

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MOBILE TELECOMMUNICATIONS :
TECHNOLOGIES, LLC, :

Plaintiff, :

v. :

UNITED PARCEL SERVICE, INC., :

Defendant. :

CIVIL ACTION NO.
1:12-CV-3222-AT

ORDER

Mobile Telecommunications Technologies, LLC (“MTel”) moves for reconsideration of the Courts’ Order [Doc. 161] granting United Parcel Service, Inc.’s (“UPS”) Motion for Judgment on the Pleadings.

MTel filed this suit in 2012, alleging that UPS infringed on MTel’s ‘748 patent, which covered a method to provide “prompt notification of delivery of an express mailing” to an addressee via messages relayed to and from a wireless paging center. After several years of litigation, UPS filed its Motion for Judgment on the Pleadings, arguing that the ‘748 patent was aimed at the abstract idea of delivery notification and therefore not patentable under 35 U.S.C. § 101.

The Court agreed, holding under the two-step framework provided by *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) that (1) the patent was in fact aimed at the abstract idea of delivery notification and (2) although the

patent limited itself to a “particular technological environment,” (Order, Doc. 161 at 12), it did not supply the “inventive concept” needed to render it patentable. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1294 (2012).

MTel now argues that the Court “slip[ped] into impermissible hindsight [bias]” (Doc. 164 at 7) when conducting step two of the *Alice Corp.* analysis. Specifically, MTel argues that the Court committed clear error when it observed that “MTel’s patent . . . covers a method for delivery notification that could be implemented with generic components, using two of the most popular methods of communication currently available in SMS text messages and e-mail.” (Order, Doc. 161 at 19.) According to MTel, the Court was required to examine technology as it existed in 1996 when assessing whether or not the ordered combination of limitations supplied an “inventive concept” rendering MTel’s claims patentable.

I. Standard

Under Local Rule 7.2(E), “[m]otions for reconsideration shall not be filed as a matter of routine practice,” but only when “absolutely necessary.” L.R. 7.2(E), NDGa; *Bryan v. Murphy*, 246 F. Supp. 2d 1256, 1258-59 (N.D. Ga. 2003); *Pres. Endangered Areas of Cobb’s History, Inc. v. U.S. Army Corps of Eng’rs*, 916 F. Supp. 1557 (N.D. Ga. 1995) (O’Kelley, J.). Reconsideration should only be granted where there is: (1) newly discovered evidence; (2) an intervening development or change in controlling law; or (3) a need to correct a clear error of

law or fact. See *Smith v. Ocwen Fin.*, 488 F. App'x 426, 428 (11th Cir. 2012); *Bryan v. Murphy*, 246 F. Supp. 2d 1256, 1258-59 (N.D. Ga. 2003); *Jersawitz v. People TV*, 71 F.Supp.2d 1330 (N.D. Ga. 1999) (Moye, J.); *Paper Recycling, Inc. v. Amoco Oil Co.*, 856 F. Supp. 671, 678 (N.D. Ga. 1993) (Hall, J.).

Parties may not use a motion for reconsideration to show the court how it “could have done it better,” to present the court with arguments already heard and dismissed, to repackage familiar arguments to test whether the court will change its mind, or to offer new legal theories or evidence that could have been presented in the original briefs. *Bryan v. Murphy*, 246 F. Supp. 2d at 1259; *Pres. Endangered Areas of Cobb's History, Inc.*, 916 F.Supp. at 1560; *Brogdon ex rel. Cline v. Nat'l Healthcare Corp.*, 103 F.Supp.2d 1322, 1338 (N.D. Ga. 2000) (Murphy, H.L., J.); *Adler v. Wallace Computer Servs., Inc.*, 202 F.R.D. 666, 675 (N.D. Ga. 2001) (Story, J.) (citing *O'Neal v. Kennamer*, 958 F.2d 1044, 1047 (11th Cir. 1992)). If a party presents a motion for reconsideration under any of these circumstances, the motion must be denied. *Bryan v. Murphy*, 246 F. Supp. 2d at 1259; *Brogdon ex rel. Cline*, 103 F. Supp. 2d at 1338.

