

# Latham Tweaks Intellectual Ventures With U-Turn Ruling

**Scott Graham**

Intellectual Ventures seemed to be closing in on a nice win in Maryland federal court a few months ago when a special master recommended that its patents on a mobile interface and managing XML documents be found eligible for protection under Section 101.

But that ruling was so May 2015. On Thursday, U.S. District Judge Paul Grimm of Maryland flipped the recommendation, citing more recent patent-eligibility case law from the U.S. Court of Appeals for the Federal Circuit and the district courts, paying special mention to U.S. District Judge Beth Labson Freeman of the Northern District of California and her recent decision involving Hewlett-Packard Co.

Grimm's decision was another bad outcome for Intellectual Ventures Management LLC (I.V.) in its litigation with Capital One Financial Corp., one of several large financial institutions the patent enterprise is jousting with in district courts and before the Patent Trial and Appeal Board. Just last month, the Federal Circuit upheld a Virginia district court ruling for Capital One that invalidated I.V. patents on computerized financial budgeting and customized web pages. That ruling also figured prominently in Grimm's decision Thursday in *Intellectual Ventures I v. Capital One Financial*.

I.V.'s 7,984,081 patent is on an apparatus that parses a variety of XML documents into plain text, so they can be manipulated by everyday users. Capital One had dismissed the invention as a "human translator" that could be achieved with pen and paper, and therefore an abstract idea. Special master Raphael Lupo had disagreed. "This highly specialized idea is not mere data storage, organizing credit card numbers and Internet addresses," wrote Lupo, a senior counsel at McDermott Will & Emery. Rather, it "identifies and solves a unique problem in computer technology presented by the many different XML documents in use across many different businesses enabling a business user to transcend them."

Although adopting Lupo's factual findings, Grimm ultimately agreed with Capital One and its Latham & Watkins team that the idea is abstract as a matter of law, and the patent claims add no inventive concept.

"The patent is, at its core, directed to the abstract idea of organizing, displaying, and manipulating data related to business documents," Grimm wrote. "This concept addresses a fundamental activity in which businesses have engaged as long as businesses have relied on documents."

And as Freeman had ruled in *HP v. Service Now*, the patent merely described what to do—not how to do it. "Simply put, the claim must show 'how' the apparatus works, because without the 'how' limitation, a claim does no more than direct the application of an abstract idea on a computer," he concluded.

The same dynamic was in play with I.V.'s 6,546,002 patent on a mobile interface that can locate files and data other computers. Capital One had compared it to "the age old concept of calling home to have a family member look up something in a file." Lupo had disagreed. "Posting on the refrigerator is not analogous to a dynamic mobile interface that provides an ability to access files from anywhere from any device no matter where those e-files are located," he wrote in May.

Again, Grimm was not on the same page, because the claims did not recite the software or formula needed to accomplish the invention. Even if it had, the idea would still be abstract. "For example, a user can access data without the interface by traveling to the location at which the data is stored and retrieving it, or having someone else at that location retrieve and forward the data," he wrote.

Grimm's decision knocked out only two of the four patents at issue in the case. But the outlook is gloomy for the other two: A federal judge in New York has already ruled claims from those two patents ineligible in a separate case brought by JPMorgan Chase & Co. Capital



**Matthew Moore of Latham & Watkins.**

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One is also pressing counterclaims for antitrust violations before Grimm.

It's not all gloom and doom for I.V. The Patent Trial and Appeal Board upheld the validity of a third patent in its New York case, and U.S. District Judge Alvin Hellerstein turned away JPMorgan Chase's motion for summary judgment of noninfringement in June. JPMorgan Chase is appealing that decision to the Federal Circuit.

Latham partner Matthew Moore argued Capital One's summary-judgment motion to Grimm. Also on Latham's team were partners Jeffrey Homrig, counsel Gabriel Bell, and associates Adam Greenfield, Elizabeth Johnson, Peter Schmidt, Michelle Woodhouse and Katie Schon. Also representing Capital One in the case are Kirkland & Ellis and Troutman Sanders.

Intellectual Ventures is represented by Feinberg Day Alberti & Thompson and Lief Cabraser Heimann & Bernstein in both the Capital One and JPMorgan litigation. Freitas Angel & Weinber and Funk & Bolton also represent I.V. in the Capital One case.

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