UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

HONORABLE JESUS G. BERNAL, U.S. DISTRICT JUDGE

ELECTRIC POWER GROUP, LLC,	)	
	)	
PLAINTIFF,	)	**Case No.**
	)	
vs.	)	**EDCV-12-6365-JGB(RZx)**
	)	
ALSTOM S.A., ALSTOM GRID, INC., PSYMETRIX LTD., and ALSTOM LIMITED,	)	
	)	
DEFENDANT.	)	

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS
MONDAY, MAY 18, 2015
9:00 A.M.
RIVERSIDE, CALIFORNIA

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RIVERSIDE, CALIFORNIA; MONDAY, MAY 18, 2015

9:00 A.M.

THE COURTROOM DEPUTY: Calling item number 2, case number EDCV 12-6365-JGB, Electric Power Group, LLC, vs. Alstom S.A., et al. Counsel, come forward and state your appearances.

MS. MITCHELL: May it please the Court, your Honor, Angel Mitchell for the defendants. Also with me is Chris Dove and Jaime Kitano.

THE COURT: Good morning.

MR. HASAN: Good morning, your Honor. My name is Art Hasan from Christie, Parker, and Hale, and with me from the firm are Kyle Kellar, Mr. David Dillard, Mr. Warren Bleeker, and Ms. SamI Schilly.

THE COURT: Good morning to you all. The matter is on for several motions that have been filed by the parties in this case, and I want to deal with the threshold motion at this hearing, which is the motion by defendants for summary judgment based on invalidity pursuant to Title 35 U.S. Code Section 101. I focused my preparation on this motion because I feel this motion is a threshold matter. If I feel I'm going to deny the motion, I'll set further argument for the rest of the motions. Sorry I did not disclose this before today. It probably could have saved you some preparation time.

But I want to focus today on defendant's motion for invalidity based on the supreme court decision in *Alice* of 2014. Under that framework, there's two questions to be asked and answered: The first question is whether the claims at issue are directed to a patent-ineligible concept. If the answer to that question is yes, then the second question becomes what else is there? In other words, is there an inventive concept that would transform the nature of the claim into a patent-eligible application of the patent-ineligible concept?

My tentative in this is to grant the motion. I do believe that both questions can be answered -- well, the first question is yes and the second question is no. So I will let you, Mr. Hasan, argue the motion. You may focus on either one. The first -- well, let's take it logically. Let's focus on the first question here, which is, the first question being whether or not the claims at issue are addressed to a patent-ineligible abstract idea. And I think the defendants have set forth what they believe is the abstract idea, which is the collection, analyze and quantification of data of multiple systems regarding electrical power output mechanisms or systems.

What's your response?

MR. HASAN: Your Honor, we have some slides. May we put it up on the screen?

THE COURT: Has those been provided to the defendant?

MR. HASAN: Yes. We can provide it now, yes.

THE COURT: Please provide a copy. You may proceed.

MR. HASAN: I have paper copies if you'd like also, if I can approach.

THE COURT: Yes.

MR. HASAN: Your Honor.

THE COURT: Very well.

MR. HASAN: By way of just momentary background, the United States electrical power grid is considered the largest machine in the world. It has 2.7 million miles of power lines and millions of syncs and sources of load and source. Because electricity cannot be easily stored, it must be generated the instant demand rises. This causes fluxes that happen on a subsecond level. They happen in a way that is in milliseconds and faster.

In response, the patents-in-suit provide a wide-area real-time monitoring system for monitoring the electric power grid with the specifically claimed features. The claimed system receives massive amounts of ever-changing humanly incomprehensible data, which is very important here, from the electric power grid. It distills this data.

THE COURT: What do you mean by "humanly

incomprehensible"?

MR. HASAN: The data being accumulated in this system is at 60 cycles per second.

THE COURT: So because of its speed it can't be comprehended by humans, correct?

MR. HASAN: It cannot be comprehended at all. It would just be a blur.

THE COURT: Because of its speed? Not for any other reason, but because of its speed?

MR. HASAN: Because of its nature and its speed.

THE COURT: Okay. What's its nature?

MR. HASAN: Its nature are -- similar to *Arrhythmia Research*, which we did, the electrocardiograph signals. This was a federal circuit decision. The electrocardiograph signals cannot be understood by a human being unless they're interpreted by the system. So it's the speed and the nature here, your Honor.

THE COURT: Very well.

MR. HASAN: So it takes the humanly incomprehensible data from the grid, distills this data by deriving metrics, and then presents dynamically changing metrics by an operator as a humanly comprehensible visualization, all in real-time.