II. Discussion

MTel argues that the Court engaged in impermissible hindsight bias “by viewing the ‘748 Patent in light of the ubiquity of wireless messaging technology today,” instead of determining whether the limitations in the patent were well-understood, routine, or conventional in the art in 1996, when the patent was filed. (MTel’s Motion, Doc. 164 at 7, 18.) MTel contends that “the Order’s

analysis of the wireless communications arts in 2016 [is] . . . the *only* basis by which the Order arrives at its conclusion that the ‘748 Patent fails to contain an inventive concept at Step Two” of the *Alice* analysis. (Motion for Reconsideration. Doc. 164 at 24.)¹ And so, according to MTel, the Court declined to embrace UPS’s argument in its Motion for Judgment on the Pleadings that “the claim elements were merely generic computers performing routine computer functions.” (Motion for Reconsideration, Doc. 164 at 23.)

The Court is not persuaded. First, MTel cherry picks a few lines from roughly seven pages of the Order’s *Alice Corp.* “inventive concept” analysis and from that contends that the entirety of the Court’s holding is suspect. It thus misreads and mischaracterizes the Court’s holding that MTel has “patented a method of delivery notification that is the equivalent of a method implemented ‘through a computer’ or ‘over the internet.’” (Order, Doc. 161 at 17.) The holding that the claim elements were the rough equivalent of “merely generic computers performing routine computer functions” was the Court’s holding.

To add to the point, the Court specifically rejected MTel’s argument that “its claims require ‘specific structures and data elements’ such as the ‘paging operations center,’ ‘express mail tracking service,’ ‘ID number,’ and ‘wireless page message[s],” holding that MTel had offered “little in the way of explanation as to how these limitations are actually limiting.” (Order, Doc. 161 at 17 (quoting

¹ MTel and UPS both argue over whether or not “novelty” (and thus the state of the art in 1996) is a concept that may be properly explored at Step Two of the *Alice* analysis.

MTel's Response in Opposition to UPS's Motion for Judgment on the Pleadings, Doc. 155 at 18.))²

In addition, the Court engaged in a lengthy case analysis surveying Federal Circuit precedent and decisions from other district courts that rejected similar patents for their failure to provide an inventive concept because they all concerned methods for long-known business practices constrained to a “particular technological environment.” (Doc. 161 at 13-17, *citing Intellectual Ventures*, 792 F.3d 1363, 1367 (Fed. Cir. 2015); *GT Nexus, Inc. v. Intrta, Inc.*, No.

² The Court provides a bit more analysis as to why MTel's limitations are generic, individually and in combination, regardless of whether assessed now or from the perspective of someone living in the mid-to-late '90s.

First, a “wireless page message” is simply data sent wirelessly, rather than data sent over a “connection-oriented framework” like a cell phone voice call. (See MTel's Response to UPS's Motion for Judgment on the Pleadings, Doc. 155 at 23.) The Court is permitted to take note of “fundamental economic concepts and technological developments” when making a § 101 determination, observes that sending wireless page messages was well-known in 1996. *Affinity Labs of Texas, LLC v. Amazon.com Inc.*, --- F. 3d ----, 2016 WL 5335502, at *4 (Fed. Cir. Sept. 23, 2016) (courts may take notice of fundamental technological developments); *see also In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 612 (Fed. Cir. 2016) (“use of conventional or generic technology in a nascent but well-known environment” not enough to render abstract idea patentable).

Second, the term “paging operations center” was defined at claim construction as “a center that receives and processes information related to an express mailing, and transmits wireless page messages to the delivery notification recipient.” (Order, Doc. 68 at 30.) In other words, it is a center that receives data and then directly or indirectly transmits it wirelessly (here, for the purpose of delivery notification). This too is generic, and the specification offers nothing to obviate that fact.

