

## Relying on the Preamble to Defeat a § 101 Challenge Makes It Limiting

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*Data Engine Technologies LLC v. Google LLC*, No. 2021-1050 (Fed. Cir. August 26, 2021)

This is a second appeal to the Federal Circuit in a case regarding three asserted patents directed to systems and methods for displaying and navigating three-dimensional electronic spreadsheets by implementing user-customizable “notebook tabs” on the spreadsheet interface. Prior to this second appeal, the alleged infringer had filed a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) that the patentee’s asserted claims were ineligible under 35 U.S.C. § 101. The district court held the asserted claims to be ineligible under § 101. The patentee appealed the decision, and the Federal Circuit agreed with the patentee’s argument that the “key innovation” of the asserted patents was a particular manner of navigating three-dimensional spreadsheets by providing a user-friendly interface with familiar notebook tabs. In a footnote, the Federal Circuit noted that claim 1 of one of the three asserted patents was affirmed as ineligible under § 101.

Subsequent to the first appeal, the alleged infringer requested the district court to reopen claim construction and construe the preamble term “three-dimensional spreadsheet.” The district court agreed with the alleged infringer that the preamble is limiting and construed the term “three-dimensional spreadsheet” as “spreadsheet that defines a mathematical relation among cells on different spreadsheet pages, such that cells are arranged in a 3-D grid.” The district court also granted the alleged infringer’s motion for summary judgment of noninfringement because it was undisputed that the alleged infringer’s accused product is not a “three-dimensional spreadsheet,” as construed by the district court.

The patentee filed this second appeal arguing that the preamble term “three-dimensional spreadsheet” is not limiting and thus does not have patentable weight. The Federal Circuit disagreed with the patentee and affirmed the district court’s decision. The Federal Circuit found that where the patentee relies on language found in the preamble, such as “three-dimensional spreadsheet,” to successfully argue that its claims are directed to eligible subject matter, it cannot later assert that the preamble term has no patentable weight for purposes of showing infringement. In addition, the Federal Circuit adopted the district court’s construction of “three-dimensional spreadsheet” that requires a mathematical relation because it found that the patentee expressly included “a mathematical relation” in its definition of “three-dimensional spreadsheet” to distinguish the claimed invention over prior art in the prosecution history.

Because the patentee did not argue that the accused product infringes under the district court's construction, summary judgment of noninfringement was affirmed.

Read the full decision [here](#).

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