So one test here, just to jump forward, your Honor -- first of all, your Honor mentioned that the

defendants have set forth an abstract idea, but they never mentioned the abstract idea in any coherent sense. They shift many times as far as in their opening brief. For example, on Slide 11 they say, "These claims are drawn to the fundamental concept of receiving, storing, processing, and displaying data from a wide-area network.

Then in the next part, "Monitoring the electric power grid has long been a fundamental practice."

Then they talk about "...receiving, storing, and applying data."

Then they shift to monitoring the power grid on slide 12.

Then they talk about the idea of a real-time system using data from a wide-area network.

So what is the abstract idea here? In *DDR*, which is a federal circuit decision, that is 773 F.3rd 1245, recognized that defining the abstract idea in challenged claims was not as straightforward as in *Alice* and proceeding the claims, then, to be patent-eligible.

Similarly, in the *Helios* case that we cited -- in the *Helios* case as we cited in our brief, the defendant failed to show that these ideas are fundamental truths and fundamental principles. That's the same thing that's happened here.

The defendants in articulating, if you want to use

one of the ones that they've stated, the real-time wide-area power grid monitoring, which they brought up for the first time in their reply, your Honor, that's on slide 15, they then provide an oversimplified alleged abstract idea. They've simply glossed over many of the claim limitation. As stated by the court in *Intellectual Ventures 1, LLC, vs. Capital One* -- we cited this in docket 235, Exhibit B -- "...to be sure the claims do recite words such as organizing and defining and identifying, but those words cannot be read in isolation from the remainder of the claim.

Similarly, in *Google vs. Simple Air*, which is from the Patent Trial and Appeal Board, the court said "Every method can be generalized to the point of abstraction if the claim language is ignored. Petitioner's generalized statements not directed to the specific language of the challenged claims are insufficient."

THE COURT: I agree with you, and those positions make sense. The question here though, is, however, what method is described to specifically carry out the idea of monitoring that is specific enough to constitute an inventive idea?

So say that -- well, you can -- you can define the patent however you wish. You still have to tell me how the claims in the patent proposed an adaptation of the idea on a method that would make this an inventive idea as opposed to

running information through an algorithm and setting forth the results. I have a question as to whether that's patentable or not.

There's a lot of information that's not humanly perceptible that gets run through an algorithm or gets summarized on a table or gets organized through a program and then becomes comprehensible. It's just how does this patent do that? Where's the language specifying the steps by which this patent does that in a way that is more than just gathering information and displaying it?

MR. HASAN: Well, your Honor, I can answer that by looking at slide 17 and 18. If you look at the claim, the only thing that the defendants focused on in Claim 1 of the '843, which is an independent claim -- it's not one of the asserted claims, but it's a claim on which the asserted claims depend -- they left out for monitoring at least one of the reliability metrics in the second -- the first element in the body of the claim.

They've left out over a plurality of controls areas of the electric power grid operated on a plurality of platforms by the plurality of different business systems or companies.

They've left out the plurality of control areas of the electric power grid via at least one display computer having a monitor for displaying a visualization of the

metrics being monitored by the monitor computer.

The visualization here in this third step, your Honor, is very significant because they analogize it to a display. And they cite to the *Diet Goals*, case which is a case where food items were statically provided on a computer to show a user to monitor their diet. This is a visualization. This is not a display. Because if it were just a display, the word would be "displaying a display" in the claims, which doesn't make any sense.

The visualization are shown on the various screens of the patent, and these visualizations are very significant. Take a look, for example, your Honor, at slide 25. This Figure 29 illustrates an embodiment of asserted Claim 9 of the '843 patent which recites, "The monitor concurrently displays at least one dynamic geographic display and a plurality of data or text panels for at least one of monitoring, tracking, prediction, actions or mitigations.

Similarly, if you look at Figure 27, which focused on asserted Claim 4 -- I'm sorry, slide 26, your Honor. I'm sorry. Slide 26 looks at Figure 27 of the patent. It shows, "Wherein the said applications perform a real-time monitoring of at least one of system vulnerability, including phasor measurements and changes thereof or exposure in terms of at least one of population or cities." That is shown in that diagram.

When you look at the diagrams, all of these visualizations are rapidly moving visualizations. That is understood from the patent itself, because the patent is deriving metrics in real-time, based on fast-moving subsecond data. So this information is constantly changing. It cannot be properly analogized under any means, we think, to a static display of a food item, for example.