Finally, the “express mail tracking network” that is accessed by the paging operations center is likewise left vague. The Court construed this term as meaning “a network or service that tracks the delivery status of a package.” (Order, Doc. 68 at 21.) The specification itself recognizes that such networks were known and used at the time of the patent. '748 patent, col. 1 ll. 17-24 (“Federal Express, for example, has in place a network for tracking express mailings they have been engaged to carry. This tracking network is capable of indicating, on essentially a real time basis, status updates on every express mail package and envelope . . . Status updates are available to Federal Express mail users.”)

In combination, these elements are also generic. The patent sets forth steps by which conventional technologies (wireless paging systems) do conventional things (relay data and send messages through, in essence, a communications center) to achieve an abstract aim: notifying a customer if and when their package has been delivered.

11-cv-2145-SBA, 2015 WL 6747142, at *4-5 (N.D. Cal. Nov. 5, 2015); *MacroPoint, LLC v. FourKites, Inc.*, No. 14-cv-1002, 2015 WL 6870118, at *2-3 (N.D. Oh. Nov. 6, 2015).)

Nor is the Court persuaded by MTel's citation to more recent Federal Circuit authority. MTel submitted a Notice of Supplemental Authority (Doc. 167) pointing the Court to *Bascom Global Internet Svcs., Inc. v. AT&T Mobility, LLC*, 827 F.3d 1341 (Fed. Cir. 2016). In *Bascom*, the Federal Circuit held that a patent for an internet content filtering system "located on a remote ISP server that associates each network account with (1) one or more filtering schemes and (2) at least one set of filtering elements from a plurality of sets of filtering elements, thereby allowing individual network accounts to customize the filtering of Internet traffic associated with the account." *Id.* at 1345. The defendant argued that the patent was directed towards the abstract idea of filtering content, while the plaintiff argued that the claims of its patent were specifically addressed to a problem "arising in the realm of computer networks, and provide a solution entirely rooted in computer technology." *Id.* at 1346.

The Federal Circuit agreed with the plaintiff, holding that "the invention is not claiming the idea of filtering content simply applied to the internet." *Id.* at 1351. Instead, "[b]y taking a prior art filter solution (one-size-fits-all filter at the ISP server) and making it more dynamic and efficient (providing individualized filtering at the ISP server), the claimed invention represents a 'software-based invention[] that improve[s] the performance of the computer system itself.'" *Id.*

at 1351. The patent therefore slotted into the category of inventions that are patentable. *See Mortgage Grader, Inc. v. First Choice Loan Services, Inc.*, 811 F.3d 1314, 1325 (Fed. Cir. 2016) (abstract idea of credit grading and facilitating anonymous loan shopping did not contain an inventive concept in part because it did not purport to “improve the functioning of the computer itself” or “effect an improvement in any other technology or technical field.”)

By contrast, the claims here “merely provide a generic environment in which to carry out the abstract idea.” *In re TLI Communications LLC Patent Litigation*, 823 F.3d 607, 611 (Fed. Cir. 2016). The patent does not claim that MTel invented wireless paging, paging operations centers, or express mail tracking networks. *See Affinity Labs of Texas, LLC v. Amazon.com Inc.*, --- F.3d ----, 2016 WL 5335502, at *4 (Fed. Cir. Sept. 23, 2016) (“Affinity makes no claim that it invented any of those components or their basic functions, nor does it suggest that those components, at that level of generality, were unknown in the art as of the priority date of the ‘085 patent.”)

The Court instead finds *In re TLI Communications LLC Patent Litigation*, a case supplied by UPS in response to MTel’s Notice of Supplemental Authority, to be more analogous. 823 F.3d at 609-612. There, Federal Circuit held that a patent for “an apparatus for recording of a digital image, communicating the digital image from the recording device to a storage device, and to administering the digital image in the storage device” on a mobile phone was directed “to the abstract idea of classifying and storing digital images in an organized manner.”

