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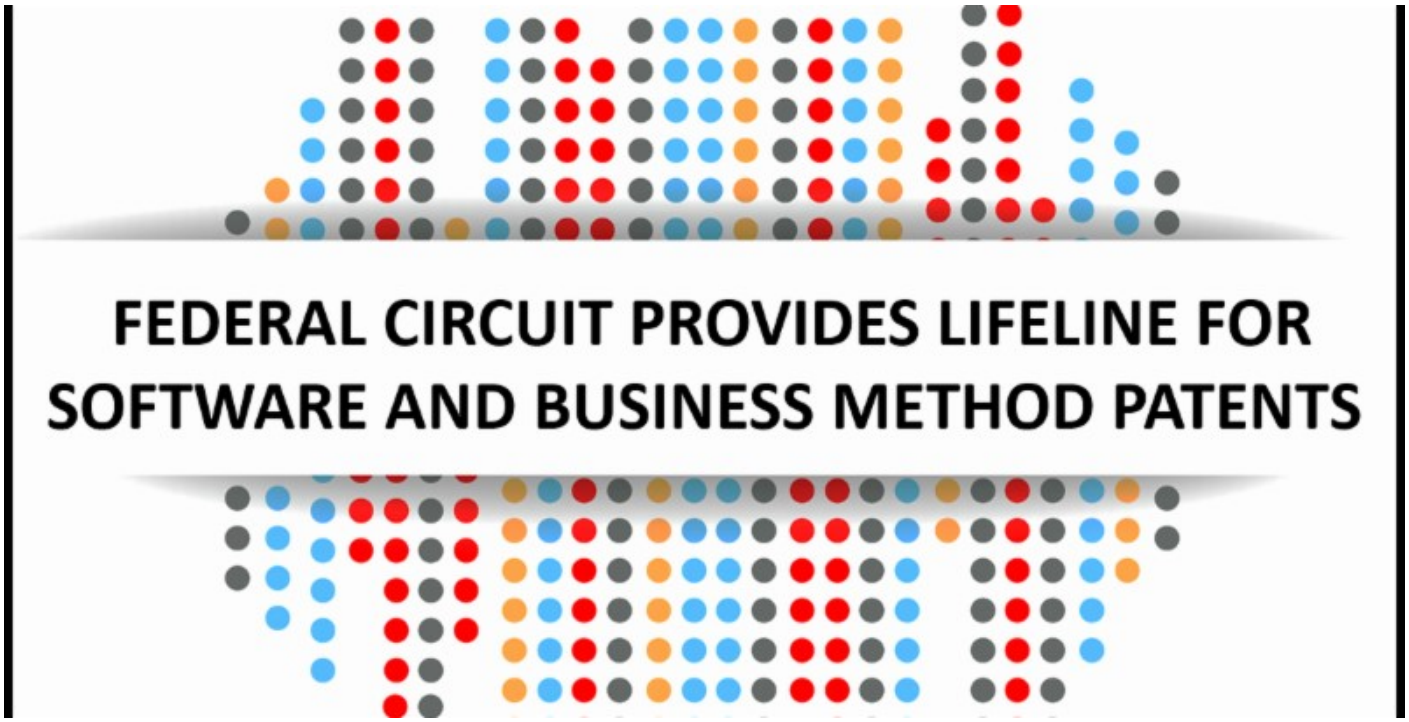
FEDERAL CIRCUIT PROVIDES LIFELINE FOR SOFTWARE AND BUSINESS METHOD PATENTS



After nearly four years of post-Alice precedent allowing the early invalidation of software and business method patents, the Federal Circuit has begun looking more favorably on patents for computer-implemented inventions. The patent enforcement landscape has been relatively hostile to these kinds of patents since the 2014 decision in Alice Corp. Pty. Ltd. V. CLS Bank Int'l, 134 S. Ct. 2347 (2014), in which the Supreme Court held that mere computer implementation did not make an abstract idea concrete and protectable.

Starting in 2016, the Federal Circuit gradually began acknowledging the validity of some software patents involving improvements to computer operation or technological processes. February has seen a continuation of this trend, as the Federal Circuit overturned the rulings of two district courts, in the Seventh and Eleventh Circuits. Both courts had ruled that the patent claims at issue were ineligible for protection as abstract ideas, pursuant to 35 U.S.C. § 101.

First, in Berkheimer v. HP Inc., (Fed. Cir. 2018), the Federal Circuit denied summary judgment, finding that there was an underlying issue of material fact as to whether a patent for data sorting and archiving involved an improvement to computer operation or a previously unknown method. Then, faced with patents covering data collection and organization in Aatrix Software Inc. v. Green Shades Software Inc., (Fed. Cir. 2018), the Federal Circuit overturned a dismissal for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6), finding a factual issue regarding whether the patents claimed only “conventional or routine” methods.

These cases provide some support for would-be and current software patentees pursuing applications or infringement remedies, in that such patents are no longer as likely to be invalidated on their faces, before discovery. Those defending against patent infringement suits should take an extra step beyond the Alice test and consider which inventive concepts might be raised by the patentee.

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