THE COURT: Very well. Let's have the other side respond to that.

Is it, Ms. Dove?

MS. MITCHELL: Ms. Mitchell.

THE COURT: Mitchell.

MS. MITCHELL: Yes. Thank you, your Honor. And I apologize. I don't have -- I don't have a slide. I don't have hard copies.

THE COURT: Very well. I want you to respond directly to their claim saying this method provides real-time synthesis of information that happened on a very fast basis and, therefore, is more than just an abstract idea.

MS. MITCHELL: Sure. Thank you, your Honor. I had a lot more slides, but I'll try to get to the rub, I think, of what we're focusing on at this point.

In Terry Winter's declaration, EPG's expert, he identifies what he claims to be the inventive concept of this patent. He says, "The claimed system must be real-time," and

that's his declaration, paragraph 29, "must be real-time operating over multiple control areas, derive metrics, and display visualization of those metrics."

The visualization display is simply the output of the whole system. Displays are well-known technology. There's case law on that we've cited in the brief. And so the visualization's not novel. It's simply the output of whatever the claimed novel system is. I shouldn't even say "novel." I should say "inventive."

Also, I would also point out that since we filed our brief, the federal circuit decided the case of *Content Extraction vs. Transmission* in December of 2014 where the federal circuit said it's okay to address representative claims if others are substantially similar and link to the same abstract idea. So we'll try to talked to about one claim in particular in order to focus that analysis.

And so as a representative claim we picked '259, the '259 patent, Claim 1, and the features of that. And, again, it talks about as your Honor noticed -- it's receiving, storing, processing, and displaying data. That's what it does

In breaking down what Mr. Winter claims to be the inventive concept, step by step, he first says it's multiple control areas. But if you look at the language of the claim, the claim language only says it's a wide-area system. You

have measurements collected over a wide area. You monitor metrics over a wide area. Derive dynamic stability metrics indicative of grid stress over the wide area, et cetera.

THE COURT: Slow down a little.

MS. MITCHELL: You have a graphic user interface to visualize measurements directed to a wide geographic are. You accumulate and update wide-area dynamics performance metrics.

Similarly, the '843 patent, Claim 1 --

THE COURT: So why is that important? Why is that significant?

MS. MITCHELL: Because he says that's -- he says that's one of the inventive concepts is this ability to have this integrated system --

THE COURT: If it were true, would it be an inventive patent?

MS. MITCHELL: It would not because of the way that it's claimed. And inasmuch as the claimed invention, as claimed, it offers no solution. If his idea is it's this wide-area system, where's the solution in the claims? That's really the rub of *Alice*, is that you need to provide some solution to the technological challenge in the claims, and that's simply what's not done in any of the claims.

The claims don't contain any limitations that would purport to improve the functioning of routine and

conventional wide-area networking technology. They don't -- they don't articulate any improved communications protocols or communications equipment or data sharing protocols or interoperability standards or anything along those lines.

In fact, Figure 2-C shows us what is envisioned by this wide-area network. And you simply have this wide-area reliability monitoring center in the middle plugged into a wide-area network. So there's nothing magic about this invention that make it's a wide-area network over what previously existed or what would be developed in the future. They simply claim a wide-area network.

And, importantly, this type of claiming has very broad preemptive effect. In our Exhibit 9 -- and we filed a supplement to that. We realized that portions of this exhibit had been omitted -- there's a Department of Energy report from August of 2013 that talks about these very types of technologies. And in 2013, which is ten years after the patent priority date, the Department of Energy itself is still saying the real challenge in these systems is to build interconnection-wide networks of PMUs, which are phasors, synchrophasors, that share information across utilities and regional transmission organizations.

And so you have this very broad claim that purports to cover these wide-area systems and yet doesn't articulate any improved way to function to achieve that desired

result.

Mr. Winter also says the system has to be real-time. But the claims, again, they don't recite any improved functioning to achieve real-time capabilities. They just say let's do this in real-time. And, again, it's not that simple.

There's no claim here that synchrophasors are new. They were cited in the abstract of the patent ad naseum. We cited that in our briefs. I would also point out in that same Department of Energy report footnote 5 points out that PMU's began being used during the 1990's, so synchrophasors aren't new.

More importantly, the claims don't recite anything that would purport to improve the speed of processing synchrophasor data.

