

Fed. Circ. Upholds Nix Of Ad IP Asserted Against Google

By **Kevin Penton**

Law360 (February 9, 2018, 5:35 PM EST) -- The Federal Circuit on Friday affirmed Google's wins before the Patent Trial and Appeal Board that invalidated the asserted claims of two patents covering technology for identifying invalid clicks for online pay-per-click advertisers, confirming that the patents were eligible for the America Invents Act covered business method review program.

Inventor Patrick Zuili failed to establish that the PTAB erred in determining that Google LLC could challenge the patents under a CBM review, following rulings by the Federal Circuit that limited the scope of the program, which is designed for patents that are related to financial products or services, according to the appellate panel's opinion.

"We do not detect error in the PTAB's findings or reasoning and, therefore, conclude that the patents-in-suit are CBM patents eligible for review," the opinion reads.

Zuili's patents cover a system to detect invalid clicks in pay-per-click advertising agreements. By measuring the number of clicks for a user in a given time period, the system can automatically determine if certain clicks are illegitimate, which helps a search engine company fairly charge advertisers, according to court documents.

The Federal Circuit on Friday also upheld the PTAB's determinations that the asserted claims for the patent are invalid under the U.S. Supreme Court's Alice standard because they are not inventive and cover nothing more than an abstract idea.

"We hold that the asserted claims are directed to the abstract idea of collecting, transmitting, analyzing and storing data to detect fraudulent and/or invalid clicks based on the time between two requests by the same device or client," the opinion reads.

The appellate court panel also rejected contentions by Zuili saying that the U.S. Patent and Trademark Office effectively stacked the deck against him by purposely choosing judges who would be averse to his position, holding that the inventor failed to present sufficient evidence to back up his claims, according to the opinion.

"We have independently reviewed Mr. Zuili's claims in light of the record but find his claims insufficiently supported," the opinion reads.

Google filed the challenges after Zuili's company, Brite Smart Corp., sued the search giant in 2014, alleging that Google's pay-per-click ad services, such as AdWords, infringed several patents. The case was initially filed in the Eastern District of Texas but was later transferred to California.

Counsel for the parties could not immediately be reached for comment on Friday.

U.S. Circuit Judges Sharon Prost, Jimmie V. Reyna and Evan J. Wallach sat on the panel for the Federal Circuit.

The patents-in-suit are U.S. Patent Numbers 7,953,667 and 8,671,057.

Zuili represented himself.

Google is represented by Andrew John Pincus, Paul Whitfield Hughes, Saqib Siddiqui, Jonathan Weinberg and Robert G. Pluta of Mayer Brown LLP.

The cases are Zuili v. Google LLC, case numbers 17-2161, 17-2258 and 17-2267, in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Matthew Bultman. Editing by Stephen Berg.