Federal Circuit ruling, but said the argument-packed week reminded him of law school final exams. Rather than relax after getting through the first and second arguments, he had no choice but to start gearing up immediately for the next hearing.

Matthew Moore of Latham & Watkins.
Diego M. Radzinschi

"What really helped is the appellate group here at Latham," he said. Former Supreme Court short-lister Maureen Mahoney, ex-Solicitor General Gregory Garre and ex-Assistant S.G. Richard Bress were among those playing the roles of Federal Circuit judges in moot courts, Moore said.

Moore, the global co-chairman of Latham's intellectual property practice is married to Federal Circuit Judge Kimberly Moore. Nobody would have had to moot court her, though. Judge Moore recuses from all of Latham's cases.

Moore had help on the briefs from Latham partners Abbott Lipsky, Marguerite Sullivan, J. Scott Ballenger and Jeffrey Homrig and counsel Gabriel Bell, as well as from Troutman Sanders partners Robert Angle and Dabney Carr IV.

Nickolas Bohl of Feinberg Day Alberti & Thompson argued for I.V. Adduci, Mastrianni & Schaumberg and Goldstein & Russell also contributed.

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