In addition, we cited a supplemental authority that we filed last week, a decision from the Patent Trial and Appeal Board, that considered the issue of the meaning of the word "real-time," and, importantly, in doing so, cited a 1996 publication from the IEEE, the -- and that definition isn't necessarily as important as it is to understand that that's from '96. Real-time is a well-understood term between electrical engineers and things like that. There's nothing image magic about the claims that makes them more real-time than anything that came before or anything that might come

after.

So then we get down to the real rub, which is what I think your Honor was focused on as well, is there's -- you have to do something with all this data. There's all this data processing steps. They're largely wrapped up into claim limitations that I would call the "derived metrics limitations." And there's a lot of fancy industry jargon in those limitations. And Mr. Winter in his declaration, paragraph 36, also points out that you have to make meaningful use of the phasor data in order to do anything with it.

But, again, the way that this is claimed, you have this system that assesses dynamic stability. Again, doesn't say how to do that. The computer derives in real-time stability metrics including this laundry list of things using phasor measurements. It doesn't tell us how to do the computation. It doesn't tell any improved way to do that computation and says -- if you read the patent, they don't claim to have invented synchrophasor applications where you take the synchrophasor data and you process it to make meaningful use of the data.

In fact, throughout the patent what we see is a very generic description, Figure 2-B. You have these various technologies where you make use of the phasor data. State estimations using phasor data. Figure 14 refers to phasor

measurement applications. Figure 4, you have dynamics monitoring using phasor measurements. So, again, just these very general ideas of we're going to process this phasor data in a way to somehow make meaningful use of that data.

And, in fact, Mr. Budhraja in his 30(b)(6) deposition -- and this is attached to docket number 209, Exhibit H -- he even admits there's nothing new about these synchrophasor apps. He says, "That's what this solves, to give everybody the visibility over a wide-area with the same data with real-time subsecond resolution using standard algorithms and power system metrics, which are well-known in use, have been in use forever, I mean, since electricity was invented."

And so really you have this universe of data processing technology that pre-existed the patents, and there's nothing in the claims that tells you how to do anything new and better in terms processing that synchrophasor data. It simply claims the results that you should try to get from that in very generic fashion.

THE COURT: Very well. I'll have a response to that.

MR. HASAN: Your Honor, the response to that is on slide 27, which is the machine or transformation test, your Honor. Now, the machine or transformation test, which was set forth *In Re Bilski* by the controlling federal circuit,

affirmed by the supreme court, is a test that is useful to determine whether or not there is an abstract idea. And we miswrote in our opening brief this would be a dispositive test to determine whether the claims are abstract. It's not the only test, but it is one test.

So, for example, to cite a very concrete case over here, *SiRF Technology* -- and this is cited in our opening brief. We have here fast-moving data received from the electric power grid. It is incomprehensible to a human. A pencil and paper can do nothing to assist this. The machine itself is an integral part of the invention. And the way that it operates on this fast-moving data is to derive into metrics and then convert the information by juxtaposing it with the visualization as set forth in the claim so the user can understand humanly incomprehensible data.

If you look at the *SiRF Technology* case, which is set forth on slide 28, the claims there were directed to an improved method by which a GPS receiver can better calculate its position when only weak GPS signals are available. The court found the claims were patent-eligible as they were tied to a specific machine, there the GPS receiver. It says, "We are not dealing with a situation which there is a method that cannot be performed" -- I'm sorry, "We are not dealing here with a situation in which there is a method that can be performed without a machine."

Here we have the computer that's attached to high-speed data and we have the electric power grid. The electric power grid is a machine, and this passes the machine or transformation test.

The next case that we cited that we put in our opening brief, your Honor -- I'll skip ahead to slide 34 -- is *Arrhythmia Research*. The federal circuit again in control precedent held that a method of detecting a certain heart condition from electrocardiograph data was patent-eligible. The court said, "These input signals, the electrocardio signals, are not abstractions. They're related to a patient's heart function."

Importantly, even though the claim method used known mathematical formulas to convert, process, and compare the received electrical signals, the court found that the recited steps transformed under the machine or transformation test physical processes from one physical or electrical signal into another. Cited on the bottom of this same slide, your Honor, *In Re Bilski* itself, which was affirmed by the Supreme Court, this is at 545 F.3rd 943 at 962-963, they cite to a supreme court case called *In Re Abel*. And in that it was a visual representation of a human body based on x-ray data. That was patent-eligible.

We cite two other cases in this section which are new cases. If you turn back for a moment, forgive me, to

slide 30, the patent at issue in *Wavetronix*, which we cited to docket 231, exhibit C -- it only issued in January of this year. It was directed to tracking the speed and location of vehicles as they approach an intersection to improve the timing of the traffic signal.