Id. at 609-612. The claims recited the use of a “telephone unit,” a “server, an “image analysis unit” and a “control unit” to accomplish the aim of classifying, organizing, and storing digital images. *Id.* at 614. The Court found that the claims’ use of these components did not display an inventive combination because the “specification limits its discussion of these components to abstract functional descriptions devoid of technical explanation as to how to implement the invention. For example, the ‘image analysis unit’ predictably analyzes the digital images to ‘determine[] the quality of the digital image provided to the server.’” *Id.* at 615. These “vague, functional descriptions of server components” were “insufficient to transform the abstract idea into a patent-eligible invention.” *Id.* In other words, these components were “merely a conduit for the abstract idea of classifying an image and storing the image based on its classification,” *id.* at 612, and “the focus of the patentee and of the claims was not on an improved telephone unit or an improved server.” *Id.* at 613. The Court recognizes that there are distinctions in the scope of operations addressed by the *TLI* patent’s claims. However, *TLI* reinforces the Court’s view that it reached the correct result in its March 24, 2016 Order granting UPS’s Motion for Judgment on the Pleadings. Like in *TLI*, MTel’s specification “fails to provide any technical details for the tangible components, but instead predominantly describes the system and methods in purely functional terms.” *Id.* at 612.

Other recent Federal Circuit cases also support this result. In *Affinity Labs of Texas, LLC v. Amazon.com, Inc.*, the court held that a patent that claimed “the

general concept of streaming user-selected content to a portable device” was ineligible for patenting under § 101. *Affinity Labs of Texas, LLC*, --- F. 3d. ----, 2016 WL 5335502, at *5. Notably, *Affinity Labs* contended that its patent “embodied a concrete technological innovation because, as of its priority date (March 28, 2000), wireless streaming of media was not ‘routine, conventional, or well known.’” *Id.* at *3. The patent claimed that it used a “network based delivery resource” and a “network based media managing system” with a “customized user interface page for the given user” to facilitate the aim of delivering the content. *Id.* at *5. The court held that these features were “described and claimed generically rather than with the specificity necessary to show how those components provide a concrete solution to the problem addressed by the patent.” *Id.* Furthermore, when addressing *Alice* Step One, the Court noted that “essentially result-focused, functional . . . claim language has been a frequent feature of claims held ineligible under § 101.” *Id.* at *3 (citations and quotations omitted).

Finally, MTel also cited and attached *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016) to its Reply in support of its Motion to argue that the Court erred in determining that the ‘748 patent was directed towards an abstract idea. *Enfish* provides no help to MTel. In *Enfish*, the Federal Circuit analyzed a patent for an “innovative logical model for a computer database.” *Id.* at 1330. The logical model was “[c]ontrary to conventional logical models” because it “include[d] all data entities in a single table, with column definitions provided by

rows in that same table.” *Id.* The patents disclosed an indexing technique that allowed for faster searching of data as a result of the database’s use of the logical model. The court only engaged in step one of the *Alice* analysis and determined that “the plain focus of the claims is on *improvement to computer functionality itself*, not on economic or other tasks for which a computer is used in its ordinary capacity.” *Id.* at 1336. *Enfish* is therefore plainly about a patent whose core aim is improving computer functionality. The ‘748 patent’s core aim is a method for delivery notification, an “economic or other task[] for which a computer is used in its ordinary capacity.” *Id.*³

III. Conclusion

For the foregoing reasons, the Court **DENIES** MTel’s Motion for Reconsideration [Doc. 164]. The Court **ENTERS** Judgment in favor of UPS and against MTel in this matter.

The Clerk is **DIRECTED** to close⁴ this case.

IT IS SO ORDERED this 21st day of October, 2016.



Amy Totenberg
United States District Judge

³ The Court also finds inapposite *McRO, Inc. v. Bandai Namco Games America, Inc.*, No. 2015-1080, 2016 WL 4896481 (Fed. Cir. Sept. 13, 2016). MIC submitted this case as part of a second notice of supplemental authority. However, the patent at issue there was “directed to a patentable, technological improvement over [] existing, manual 3-D animation techniques.” *Id.* at *10.

⁴ This matter has previously been administratively closed.