Turning to the next slide, there was no dispute that a known mathematical formula was being used by claimed system to derive the arrival time based on speed and distance. The court held that this was a patent-eligible invention because they viewed the system as a whole and what it did, namely, convert the sensor data from the vehicles into some other data that could be appreciated as to its effect.

Now, in these cases, except the x-ray case, your Honor, there was no visualization. There was no visualization in the graphical representation of the data that further tied the claims down.

This brings us to *DDR Holdings*, which is another new case, on slide 33, your Honor. This is a federal circuit case, and, again, it's controlling. In this case what happened was that it had to do with websites. And when somebody pressed a link on a website, it would take you to a page that had a hybrid website that had the original contents of the website, but it put a border around the website to make it look like you never left the original website when

you pressed the link. That way it retained visitors, purportedly, to the original site because it didn't move you to something that looked like a completely different site.

That was held independently of all these other cases to be patent-eligible by the federal circuit because it was an improvement to the user interface itself.

Just like the visualizations that are shown in all of the diagrams that you can see in the patent, all of those visualizations -- and in the claims that we pointed out to you with dynamic geographic visualizations and showing it juxtaposed with cities -- are ways to interpret incomprehensible data next to things and juxtaposed with things that allows somebody to understand this.

There's no case, no case, your Honor, that they can cite, not one, where the abstract idea was something that could not be performed in the human mind. All of the cases that you look at, including the *Alice* case, had to do with traditional types of things such as hedge fund trading, such as recommending a meal, such as match-making, such as providing travel recommendations. These are all -- updating account records, ledgers. All of these can be performed in the human mind.

They just filed on Thursday, your Honor supplemental authority. We responded to that supplemental authority on Friday. In our response, because they summarize

the cases, we point out that every single one of those cases, the underlying abstract idea could be easily performed by a human being. Those are the types of cases that are abstract ideas, not cases where you're dealing with the underlying application being high-speed data.

In those cases real-time had no consequence. Real-time had no consequence because whether you called on the phone or looked at it at a computer, it didn't matter whether you were giving the meal planning or not. That was just something that the computer did. Here real-time has significance.

And the reason why it goes to our other point of what do these claims preempt? You have to look at preemption. Real-time there are other types of monitoring that are available and have been available. These are called state estimation. They're called simulation. Those are not done in real-time. Those are things that are available.

Also, if you look at all of the claim limitations, they could avoid any of these by using a different type of visualization. They can avoid it by using state estimation. They can avoid it by looking at different types of data, by juxtaposing the data separately. This is not a broad sweeping type of thing. If you look at the machine or transformation cases that we saw, none of them were detailed claims, your Honor. None of them were detailed claims.

The *Arrhythmia* case, the *Bilski* case that focused on the x-rays that was a cite within a cite, these were not detail cases. They didn't deal with any new formulas. That's not the test. The test here is the transformation of data from the incomprehensible, the x-ray of the human body to something that can be visualized, is something, or making something -- making sense out of that data. So it's critical to look at all of that, your Honor, over here.

If you look at --

THE COURT: Very well, what I'll do is -- Ms. Mitchell, if you want to submit your Power Point hard copy, I'll consider that. I'll take the matter under submission, and I'll issue a ruling.

When do you think you can submit that Power Point? If you want me to consider it. You don't have to.

MS. MITCHELL: Your Honor, we'd be happy to get that to the Court.

THE COURT: File it by the end of the day today. Can you do that

MS. MITCHELL: I think so, yes.

THE COURT: Very well. So the matter stands submitted. Thank you.

MS. MITCHELL: So, your Honor, just so I'm clear, the slide dec that we just provided?

THE COURT: Yes.

MS. MITCHELL: Thank you.

THE COURT: And, again, if -- depending on how I decide this motion, I may have a further hearing on the other motions and/or set further dates. But as of this time the matter stands submitted. Thank you.

MS. MITCHELL: Thank you, your Honor.

(Proceedings Concluded.)

CERTIFICATE OF OFFICIAL REPORTER

I, ADELE C. FRAZIER, FEDERAL OFFICIAL REALTIME COURT REPORTER, IN AND FOR THE UNTIED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED STATES CODE THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE TRANSCIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATED THIS 20th DAY OF MAY, 2015

/S/ ADELE C. FRAZIER

ADELE C. FRAZIER, CSR No. 9690, CRR, RMR

FEDERAL OFFICIAL COURT REPORTER